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Elections

NEW JERSEY  
STATUTES ANNOTATED

Title 19

Elections

19:1 to 19:31A

19:1  
TO  
19:31A



***F. Clifton White Resource Center***

International Foundation

for Election Systems 3/98

1101 15th Street, NW

Washington, DC 20005

## LIST OF TITLES NEW JERSEY REVISED STATUTES NEW JERSEY STATUTES ANNOTATED

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- |   |  |
|---|--|
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- Acts Saved from Repeal.
- Validating Acts.

# NEW JERSEY STATUTES ANNOTATED

**Title 19**

**ELECTIONS**

**19:1-1 to 19:31A-10**

*F. Clifton White Resource Center*  
International Foundation  
for Election Systems 3/99  
1101 15th Street, NW  
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Interpretation of the  
statutes of the State  
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West Group  
Washington, DC 20008



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## **PREFACE**

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These recompiled volumes, containing Title 19, Elections, are designed to preserve and extend the practical utility of New Jersey Statutes Annotated by bringing to date the presentation of the general and permanent laws under official allocations within the framework of the Revised Statutes of 1937 together with constructions and interpretations thereof by state and federal courts, the attorney general, and administrative decisions.

Laws are included through Chapter 153 of the 1998 Annual Session.

### **Features of Volume**

The many outstanding features of New Jersey Statutes Annotated are continued in this volume. These include Governor's reconsideration and recommendation statements applicable to the enacted law and committee and introductory statements which state the purpose of the law; detailed historical and statutory notes; cross references and administrative code references to similar, related, supplementary or qualifying provisions; references to commentaries in law reviews published in New Jersey; library references; references to relevant decisions of the United States Supreme Court; and complete annotations covering the judicial constructions and interpretations of the law by the courts.

### **Statements**

Governor's reconsideration and recommendation statements, Senate and Assembly committee statements, and introductory statements added by the sponsor, applicable to the final enrolled bill, are set forth following the first classified section of a law together with references from other classified sections of the law to the statement under the first section.

### **Historical and Statutory Notes**

Historical and Statutory Notes provide information relevant to the interpretation and construction of each section of law.

## PREFACE

### Source and Prior Laws

The Source, as supplied by the State or editorially, and the Prior Laws, as editorially supplied, under each section of Title 19 provide, for research purposes, a means of access to the former sections, the legislative acts, and the uniform laws from which the revised or new sections were derived.

### Library References

Library References provide citations to the pertinent Key Numbers of the New Jersey Digest and other Digests in the American Digest System, to Corpus Juris Secundum, the popular and widely accepted major law encyclopedia, and to the New Jersey Practice volumes. Through these works the researcher has complete access to cases of other jurisdictions relating to the same subject matter as the statute under consideration.

### Notes of Decisions

This feature, the distinguishing hallmark of New Jersey Statutes Annotated, consists of paragraphs with statements of construction and application of the statutes of New Jersey by state and federal courts, opinions of the attorney general and state administrative agencies.

The annotations are arranged in logical order under numbered catchlines. Sections with more than one annotation catchline are provided with alphabetical indexes to the annotations. Where annotations tend to relate to the chapter as a whole, they are generally classified to the first section of the chapter.

The annotations from the decisions of the State and Federal courts construing the laws close with cases reported in:

Atlantic Reporter, Second Series .....	717 A.2d 1139
New Jersey Reports .....	156 N.J. 373
New Jersey Superior Court Reports .....	315 N.J.Super. 286
Supreme Court Reporter .....	118 S.Ct. 2398
United States Reports .....	518 U.S. (part)
Lawyers' Edition, Second Series .....	143 L.Ed.2d (part)
Federal Reporter, Third Series .....	156 F.3d 189
Federal Supplement, Second Series .....	14 F.Supp.2d 750
Federal Rules Decisions .....	181 F.R.D. 558
Bankruptcy Reporter .....	225 B.R. 252
Federal Claims Reporter .....	41 Fed.Cl. 610
New Jersey Tax Court .....	17 N.J.Tax Ct. 102
Opinions of the Attorney General -- Atty.Gen.F.O.1997, No. 1	
Other Standard Reports	

## **PREFACE**

### **Index**

Comprehensive and detailed indices of Title 19 are included at the end of the second volume of Title 19. In addition, full coverage of Title 19 and all related statutes is provided in N.J.S.A.'s General Index.

### **Upkeep of the Basic Volume**

This volume is designed for supplementation with the modern system of interim annotation and session law service pamphlets and cumulative pocket parts.

Of special note for the New Jersey user is West's New Jersey Session Law Service and the New Jersey databases on WESTLAW. Since the legislature remains active during the entire year, it is important that the laws be published soon after they are enacted. Session law service pamphlets are published frequently during the session and the cumulative tables and index within each pamphlet keep the user aware of what has been enacted by the legislature to that date.

**WEST GROUP**

March, 1999

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## ABBREVIATIONS

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A.B.A.J. -----	American Bar Association Journal
A.D. -----	Appellate Division, Superior Court
A.L.R. -----	American Law Reports
A.L.R.2d -----	American Law Reports, Second Series
A.L.R.3d -----	American Law Reports, Third Series
A.L.R.4th -----	American Law Reports, Fourth Series
A.L.R.5th -----	American Law Reports, Fifth Series
A.L.R.Fed. -----	American Law Reports, Federal
App. -----	Appendix
Art. -----	Article
A. -----	Atlantic Reporter
A.2d -----	Atlantic Reporter, Second Series
Atty.Gen.F.O. -----	Attorney General Formal Opinion
B.R. -----	Bankruptcy Reporter
Cert. -----	Certification
c. -----	Chapter of Act
Ch. -----	Chapter or Chancery Division, Superior Court
C. -----	Compilation number
C.S. -----	Compiled Statutes
C.J.S. -----	Corpus Juris Secundum
Cl. -----	Clause
Const. -----	Constitution
Co. -----	County Court
Com.Pl. -----	Court of Common Pleas
Cr.Ct. -----	Criminal Judicial District Court
Crim.Just.Q. -----	Criminal Justice Quarterly
Dist.Ct. -----	County District Court
Eff. -----	Effective
Err. & App. -----	Court of Errors and Appeals
Fed.Cas. -----	Federal Cases
Fed.Cl. -----	Federal Claims Reporter
F. -----	Federal Reporter
F.2d -----	Federal Reporter, Second Series
F.3d -----	Federal Reporter, Third Series
F.R.D. -----	Federal Rules Decisions
F.Supp. -----	Federal Supplement
F.O. -----	Formal Opinion of Attorney General
Juv. & Dom.Rel. -----	Juvenile and Domestic Relations Court

## ABBREVIATIONS

☞ (Key Number) -----	State Digest and other units of the American Digest System
L. -----	Laws or Law Division, Superior Court
L.Ed. -----	Lawyers' Edition
L.Ed.2d -----	Lawyers' Edition, Second Series
Mun. -----	Municipal Court
N.J.A.C. -----	New Jersey Administrative Code
N.J.A.R. -----	New Jersey Administrative Reports
N.J.Eq. -----	New Jersey Equity Reports
N.J.L.J. -----	New Jersey Law Journal
N.J.L. -----	New Jersey Law Reports
N.J.Law. -----	New Jersey Lawyer
N.J.Misc. -----	New Jersey Miscellaneous Reports
N.J. -----	New Jersey Reports
N.J.State Bar J. -----	New Jersey State Bar Journal
N.J.S. -----	New Jersey Statutes
N.J.S.A. -----	New Jersey Statutes Annotated
N.J.Super. -----	New Jersey Superior Court Reports
N.J.Tax -----	New Jersey Tax Court Reports
No. -----	Number
Op.Atty.Gen. -----	Opinion of the Attorney General
Orph. -----	Orphans' Court
Par. -----	Paragraph
Pa.C.S.A. -----	Pennsylvania Consolidated Statutes Annotated
PEB -----	Permanent Editorial Board for the Uniform Commercial Code
P.L. -----	Pamphlet Laws
Prerog. -----	Prerogative Court
Prob. -----	Probate Part of Chancery Division, Superior Court
Resen. -----	Resentencing Panel, Superior Court
R.S.C.S. -----	Revised Statutes Cumulative Supplement
R.S. -----	Revised Statutes
Rev. -----	Revision
R. -----	Rules of Court
R.R. -----	Rules of Court, 1953 Revision
Rutgers L.J. -----	Rutgers Law Journal
Rutgers-Camden L.J. -----	Rutgers-Camden Law Journal
Rutgers L.Rev. -----	Rutgers Law Review
Sec. -----	Section of the Act
Seton Hall L.Rev. -----	Seton Hall Law Review
Seton Hall Legis.J. -----	Seton Hall Legislative Journal
Sp.Session -----	Special Session

## ABBREVIATIONS

Subsec.-----	Subsection
Subd. -----	Subdivision
Suppl. -----	Supplement
S.Ct.-----	Supreme Court Reporter
Sur.-----	Surrogate's Court
U.L.A.-----	Uniform Laws Annotated
U.S.-----	United States Reports
U.S.C.A. -----	United States Code Annotated
Val. -----	Validating Acts

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# CITE THIS BOOK

Thus: N.J.S.A. 19:1-1

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# NEW JERSEY STATUTES

## ANNOTATED

Chapters 1 to 31A appear in this volume

### TITLE 19

### ELECTIONS

#### Subtitle

1. Any Election.
2. General Elections.
3. Primary Elections.
4. Special Elections and Filling Vacancies.
5. Recounts and Contests—Any Election.
6. Registration of Voters.
7. Enforcement of Election Law.
8. War Time Voting. [Repealed]
9. Electoral College.
10. Nonbinding County or Municipal Referenda.
11. First Elections in Consolidated Municipalities. [Repealed]
12. Campaign Expenditures [Repealed]
- 12A. Campaign Contributions and Expenditures
- 12B. Financial Disclosure by Candidates
13. Public Election Expenses.
14. Congressional Districts.
15. Voting Machines; Procedure
16. Absentee Voting—Military Service [Repealed]
17. Absentee Voting

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# SUBTITLE 1

## ANY ELECTION

### Chapter

1. Definitions and Application.
2. Time for Holding.
3. Offices and Public Questions.
4. The Electorate.
5. Party Organizations.
6. Election Officials.
7. Challengers.
8. Polling Places; Ballot Boxes; Equipment.
9. Election Supplies.
10. Preservation of Election Documents and Papers.
11. Sundays and Legal Holidays.

### CHAPTER 1

## DEFINITIONS AND APPLICATION

### Section

- 19:1-1. Words and terms defined.  
19:1-2. Title applicable to commission governed municipalities.  
19:1-3. Title applicable to charter elections.  
19:1-4. Title applicable to referendum procedure.

### Administrative Code References

Elections, see N.J.A.C. 15:10-1.1 et seq.

### Library References

Elections ☞ 1 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 1 et seq.

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**19:1-1. Words and terms defined**

As used in this Title:

“Election” means the procedure whereby the electors of this State or any political subdivision thereof elect persons to fill public office or pass on public questions.

“General election” means the annual election to be held on the first Tuesday after the first Monday in November.

“Primary election” means the procedure whereby the members of a political party in this State or any political subdivision thereof nominate candidates to be voted for at general elections, or elect persons to fill party offices, or delegates and alternates to national conventions.

“Municipal election” means an election to be held in and for a single municipality only, at regular intervals.

“Special election” means an election which is not provided for by law to be held at stated intervals.

“Any election” includes all primary, general, municipal, school and special elections, as defined herein.

“Municipality” includes any city, town, borough, village, or township.

“School election” means any annual or special election to be held in and for a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes.

“Public office” includes any office in the government of this State or any of its political subdivisions filled at elections by the electors of the State or political subdivision.

“Public question” includes any question, proposition or referendum required by the legislative or governing body of this State or any of its political subdivisions to be submitted by referendum procedure to the voters of the State or political subdivision for decision at elections.

“Political party” means a party which, at the election held for all of the members of the General Assembly next preceding the holding of any primary election held pursuant to this Title, polled for members of the General Assembly at least 10% of the total vote cast in this State.

“Party office” means the office of delegate or alternate to the national convention of a political party or member of the State, county or municipal committees of a political party.

“Masculine” includes the feminine, and the masculine pronoun wherever used in this Title shall be construed to include the feminine.

“Presidential year” means the year in which electors of President and Vice-President of the United States are voted for at the general election.

“Election district” means the territory within which or for which there is a polling place or room for all voters in the territory to cast their ballots at any election. o

“District board” means the district board of registry and election in an election district.

“County board” means the county board of elections in a county.

“Superintendent” means the superintendent of elections in counties wherein the same shall have been appointed.

“Commissioner” means the commissioner of registration in counties.

“File” or “filed” means deposited in the regularly maintained office of the public official wherever said regularly maintained office is designated by statute, ordinance or resolution.

Amended by L.1947, c. 168, p. 737, § 1; L.1948, c. 438, p. 1693, § 1; L.1965, c. 213, § 1, eff. Dec. 23, 1965; L.1995, c. 278, § 13, eff. March 14, 1996.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶1, p. 671.

### Library References

Words and Phrases (Perm. Ed.)

### Notes of Decisions

Any election 5  
 Construction in pari materia 2  
 Liberal construction 1  
 Municipal election 8  
 Party office 4  
 Political party 6  
 Public office 7  
 Purposes 3

the voters. *Mays v. Penza*, 179 N.J.Super. 185, 430 A.2d 1145 (L.1981).

Election statutes are to be tested like all other statutes, but with a leaning to liberality in view of the great public purposes, including prevention of fraud and wrongdoing, for which they are intended. *Cavanagh v. Morris County Democratic Committee*, 121 N.J.Super. 430, 297 A.2d 594 (Ch.1972).

#### 1. Liberal construction

Election laws are to be construed liberally so as to effectuate their intent and to provide a broad right of franchise to

Election laws are to be liberally construed to effectuate their purpose, and they should not be so construed as to deprive voters of their franchise or render

## DEFINITIONS AND APPLICATION

19:1-1

Note 5

an election void for technical reasons. In re Atlantic County Bd. of Elections, 117 N.J.Super. 244, 284 A.2d 368 (A.D.1971).

Election laws are to be liberally construed so as to effectuate their purpose and not so as to deprive voters of their franchise or render an election void for technical reasons. Petition of Keogh-Dwyer, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

Election laws are to be liberally construed so as to effectuate their purpose. Stone v. Wyckoff, 102 N.J.Super. 26, 245 A.2d 215 (A.D.1968).

The election laws are to be liberally construed. Application of Cucci, 92 N.J.Super. 223, 222 A.2d 662 (L.1966).

The election laws are to be liberally construed to effectuate their purpose. Bontempo v. Carey, 64 N.J.Super. 51, 165 A.2d 222 (L.1960).

Election laws should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons. Kilmurray v. Gilfert, 10 N.J. 435, 91 A.2d 865 (1952).

Election statutes are to be tested like other statutes, but with a leaning to liberality in view of great public interest which they accomplish, and except where they specifically provide that a thing shall be done in manner indicated and not otherwise, their provisions designed merely for information and guidance of officers must be regarded as directory only, and election will not be defeated by failure to comply with them, providing irregularity has not hindered any who were entitled from exercising right of suffrage, or rendered doubtful, evidence from which result was to be declared. Sharrock v. Borough of Keansburg, 15 N.J.Super. 11, 83 A.2d 11 (A.D.1951).

Liberal construction of election laws is necessary to effectuate their purposes and to facilitate and not hamper exercise by voters of their rights. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

Liberal interpretation to be given to election laws in order to effectuate intent of legislature and facilitate right of voters to be heard at the polls does permit court

to substitute its own idea of what statute should provide in face of clear and unambiguous statutory requirements. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

### 2. Construction in pari materia

Election Law statute and referendum provisions of this section must be read in pari materia. Seligson v. DeBruin, 174 N.J.Super. 60, 415 A.2d 375 (L.1980).

Election laws must be read in pari materia, and thus their intent must be gathered from whole of context. Hand v. Larason, 163 N.J.Super. 68, 394 A.2d 163 (L.1978).

Legislative intent must be derived from election statutes, reasonably to be considered in pari materia, and not from a refashioning judicial action. Petition of Keogh-Dwyer, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

### 3. Purposes

The legislative purpose is to be ascertained by considering all provisions of the Election Act in pari materia. Application of Cucci, 92 N.J.Super. 223, 222 A.2d 662 (L.1966).

One of the purposes of Election Law is to purify the politics of State by preventing fraud and wrongdoing in the nominating procedure. Sadloch v. Allan, 25 N.J. 118, 135 A.2d 173 (1957).

### 4. Party office

A county committeeman is the holder of a "party office." Bontempo v. Carey, 64 N.J.Super. 51, 165 A.2d 222 (L.1960).

### 5. Any election

A registered voter who has not voted for four consecutive years except at a school election, which is not "any election" as defined in this section, must re-register in order to vote at any subsequent election, as required by section 19:31-5, which provides that if any registered voter "does not vote at any election during four consecutive years his original and duplicate permanent registration and record of voting forms shall be removed to the inactive file and he shall be required to register before being allowed to

## Note 5

vote at any subsequent election". Atty. Gen.F.O.1965, No. 3.

## 6. Political party

Under the circumstances of a municipal election, a "political party" is an association of persons maintaining certain political principles and urging the adoption of such principles in governmental affairs through officers of like beliefs, and definition given in this section with respect to statewide elections for the General Assembly is not controlling; but even under such liberal construction, group of "Independents" in the Borough of Oakland was not a "political party" for purposes of the Vacancy Law, where group was composed for the most part of members of both Republican and Democratic parties who, for a variety of reasons, were dissatisfied with the government and representation afforded by those parties on the local level. *Crifasi v. Governing Body of Borough of Oakland*, 151 N.J.Super. 98, 376 A.2d 576 (L.1977), affirmed in part, reversed in part on other grounds 156 N.J.Super. 182, 383 A.2d 736.

A "political party" is an association of persons sponsoring ideas of government or maintaining certain political principles or beliefs in public policies of government, and its purpose is to urge adoption and execution of such principles in governmental affairs through officers of like beliefs. *Rogers v. State Committee of*

Republican Party, 96 N.J.Super. 265, 232 A.2d 852 (L.1967).

A political party makes its own rules and regulations and determines its own policies. *Rogers v. State Committee of Republican Party*, 96 N.J.Super. 265, 232 A.2d 852 (L.1967).

## 7. Public office

Although terms "civil office" and "public office" are used interchangeably, they are nevertheless distinguishable in that former includes all offices exercising governmental or sovereign power except military offices, and latter encompasses both civil and military offices. *Lanza v. De Marino*, 160 N.J.Super. 71, 388 A.2d 1294 (A.D.1978).

Office of chairman of municipal committee of political party is not "public office" which sheriff may not hold at same time as he holds and exercises office of sheriff, since it is not in government of the state or any of its political subdivisions and is not filled at elections by electors of state or political subdivision. *Lanza v. De Marino*, 160 N.J.Super. 71, 388 A.2d 1294 (A.D.1978).

## 8. Municipal election

Legislature did not intend that a primary election and a regular municipal election would be synonymous under § 40:69A-20, a referendum statute. *Seligson v. DeBruin*, 174 N.J.Super. 60, 415 A.2d 375 (L.1980).

## 19:1-2. Title applicable to commission governed municipalities

This title shall apply to elections held in municipalities under the provisions of subtitle 4 of the title Municipalities and Counties (§ 40:70-1 et seq.) only in so far as the provisions of this title are not inconsistent therewith.

## Historical and Statutory Notes

Source: L.1930, c. 187, §2, p. 673.

## Notes of Decisions

## Laws applicable 1

## 1. Laws applicable

This section did not make provision of § 19:31-18.2 (now repealed) requiring an

investigation, applicable to lists prepared and to be used in connection with municipal election for city commissioners. *Casey v. MacPhail*, 2 N.J.Super. 619, 65 A.2d 657 (L.1949).

**19:1-3. Title applicable to charter elections**

This title shall apply to elections authorized by charter to be held in certain municipalities only in so far as the provisions hereof are not inconsistent with the provisions of the acts authorizing such elections and the acts amendatory thereof and supplemental thereto.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §3, p. 673.

**19:1-4. Title applicable to referendum procedure**

Except as in this title otherwise provided, the provisions for the election of public and party offices shall also apply to the determination of public questions under the referendum procedure so far as may be.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §4, p. 673.

**Notes of Decisions**

- Laws applicable 1**
  - Public questions 3**
  - Review of petitions 2**
- 

**1. Laws applicable**

The verification provisions in General Election Law do not apply to a petition for special election to adopt municipal-manager form of government for city. *Steger v. Schellenger*, 33 N.J. 293, 163 A.2d 377 (1960).

**2. Review of petitions**

In that the Optional County Charter Law (Musto Act) was modeled after the Optional Municipal Charter Law (Faulkner Act), procedures provided in Faulkner Act for review of initiative or referendum petition and not procedures

provided in the Elections Law govern review of initiative or referendum petitions filed under the Musto Act. *Citizens for Charter Change in Essex County v. Caputo*, 136 N.J.Super. 424, 346 A.2d 605 (A.D.1975), certification denied 74 N.J. 268, 377 A.2d 652, certification denied 74 N.J. 269, 377 A.2d 652.

**3. Public questions**

Where Sunday Closing Law, enacted subject to county-wide referenda, contained no express requirement for verification of referenda petitions, but merely required that petition be signed by not less than 2500 registered voters of the county, no verifications need be affixed to the petition. *Atty.Gen.F.O.1959, No. 15.*



## CHAPTER 2

### TIME FOR HOLDING

#### Section

- 19:2-1. Primary for delegates and alternates to national conventions and for general and special elections.
- 19:2-2. Repealed.
- 19:2-2.1, 19:2-2.2. Repealed.
- 19:2-2.3. Repealed.
- 19:2-3. General and special elections.

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#### **19:2-1. Primary for delegates and alternates to national conventions and for general and special elections**

Primary elections for delegates and alternates to national conventions of political parties and for the general election shall be held in each year on the Tuesday next after the first Monday in June, between the hours of 7:00 A.M. and 8:00 P.M., Standard Time. Primary elections for special elections shall be held not earlier than 30 nor later than 20 days prior to the special elections.

Amended by L.1948, c. 2, p. 29, § 1; L.1965, c. 4, § 1; L.1966, c. 19, § 1; L.1967, c. 7, § 1; L.1967, c. 26, § 1, eff. April 21, 1967; L.1968, c. 292, § 1, eff. Sept. 6, 1968.

#### Historical and Statutory Notes

#### Source:

L.1930, c. 187, ¶5, p. 673.  
L.1935, c. 9, § 1, p. 19.  
L.1936, c. 87, § 1, p. 226.

Section was also amended by L.1946, c. 11, p. 25, § 1, which was repealed by L.1948, c. 2, p. 46, § 32.

## TIME FOR HOLDING

19:2-2.1, 19:2-2.2  
Repealed

### Library References

Elections  $\S$ 38, 131.  
WESTLAW Topic No. 144.  
C.J.S. Elections  $\S\S$  76, 77, 98.

### Texts and Treatises

26 Am Jur 2d, Elections  $\S$  226.

### Notes of Decisions

#### Construction with other laws 2 Validity 1

##### 1. Validity

L.1948, c. 2, pp. 29, 38,  $\S\S$  1, 17, amending this section and  $\S$  19:13-9, and changing final day for filing nominating petitions for general election from five to 40 days prior to primary day and changing primary date from first Tuesday in June to third Tuesday in April were not unreasonable, capricious, or arbitrary as applied to one whose direct nominating petition as candidate for representative in Congress was not timely filed under amended statutes, and amended statutes were constitutional. *Ring v. Marsh*, D.C.N.J.1948, 78 F.Supp. 914, appeal dismissed 69 S.Ct. 84, 335 U.S. 849, 93 L.Ed. 398.

#### 2. Construction with other laws

Section 19:13-9, fixing final day for filing nominating petitions for general elections as forty days prior to primary day must be read in conjunction with this section, providing that primary election for delegates and alternates to national conventions and for general election shall be held on third Tuesday in April in each year. *Ring v. Marsh*, D.C.N.J.1948, 78 F.Supp. 914, appeal dismissed 69 S.Ct. 84, 335 U.S. 849, 93 L.Ed. 398.

Although this section and  $\S$  19:3-3 are in conflict, the date of the primary election for delegates and alternates to national conventions of political parties and for the general election is on the Tuesday next following the first Monday in June pursuant to this section, or, in 1976, on June 8. *Atty.Gen.F.O.1975*, No. 31.

## 19:2-2. Repealed by L.1946, c. 11, p. 32, $\S$ 16

### Historical and Statutory Notes

The repealed section, derived from L.1930, c. 187,  $\S$  7, p. 674, amended by L.1935, c. 9,  $\S$  2, p. 19, L.1935, c. 299,  $\S$  1, p. 935, specified time for primary for general or special elections. For provisions relating to similar subject matter, see, now,  $\S$  19:2-1.

L.1946, c. 11, p. 25, repealing this section, was repealed by L.1948, c. 2, p. 46,  $\S$  32. Section 33 of the Act of 1948 provided that the "repeal of any act by this act shall not revive any act repealed thereby."

## 19:2-2.1, 19:2-2.2. Repealed by L.1945, c. 7, p. 21, $\S$ 21

### Historical and Statutory Notes

The repealed sections were added by L.1944, c. 141, p. 375, and related to general elections during war.

L.1945, c. 7, p. 18, repealing these sections, was repealed by L.1948, c. 2, p. 45,

$\S$  30. Section 33 of the Act of 1948, provided that the "repeal of any act by this act shall not revive any act repealed thereby."

19:2-2.3. Repealed by L.1948, c. 2, p. 45, §§ 30, 31

Historical and Statutory Notes

The repealed section was added by L.1946, c. 10, p. 22, § 1 and related to L.1945, c. 7, p. 18, § 1, amended by primary elections during the war.

19:2-3. General and special elections

The general election shall be held on the Tuesday next after the first Monday in November in each year. Special elections shall be held on the days hereinafter provided for the purpose in this title or in any other statute relative thereto.

Historical and Statutory Notes

Source: L.1930, c. 187, ¶6, p. 674.

Constitutional Provisions

Article 2, par. 1, provides:

"General elections shall be held annually on the first Tuesday after the first Monday in November; but the time of holding such elections may be altered by

law. The Governor and members of the Legislature shall be chosen at general elections. Local elective officers shall be chosen at general elections or at such other times as shall be provided by law."

Library References

Elections ⇨38.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 76, 77.

Notes of Decisions

General elections 1

1. General elections

Under Rev.1877, p. 338, § 9, repealed, eight days notice was required before an election. State ex rel. Miller v. Board of Chosen Freeholders of Cumberland County, 58 N.J.L. 501, 33 A. 948 (1896).

When an election for officers of a municipal corporation was held on a wrong day, without objection, and by a pure mistake, which was not discovered by any person interested, either as an officer of

election or candidate or voter, until after the election was held, and where there was no pretense of fraud or corrupt motive on the part of any person concerned in the election, which was participated in by a large majority of the qualified voters in the city, the court, in the exercise of its discretion, may properly refuse to allow an information in the nature of a quo warranto against one who was chosen an alderman at such election, to inquire by what authority he holds and exercises his office. Mitchell v. Tolan, 33 N.J.L. 195 (1868).

## CHAPTER 3

### OFFICES AND PUBLIC QUESTIONS

#### ARTICLE 1. GENERAL PROVISIONS

**Section**

- 19:3-1. Public offices, party offices and public questions classified.
- 19:3-2. Public offices filled, vacancies filled and public questions voted upon at general elections; exceptions.
- 19:3-3. Delegates and alternates to national conventions and committee members chosen at primary election.
- 19:3-4. Basis of election to office.
- 19:3-5. Holding incompatible offices; qualifications of presidential and vice presidential electors; qualifications of congressmen.
- 19:3-5.1. Prohibition on accepting nomination by petition for more than one office.
- 19:3-6. Form of public question; when question deemed approved; "legal voters" defined.

#### ARTICLE 2. VOID NOMINATIONS OR ELECTIONS

- 19:3-7. Office forfeited by nonfiling of statement or filing of false statement.
- 19:3-8. Repealed.
- 19:3-9. Circumstances under which office not void.

#### ARTICLE 3. EFFECTS OF VOID NOMINATIONS OR ELECTIONS

##### A. NOMINATIONS

- 19:3-10. Name not printed on ballot; next highest name printed.
- 19:3-11. No certificate of election to candidate elected.
- 19:3-12. Delivered certificate of election void.
- 19:3-13. Candidate inducted into office; proceedings for vacation of office.

##### B. ELECTION TO PUBLIC OFFICE

- 19:3-14. No certificate of election delivered.
- 19:3-15. Delivered certificate of election void.
- 19:3-16. Candidate inducted into office; proceedings for vacation of office.

##### C. ELECTIONS TO PARTY OFFICE

- 19:3-17. No certificate of election delivered.
- 19:3-18. Delivered certificate of election void.
- 19:3-19. Surrender by delegates to national convention of certificate voided.

##### D. VACANCIES AND APPOINTMENTS

- 19:3-20. Candidate whose nomination or election annulled ineligible to fill vacancies.
- 19:3-21. Candidate removed from office ineligible to fill vacancies; exception.
- 19:3-22. Appointments null and void.

### Section

#### E. VACATION OF OFFICE

- 19:3-23. Vacation of office when nomination or election void.  
19:3-24. Right to seek recovery of office unabridged.

#### ARTICLE 4. VACANCIES IN PUBLIC OFFICE

- 19:3-25. What constitutes vacancy.  
19:3-26. Vacancies in United States senate; election to fill; temporary appointment by governor.  
19:3-27. Vacancies in United States house of representatives; election to fill.  
19:3-28. Repealed.  
19:3-29. Other vacancies; election to fill.

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### ARTICLE 1. GENERAL PROVISIONS

#### 19:3-1. Public offices, party offices and public questions classified

Public offices and party offices and public questions shall be divided and classified as follows:

- a. Those offices voted for and public questions voted upon by the electors of the state or of more than one county thereof, or members of the house of representatives;
- b. Those offices voted for and public questions voted upon by the electors of a county or of more than one municipality thereof;
- c. Those offices voted for and public questions voted upon by the electors of a municipality or of any portion thereof.

#### Historical and Statutory Notes

Source: L.1930, c. 187, § 18, p. 674.

## Notes of Decisions

**Laws applicable to election** 1**1. Laws applicable to election**

Since § 41 of the Borough Act of 1897, as amended by § 1 of L.1910, p. 205, repealed, authorizing the issuance of bonds by a borough, was intended to en-

able the council to submit the question to voters at an annual or at a special election, the laws governing the procedure at an annual election applied to the submission of the question where it was submitted at such election. *D'Espard v. Borough of Essex Fels*, 84 N.J.L. 181, 86 A. 172 (1913).

**19:3-2. Public offices filled, vacancies filled and public questions voted upon at general elections; exceptions**

All elective public offices in this State or any of its political subdivisions, except such as are provided by law to be filled at special, municipal or school elections, shall be filled at the general elections as hereinafter provided. All vacancies in public offices to be filled by election, except such as are provided by law to be filled at special or municipal elections, shall be filled at the general elections. All public questions to be voted upon by the people of the entire State and all other public questions, except such as are provided by law to be decided at any other elections, shall be voted upon and decided at the general elections.

Amended by L.1948, c. 438, p. 1695, § 2; L.1995, c. 278, § 14, eff. March 14, 1996.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶9, p. 674.

**Library References**

Elections ⇨ 166.

WESTLAW Topic No. 144.

C.J.S. Elections § 156 et seq.

**19:3-3. Delegates and alternates to national conventions and committee members chosen at primary election**

Delegates and alternates to the national conventions of the political parties shall be elected at the primary election to be held on the Tuesday next after the first Monday in June in that year. The members of State, county and municipal committees of the political parties shall be chosen at the primary for the general election as hereinafter provided.

Amended by L.1948, c. 2, p. 30, § 2; L.1965, c. 4, § 2; L.1974, c. 9, § 1, eff. March 15, 1974; L.1976, c. 26, § 1, eff. May 24, 1976.

### Historical and Statutory Notes

**Source:**

L.1930, c. 187, ¶10, p. 675.

L.1935, c. 9, § 3, p. 19.

L.1935, c. 299, § 2, p. 935.

### Library References

Elections ⇄131.

WESTLAW Topic No. 144.

C.J.S. Elections § 98.

### Texts and Treatises

25 Am Jur 2d, Elections § 118.

### Notes of Decisions

**Time of election 1**


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**1. Time of election**

Although this section and § 19:2-1 are in conflict, the date of the primary elec-

tion for delegates and alternates to national conventions of political parties and for the general election is on the Tuesday next following the first Monday in June pursuant to this section, or, in 1976, on June 8. Atty.Gen.F.O.1975, No. 31.

### 19:3-4. Basis of election to office

At every election the person or persons, to the number to be elected therein, who shall by law be qualified for the office or offices to be filled at such election, and for whom the greatest number of votes shall have been given therein for such office or offices, shall be deemed and taken to be elected to such office or offices.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶11, p. 675.

### Library References

### Texts and Treatises

26 Am Jur 2d, Elections § 304.

### Notes of Decisions

**Count of votes 1**


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**1. Count of votes**

Generally, votes cast for deceased, disqualified or ineligible person are not to be treated as void or thrown away, but are to be counted in determining results

of election as regards other candidates. *Highton v. Musto*, 186 N.J.Super. 281, 452 A.2d 487 (L.1982).

Board of County Canvassers, under this section, can only determine votes cast from statements produced by clerk. *In re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

### 19:3-5. Holding incompatible offices; qualifications of presidential and vice presidential electors; qualifications of congressmen

No person shall hold at the same time more than one of the following offices: elector of President and Vice-President of the United States, member of the United States Senate, member of the House of Representatives of the United States, member of the Senate or of the General Assembly of this State, county clerk, register, surrogate or sheriff.

No person shall be elected an elector of President and Vice-President of the United States unless he shall possess the qualifications of a legal voter of the State, shall be of the age of 25 years or upwards and shall have been a citizen of the United States 7 years next preceding such election.

No person shall be elected a member of the House of Representatives, or an elector of President and Vice-President who shall hold any office of trust or profit under the United States.

Amended by L.1971, c. 2, § 9, eff. Jan. 15, 1971.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶12, p. 675.

#### Cross References

Aliens not to hold office, see § 46:3-18.

#### American Law Reports

Validity of age requirement for state public office, 90 ALR3d 900.

#### Law Review and Journal Commentaries

Dual offices incompatible under common law. (1961) 16 Rutgers L.Rev. 157. Municipal government and the Supreme Court: 1979. Lewis Goldshore (1980) 105 N.J.L.J. 153.

#### Library References

Officers and Public Employees ¶30.1, C.J.S. Officers and Public Employees 30.3. §§ 27, 29, 32.  
WESTLAW Topic No. 283.

#### Texts and Treatises

25 Am Jur 2d, Elections §§8, 9.

#### Notes of Decisions

Authorization of dual officeholding 5 Common law 1



**Compatibility of particular offices 4****Purpose 2****Sheriffs 7****Surrogates 6****Test of compatibility 3****1. Common law**

In determining whether conflict exists between two positions for purposes of application of common-law prohibition against holding incompatible offices, test is incompatibility in functions or duties of office, rather than mere possibility of conflict of interests. *Lanza v. De Marino*, 160 N.J. Super. 71, 388 A.2d 1294 (A.D. 1978).

Common-law doctrine prohibiting dual holding of incompatible offices did not bar member of State Senate from holding post of township attorney. *Reilly v. Ozard*, 33 N.J. 529, 166 A.2d 360 (1960).

**2. Purpose**

By enacting this section, Legislature did not intend to authorize dual office-holding beyond terms of its interdiction and thus abolish, by implication, common-law doctrine prohibiting dual holding of incompatible offices. *Reilly v. Ozard*, 33 N.J. 529, 166 A.2d 360 (1960).

**3. Test of compatibility**

In absence of express constitutional or statutory provisions, true test of legal incompatibility of two offices is not mere physical inability to render personal discharge of obligations of both offices, but whether the two are incompatible in their natures, in the rights, duties or obligations connected with or flowing out of them. *De Feo v. Smith*, 17 N.J. 183, 110 A.2d 553 (1955).

**4. Compatibility of particular offices**

Office of member of county board of taxation and office of chosen freeholder were such that possibility of conflict in obligations of the positions in relation to the public interest might result from the common holding of the offices by one person, and the offices were therefore incompatible, and member of the county board of taxation who accepted membership on board of chosen freeholders ipso facto vacated office as member of the county board of taxation. *De Feo v. Smith*, 17 N.J. 183, 110 A.2d 553 (1955).

Omission, from statutory enumeration of incompatible offices, of office of mayor and army commission, was not conclusive as to compatibility of such offices. *Kobylarz v. Mercer*, 130 N.J.L. 44, 31 A.2d 208 (1943).

**5. Authorization of dual officeholding**

If provision of L.1962, c. 173 permitting legislators to hold simultaneously elective or appointive office or position in county or municipal government were unconstitutional, it would be severable from other portions permitting persons to hold simultaneously elective county office and elective municipal office, despite absence of specific clause so stating. *Ahto v. Weaver*, 39 N.J. 418, 189 A.2d 27 (1963).

Taxpayer contending that officer held incompatible offices was in no position to challenge constitutionality of statutory section permitting dual office holding by legislators where the officer involved was not a legislator and the plaintiff's rights as taxpayer were not affected by such challenged section. *Ahto v. Weaver*, 39 N.J. 418, 189 A.2d 27 (1963).

Except for certain specific proscriptions contained in the Constitution or statutes, there is no absolute bar to dual employment of public officers and employees. *Atty.Gen.F.O.1976, No. 18*.

**6. Surrogates**

Office of surrogate is not incompatible with office of town commissioner and does not require individual to forfeit office to which he was last elected. *Clark v. DeFino*, 80 N.J. 539, 404 A.2d 621 (1979), certification granted 81 N.J. 260, 405 A.2d 805.

The only restriction on a surrogate becoming a candidate for another elective public office is based on the incompatibility of the offices. *Clark v. DeFino*, 80 N.J. 539, 404 A.2d 621 (1979), certification granted 81 N.J. 260, 405 A.2d 805.

**7. Sheriffs**

This section listing certain incompatible offices and providing that no person shall hold more than one of such offices at same time does not preclude sheriff from holding political office of any kind. *Lanza v. De Marino*, 160 N.J. Super. 71, 388 A.2d 1294 (A.D.1978).

**19:3-5.1. Prohibition on accepting nomination by petition for more than one office**

No person may accept a nomination by petition in the manner provided by R.S. 19:13-8 or consent to the acceptance of a nomination in a petition for a primary election in the manner provided by R.S. 19:23-7, for more than one office to be filled at the same general election, the simultaneous holding of which would be prohibited by the Constitution of the State of New Jersey or R.S. 19:3-5.

L.1979, c. 467, § 1, eff. Feb. 27, 1980.

**Senate State Government, Federal and Interstate Relations and Veterans Affairs Committee Statement**

**Senate, No. 3383—L.1979, c. 467**

\* \* \* \* \*

The bill, when it becomes law, will preclude the acceptance of nominations by an individual to run for legislative office and for the office of the Governor in the same general election.

**Historical and Statutory Notes**

**Title of Act:**

An Act concerning dual candidacy for public office in certain cases and supple-

menting chapter 3 of Title 19 of the Revised Statutes. L.1979, c. 467.

**Constitutional Provisions**

Article 3, par. 1, in part, provides:

"1. . . . . No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution."

Article 4, § 5, pars. 1, 3, 4 provide:

"1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as Governor or as a member of the Senate or General Assembly."

"3. If any member of the Legislature shall become a member of Congress or

shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

"4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature."

Article 5, § 1, par. 3, provides:

"No member of Congress or person holding any office or position, of profit, under this State or the United States shall be Governor. If the Governor or person administering the office of Governor shall accept any other office or position, of profit, under this State or the United States, his office of Governor shall thereby be vacated. No Governor shall be elected by the Legislature to any office during the term for which he shall have been elected Governor."

**Library References**

Elections ⇨146.

WESTLAW Topic No. 144.

C.J.S. Elections § 95.

**Texts and Treatises**

25 Am Jur 2d, Elections §§136, 180.

**19:3-6. Form of public question; when question deemed approved; "legal voters" defined**

Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon. Where the question concerns any amendment to the State Constitution, or any act or statute or other legal titles of any nature, the printed phrasing on the ballots shall include a brief statement interpreting same. In event that in any statute the public question to be voted upon is so stated as not clearly to set forth the true purpose of the matter being voted upon and no provision is made in said statute for presenting the same in simple language or printing upon the ballots a brief statement interpreting the same, there may be added on the ballots to be used in voting upon the question, a brief statement interpreting the same and setting forth the true purpose of the matter being voted upon in addition to the statement of the public question required by the statute itself.

Such public question, when duly voted upon at an election, shall be deemed to be approved when that percentage of the legal voters of the State or any subdivision thereof as required by the statute authorizing the proposal of such public question shall vote in favor of its adoption.

For the purpose of this Title it is hereby declared that the intent and meaning in any such statute of the words "legal voters" are persons entitled to vote, and who do vote, at the time and in the manner prescribed in and by such statute upon the public question submitted; and for the purpose of ascertaining what is the percentage of the legal voters of any district defined in such statute, upon the public question therein directed to be submitted, the persons who do not vote at such election, the persons who do not vote upon the public question and the persons whose ballots may be declared invalid, shall not be estimated, counted or considered.

Amended by L.1938, c. 308, p. 706, § 1; L.1941, c. 170, p. 543, § 1.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶13, p. 675.

## Library References

Statutes  $\S$ 301 et seq., 320.

WESTLAW Topic No. 361.

C.J.S. Statutes  $\S\S$  115 et seq., 138 et seq.

## Texts and Treatises

26 Am Jur 2d, Elections  $\S\S$ 221, 291 et seq.

## Notes of Decisions

Clarity of language 1  
 Constitutional amendment 2  
 Interpretive statement 3  
 Vote necessary 4

## 1. Clarity of language

Legislative policy is that public questions shall be presented in simple language that can be easily understood by the voter, and referendum shall clearly set forth the true purpose of matter being voted upon. Board of Ed. of City of Hackensack v. City of Hackensack, 63 N.J.Super. 560, 165 A.2d 33 (A.D.1960).

## 2. Constitutional amendment

Proposed amendment to State Constitution, concerning procedures, whereby legislature may invalidate rule or regulation proposed by administrative agency, was not so ambiguous that it should not be placed on ballot at general election. Kimmelman v. Burgio, 204 N.J.Super. 44, 497 A.2d 890 (A.D.1985).

## 3. Interpretive statement

Interpretive statement accompanying proposed amendment to State Constitution which Secretary of State had placed on ballot at general election was highly misleading in that, while it appeared to indicate that amendment involved only routine housekeeping matter, its real purpose was attempt to limit application of separation of powers and presentment causes of Constitution and it could reasonably be said to be intended to alter basic relationship between executive and legislative branches of government; thus, interpretive statement could not be used on ballot. Kimmelman v. Burgio, 204 N.J.Super. 44, 497 A.2d 890 (A.D.1985).

Where opening sentence in explanation of question to be put to voters in constitutional amendment was presumptively inapplicable or incorrect and grossly misstated amendment, and where same was obviously drafted in order to encourage voters to defeat amendment, statement would be declared invalid and its use in forthcoming election enjoined. Gormley v. Lan, 181 N.J.Super. 7, 436 A.2d 535 (A.D.1981), affirmed 88 N.J. 26, 438 A.2d 519.

Discretion to determine whether an interpretive statement should be added to the ballot of a proposed constitutional amendment, as well as the content of the statement itself, is vested not in the secretary of state, but in the attorney general. Gormley v. Lan, 181 N.J.Super. 7, 436 A.2d 535 (A.D.1981), affirmed 88 N.J. 26, 438 A.2d 519.

## 4. Vote necessary

L.1898, p. 319,  $\S$  185, repealed, which concerned the same subject-matter as this section, furnished a legislative definition of what shall be deemed to be a majority of the legal voters voting at an election with respect to any proposition submitted at such election. Hence such definition would be applied to subsequent legislation, unless such subsequent legislation excluded it, either expressly or by necessary implication. Nugent v. City of Newark, 77 N.J.L. 425, 72 A. 11 (1909).

"A majority of the voters voting at such election" required for approval of a resolution for bond issue meant only a majority of the persons voting on such proposition, and not a majority of the persons voting at such election on that and other questions. Murphy v. City of Long Branch, 61 A. 593 (1905).

## ARTICLE 2. VOID NOMINATIONS OR ELECTIONS

## Library References

- |   |  |
|---|--|
| Elections $\S$ 126(1) et seq., 228 to 232, 309 et seq.                    | C.J.S. Elections $\S\S$ 111 et seq., 215 to 219, 323 et seq., 334. |
| Officers and Public Employees $\S$ 55(1).<br>WESTLAW Topic Nos. 144, 283. | C.J.S. Officers and Public Employees<br>$\S\S$ 48, 74 to 76, 107.  |

**19:3-7. Office forfeited by nonfiling of statement or filing of false statement**

If any candidate for nomination for or election to any public office or party position, or his campaign manager, shall fail to file any statement or oath required by this Title to be filed, at the time, place and in the manner required by this Title, and duly verified as herein required, or shall file any false statement, the nomination or election of such candidate, if nominated or elected at the primary or other election concerning which such statement shall have been filed, shall be null and void.

Amended by L.1949, c. 24, p. 71,  $\S$  1.

## Historical and Statutory Notes

Source: L.1930, c. 187,  $\S$ 14, p. 676.

## Library References

## Texts and Treatises

25 Am Jur 2d, Elections  $\S\S$ 137, 143; 26  
Am Jur 2d  $\S$  321.

## Notes of Decisions

## Definitions 2

Failure to file statement or oath 4

Nullification of elections 3

Validity 1

## 1. Validity

The 1949 statute amending  $\S\S$  19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16 which requires that candidate for election to public office or party position file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's

authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

## 2. Definitions

The words "nominee," "nomination," and "vacancy" as used in the election law should be given their common meaning, in absence of a specific definition or indication that the words have an unusual or different meaning. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

## 3. Nullification of elections

By dealing in a separate article with specific circumstances causing results of election to be null and void, legislature intended to limit occurrences sufficient to nullify an election to those thus expressed. *Petition of Keogh-Dwyer*, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

**4. Failure to file statement or oath**

Where candidate received 125 write in votes in primary election for office of councilman and no other persons appeared on party ballot for that position, and candidate failed to file certificate of acceptance within seven days, but the party county committee filed a certificate of selection designating the candidate as the party nominee to fill vacancy for the office, the candidate was entitled to appear on the ballot as a party nominee.

*Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

This section relating to failure to file any statement or oath, and § 19:23-16 requiring one nominated by write-in vote to file certificate of acceptance are in pari materia and are not in conflict with or repugnant to each other, since each has a separate and independent legislative objective. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

**19:3-8. Repealed by L.1973, c. 83, § 26, eff. April 24, 1973****Historical and Statutory Notes**

The repealed section, derived from L.1930, c. 187, ¶ 15, p. 676, related to the forfeiture office for excessive or unautho-

riized expenditures by or on behalf of a candidate for nomination for or election to office. See, now, § 19:44A-1 et seq.

**19:3-9. Circumstances under which office not void**

When upon the trial of any action or proceedings instituted under this Title for the purpose of securing a determination that any nomination for or election to any public office or party position is null and void, it shall appear from the evidence that the offense complained of was not committed by the candidate, or with his knowledge or consent, and that all reasonable means were taken by or on behalf of the candidate to prevent the commission of any such offense, or that the offenses complained of were trivial or unimportant, and that in all respects his candidacy and election were free from all illegal acts, or that any act or omission of any candidate complained of arose from accidental miscalculation or from some other reasonable cause of like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the court or judge to be unjust that the candidate shall forfeit his nomination, position or office, then the nomination or election of such candidate shall not by reason of such offense complained of be void.

Amended by L.1953, c. 19, p. 323, § 1.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶16, p. 677.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§342, 343.

## Notes of Decisions

Nullification of elections 1  
Validity of nomination or election 2

## 1. Nullification of elections

By dealing in a separate article with specific circumstances causing results of election to be null and void, legislature intended to limit occurrences sufficient to nullify an election to those thus expressed. Petition of Keogh-Dwyer, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

Elections should never be held void, unless clearly illegal. Application of Wene, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

## 2. Validity of nomination or election

Public policy did not preclude plaintiff, who was unsuccessful formal candidate for Republican mayoral nomination, from being nominated by write-in votes for mayor in Democratic primary from four registered Democratic voters, which were sufficient to win Democratic nomination. Riecker v. Hartmann, 130 N.J.Super. 266, 326 A.2d 101 (L.1974).

Election could not be voided on mere showing that successful candidate's majority was smaller than number of illegal votes cast, without any attempt by contestant to show for whom illegal votes were cast, where neither fraud, corruption nor widespread illegality was shown and there was no proof that illegal votes were

cast at contestee's instigation or with his knowledge and consent. Application of Murphy, 101 N.J.Super. 163, 243 A.2d 832 (A.D.1968).

Evidence that total votes shown on voting machines exceeded number of voting authorities issued did not support determination that excessive votes were illegal, in absence of showing that vote also exceeded number of persons signing voting books. Application of Murphy, 101 N.J.Super. 163, 243 A.2d 832 (A.D.1968).

The presence and availability in polling places of rubber stamps containing names of persons seeking nomination in primary election and making such stamps available to persons eligible to vote in such election was not such violation of election laws as would invalidate entire election. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

Under this section one nominated as political party's candidate for governor in primary election should not forfeit nomination because of election officials' failure to require voters not voting in two annual primary elections to sign and file statutory declarations under § 19:23-45, of political parties in whose primary elections voters desired to vote. Application of Wene, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

ARTICLE 3. EFFECTS OF VOID NOMINATIONS  
OR ELECTIONS

## A. NOMINATIONS

## Library References

Elections ⇨ 158.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 90, 138.

## 19:3-10. Name not printed on ballot; next highest name printed

If it shall be determined in a manner hereinafter provided, that the nomination for an office of a successful candidate at any primary

election is null and void, and if such determination shall have been made ten days before the election at which the candidates nominated at such primary election are to be voted for, an order shall be made by the court or judge making such determination prohibiting the printing of the name of such candidate on the ballot to be used at such election, and the name of the candidate for nomination or party position at such primary election receiving the next highest number of votes shall thereupon be printed upon the ballot as the nominee for the office.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶17, p. 678.

#### Library References

##### Forms

9 Am Jur Pl & Pr Forms, Rev, Elections, Forms 93, 94.

##### Texts and Treatises

25 Am Jur 2d, Elections §§137, 138.

#### Notes of Decisions

**Annulment or voidance of election** 1 result from judicial action. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

##### 1. Annulment or voidance of election

In view of this section, § 19:3-20 requires that the annulment or voidance

### 19:3-11. No certificate of election to candidate elected

If such determination shall not have been made ten days prior to the election at which the candidates at such primary election are to be voted for, and in case such candidate shall be elected at the election to the office for which he claimed nomination under such void primary, no certificate of election shall be delivered to such candidate and the election for the office for which such person was a candidate shall be null and void.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶18, p. 678.

#### Library References

##### Texts and Treatises

26 Am Jur 2d, Elections §§ 304, 305.



**19:3-12. Delivered certificate of election void**

If such determination shall have been made after the delivery of the certificate of election to such candidate, the certificate shall be null and void, and the candidate shall not be inducted into the office for which the certificate was issued.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶19, p. 679.

**19:3-13. Candidate inducted into office; proceedings for vacation of office**

If such determination shall not have been made until after such candidate has been inducted into office, then upon a certified copy of the record of the determination being sent to the Attorney-General, it shall be his duty to institute appropriate proceedings for the vacation of such office where no other proceeding to the same purpose has been commenced.

If the record relates to the election of any candidate for the office of United States Senator, member of Congress, State Senator or member of the General Assembly, the Attorney-General, instead of instituting appropriate proceedings for the vacation of the office, shall send the certified copy, within five days after the same is received by him, to the United States Senate, the House of Representatives, the State Senate or the General Assembly, as the case may be, if such United States Senate, House of Representatives, State Senate or General Assembly is then in session, and if not, then on the first day of such session.

Amended by L.1953, c. 19, p. 324, § 2.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶20, p. 679.

**Library References**

Officers and Public Employees ¶64.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§ 101.

**Texts and Treatises**

26 Am Jur 2d, Elections §§316, 317.

## B. ELECTION TO PUBLIC OFFICE

## Library References

Elections §227(1) et seq., 265.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 195 et seq., 214, 240.

**19:3-14. No certificate of election delivered**

If it shall be determined, in the manner hereinafter provided, that the election to an office of a candidate at any election is null and void, no certificate of election shall be delivered to the candidate whose election shall have been so determined to be null and void.

## Historical and Statutory Notes

Source: L.1930, c. 187, §21, p. 679.

## Library References

## Texts and Treatises

26 Am Jur 2d, Elections §§304, 305.

**19:3-15. Delivered certificate of election void**

If such determination shall have been made after the delivery of the certificate of election to such candidate, the certificate shall be null and void, and the candidate shall not be inducted into the office for which the certificate was issued.

## Historical and Statutory Notes

Source: L.1930, c. 187, §22, p. 680.

**19:3-16. Candidate inducted into office; proceedings for vacation of office**

If such determination shall not have been made until after such candidate shall have been inducted into office, then upon a certified copy of the record of the determination being sent to the Attorney-General, it shall be his duty to institute appropriate proceedings for the vacation of such office where no other proceeding to the same purpose has been commenced.

If the record relates to the election of any candidate to the office of United States Senator, member of Congress, State Senator, or member of the General Assembly, the Attorney-General, instead of instituting appropriate proceedings for the vacation of the office, shall send the certified copy, within five days after the same is received by him, to the United States Senate, the House of Representatives, the State

Senate or the General Assembly, as the case may be, if such United States Senate, House of Representatives, State Senate or General Assembly is then in session, and if not, then on the first day of such session.

Amended by L.1953, c. 19, p. 324, § 3.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶23, p. 680.

#### Library References

Officers and Public Employees ¶70 et seq. C.J.S. Officers and Public Employees §§ 108 et seq., 145, 179 et seq.  
WESTLAW Topic No. 283.

#### Texts and Treatises

26 Am Jur 2d, Elections §§316, 317.

### C. ELECTIONS TO PARTY OFFICE

#### Library References

Elections ¶121(2).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 86 et seq.

### 19:3-17. No certificate of election delivered

If it shall be determined in the manner hereinafter provided, that the election of a person to a party office is null and void, no certificate of election shall be delivered to the candidate whose election shall have been so determined to be null and void.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶24, p. 680.

#### Library References

#### Texts and Treatises

26 Am Jur 2d, Elections §§304, 305.

#### Notes of Decisions

#### Writs of mandamus 1

##### 1. Writs of mandamus

The defeated candidates in a primary election for position on state committee

of political party were not entitled under this section to writs of mandamus compelling the county clerk to issue certificates of election to them, since existence of order of the circuit judge, under § 19:29-1, subd. a, setting aside the elec-

tion necessarily implied a finding that no person had been truly elected. *Ziegener v. Bach*, 120 N.J.L. 42, 198 A. 290 (1938).

### **19:3-18. Delivered certificate of election void**

If such determination shall have been made after the delivery of the certificate of election to such candidate, the certificate shall be null and void, and whether such determination shall have been made before or after the delivery of a certificate of election, a certificate of election shall be delivered to the candidate having the next highest number of votes.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶25, p. 681.

### **19:3-19. Surrender by delegates to national convention of certificate voided**

In the case of a delegate-at-large or district delegate to any national convention, whose election shall have been declared null and void under this Title, after a certificate of election has been issued to him, the Attorney-General shall transmit to such convention a certified copy of the judgment and determination of the court or judge declaring the election void, to the end that the certificate of election issued to the person having the next highest number of votes for such party position may be honored by the convention.

Any delegate-at-large or district delegate to any national convention to whom a certificate of election shall have been delivered, which certificate shall have been declared null and void after such delivery, shall, upon the service upon him of a certified copy of the determination of the court or judge declaring the certificate null and void, forthwith surrender such certificate to the Clerk of the Superior Court.

Amended by L.1953, c. 19, p. 325, § 4.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶26, p. 681.

#### **Library References**

Elections  $\S$  121(2).

WESTLAW Topic No. 144.

C.J.S. Elections  $\S$  86 et seq.

## D. VACANCIES AND APPOINTMENTS

**19:3-20. Candidate whose nomination or election annulled ineligible to fill vacancies**

A candidate nominated for or elected to an office, whose nomination or election has been annulled and set aside for any reason mentioned in this title, shall not, during the period fixed by law as the term of such office, be appointed to fill any vacancy which may occur in such office; but this provision shall not apply to appointments to any office the qualifications for which are prescribed by the constitution of this state or of the United States.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §27, p. 681.

**Library References**

Elections	⊕147.	C.J.S. Elections	§§ 93, 136.
Officers and Public Employees	⊕18 et seq., 57 et seq.	C.J.S. Officers and Public Employees	§§ 15, 16, 78.
WESTLAW Topic Nos.	144, 283.		

**Texts and Treatises**

63A Am Jur 2d, Public Officers and Employees § 136.

**Notes of Decisions**

**Annulment or voidance of election** 1 \_\_\_\_\_ result from judicial action. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

**1. Annulment or voidance of election**

In view of § 19:3-10, this section requires that the annulment or voidance

**19:3-21. Candidate removed from office ineligible to fill vacancies; exception**

A candidate or other person removed from or deprived of his office for any offense mentioned in this title shall not, during the period remaining as the unexpired term of such office, or during the period fixed by law as the next ensuing term of such office, be appointed to fill any vacancy which may occur in such office; but this provision shall not apply to appointments to any office the qualifications for which are prescribed by the constitution of this state or of the United States.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶28, p. 682.

**19:3-22. Appointments null and void**

An appointment to an office made in violation of or contrary to the provisions of section 19:3-20 or section 19:3-21 of this title shall be void.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶29, p. 682.

**E. VACATION OF OFFICE****19:3-23. Vacation of office when nomination or election void**

When the nomination or election of a person to public office within this State or any of its political subdivisions shall have been declared null and void, such person shall remove or be removed from such office.

It shall be lawful for the Attorney-General to institute a proceeding in lieu of prerogative writ to remove from office a person whose nomination or election shall be void under the provisions of this Title. Amended by L.1953, c. 19, p. 325, § 5.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶30, p. 682.

**Library References**

Officers and Public Employees ¶55(1).  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 48, 74 to 76, 107.

**Texts and Treatises**

26 Am Jur 2d, Elections §§315, 317,  
357; 63A Am Jur 2d, Public Officers  
and Employees §135 et seq.

**19:3-24. Right to seek recovery of office unabridged**

Nothing in this Title contained shall abridge any right which a claimant to any office might otherwise have to institute a proceeding in lieu of prerogative writ for the recovery of such office.

Amended by L.1953, c. 19, p. 326, § 6.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §31, p. 682.

**Library References**

Officers and Public Employees ¶55(1).      C.J.S. Officers and Public Employees  
WESTLAW Topic No. 283.                      §§ 48, 74 to 76, 107.

**ARTICLE 4. VACANCIES IN PUBLIC OFFICE****Library References**

Officers and Public Employees ¶57.      C.J.S. Officers and Public Employees  
WESTLAW Topic No. 283.                      § 78.

**19:3-25. What constitutes vacancy**

When a person shall remove or be removed from office because his nomination or election thereto has been declared null and void, such office shall be deemed to be vacant.

When an equal number of votes shall have been given to two or more persons to fill any office for which they shall by law be qualified, the office shall be deemed to be vacant.

When a person who shall have been elected or appointed to any office as mentioned in section 19:3-5 of this title shall, during the term for which he shall have been elected, or appointed, be elected or appointed to another of such offices, and shall accept the same, such acceptance shall be deemed to make vacant the office to which he shall have been previously elected or appointed; and he shall not be permitted to qualify or take such new office until he shall have formally relinquished the office which he may have been holding.

When a person shall, at an election, be elected to two or more of such offices, he shall accept but one of the same, and the other or others shall be deemed vacant.

When a person who shall be elected a member of the senate or general assembly of this state shall neglect or refuse for ten days next after the commencement of the session of such house to take his seat therein, or to send to such house a satisfactory excuse, or shall during any session of such house be absent unremittingly for ten days, unless expressly excused by such house from attendance thereon, or shall remove from and cease to be a resident of the state or of the county for which he may have been elected, his office shall be deemed vacant.

## Historical and Statutory Notes

Source: L.1930, c. 187, §32, p. 683.

## Notes of Decisions

Holding over	4
Qualifications for office	2
Salary withholding	6
Standing	7
Tie vote	5
Vacancy	3
Validity	1

## 1. Validity

Application of this section creating an automatic vacancy in office of state Senator who has been unremittingly absent for ten days without excuse was not unconstitutional because Constitution (Art. 4, § 4, par. 3) prescribed the method by which a member's right to remain in office may be terminated. *Errichetti v. Merlino*, 188 N.J.Super. 309, 457 A.2d 476 (L.1982).

## 2. Qualifications for office

For purposes of this section governing what constitutes a vacancy in office, the statutory requirements are met if a person is qualified to hold office; it is not necessary that a person simultaneously be qualified as the nominee of a particular party. *Mays v. Penza*, 179 N.J.Super. 185, 430 A.2d 1145 (L.1981).

Language "any office for which they shall by law be qualified" within context of this section governing what constitutes a vacancy in public office applies only to those qualifications necessary to hold office, not those necessary to be nominated by a particular political party. *Mays v. Penza*, 179 N.J.Super. 185, 430 A.2d 1145 (L.1981).

## 3. Vacancy

The "vacancy" referred to in § 40A:16-16 is a statutory vacancy as defined in this section providing that when an equal number of votes are garnered by two or more candidates the office shall be deemed vacant, i.e., it is a vacancy created by the tie, not a vacancy created by expiration of the term of the incumbent without existence of qualified successor. *Thomas v. Sosa*, 172 N.J.Super. 146, 410 A.2d 1210 (L.1979).

Vacancy arising when election of successor to the then holder of office of township committee member was vacated prior to January 1, date on which successor's term would have begun, fell within purview of § 40:45B-2 of Municipal Governing Body Vacancy Law (repealed; see, now, §§ 40A:16-4 to 40A:16-9, 40A:16-14) requiring that a vacancy occurring prior to September 1 preceding general election in any year other than last year of term of member whose office has become vacant be filled by governing body by vote of majority of its membership. Application of *Moffat*, 142 N.J.Super. 217, 361 A.2d 74 (A.D.1976), certification denied 71 N.J. 527, 366 A.2d 682.

Where election for borough councilman resulted in tie vote between incumbent and challenger, incumbent remained in possession of such office until a successor was qualified, regardless of whether borough council requested incumbent to hold over in office and even though incumbent's term of office had expired and therefore vacancy in the statutory sense existed. *Republican Committee of Garwood v. Mayor and Council of Borough of Garwood*, 140 N.J.Super. 593, 357 A.2d 51 (L.1976).

"Vacancy" in office is generally defined as having no technical meaning, and an office is vacant whenever it is unoccupied by one who has the legal right to hold it and exercise the powers and perform the duties pertaining thereto. *Paul v. Pierce*, 68 N.J.Super. 521, 172 A.2d 721 (L.1961).

A "suspension" does not create a vacancy in public office or remove an officer, but merely prevents him for the time being from performing functions of his office. *Paul v. Pierce*, 68 N.J.Super. 521, 172 A.2d 721 (L.1961).

A "vacancy" exists where there is no documentary title to such office. *Stevens ex rel. Kuberski v. Haussermann*, 113 N.J.L. 162, 172 A. 738 (1934).

Where new offices on township committees in townships exceeding a population of 4,500 (except townships located in 6th class counties) were created as a re-



sult of the 1960 census, which was promulgated at a date too late for the nominations at regular primary election of candidates for newly established offices, a "vacancy" existed in these offices, and these vacancies should be filled according to the procedure set out in § 19:27-11 which is intended to make unnecessary a special primary election in connection with certain vacancies and yet make available the machinery of the general election for the filling of such vacancies, and which provides, among other things for the naming of candidates under such circumstances, by two processes; first, the county committee of each political party is authorized to name a candidate and, second, independent candidates may be nominated by petition. *Atty.Gen.F.O. 1961, No. 13.*

#### 4. Holding over

Where a successor to only one of two councilman whose terms were to expire was elected, incumbent councilman who received an equal number of votes with one of the unsuccessful candidates was not entitled to hold over until his successor qualified because other incumbent councilman resigned after failure of re-election. *Stevens ex rel. Kuberski v. Haussermann, 113 N.J.L. 162, 172 A. 738 (1934).*

#### 5. Tie vote

Where there had been no averment either by way of pleading or oral argument before court which would indicate that individual defendant was not qualified to hold office of city councilman, a tie existed between two qualified candidates within meaning of this section governing

what constitutes a vacancy in office, and thus defendant was entitled to dismissal as moot of action seeking determination that nomination of individual defendant as Democratic candidate for unexpired term of city council seat was void. *Mays v. Penza, 179 N.J.Super. 185, 430 A.2d 1145 (L.1981).*

Where tie existed in election for borough council seat, position had to be filled in accordance with § 40:45B-2 (repealed; see, now, §§ 40A:16-4 to 40A:16-9, 40A:16-14) which provided that vacancy could be filled within 30 days of occurrence of vacancy by a majority of governing body until next ensuing general election. *Mulcahy v. Bergen County Bd. of Elections, 156 N.J.Super. 429, 383 A.2d 1214 (L.1978).*

#### 6. Salary withholding

Pursuant to this section, state Senator's office became vacant automatically upon his tenth consecutive absence during a session without excuse; thus, action of president of state Senate in directing that Senator's pay be withheld was appropriate. *Errichetti v. Merlino, 188 N.J.Super. 309, 457 A.2d 476 (L.1982).*

#### 7. Standing

State Senator, who automatically forfeited his office upon his tenth consecutive unexcused absence from a legislative session and who had been afforded an evidentiary hearing thereafter, lacked standing to challenge constitutionality of this section under which his office was vacated in its application to others. *Errichetti v. Merlino, 188 N.J.Super. 309, 457 A.2d 476 (L.1982).*

### 19:3-26. Vacancies in United States senate; election to fill; temporary appointment by governor

If a vacancy shall happen in the representation of this state in the United States senate, it shall be filled at the general election next succeeding the happening thereof, unless such vacancy shall happen within thirty days next preceding such election, in which case it shall be filled by election at the second succeeding general election, unless the governor of this state shall deem it advisable to call a special election therefor, which he is authorized hereby to do.

The governor of this state may make a temporary appointment of a senator of the United States from this state whenever a vacancy shall occur by reason of any cause other than the expiration of the term;

and such appointee shall serve as such senator until a special election or general election shall have been held pursuant to law and the board of state canvassers can deliver to his successor a certificate of election.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶33, p. 684.

**Library References**

United States ☞7.

WESTLAW Topic No. 393.

C.J.S. United States §§ 9, 10.

**Texts and Treatises**

2Am Jur 2d, Elections § 3; 26 Am Jur  
2d, Elections §§185-187; 63A Am Jur

2d, Public Officers and Employees  
§§136, 137.

**19:3-27. Vacancies in United States house of representatives;  
election to fill**

When a vacancy shall happen in the representation of this state in the United States house of representatives, it shall be the duty of the governor to issue a writ of election to fill such vacancy, unless the term of service for which the person whose office shall become vacant will expire within six months next after the happening of the vacancy.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶34, p. 684.

**Library References**

United States ☞7.

WESTLAW Topic No. 393.

C.J.S. United States §§ 9, 10.

**19:3-28. Repealed by L.1988, c. 126, § 11, eff. Sept. 16, 1988,  
operative Nov. 8, 1988****Historical and Statutory Notes**

The repealed section, amended by L.1981, c. 429, § 1, and derived from L.1930, c. 187, ¶35, p. 684, related to an election to fill a vacancy in the state senate or general assembly.

See, now, § 19:27-11.1.

**19:3-29. Other vacancies; election to fill**

A vacancy happening in a public office other than that of United States Senator, Member of Congress, State Senator, or member of the House of Assembly, shall be filled at the general election next succeeding the happening thereof, unless such vacancy shall happen within thirty-seven days next preceding such election, in which case it shall be filled at the second succeeding general election.

Amended by L.1951, c. 119, p. 530, § 2.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶36, p. 685.

**Library References**

Officers and Public Employees ¶57.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§ 78.

**Notes of Decisions****Filling of vacancy 1****1. Filling of vacancy**

Where majority of votes cast for mayor in general election were cast for candidate who had died seven days before, vacancy in office of mayor resulted upon expiration of term of incumbent, to be filled at next ensuing general election rather than by borough council, and in interim incumbent continued to hold office; however, under circumstances, person elected mayor at subsequent general election would qualify and take office on Monday following election rather than at later date ordinarily provided. *Bogdanove v. Mayor and Council of Borough of Waldwick*, 120 N.J.Super. 5, 293 A.2d 213 (A.D.1972).

This section and § 40:20-4 (repealed; see, now, §§ 40:20-35.10 to 40:20-35.13)

contemplate that whether a vacancy in county board of freeholders occurs between annual meeting in any year and the 37th day before general election in that year, or whether it occurs between 37th day and the next annual meeting, the board may appoint a freeholder to hold office until annual meeting next after the first general election at which the people could elect a person to fill the unexpired term, if any. *Cilento v. Connors*, 44 N.J.Super. 23, 129 A.2d 574 (A.D.1957).

Where there is prima facie vacancy in public office at time of election thereto, it is not necessary, in order to entitle candidate nominated for the office by petition to have the petition accepted by the proper officer, that there be judicial determination of vacancy in the office. *Kobylarz v. Mercer*, 130 N.J.L. 44, 31 A.2d 208 (1943).

## CHAPTER 4

### THE ELECTORATE

#### ARTICLE 1. RIGHT OF FRANCHISE

##### Section

- 19:4-1. Constitutional qualifications; persons not having right of suffrage; right to register.  
19:4-2, 19:4-3. Repealed.  
19:4-4. Arrest under civil process on election day.

#### ARTICLE 1A. RESIDENCE

- 19:4-4.1. Voters having more than one place of residence; authority to file statement.  
19:4-4.2. Form and contents of statement.  
19:4-4.3. Statement to be furnished by and filed with election official having jurisdiction of indicated domicile.  
19:4-4.4. Filing like statement on subsequent change of domicile.  
19:4-4.5. Statement as prima facie evidence of domicile; right to register in voting district.  
19:4-4.6. Act as remedial; construction.  
19:4-4.7. Offenses; violators as disorderly persons; penalties.

#### ARTICLE 2. ELECTION DISTRICTS

- 19:4-5 to 19:4-9. Repealed.  
19:4-10. Geographical composition.  
19:4-11. District with one voting machine or four electronic system voting devices; number of voters.  
19:4-12. Other districts with more machines or devices; number of voters; additional members of district board.  
19:4-13. Readjustment of boundaries for correct number of voters.  
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19:4-16. Maps and descriptions; filing; public inspection; rules and regulations.  
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ARTICLE 1. RIGHT OF FRANCHISE

Law Review and Journal Commentaries

Federal protection of voting rights against economic interference. Richard A. Givens (1966) 20 Rutgers L.Rev. 696. Student voting. (1972) 4 Seton Hall L.Rev. 329.

Library References

Elections ¶1 et seq., 59 et seq., 88, 160 et seq. WESTLAW Topic No. 144. C.J.S. Elections §§ 1 et seq., 15, 16, 30 et seq., 149 et seq.

**19:4-1. Constitutional qualifications; persons not having right of suffrage; right to register**

Except as provided in sections 19:4-2 and 19:4-3 of this Title, every person possessing the qualifications required by Article II, paragraph 3, of the Constitution of the State of New Jersey and having none of the disqualifications hereinafter stated and being duly registered as required by this Title, shall have the right of suffrage and shall be entitled to vote in the polling place assigned to the election district in which he actually resides, and not elsewhere.

No person shall have the right of suffrage—

- (1) Who is an idiot or is insane; or
- (2) (Deleted by amendment.)
- (3) (Deleted by amendment.)
- (4) (Deleted by amendment.)
- (5) (Deleted by amendment.)
- (6) Who has been convicted of a violation of any of the provisions of this Title, for which criminal penalties were imposed, if such person was deprived of such right as part of the punishment therefor according to law unless pardoned or restored by law to the right of suffrage; or
- (7) Who shall be convicted of the violation of any of the provisions of this Title, for which criminal penalties are imposed, if such person shall be deprived of such right as part of the punishment therefor according to law, unless pardoned or restored by law to the right of suffrage; or
- (8) Who is serving a sentence or is on parole or probation as the result of a conviction of any indictable offense under the laws of this or another state or of the United States.

A person who will have on the day of the next general election the qualifications to entitle him to vote shall have the right to be registered for and vote at such general election and register for and

vote at any election, intervening between such date of registration and such general election, if he shall be a citizen of the United States and shall meet the age and residence requirements prescribed by the Constitution of this State and the laws of the United States, when such intervening election is held, as though such qualifications were met before registration.

Amended by L.1948, c. 438, p. 1695, § 3; L.1955, c. 156, p. 650, § 1; L.1957, c. 205, p. 724, § 1; L.1959, c. 127, p. 560, § 1; L.1964, c. 7, § 1; L.1971, c. 280, § 1, eff. Aug. 4, 1971.

### Historical and Statutory Notes

Source: L.1930, c. 187, § 37, p. 686.

### Constitutional Provisions

Article 2, par. 3, provides:

"(a) Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people; and

"(b) (Deleted by amendment.)

"(c) Any person registered as a voter in any election district of this State who has removed or shall remove to another State or to another county within this State and is not able there to qualify to vote by reason of an insufficient period of resi-

dence in such State or county, shall, as a citizen of the United States, have the right to vote for electors for President and Vice President of the United States, only, by Presidential Elector Absentee Ballot, in the county from which he has removed, in such manner as the Legislature shall provide."

Article 2, pars. 6 and 7 provide:

"6. No idiot or insane persons shall enjoy the right of suffrage.

"7. The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right."

### Cross References

Persons entitled to register for permanent registration, see § 19:31-5.

### American Law Reports

Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office, 39 ALR3d 303@ec.

Voting rights of persons mentally incapacitated, 80 ALR3d 1116@ec.

### Law Review and Journal Commentaries

Denial of voting rights to hospital patient. (1960) 14 Rutgers L.Rev. 627.

Survey of municipal corporation law. Jerome J. Shestack (1956) 11 Rutgers L.Rev. 96.

## Library References

## Texts and Treatises

25 Am Jur 2d, Elections §53 et seq.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## United States Supreme Court

Limitation of right to vote in bond election to persons who had "rendered" property for taxation, see *Hill v. Stone*, U.S.Tex.1975, 95 S.Ct. 1637, 421 U.S. 289, 44 L.Ed.2d 172, rehearing denied 95 S.Ct. 2617, 422 U.S. 1029, 45 L.Ed.2d 686.

Validity, moral turpitude as disfranchisement grounds, see *Hunter v. Underwood*, 1985, 105 S.Ct. 1916, 471 U.S. 222, 85 L.Ed.2d 222.

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## 1. Validity

This section governing disenfranchisement of resident citizens is unconstitutional as violative of equal protection. *Stephens v. Yeomans*, D.C.N.J.1970, 327 F.Supp. 1182.

Federal district court would not abstain from passing on constitutionality of this section governing qualification of voters where interpretation of statute by county superintendent of elections, the officer charged with enforcement, seemed consistent with such prior state court decisions as bore on matter; it was not contended that statute was misap-

plied to voter who brought action challenging constitutionality and even if voter could seek state judicial review matter could not be finally determined by highest state court in time for forthcoming general election and § 2A:167-5 providing for executive clemency did not provide administrative review of action of superintendent of elections. *Stephens v. Yeomans*, D.C.N.J.1970, 327 F.Supp. 1182.

Statutory right to vote is not absolute and is subject to limitations. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

## 2. Right to vote

Statutory right to vote is not an absolute and is subject to exceptions and limitations. *Mulcahy v. Bergen County Bd. of Elections*, 156 N.J.Super. 429, 383 A.2d 1214 (L.1978).

Provision of § 40:157-6 relating to incorporation of villages that election shall be conducted, as nearly as may be, in accordance with general laws relating to elections indicates that the Legislature intended that voters at such election should be legal voters as defined by the Constitution and by the General Election Law. In re Village of Loch Arbour, 25 N.J. 258, 135 A.2d 663 (1957).

The right of suffrage is constitutional, and, while the Legislature may protect it, it cannot enact a statute which infringes upon the rights of the voters to select as

their candidate any person who is qualified to hold office. In re City Clerk of Paterson, 88 A. 694 (1913).

The right to vote, secured by the constitution, can only become operative by legislation; and any reasonable legislative regulation for the purpose of securing an enforced secrecy of the ballot is not a deprivation of a right to vote. *State v. Black*, 54 N.J.L. 446, 24 A. 489 (1892), affirmed 65 N.J.L. 688, 51 A. 1109.

It is appropriate that legislation in derogation of right to vote be narrowly construed. *McCann v. Superintendent of Elections of Hudson County*, 303 N.J.Super. 371, 696 A.2d 1134 (Ch.1997), affirmed 303 N.J.Super. 352, 696 A.2d 1124, certification denied 149 N.J. 139, 693 A.2d 109.

Election laws must be liberally construed to effectuate the overriding public policy in favor of enfranchisement of voters. *McCann v. Superintendent of Elections of Hudson County*, 303 N.J.Super. 371, 696 A.2d 1134 (Ch.1997), affirmed 303 N.J.Super. 352, 696 A.2d 1124, certification denied 149 N.J. 139, 693 A.2d 109.

Strict construction of election laws does not mean that manifestations of legislature's intention should be disregarded. *McCann v. Superintendent of Elections of Hudson County*, 303 N.J.Super. 371, 696 A.2d 1134 (Ch.1997), affirmed 303 N.J.Super. 352, 696 A.2d 1124, certification denied 149 N.J. 139, 693 A.2d 109.

### 3. Place of voting

The provision of L.1898, p. 272, § 69, repealed, that "every person \* \* \* shall be entitled to vote in the election district in which he actually resides and not elsewhere" would not be held to disfranchise voters who vote at a polling-place selected and advertised by the proper officers as the polling-place of the district in which such voters reside, notwithstanding the place so selected, but at which the election is otherwise lawfully held, was outside the territorial limits of the election district for which it is provided; no fraud or other harm being shown or charged. *Otis v. Lane*, 68 N.J.L. 656, 54 A. 442 (1903).

### 4. Residence—In general

Evidence that voters who were challenged by candidate for borough council

as not being bona fide residents of borough had continued attachment to borough such as would justify their claimed right of suffrage supported trial court's decision in election contest case to count their ballots. Application of Langbaum, 201 N.J.Super. 484, 493 A.2d 580 (A.D. 1985).

Permanent home of a person is his domicile and the place of his domicile determines his right to vote. *Mercadante v. City of Paterson*, 111 N.J.Super. 35, 266 A.2d 611 (Ch.1970), affirmed 58 N.J. 112, 275 A.2d 440.

Residence requirements of the Constitution and statutes mean that voter must be domiciled in the State of New Jersey. *State v. Benny*, 20 N.J. 238, 119 A.2d 155 (1955).

A voter loses his right to vote in a municipality when he abandons physical residence in such municipality, despite fact that he continues to maintain an apartment or other habitable place of abode therein. *Jacobsen v. Gardella*, 22 N.J. Misc. 277, 38 A.2d 126 (1944).

"Residence," to entitle person to vote, is not changed by occasional absence animo revertendi, with or without family. *Brueckmann v. Frignoca*, 9 N.J. Misc. 128, 152 A. 780 (1930).

### 5. — Actually resides

For purposes of statute entitling persons to vote in polling place assigned to election district in which they "reside," that district is equated to where they are domiciled. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

For party to show that he "actually resides" in a certain place within meaning of this section, party is required to maintain such relationship with place or premises so selected as will entitle him at his will to occupy that place or premises whenever his necessities or pleasures require without having to ask permission of someone else, and matter cannot be controlled by intention. *Perri v. Kisselbach*, 34 N.J. 84, 167 A.2d 377 (1961).

Patients in county tuberculosis sanatorium did not "actually reside" in election district in which sanatorium was situated, even though they stated that they had no other home and hence were ineligible



to vote. *Perri v. Kisselbach*, 34 N.J. 84, 167 A.2d 377 (1961).

The words "actually resides", in this section, mean that voter is entitled to vote only from an address where he physically lodges and dwells. *Jacobsen v. Gardella*, 22 N.J. Misc. 277, 38 A.2d 126 (1944).

Under this section voters who registered in a district other than that in which they resided for the purpose of helping a candidate in another district did not "actually reside" in such district and votes cast by such voters were illegal. *In re Erickson*, 18 N.J. Misc. 5, 10 A.2d 142 (1939).

#### 6. — Intention, residence

In order for person to acquire domicile, it is necessary that there be intention not only to live at the place but also to make a home there. *Michaud v. Yeomans*, 115 N.J. Super. 200, 278 A.2d 537 (L.1971).

A voter cannot actually reside in one place, but claim the right to vote at another, on ground that he constitutes the latter place as his voting residence, since mere declaration by voter that an address is his voting residence unaccompanied by any act of dwelling or lodging there on his part is not a compliance with requirements of this section. *Jacobsen v. Gardella*, 22 N.J. Misc. 277, 38 A.2d 126 (1944).

Under this section, it is not sufficient to merely designate an address as a "voting residence," since the residence must be real, actual and positive, and to be a "voting residence" there must be not only the intention of having the address for the purpose of voting, but that intention must be accompanied by acts of living, dwelling, lodging or residing sufficient to reasonably establish that it is the real and actual residence of the voter. *In re Erickson*, 18 N.J. Misc. 5, 10 A.2d 142 (1939).

#### 7. — Fixed domicile or permanent home, residence

WPA workers from other states and other sections of the state, who resided in federal camp within borough for over a year before general election, and who were properly registered, and who took statutory oath of qualification when challenged, were not qualified to vote in general election in the borough, where there was no showing of change of residence outside of attendance at camp. *Schweitzer*

*v. Buser*, 15 N.J. Misc. 217, 190 A. 89 (1936)

"Residence," to entitle person to vote, means fixed domicile or permanent home. *Brueckmann v. Frignoca*, 9 N.J. Misc. 128, 152 A. 780 (1930).

Inmates of tuberculosis sanatorium having permanent homes elsewhere held not to have voting "residence" in borough. *Brueckmann v. Frignoca*, 9 N.J. Misc. 128, 152 A. 780 (1930).

The residence required to entitle a person to vote meant his fixed domicile or permanent home, and was not changed or altered by his occasional absence with or without his family. *Cadwalader v. Howell*, 18 N.J.L. 138 (1840).

#### 8. — Students, residence

Neither state's interest in preventing fraudulent voting nor state's interest in promoting a more informed electorate and insuring that voters have an attachment to the communities from which they vote justifies restrictions on voting by resident students in the college or university communities in which they reside. *Worden v. Mercer County Bd. of Elections*, 61 N.J. 325, 294 A.2d 233 (1972).

#### 9. — Duration of residence

Nonresident WPA workers who failed to meet requirement of one year's residence in the state, were not legally entitled to vote at general election. *Schweitzer v. Buser*, 15 N.J. Misc. 217, 190 A. 89 (1936).

#### 10. Age

A person registered pursuant to §§ 19:4-1 and 19:31-5 of the election law, must have the constitutional age qualification at the time he attempts to vote in any commission or city manager election which takes place between the primary and general election. *Op. Atty. Gen.*, May 23, 1949, No. 56.

#### 11. Registration

Fact that successful candidate for democratic nomination to General Assembly was not, at time he filed his nominating petition, registered voter in district, did not render his signature on required certificate stating that he was legal voter in jurisdiction fraudulent and did not render him constitutionally ineligible for membership in General Assembly where, when candidate attested that he was legal

voter, he was not attesting that he was registered voter of assembly district in question, and where candidate had constitutional right to vote even if, in fact, he did not have ability to exercise that right on date when petition was filed and certificate of acceptance signed. *Alston v. Mays*, 152 N.J.Super. 509, 378 A.2d 72 (L.1977).

Resident students who seek to register to vote in the communities in which their college or university residences are located may not be subjected as a class to questioning beyond that to which all other applicants are subjected. *Worden v. Mercer County Bd. of Elections*, 61 N.J. 325, 294 A.2d 233 (1972).

### 12. Conviction of crime

Section 2C:51-2 mandating forfeiture of public office on conviction of a criminal offense is constitutional, notwithstanding that the state constitution limits eligibility for membership in the state Senate to persons entitled to right of suffrage. *State v. Musto*, 188 N.J.Super. 106, 456 A.2d 114 (A.D.1983).

Convicted criminal was entitled to vote in election where, on date of election, he was free on his own recognizance pending future surrender date to penitentiary. *Hitchner v. Cumberland County Bd. of Elections*, 163 N.J.Super. 560, 395 A.2d 270 (Co.1978).

Convicted criminal could not be barred from voting in election where superintendent of elections failed to provide any notice to him of such disqualification and voter learned of it only when he was refused right to vote at polling place. *Hitchner v. Cumberland County Bd. of Elections*, 163 N.J.Super. 560, 395 A.2d 270 (Co.1978).

Councilman who had been convicted of conspiring to unlawfully demand and receive a cash sum for favorable consideration of local variance application was not rendered ineligible to continue in office by virtue of § 10:1-1 providing that right of citizens to hold office shall be co-extensive with their right to vote or this section denying right to vote to persons convicted of offenses. *Galloway v. Council of Clark Tp., Union County*, 92 N.J.Super. 409, 223 A.2d 644 (L.1966), affirmed 94 N.J.Super. 527, 229 A.2d 279.

This section denying to persons who have been convicted of certain enumerat-

ed offenses the right of suffrage operates to deny right of one convicted to vote at public election and does not apply to any votes which might be cast by an officer of municipal corporation in exercise of rights and duties of his office. *Galloway v. Council of Clark Tp., Union County*, 92 N.J.Super. 409, 223 A.2d 644 (L.1966), affirmed 94 N.J.Super. 527, 229 A.2d 279.

Where conviction results in loss of some rights, the Legislature can so phrase the statute that the disqualification does not come to pass unless it is expressly included as part of the sentence, but statutes are seldom so worded, and disqualification follows conviction though not mentioned in the sentence unless the plain meaning of the statute requires the contrary. *MacKinnon v. Ferber*, 16 N.J.Super. 390, 84 A.2d 647 (A.D.1951), certification denied 8 N.J. 613, 86 A.2d 617.

Under Const.1948, Art. 2, par. 7, providing that legislature may pass laws to deprive persons of the right of suffrage who "shall be convicted" of such crime as it may designate, quoted words apply to persons convicted before or after adoption of 1947 Constitution. Application of *Smith*, 8 N.J.Super. 573, 73 A.2d 761 (Co.1950).

New election law, effective on October 6, 1948, disfranchising persons convicted of certain crimes is not unconstitutional insofar as it purports to disfranchise persons who were convicted prior to effective date of the law. Application of *Palm-er*, 61 A.2d 922 (Co.1948).

In determining its public policy with regard to withholding right of suffrage, as from person convicted of crime, the state may adopt such standard as it desires, subject to federal Constitution, and can therefore adopt a penal standard set by the federal government. Application of *Marino*, 23 N.J. Misc. 159, 42 A.2d 469 (1945).

Statute denying suffrage to persons serving sentence or on parole or probation applied to person serving supervised release component of sentence for conviction of federal indictable offense. *McCann v. Superintendent of Elections of Hudson County*, 303 N.J.Super. 371, 696 A.2d 1134 (Ch.1997), affirmed 303 N.J.Super. 352, 696 A.2d 1124, certification denied 149 N.J. 139, 693 A.2d 109.

The purpose of disenfranchisement has to do with maintaining purity of election process. *McCann v. Superintendent of Elections of Hudson County*, 303 N.J.Super. 371, 696 A.2d 1134 (Ch.1997), affirmed 303 N.J.Super. 352, 696 A.2d 1124, certification denied 149 N.J. 139, 693 A.2d 109.

Suffrage disqualification statute, which applied to those serving sentence or on parole or probation, applied to person enrolled in federal supervised release program as part of sentence for conviction of federal indictable offense; there were essential similarities between federal program and parole as known on state level, program appeared to embody many elemental qualities of probation, and service of federal sentence would not be completed until all requirements imposed were consummated. *McCann v. Superintendent of Elections of Hudson County*, 303 N.J.Super. 352, 696 A.2d 1124 (A.D. 1997), certification denied 149 N.J. 139, 693 A.2d 109.

All persons, including minors, convicted in an adult criminal court of offenses enumerated in this section would be included among those to whom the disenfranchisement provisions of the Constitution would apply, but such provisions do not apply to minors adjudicated as juvenile offenders in the juvenile and domestic relations court. *Atty.Gen.F.O.1961, No. 7.*

### 13. Idiocy or insanity

That individuals had been determined to be eligible for residential optional services at an institution for mentally retarded gave rise to no presumption of idiocy for voter registration purposes. *Carroll v. Cobb*, 139 N.J.Super. 439, 354 A.2d 355 (A.D.1976).

Mentally retarded person is not necessarily an "idiot," and a mentally ill person is not necessarily "insane," for voter registration purposes. *Carroll v. Cobb*, 139 N.J.Super. 439, 354 A.2d 355 (A.D. 1976).

## 19:4-2, 19:4-3. Repealed by L.1981, c. 462, § 57, eff. Jan. 1, 1982

### Historical and Statutory Notes

The repealed sections, derived from L.1931, c. 380, § 1 and L.1933, c. 389, §§ 1, 2, pp. 1091, 1092, related to requirements to vote in a municipal elec-

tion in a city of the second class and in any election except a primary election in certain cities of the fourth class.

## 19:4-4. Arrest under civil process on election day

No person who shall have a right to vote at any election shall be arrested by virtue of any civil process on the day on which such election shall be held.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶38, p. 686.

### Library References

Arrest ⇨ 8, 9.  
WESTLAW Topic No. 35.  
C.J.S. Arrest §§ 79 to 87.

### Texts and Treatises

5 Am Jur 2d, Arrest § 106.

ARTICLE 1A. RESIDENCE

Library References

Elections §71 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 19.

19:4-4.1. Voters having more than one place of residence; authority to file statement

Any person entitled to vote in this State and who has more than 1 place of residence, may file a statement pursuant to this act.  
L.1960, c. 195, p. 836, § 1.

Historical and Statutory Notes

Title of Act:

An Act concerning elections in relation to voters having more than 1 residence, supplementing article 1 of chapter 4 of

Title 19 of the Revised Statutes, and prescribing penalties for certain violations thereof. L.1960, c. 195, p. 836.

Notes of Decisions

Candidates 1  
Students 2

son v. Capella, 150 N.J.Super. 110, 374 A.2d 1253 (A.D.1977).

2. Students

1. Candidates

Even if § 19:4-4.1 et seq. permitting a voter who has more than one place of residence where he is entitled to vote to elect one as his voting domicile was applicable to residency requirements of candidates for office, statement filed pursuant to that statute was insufficient to render candidate eligible to seek to represent borough on county committee where court had found that he did not have dual residency but rather resided solely in a township outside the borough. Nicker-

Right to register and vote in the college or university community in which they reside must be afforded to all bona fide resident students, including those who plan to return to their previous residences, those who plan to remain permanently in their college communities, those who plan to obtain employment away from their previous residences, and those who are uncertain as to their future plans. Worden v. Mercer County Bd. of Elections, 61 N.J. 325, 294 A.2d 233 (1972).

19:4-4.2. Form and contents of statement

The statement shall be in writing, in such form as the Secretary of State may prescribe from time to time, and shall be sworn to under oath, or affirmed, by the person named therein. Every such statement shall set forth facts showing the affiant's qualifications as a voter, a description of the places where he previously resided and the dates thereof, a description of the places where he resides, the names and all residences of the members of his immediate family or household who are of voting age with indication of the residence at

which each is domiciled for voting, and a statement of the place of residence where he intends his domicile to be.

L.1960, c. 195, p. 836, § 2.

#### American Law Reports

Residence of students for voting purposes, 44 ALR3d 797.

#### Library References

Elections ⇨72.

WESTLAW Topic No. 144.

C.J.S. Elections § 20.

#### Texts and Treatises

25 Am Jur 2d, Elections §§ 66-78.

39 Am Jur Proof of Facts 2d 587, Establishment of Person's Domicil.

### 19:4-4.3. Statement to be furnished by and filed with election official having jurisdiction of indicated domicile

The statement shall be furnished by and filed with the election official whose jurisdiction embraces the indicated domicile of the affiant and with whom voters are required to register or reregister.

L.1960, c. 195, p. 836, § 3.

#### Notes of Decisions

##### Necessity to file 1

##### 1. Necessity to file

Adequate evidence as to candidate's nonresidency existed to require that candidate file with appropriate election official

a dual residency statement setting forth specified residence as residence at which he was domiciled for voting, which residence should be same as residence address of candidate set forth in his petition of nomination. *Ivkovich v. Green*, 174 N.J.Super. 225, 416 A.2d 68 (A.D. 1980).

### 19:4-4.4. Filing like statement on subsequent change of domicile

Any person who files a statement under section 3 of this act<sup>1</sup> shall be required, as a condition to any subsequent change of domicile within this State, to file a like statement with the election official who received the previous statement and with the election official whose jurisdiction embraces the newly designated domicile.

L.1960, c. 195, p. 836, § 4.

<sup>1</sup> N.J.S.A. § 19:4-4.3.

## Library References

Elections  $\Leftrightarrow$  73.

WESTLAW Topic No. 144.

C.J.S. Elections § 21.

### 19:4-4.5. Statement as prima facie evidence of domicile; right to register in voting district

A statement satisfying the requirements of sections 2 or 4 of this act<sup>1</sup> shall be prima facie evidence that the place of residence in this State identified therein is the domicile of the affiant. In the absence of evidence contrary thereto appearing either in said statement or otherwise, the affiant shall be entitled to register or reregister within the voting district where such domicile is located, provided he possesses all other qualifications entitling him to do so. Any election official with whom such statement is filed is hereby empowered to conduct such investigation and to require the affiant to furnish additional data or information relating to his identified domicile, as he may consider necessary to discharge his duty pursuant to law.

L.1960, c. 195, p. 837, § 5.

<sup>1</sup> N.J.S.A. §§ 19:4-4.2 and 19:4-4.4.

## Notes of Decisions

Acceptance of statement 1

Burden of proof 3

Investigation or additional data 2

Presumptions and burden of proof 3

his parents' address on records of employment, driver's license and other documents. *Michaud v. Yeomans*, 115 N.J.Super. 200, 278 A.2d 537 (L.1971).

#### 2. Investigation or additional data

Under this section providing, inter alia, that in absence of evidence contrary to statement of intended domicile by person having more than one residence, the affiant shall be entitled to register to vote, commissioner of registration may act in summary manner with or without conducting investigation or requiring additional information. *Michaud v. Yeomans*, 115 N.J.Super. 200, 278 A.2d 537 (L.1971).

#### 3. Presumptions and burden of proof

Generally student is presumed not to have the right to vote in municipality where university is located, and must overcome such presumption by preponderance of the evidence. *Michaud v. Yeomans*, 115 N.J.Super. 200, 278 A.2d 537 (L.1971).

#### 1. Acceptance of statement

Township clerk improperly invalidated, on ground of nonresidence, petition of nomination of candidate, who filed statement of dual residency and claimed specified residence to be residence at which she was domiciled for voting. *Ivkovich v. Green*, 174 N.J.Super. 225, 416 A.2d 68 (A.D.1980).

Under this section providing that statement of intended domicile by person having more than one residence shall be prima facie evidence of domicile, student had not by preponderance of the evidence rebutted presumption that as student he was not domiciled at university, where there was evidence contrary to his statement, including facts that he had no key to any room at the university and did not keep his clothes there and that he gave

**19:4-4.6. Act as remedial; construction**

This act shall be deemed remedial and shall be construed in such manner as to assist the affiant to establish his lawful right to vote in his voting district in advance of casting his vote and to enforce such right, pursuant to law.

L.1960, c. 195, p. 837, § 6.

**19:4-4.7. Offenses; violators as disorderly persons; penalties**

Any person who shall make false oath or affirmation to any statement under this act, or who shall make any false statement therein, shall be adjudged a disorderly person and shall be punishable by a fine not to exceed \$1,000.00 or by imprisonment not to exceed 1 year, or both.

L.1960, c. 195, p. 837, § 7.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections § 375.

**ARTICLE 2. ELECTION DISTRICTS****Library References**

Elections §46 et seq., 119.

WESTLAW Topic No. 144.

C.J.S. Elections § 52 et seq.

**Comments**

Administration of elections, see New Jersey Practice vol. 35, Pane, § 462 et seq.

**19:4-5 to 19:4-9. Repealed by L.1976, c. 83, § 9, eff. Jan. 1, 1977**

**Historical and Statutory Notes**

The repealed sections, amended by L.1948, c. 2, p. 30, § 3; L.1975, c. 316, §§ 1, 2, and derived from L.1930, c. 187, §§ 39 to 43, pp. 686 to 689 amended by L.1933, c. 25, § 1, p. 41; L.1935, c. 9, § 4, p. 20; L.1936, c. 146, § 1, p. 344,

related to the number of voters, the use of a polling place in one district by voters in another and readjustment of boundaries of election districts.

See, now, §§ 19:4-10 to 19:4-17.

**19:4-10. Geographical composition**

As nearly as practicable, each election district shall be composed of contiguous and compact areas having clearly definable boundaries

and shall be contained wholly within only one ward, only one municipality, only one county freeholder district, one State legislative district, only one United States Congressional district, and only one other district from which any public official is elected. The election districts within each municipality shall be numbered consecutively. L.1976, c. 83, § 1, eff. Jan. 1, 1977.

**Historical and Statutory Notes**

**Prior Laws:** R.S. 19:4-6, amended by L.1948, c. 2, p. 30, § 3; L.1975, c. 316, § 2.

L.1930, c. 187, ¶40, p. 687, amended by L.1933, c. 25, § 1, p. 41; L.1935, c. 9, § 4, p. 20; L.1936, c. 146, § 1, p. 344.

Section 10 of L.1976, c. 83, approved Sept. 1, 1976, provides:

"This act shall take effect January 1, 1977."

**Title of Act:**

An Act concerning elections and repealing R.S. 19:4-5, 19:4-6, 19:4-7, 19:4-8, 19:4-9 and 19:51-1. L.1976, c. 83.

**Administrative Code References**

Election district maps, see N.J.A.C. 15:10-3.1 et seq.

**American Law Reports**

Diluting effect of minorities' votes by adoption of particular election plan, or gerrymandering of election dis-

trict, as violation of equal protection clause of Federal Constitution, 27 ALR Fed 29.

**Library References**

Elections ↪48.

WESTLAW Topic No. 144.

C.J.S. Elections § 54.

**Texts and Treatises**

25 Am Jur 2d, Elections §§13-15, 17 et seq.

**United States Supreme Court**

Equal protection,  
 Redistricting, racial gerrymandering, narrowly tailored to serve compelling state interest, see *Shaw v. Hunt*, 1996, 116 S.Ct. 1894, 517 U.S. 899, 135 L.Ed.2d 207.  
 Redistricting, racial gerrymandering, noncompact and bizarrely shaped

majority-minority districts, compelling state interest, voting Rights Act, see *Bush v. Vera*, U.S.Tex. 1996, 116 S.Ct. 1941, 517 U.S. 952, 135 L.Ed.2d 248.



## Notes of Decisions

## Shape of district 1

## 1. Shape of district

Even though after readjustment of districts in borough one district wedged in by reservation on one side and town on another was not rectangular in shape and

there seemed to be a narrow bottle neck toward the center, in absence of proof of abuse of power to readjust districts as nearly rectangular as possible the redistricting was within requirements of statute. *Reisdorf v. Mayor and Council of Borough of Mountainside*, 114 N.J. Super. 562, 277 A.2d 554 (L.1971).

### 19:4-11. District with one voting machine or four electronic system voting devices; number of voters

Subject to the provisions of law as to redistricting, each election district in which only one voting machine or four electronic system voting devices are used shall contain no more than 750 voters, except an election district in which there is located a public or private institution where persons entitled to vote may reside, and in such district the number of voters shall be as near to 750 as is practicable.

L.1976, c. 83, § 2, eff. Jan. 1, 1977.

#### Historical and Statutory Notes

**Prior Laws:** R.S. 19:4-5; 19:51-1, L.1930, c. 187, ¶ 39, p. 686. L.1935, c. amended by L.1945, c. 56, p. 329, § 8. 302, § 13, p. 953.

### 19:4-12. Other districts with more machines or devices; number of voters; additional members of district board

Each district in which two voting machines or five electronic system voting devices are to be used shall contain, as nearly as is practicable, 1,000 voters, and each district in which three voting machines or eight electronic system voting devices are to be used shall contain, as nearly as is practicable, 1,500 voters.

Nothing herein shall prevent any election district from containing fewer voters than prescribed above, if necessary for the convenience of the voters.

In a district where more than two voting machines or five electronic system voting devices are to be used, two additional members of the district board, who shall not be members of the same political party, shall be appointed for each additional voting machine or system.

L.1976, c. 83, § 3, eff. Jan. 1, 1977. Amended by L.1996, c. 120, § 1, eff. Oct. 31, 1996.

#### Historical and Statutory Notes

**Prior Laws:** R.S. 19:4-6, amended by § 2; 19:51-1, amended by L.1945, c. 56, L.1948, c. 2, p. 30, § 3; L.1975, c. 316, p. 329, § 8.

L.1930, c. 187, ¶40, p. 687, amended § 4, p. 20; L.1936, c. 146, § 1, p. 344. by L.1933, c. 25, § 1, p. 41; L.1935, c. 9, L.1935, c. 302, § 13, p. 953.

**19:4-13. Readjustment of boundaries for correct number of voters**

When in any two consecutive general elections in an election district more than 750 or less than 250 votes shall have been cast, the county board shall readjust the boundary lines of such election district and other election districts necessary to effect changes so that none of the election districts affected shall have more than 750 registered voters, and for this purpose shall have power to consolidate any number of districts and subdivide the same.

L.1976, c. 83, § 4, eff. Jan. 1, 1977.

**Historical and Statutory Notes**

**Prior Laws:** R.S. 19:4-6, amended by L.1948, c. 2, p. 30, § 3; L.1975, c. 316, § 2; 19:51-1, amended by L.1945, c. 56, p. 329, § 8. L.1930, c. 187, ¶40, p. 687, amended by L.1933, c. 25, § 1, p. 41; L.1935, c. 9, § 4, p. 20; L.1936, c. 146, § 1, p. 344; L.1935, c. 302, § 13, p. 953.

**United States Supreme Court**

Equal protection, majority-minority districts, compelling state interest, voting Rights Act, see *Bush v. Vera*, U.S.Tex. 1996, 116 S.Ct. 1941, 517 U.S. 952, 135 L.Ed.2d 248.  
Redistricting, racial gerrymandering, narrowly tailored to serve compelling state interest, see *Shaw v. Hunt*, 1996, 116 S.Ct. 1894, 517 U.S. 899, 135 L.Ed.2d 207.  
Redistricting, racial gerrymandering, noncompact and bizarrely shaped

**Notes of Decisions**

**In general 1**

**1. In general**

Under former § 19:4-6 authorizing readjustment of boundary lines of election districts so that none of the districts affected shall have more than 550 or less than 350 registered voters, and providing that "like procedure" could be followed in redistricting districts using voting machines, where in two consecutive elections over 600 votes were cast in most of

borough's election districts, borough had authority to readjust boundary lines and readjustment did not violate provisions of § 19:51-1 (repealed; see, now, §§ 19:4-11 to 19:4-13) permitting alteration of districts in which voting machines were used so as to provide that each district in which one machine was to be used should contain, as nearly as could be, 750 registered voters. *Reisdorf v. Mayor and Council of Borough of Mountainside*, 114 N.J.Super. 562, 277 A.2d 554 (L.1971).

**19:4-14. Revision or readjustment of boundaries at option of county board**

Where it appears that serious inconveniences have been caused the voters by the size or shape of an election district, or that certain districts contain an unreasonably large or small number of voters in

comparison with other districts, or that a change is necessary because of a change in ward lines, the county board may revise or readjust the election districts in the municipality, without regard to whether a readjustment is authorized by section 2 or 3 of this act.<sup>1</sup>

L.1976, c. 83, § 5, eff. Jan. 1, 1977.

<sup>1</sup> N.J.S.A. §§ 19:4-11, 19:4-12.

### Historical and Statutory Notes

**Prior Laws:** R.S. 19:4-7.

L.1930, c. 187, ¶ 41, p. 688.

### Library References

#### Texts and Treatises

25 Am Jur 2d, Elections §§14, 15.

### Notes of Decisions

#### Number of voters in district 1

##### 1. Number of voters in district

Where of five districts in borough, District 2 had slightly more than twice as many voters as District 3, and approximately 58% more voters than District 1, and Districts 4 and 5 each had more than

200 fewer voters than District 2, former § 19:4-7 authorizing readjustment of district boundary lines when certain districts contain unreasonably large or small number of voters in comparison with other districts authorized redistricting. *Reisdorf v. Mayor and Council of Borough of Mountainside*, 114 N.J.Super. 562, 277 A.2d 554 (L.1971).

### 19:4-15. Time of change

a. No county board shall make division of an election district in any year in the period commencing 75 days before the primary election and the day of the general election.

b. To facilitate the use of Federal decennial census populations for apportionment and redistricting purposes and notwithstanding the provisions of this or any other law, no election districts shall, except with the prior approval of the Secretary of State, be created, abolished, divided or consolidated between January 1 of any year whose last digit is 7 and December 1 of any year whose last digit is 0.

L.1976, c. 83, § 6, eff. Jan. 1, 1977.

### Historical and Statutory Notes

**Prior Laws:** R.S. 19:4-6, amended by L.1948, c. 2, p. 30, § 3; L.1975, c. 316, § 2.

L.1930, c. 187, ¶ 40, p. 687, amended by L.1933, c. 25, § 1, p. 41; L.1935, c. 9, § 4, p. 20; L.1936, c. 146, § 1, p. 344.

**19:4-16. Maps and descriptions; filing; public inspection; rules and regulations**

The county board shall cause to have prepared and shall maintain an up-to-date suitable map of the county and of each constituent municipality clearly delineating the geographical boundaries of each election district contained therein and of the ward, legislative, freeholder, Congressional or other district or part thereof, in which each election district is contained. A word description of such geographical boundaries shall be attached to each such map.

The county board shall file copies of such maps and descriptions in the following manner: three copies to the Secretary of State, one copy to the county clerk, and one copy to the clerk of each affected municipality. Within 30 days of any changes in the boundaries of any of the aforementioned districts, the county board shall file revised maps and accompanying revised descriptions in the same manner.

Said maps and descriptions shall be public records and shall be available for inspection by the public in the offices of the Secretary of State, county clerks and municipal clerks during normal office hours. Copies shall be made available to the public for a fee necessary to cover the cost of reproduction.

In order to effectuate the purposes of this act, the Secretary of State shall establish such rules and regulations governing the preparation, maintenance, distribution and filing of said maps and descriptions as he deems necessary or desirable.

L.1976, c. 83, § 7, eff. Jan. 1, 1977.

**Historical and Statutory Notes**

**Prior Laws:** R.S. 19:4-9.

L.1930, c. 187, ¶ 43, p. 689.

**Administrative Code References**

Election district maps, see N.J.A.C. 15:10-3.1 et seq.

**19:4-17. Secretary of State as liaison with Bureau of Census**

The Secretary of State shall serve as the State liaison with the Bureau of the Census, United States Department of Commerce, on matters relating to the preparation of maps and the tabulation of the population for election purposes.

L.1976, c. 83, § 8, eff. Jan. 1, 1977.

**Library References**

States ⇨73.

WESTLAW Topic No. 360.

C.J.S. States §§ 130 to 136, 140.

**United States Supreme Court**

Census, statistical adjustment to correct undercounting of minority groups, reasonable relationship to actual enumer-

ation of population, see *Wisconsin v. City of New York*, U.S.N.Y.1996, 116 S.Ct. 1091, 517 U.S. 1, 134 L.Ed.2d 167.

## CHAPTER 5

### PARTY ORGANIZATIONS

#### ARTICLE 1. GENERAL PROVISIONS

**Section**

19:5-1. Powers of and restrictions upon political parties; party columns on official ballot.

#### ARTICLE 2. MUNICIPAL, COUNTY AND STATE COMMITTEES

19:5-2. Membership and organization of municipal committees.

19:5-2.1. Access to financial records of municipal committees; request by persons elected to membership in committee.

19:5-3. Membership and organization of county committees; vacancies; certification of unit of representation and number of election districts.

19:5-3.1. Access to financial records of county committees; request by persons elected to membership in committee.

19:5-4. Membership and organization of state committees; vacancies; national committee members.

19:5-4a. Access to financial records of state committee; request by persons elected to committee.

19:5-4.1. Apportionment of members different from apportionment under which current members elected; adoption of bylaws; election of new members.

19:5-4.2. Inadequacy of time to give notice; filling of additional memberships on state committee.

19:5-5. Maintenance of party organization.

#### ARTICLE 3. STATE CONVENTIONS

19:5-6. Annual convention; members; time and place, platform; resolutions and public hearings.

#### Library References

**Comments**

Political parties, see New Jersey Practice  
vol. 35, Pane, § 466 et seq.

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**ARTICLE 1. GENERAL PROVISIONS****19:5-1. Powers of and restrictions upon political parties; party columns on official ballot**

A political party may nominate candidates for public office at primary elections provided for in this Title, elect committees for the party within the State, county or municipality, as the case may be, and in every other respect may exercise the rights and shall be subject to the restrictions herein provided for political parties; except that no political party which fails to poll at any primary election for a general election at least ten per centum (10%) of the votes cast in the State for members of the General Assembly at the next preceding general election, held for the election of all of the members of the General Assembly, shall be entitled to have a party column on the official ballot at the general election for which the primary election has been held. In such case the names of the candidates so nominated at the primary election shall be printed in the column or columns designated "Nomination by Petition" on the official ballot under the respective titles of office for which the nominations have been made, followed by the designation of the political party of which the candidates are members.

Amended by L.1948, c. 438, p. 1696, § 4.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶44, p. 689.

**American Law Reports**

Validity of percentage of vote or similar requirements for participation by political parties in primary elections, 70 ALR2d 1162.

**Library References**

Elections ⇨ 168(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 159.

**Texts and Treatises**

25 Am Jur 2d, Elections §121 et seq.

## Notes of Decisions

**Ballots 3****Political parties 1, 2****In general 1****Regulation of parties 2****Regulation of parties, political parties 2****1. Political parties—In general**

A "political party" is an association of persons sponsoring ideas of government or maintaining certain political principles or beliefs in public policies of government, and its purpose is to urge adoption and execution of such principles in governmental affairs through officers of like beliefs. *Rogers v. State Committee of Republican Party*, 96 N.J. Super. 265, 232 A.2d 852 (L.1967).

**2. — Regulation of parties**

A political party makes its own rules and regulations and determines its own policies. *Rogers v. State Committee of Republican Party*, 96 N.J. Super. 265, 232 A.2d 852 (L.1967).

Statutes relating to party organization reflect legislative intent to provide only rudimentary framework by which county committees should operate, and were not intended to create pervasive regulation of intraparty operations and procedures. *Deamer v. Jones*, 42 N.J. 516, 201 A.2d 712 (1964).

**3. Ballots**

County clerk's proper exercise of discretion required that all of party candidates be placed on same line on general election voting machine ballot even though party was not political party as defined in Election Law and not all of positions in prior line were filled. *Richardson v. Caputo*, 46 N.J. 3, 214 A.2d 385 (1965).

Party, even though not a political party as defined in Election Law, was not intended to be denied opportunity to have its slate on one line on general election voting machine ballot. *Richardson v. Caputo*, 46 N.J. 3, 214 A.2d 385 (1965).

## ARTICLE 2. MUNICIPAL, COUNTY AND STATE COMMITTEES

## Library References

Elections ⇨ 121(1), (2).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**19:5-2. Membership and organization of municipal committees**

The members of the municipal committees of political parties shall consist of the elected members of the county committee resident in the respective municipalities. The members of the municipal committee shall take office on the first Saturday following their election as members of the county committee, on which day the terms of all members of such committees theretofore elected shall terminate. The annual meeting of each municipal committee shall be held on the first Monday following the primary election for the general election, at an hour and place to be designated in a notice to be given by the chairman of the outgoing municipal committee to each member-elect, at which annual meeting the members of each committee shall elect some suitable person who shall be a resident of such municipality as chairman to hold office for 1 year or until his successor is elected. The municipal committee shall have power to adopt a



constitution and bylaws for its proper government. The chairman shall preside at all meetings of the committee, and shall perform all duties required of him by law and the constitution and bylaws of such committee.

When a member of a municipal committee ceases to be a resident of the district or unit from which elected, a vacancy on the committee shall exist. A member of a municipal committee of any political party may resign his office to the committee of which he is a member, and upon acceptance thereof by the committee a vacancy shall exist. A vacancy in the office of a member of a municipal committee of any political party, howsoever caused, shall be filled for the unexpired term by the remaining members of the committee in the municipality in which the vacancy occurs.

Amended by L.1979, c. 458, § 1, eff. Feb. 27, 1980.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶45, p. 689,  
amended by L.1935, c. 9, § 5, p. 21.

### Notes of Decisions

#### County committees 2 Qualification of members 1

##### 1. Qualification of members

County sheriff was not barred from holding office of chairman of municipal committee of Democratic party of township at same time as he held and exercised office of sheriff. *Lanza v. De Marino*, 160 N.J.Super. 71, 388 A.2d 1294 (A.D.1978).

Although plaintiffs, who on June 8, 1971 were elected by write-in votes to position of political party's county committeewoman and committeeman of their respective districts, had not tendered a

written acceptance by Saturday, June 12, it was improper for municipal committee to deny plaintiffs the offices to which they were elected, where certificate of election was issued to plaintiffs on Tuesday, June 15, and plaintiffs promptly filed their certification of membership in political party with the secretary of the county committee. *Filippone v. O'Connor*, 116 N.J.Super. 399, 282 A.2d 443 (L.1971).

##### 2. County committees

Municipal committees and county committees are statutorily separate and distinct entities rather than one being a part of the other. *Bontempo v. Carey*, 64 N.J.Super. 51, 165 A.2d 222 (L.1960).

#### 19:5-2.1. Access to financial records of municipal committees; request by persons elected to membership in committee

In the time intervening between a primary election at which the members of a municipal committee of a political party are elected and the annual meeting of the municipal committee as provided by R.S. 19:5-2, any person elected to membership on that municipal committee at that election may request, in writing and by certified mail, either access to the complete financial records of the municipal committee or a copy of the balance sheet of the municipal committee

showing the assets and liabilities of the municipal committee as of the close of business on the date of that primary election. The person requesting that access or copy of the balance sheet shall receive the access or copy so requested within 48 hours of the receipt of that request by the committee.

L.1983, c. 579, § 22, eff. Jan. 17, 1984.

**Historical and Statutory Notes**

<b>Title of Act:</b>	thereof and revising parts of the statutory law. L.1983, c. 579.
An Act concerning election related financial information and the disclosure	

**Library References**

Elections ⇨317.4.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 329.

**19:5-3. Membership and organization of county committees; vacancies; certification of unit of representation and number of election districts**

The members of the county committees of political parties shall be elected annually at the primary for the general election in the manner provided in this Title for the selection of party candidates to be voted for at the general election by voters of a municipality. The county committee shall consist of one male and one female member from each unit of representation in the county. The male receiving the highest number of votes among the male candidates and the female receiving the highest number of votes among the female candidates shall be declared elected. Members of the county committee shall actually reside in the districts or units which they respectively represent. The county committee shall determine by its bylaws the units into which the county shall be divided for purpose of representation in the county committee:

The members of the county committee of each of the political parties shall take office on the first Saturday following their election, on which day the terms of all members of such committees theretofore elected shall terminate. The annual meeting of each county committee shall be held on the first Tuesday following the primary election, except that when such meeting day falls on a legal holiday then the said meeting shall be held on the day following, and when such meeting day falls on the day of a municipal runoff election within the county then said meeting may be held on the day following, at an hour and place to be designated in a notice in writing to be mailed by the chairman of the outgoing county committee to each

member-elect, at which annual meeting the members of such committee shall elect some suitable person as chairman who shall be a resident of such county to hold office for 1 year, or until his successor is elected. The members shall also elect a vice-chairman of the opposite sex of the chairman to hold office for 1 year or until his or her successor is elected and the vice-chairman shall perform all duties required of him or her by law and the constitution and bylaws of such committee. Such committee shall have power to adopt a constitution and bylaws for its proper government. The chairman shall preside at all meetings of the committee and shall perform all duties required of him by law and the constitution and bylaws of such committee.

When a member of a county committee ceases to be a resident of the district or unit from which elected, a vacancy on the county committee shall exist. A member of a county committee of any political party may resign his office to the committee of which he is a member, and upon acceptance thereof by the committee a vacancy shall exist. A vacancy in the office of a member of the county committee of any political party, caused by death, resignation, failure to elect or otherwise, shall be filled for the unexpired term by the municipal committee of the municipality wherein the vacancy occurs, if there is such committee, and if not, by the remaining members of the county committee of such political party representing the territory in the county in which such vacancy occurs.

The chairman of the county committee of the several political parties shall before April 1, certify to the clerk of each municipality in the county the unit of representation in such municipality, together with the enumeration of the election district or districts embraced within such unit.

Amended by L.1948, c. 2, p. 31, § 4; L.1955, c. 236, p. 904, § 1; L.1964, c. 23, § 1; L.1965, c. 4, § 3; L.1966, c. 19, § 2; L.1967, c. 7, § 2; L.1967, c. 27, § 2, eff. April 21, 1967; L.1968, c. 292, § 2, eff. Sept. 6, 1968; L.1978, c. 29, § 1, eff. June 7, 1978; L.1979, c. 458, § 2, eff. Feb. 27, 1980; L.1980, c. 105, § 3, eff. Sept. 11, 1980.

### Historical and Statutory Notes

#### Source:

L.1930, c. 187, ¶46, p. 690.  
L.1931, c. 374, § 1, p. 948.  
L.1932, c. 165, § 1, p. 291.  
L.1935, c. 9, § 6, p. 22.

L.1936, c. 87, § 2, p. 226.

L.1955, c. 236, passed Dec. 5, 1955, over the Governor's veto by two-thirds majority of both Houses. Filed Dec. 6, 1955.

### Library References

Elections ⇨121(2).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 86 et seq.

**Forms**

2 Am Jur Legal Forms 2d, Associations and Clubs § 27:43.3.

**Notes of Decisions**

By-laws 4  
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**1. Validity**

Elections statute concerning committee party organizations was unconstitutional insofar as it mandated election of officers of county committee based on gender; state did not have compelling interest in internal affairs of county committees of political parties sufficient to warrant legislating gender of candidates for leadership positions of those parties. *Hartman v. Covert*, 303 N.J.Super. 326, 696 A.2d 788 (L.1997).

In determining constitutionality of state election law, first examination is whether or not law burdens rights protected by First and Fourteenth Amendments to the Constitution, and if challenged law burdens rights of political parties and their members, state must prove law advances a compelling state interest for law to withstand constitutional scrutiny; further, law must be narrowly tailored to serve that state interest. *Hartman v. Covert*, 303 N.J.Super. 326, 696 A.2d 788 (L.1997).

State statute that restricts positions of political party committee chair and vice-chair to persons of opposite genders limits political parties' discretion in how to organize themselves and select their leaders, and thus burdens associational rights of parties and their members; associational rights at stake are particularly strong as they implicate right of entire voluntary group of persons who are seeking to associate with one another for specific political goals and objectives central to democratic process. *Hartman v. Covert*, 303 N.J.Super. 326, 696 A.2d 788 (L.1997).

303 N.J.Super. 326, 696 A.2d 788 (L.1997).

State statute that restricts positions of political party committee chair and vice-chair to persons of opposite genders does not serve compelling state interest sufficient to sustain constitutional burdens, even though statute's interest appeared to be assurance and protection of equal representation of two genders in terms of political party leadership and at time of passage intended to assure equal representation, that purpose was largely subsumed by laws striking gender-based discrimination, and requirement of one man and one woman in positions did not serve to ensure "orderly and fair" election process. *Hartman v. Covert*, 303 N.J.Super. 326, 696 A.2d 788 (L.1997).

**2. Municipal committees**

Municipal committees and county committees are statutorily separate and distinct entities rather than one being a part of the other. *Bontempo v. Carey*, 64 N.J.Super. 51, 165 A.2d 222 (L.1960).

**3. Special committees**

County Democratic committee did not have authority to create a committee independent from itself, and any special committee established by it was considered as a part of the county committee. *Cavanagh v. Morris County Democratic Committee*, 121 N.J.Super. 430, 297 A.2d 594 (Ch.1972).

**4. By-laws**

Statutes relating to party county organization do not require, but merely permit, adoption of bylaws. *Deamer v. Jones*, 42 N.J. 516, 201 A.2d 712 (1964).

**5. Voting**

Absent statutory or bylaw provision to the contrary, open roll-call vote was required to determine whether balloting for election of officers of county committee of political party should be open or secret. *Baran v. Kelly*, 119 N.J.Super. 567, 293 A.2d 189 (A.D.1972).

## Note 5

County committee could properly adopt open form of voting, rather than secret ballot, for election of State Committeeman. *Deamer v. Jones*, 42 N.J. 516, 201 A.2d 712 (1964).

Where unit rule or proxy voting were improperly used at meeting of political party county committee, which meeting had been convened for the purpose of electing a county committee chairman, the election of the chairman was a nullity, and new election must be held to select a chairman, and until such selection should be made the chairman who had been elected at the meeting which used unit rule and proxy voting would continue to serve. *Bontempo v. Carey*, 64 N.J. Super. 51, 165 A.2d 222 (L.1960).

Political party committee members must be present to cast their votes at county and municipal meetings and proxy voting or unit rule voting may not be used. *Bontempo v. Carey*, 64 N.J. Super. 51, 165 A.2d 222 (L.1960).

#### 6. Members—In general

The county committeeman of a political party is a trustee of voter rights and interest in party affairs. *Bontempo v. Carey*, 64 N.J. Super. 51, 165 A.2d 222 (L.1960).

#### 7. — Qualifications, members

Even if § 19:4-4.1 et seq. permitting a voter who has more than one place of residence where he is entitled to vote to elect one as his voting domicile was applicable to residency requirements of candidates for office, statement filed pursuant to that statute was insufficient to render candidate eligible to seek to represent borough on county committee where court had found that he did not have dual residency but rather resided solely in a township outside the borough. *Nickerson v. Capella*, 150 N.J. Super. 110, 374 A.2d 1253 (A.D.1977).

#### 8. Chairman

Authority of chairman of county committee is not restricted to specific statutory powers in absence of bylaws granting him additional duties and powers. *Deamer v. Jones*, 42 N.J. 516, 201 A.2d 712 (1964).

#### 9. Vacancies

County Chairman and Executive Committee had power to call election to fill vacancy in office of State Committeeman, without bylaws granting such authority. *Deamer v. Jones*, 42 N.J. 516, 201 A.2d 712 (1964).

### 19:5-3.1. Access to financial records of county committees; request by persons elected to membership in committee

In the time intervening between a primary election at which the members of a county committee of a political party are elected and the annual meeting of the county committee as provided by R.S. 19:5-3, any person elected to membership on that county committee at that election may request, in writing and by certified mail, either access to the complete financial records of the county committee or a copy of the balance sheet of the county committee showing the assets and liabilities of the county committee as of the close of business on the date of that primary election. The person requesting that access or copy of the balance sheet shall receive the access or copy so requested within 48 hours of the receipt of that request by the committee.

L.1983, c. 579, § 23, eff. Jan. 17, 1984.

#### Library References

Elections ↻317.4.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 329.

**19:5-4. Membership and organization of state committees; vacancies; national committee members**

The members of the State committee of each of the political parties shall be elected at the primary for the general election of the year in which a Governor is to be elected.

The number of males and females comprising the State committee of each of the political parties from each county may be determined by the bylaws of each such political party, but in any event in accordance with one of the following methods:

a. One male and one female member of the State committee to be elected in each county, each having one vote; or

b. Not less than 79 nor more than 82 elected members, to be apportioned among the several counties in accordance with population as determined at the most recent Federal decennial census; provided that each county shall have at least one vote, and provided further that the members of the State committee from each county shall be divided equally between males and females. In those counties with an odd number of State committee members, one seat shall be shared by one male and one female who shall each have one-half vote in all matters of the State committee; or

c. One male and one female member of the State committee to be elected in each county, each member having a vote weighted in strength on the basis of population as determined at the most recent Federal decennial census.

The members of the State committee of each of the political parties shall take office on the first Tuesday following their election, on which day the terms of all members of such committees theretofore elected shall terminate. The annual meeting of the State committee shall be held on the first Tuesday after such primary election at the hour and place to be designated in a notice in writing to be mailed by the chairman of the outgoing State committee to each member-elect, at which annual meeting the members of the committee in the year in which a Governor is to be elected, shall elect some suitable person as chairman to hold office for 4 years, or until his successor is elected. The committee shall have power to adopt a constitution and bylaws for its proper government. The chairman shall preside at all meetings of the committee and shall perform all duties required of him by law and the constitution and bylaws of such committee.

A member of a State committee of any political party may resign his office to the committee of which he is a member, and upon acceptance thereof by the committee a vacancy shall exist. A vacancy in the office of a member of the State committee of any political

party, howsoever caused, shall be filled for the unexpired term by the members of the county committee of such political party in the county in which the vacancy occurs.

Members of the State committee shall serve for 4 years or until their successors are elected. The State committee shall choose its chairman and the member or members of the national committee of its political party.

Amended by L.1948, c. 216, p. 1044, § 1; L.1978, c. 15, § 1, eff. March 30, 1978.

### Introductory Statement

Senate, No. 956—L.1978, c. 15

The purpose of this bill is to prescribe three alternative procedures to elect the State committee of a political party. One alternative allows for a State committee to elect two members from each county. The second alternative allows for the election of an 80 to 82 member State committee to be apportioned among the counties on the basis of population in order to comply with any national party guidelines concerning the composition of State committees. If a State committee can not provide sufficient notice to the county committee chairmen that additional members are to be elected at the next primary election, the additional members may be filled by the county committees.

\* \* \* \* \*

The bill's purpose in its second prescribed alternative is to enable any presently serving member of a State committee to continue his term with full and complete powers.

\* \* \* \* \*

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶47, p. 692. present terms of the chairmen or members of the State Committee." Section 3 of the amendatory act of 1948 read as follows:

"This act [§§ 19:5-4, 19:5-6] shall take effect immediately, but shall not affect the

### Library References

Elections ⇨121(2).

WESTLAW Topic No. 144.

C.J.S. Elections § 86 et seq.

## Notes of Decisions

Chairman 3  
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Democratic State Committee for cause. Op. Atty. Gen., March 9, 1951, No. 11.

## 4. Vacancies

County Chairman and Executive Committee had power to call election to fill vacancy in office of State Committeeman, without bylaws granting such authority. *Deamer v. Jones*, 42 N.J. 516, 201 A.2d 712 (1964).

Under § 19:5-4, providing for term of office for member of state committee of political party of three years or until election of successor, and for filling of vacancies by county committee, voiding of election of new member created a "vacancy" in office, and old member was continued in office until election of his successor. *Ringle v. Republican State Committee of New Jersey*, 122 N.J.L. 435, 6 A.2d 136 (1939).

The selection by county committee of political party of a second successor to fill vacancy on state committee divested old member of state committee of right to continue to hold over in office after voiding of election of one originally elected to succeed him. *Ringle v. Republican State Committee of New Jersey*, 122 N.J.L. 435, 6 A.2d 136 (1939).

## 1. Validity

This section did not violate equal protection on ground that there was no provision for a one man, one vote basis, in view of facts that the Committee neither makes nor enforces any laws and that its permissible activities cannot be classified as truly governmental. *Rogers v. State Committee of Republican Party*, 96 N.J. Super. 265, 232 A.2d 852 (L.1967).

## 2. Regulation of parties

Statutes concerning the State committees of political parties manifest no intention to create a pervasive regulation of intraparty operations and procedures. *Rogers v. State Committee of Republican Party*, 96 N.J. Super. 265, 232 A.2d 852 (L.1967).

## 3. Chairman

The Democratic State Committee has no power to remove Chairman of the

### 19:5-4a. Access to financial records of state committee; request by persons elected to committee

In the time intervening between a primary election at which the members of a State committee of a political party are elected and the annual meeting of the State committee as provided by R.S. 19:5-4, any person elected to membership on that State committee at that election may request, in writing and by certified mail, either access to the complete financial records of the State committee or a copy of the balance sheet of the State committee showing the assets and liabilities of the State committee as of the close of business on the date of that primary election. The person requesting that access or copy of the balance sheet shall receive the access or copy so requested within 48 hours of the receipt of that request by the committee. L.1983, c. 579, § 24, eff. Jan. 17, 1984.

## Library References

Elections ⇨ 317.4.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 329.



**19:5-4.1. Apportionment of members different from apportionment under which current members elected; adoption of bylaws; election of new members**

a. The State committee of any political party may adopt bylaws prescribing the apportionment of members of said committee different from the method under which the members currently serving were elected, in accordance with section 1 of this amendatory and supplementary act.<sup>1</sup> Such bylaws shall be adopted by a majority of the members of the respective State committee present and voting at a duly convened meeting of said State committee at which a quorum of at least 40% plus one is present. The chairman of such State committee shall certify the adoption of its bylaws to the Secretary of State within 10 days of their adoption.

b. In the event that a State committee of any political party shall adopt bylaws providing for an apportionment of members different from the apportionment under which the current members were elected and requiring the election of additional members before the next primary election at which candidates for Governor are to be nominated, the additional members of such State committee shall be elected at the primary election following the adoption of said bylaws.

c. The chairman of such State committee shall, no later than 45 days before the date of the primary election, notify in writing the chairman of each county committee of such party of the number of additional male and female members and members with less than one full vote to be elected from the county at such election. At the same time the chairman of the State committee shall make similar notification to the county clerk of each county.

d. The members and officers of the State committee adopting such bylaws shall serve out the terms to which they had been elected and shall be the only members who shall participate in the process of nomination of members of county boards of election provided for in this act until the termination of their terms.

L.1978, c. 15, § 6, eff. March 30, 1978.

<sup>1</sup> N.J.S.A. § 19:5-4.

**Historical and Statutory Notes**

**Statement:** Introductory Statement to Senate, No. 956—L.1978, c. 15, see § 19:5-4.

19:23-56 and 19:24-1, and supplementing Title 19, of the Revised Statutes. L.1978, c. 15.

**Title of Act:**

An Act concerning elections, amending sections 19:5-4, 19:6-18, 19:23-1,

**Library References**

Elections  $\Leftrightarrow$ 121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**19:5-4.2. Inadequacy of time to give notice; filling of additional memberships on state committee**

In the event that notice of the additional members of the State committee to be elected from the county can not be given within the time prescribed in subsection c. of section 6 of this act,<sup>1</sup> the additional memberships on such State committee shall be filled in the same manner as vacancies are filled under R.S. 19:5-4 by the county committee of each county to which additional members have been apportioned.

L.1978, c. 15, § 7, eff. March 30, 1978.

<sup>1</sup> N.J.S.A. § 19:5-4.1.

**Historical and Statutory Notes**

**Statement:** Introductory Statement to Senate, No. 956—L.1978, c. 15, see § 19:5-4.

**Library References**

Elections  $\Leftrightarrow$ 121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**19:5-5. Maintenance of party organization**

Any State committee, county committee or municipal committee of any political party may receive and disburse moneys for the general purposes of maintaining such organization during the whole or any part of the year. The expenses for maintenance of organization shall be confined to the hiring or acquisition of suitable quarters for meetings of such committee, for stationery, for hiring of necessary clerks, for the expenses of notices of the meetings of such committee, for giving publicity to the policies and candidates of their respective party organizations, and other expenses incidental to the maintenance of such organization.

Amended by L.1973, c. 83, § 27, eff. April 24, 1973.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶48, p. 693.

**Cross References**

Campaign contributions and expenditures, see § 19:44A-1 et seq.

**Library References**

Elections ⇨121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**Notes of Decisions****Reports 1****1. Reports**

Campaign Contributions and Expenditures Reporting Act, § 19:44A-1 et seq., contemplates remedy for default of statu-

tory reporting by committee of receipts and expenditures initially through Election Law Enforcement Commission rather than courts. *O'Neill v. Lerner*, 154 N.J.Super. 317, 381 A.2d 383 (A.D.1977), certification denied 75 N.J. 610, 384 A.2d 840.

**ARTICLE 3. STATE CONVENTIONS****Library References**

Elections ⇨121.

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**19:5-6. Annual convention; members; time and place, platform; resolutions and public hearings**

There shall be held in each year in which all members of the General Assembly are to be elected, a State convention of each of the political parties.

Such State convention of each party shall consist of the following members:

(1) The party candidates for the following offices:

(a) Members of the Senate or House of Representatives of the United States from this State, nominated at the party primaries held for the nomination of candidates for any of said offices immediately preceding the convention.

(b) State Senator nominated, in each county, at the party primaries, held for the nomination of a candidate for said office, immediately preceding the convention, and

(c) Members of the General Assembly, nominated in each county, at the party primaries immediately preceding the convention, if the convention is to be held in a year in which all of the members of the General Assembly are to be elected; or all of the party candidates for said offices, in each county, who were voted upon and were not elected at the general election held in

the year immediately preceding the convention, if the convention is to be held in a year other than one in which all of the members of the General Assembly are to be elected, except that any candidates nominated for the filling of vacancies, in said offices, at the party primaries held in the year in which the convention is held, shall replace, to an equal number, the candidates so voted upon and not elected at the general election held in the preceding year, who received the least number of votes in said general election;

(2) The candidate of the party for Governor nominated at the primaries in said year;

(3) Members of the State Senate and of the General Assembly belonging to the party who are holding office at the time of the State convention and whose successors are not to be chosen at the ensuing general election;

(4) Members of the State Committee chosen as herein provided;

(5) Members of the Senate and House of Representatives of the United States from this State, belonging to such party, who are holding office at the time of the holding of the State convention and whose successors are not to be chosen at the ensuing general election;

(6) Members of the National Committee from this State; and

(7) The county chairperson and vice chairperson of the several county committees.

The convention of each party shall be held at the city of Trenton on the second Thursday after the primary election for the general election in each year in which all members of the General Assembly are to be elected. When the day prescribed by law for holding State conventions of political parties, or any adjournment thereof, falls on a legal holiday, the convention or adjournment thereof, as the case may be, shall be held on the day preceding such legal holiday. The place and the hour at which the convention shall meet shall be fixed by call of the existing State Committee to be issued at least 5 days prior to the date of meeting. If no call is issued by the State Committee, any person qualified to sit in the convention may issue a call.

The convention of each party shall have power to adopt and promulgate a party platform for its party, and to transact such other business as may properly come before it. The convention of each political party, in this Title authorized, upon convening, shall appoint a committee on resolutions consisting of five members. The convention shall then be open for the reception of all proposed planks for the party platform, which planks shall be referred to the committee on resolutions, whose duty it shall be to prepare a tentative party

platform and furnish it to each member of the convention within 75 days. The committee on resolutions of each political party shall hold a minimum of three public hearings throughout the State. A number of such public hearings shall be held in the evenings, if feasible, to give the largest possible number of people an opportunity to express their views. The State convention of each political party shall adjourn to meet again at its originally set meeting place not later than 90 days after the initial adjournment of such convention. The State chairman of each political party shall set the date of the adjourned meeting of his party. A notice of the date of the adjourned meeting of each political party shall be furnished to each member of each respective convention not later than 15 days prior to such adjourned meeting. At such meeting the respective conventions shall consider and may adopt the draft of the platform so prepared by the committee on resolutions with such amendments as shall be suggested and adopted in the conventions as a whole. The voting on the adoption of the party platform shall be on the entire platform as reported by the committee on resolutions, unless there be an objection to any separate plank or planks or to any amendment thereto, in which case the voting on such plank or planks or amendment shall be by the "ayes" and "nays" of the members of the convention present and voting.

The provisions of this section shall not preclude the holding of additional State conventions of the political parties at such times as the State Committees of the parties shall determine.

Amended by L.1948, c. 216, p. 1045, § 2; L.1950, c. 35, p. 69, § 1; L.1958, c. 125, p. 604, § 1; L.1959, c. 99, p. 239, § 1; L.1977, c. 145, § 1; L.1979, c. 423, § 1.

**Senate Judiciary Committee Statement**  
**Assembly, No. 3523—L.1979, c. 423**

The purpose of Assembly Bill No. 3523 is to increase the time period that political parties have to promulgate a party platform. Presently, each party's committee on resolutions has 3 weeks to prepare a tentative party platform and the entire convention must vote on adoption of that platform 4 weeks after the original meeting. Assembly Bill No. 3523 would increase to 75 days the time period that the committee on resolutions has to prepare the tentative party platform and would increase to 90 days from the date of the original meeting, the date on which the entire convention must vote on adoption of the platform. Assembly Bill No. 3523 would also mandate that at least three public hearings shall be held throughout the State by the committee on resolutions on the tentative platform. These hearings shall be held in the evenings, if feasible, to give the largest possible number of people an opportunity to express their views.

**Historical and Statutory Notes**

**Sources:**

L.1930, c. 187, ¶49, p. 693.

L.1931, c. 42, § 1, p. 86.

L.1933, c. 172, § 1, p. 372.

Section 2 of L.1977, c. 145, approved July 7, 1977, provides:

"This act shall take effect immediately and shall be retroactive to June 23, 1977."

L.1979, c. 423, § 2, approved Feb. 8, 1980, provides:

"This act shall take effect immediately and shall be retroactive to July 1, 1979."

**Library References**

Elections ⇐121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**Texts and Treatises**

25 Am Jur 2d, Elections §164 et seq.

## CHAPTER 6

### ELECTION OFFICIALS

#### ARTICLE 1. DISTRICT BOARDS OF REGISTRY AND ELECTION

**Section**

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**ARTICLE 1. DISTRICT BOARDS OF REGISTRY AND ELECTION****Library References**

Elections  $\S$  49 et seq., 99 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections  $\S\S$  41 et seq., 56 et seq.

**Comments**

Election administration, see New Jersey  
Practice vol. 35, Pane,  $\S$  462 et seq.

**19:6-1. Membership**

The district boards in each election district shall consist of four members, except that where electronic voting systems are in use any election district in which there are more than 900 registered voters the district board shall consist of six members. The members shall be appointed by the county board of the county in which such election district is located, in the manner hereinafter provided.

In election districts in which the primary language of 10% or more of the registered voters is Spanish, the county board shall appoint two additional members who shall be of Hispanic origin and fluent in Spanish.

Amended by L:1974, c. 30,  $\S$  1; L:1975, c. 316,  $\S$  3, eff. Feb. 19, 1976.



### Historical and Statutory Notes

Source: L.1930, c. 187, ¶50, p. 695. "This act shall take effect 90 days after  
 Section 23 of L.1974, c. 30, approved enactment."  
 May 28, 1974, provided:

### Library References

#### Texts and Treatises

25 Am Jur 2d, Elections § 39 et seq.

### Notes of Decisions

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##### 1. De facto members

The authority conferred by Election Law of 1898, L. p. 237, repealed, on county board of election to appoint district boards of registry and election, was valid to the extent at least that persons so appointed became de facto members of the board and as such were indictable for official misdemeanors created by law. *State v. Corrigan*, 72 N.J.L. 64, 60 A. 515 (1905).

##### 2. Removal of members

The office of member of a district board of registry and election is one of profit; and a member is subject to removal, if shown to be disqualified. *Reilly v. Curtiss*, 83 N.J.L. 77, 84 A. 199 (1912).

Mandamus was not a proper remedy by which a person appointed to a precinct board of registry may lawfully call in question the title of an incumbent of the office, or oust a de facto officer therefrom. *Fort v. Howell*, 58 N.J.L. 541, 34 A. 751 (1896).

### 19:6-2. Application for membership; form; qualifications

a. Any legal voter (1) who is a member of a political party by virtue of having voted in a party primary or who shall have filed a party declaration form for the ensuing primary election for the general election with the commissioner of the county in which the voter is registered and who, for two years prior to making written application, has not espoused the cause of another political party or its candidates, or (2) who is not affiliated with a political party may make written application for service as a member of a district board of any municipality in the county in which he or she resides on a form to be prepared and furnished for that purpose by such board and signed by him or her and stating thereon, under the applicant's oath, the applicant's name and address and the political party to which he or she belongs or, if the applicant is not affiliated with a political party, the fact that the applicant is not so affiliated, and that the applicant is of good moral character and has not been convicted of any crime involving moral turpitude and possesses the following qualifications, namely: such eyesight as will enable the applicant, with or without eyeglasses, to read nonpareil type; ability to read the English language readily; ability to add and subtract figures correctly; ability to write in a legible hand with reasonable facility; reasonable knowledge of the duties to be performed by the applicant as an

election officer under the election laws of this State and such health as will permit the applicant to discharge his or her duties as such election officer.

b. No person shall be precluded from applying to serve as a member of a district board of any municipality for failure to vote in any year such person was ineligible to vote by reason of age or residence.

Amended by L.1940, c. 136, p. 300, § 1; L.1973, c. 261, § 1, eff. Nov. 28, 1973; L.1981, c. 257, § 1, eff. Aug. 12, 1981; L.1996, c. 120, § 2, eff. Oct. 31, 1996.

### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶51, p. 695.

### **Library References**

Elections ⇨51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

### **19:6-3. Members appointed by county board; by Assignment Judge of Superior Court**

a. (1) The county board shall, on or before April 1, appoint the members of the district boards in the manner prescribed by paragraph (2) of this subsection. The members of any district board shall be equally apportioned between the two political parties which at the last preceding general election held for the election of all of the members of the General Assembly cast the largest and next largest number of votes respectively in this State for members of the General Assembly, except that if the county board is unable to fill all of the positions of the members of a particular district board from among qualified members of those two political parties, the county board shall appoint to any such unfilled position an otherwise qualified person who is unaffiliated with any political party, but no such appointment of an unaffiliated person shall be made prior to March 25, and in no event shall more than two such unaffiliated persons serve at the same time on any district board.

(2) In making appointments of members of the several district boards of the county, the county board shall consult with the chairperson of the county committee of each of the two political parties referred to in paragraph (1) of this subsection. On or before March 15 of each year, the county board shall transmit to each of those chairpersons a list of those positions on the membership of the several district boards that are subject to apportionment under that paragraph (1) to the political party of which that chairperson is a

member, and to which the county board has been unable to make an appointment from among qualified members of that political party. The county board shall include with each such list a request that the chairperson to whom that list is transmitted return to the board a list of the names of candidates for those unfilled positions. On or before March 25, the county board shall, on the basis of the lists so returned to it, fill as many of the remaining unfilled positions in the membership of the several district boards as possible, and shall assign or reassign appointees as necessary to ensure that the membership of each district board within the county shall include at least one member of each of the two political parties. The county board shall then appoint to any unfilled position on a district board an otherwise qualified person who is unaffiliated with any political party.

b. In case the county board shall neglect, refuse or be unable to appoint and certify the members of the district boards as herein provided, the Assignment Judge of the Superior Court shall, before April 10 in each year, make such appointments and certifications.

Amended by L.1948, c. 2, p. 33, § 5; L.1953, c. 19, p. 326, § 8; L.1965, c. 4, § 4; L.1966, c. 19, § 3, eff. April 19, 1966; L.1991, c. 91, § 239, eff. April 9, 1991; L.1996, c. 120, § 3, eff. Oct. 31, 1996.

### Historical and Statutory Notes

Source: L.1930, c. 187, § 52, p. 695.

### Notes of Decisions

Defects or omissions 3  
Failure to appoint 2  
Judicial appointments 1

#### 1. Judicial appointments

In view of Act Feb. 14, 1918, L. 137, § 2 (repealed), permitting any power conferred on the judges of the court of common pleas to be exercised by either of the judges, which was a supplement relating to the acts of the court of common pleas in judicial proceedings, the power of the judges to appoint election officers when the board fails or refuses to act, if it can be exercised by one judge, should only be exercised on petition, so as to prevent an unseemly competition between the judges for priority, and only after notice and hearing to the election board on the issue of their failure to act. *Gardner v. Brevis*, 95 N.J.L. 21, 111 A. 321 (1920).

#### 2. Failure to appoint

Mandamus was the proper remedy by which a person nominated by the chairman of the county committee for appointment as member of a precinct board of registry may compel the board of election to appoint him to the office in accordance with L.1895, p. 660, § 3, repealed, concerning appointment of precinct boards. *Fort v. Howell*, 58 N.J.L. 541, 34 A. 751 (1896).

#### 3. Defects or omissions

In matters of public importance, wherein the general public of a locality is directly concerned, a clerical oversight, omission, or deliction of the county board of elections, charged with the performance of a clerical administrative duty, such as the appointment of a district election officer, under L.1911, p. 276, et seq., repealed, will not vitiate the result so as to compromise the public right. *Hartley v. County Board of Elections of Passaic County*, 93 N.J.L. 313, 107 A. 817 (1919).

**19:6-4. Removal of board or members for cause**

A judge of the Superior Court or the county board shall have power to dismiss any member of a district board from such board for an illegal act, or for any cause which shall be determined in a summary way by such judge or county board. The county board shall dismiss the members of a district board from such board if upon any recount of the votes cast in such district it shall appear that errors occurred in the count or the certificate thereof, which, under the provisions of this Title, are sufficient to cause the costs of such recount to be paid by the State, county or municipality; and no person so removed from any board shall thereafter be eligible to serve as a member of the same or any other district election board. Application for the removal of all of the members, or of any member of any district election board, may, within ten days after the final order has been entered on any recount which may have been allowed affecting such district, be made by any candidate at the last election to a judge of the Superior Court or the county board. On the application, summary hearings shall be held to determine whether the board or the member was incompetent or careless in the receipt of illegal votes or the rejection of legal votes or otherwise in the conduct of the election generally. If, upon such hearing, it appears to the judge or the county board, as the case may be, that such incompetency or carelessness existed, the board or the member thereof found so to be incompetent or careless shall be removed and upon such removal disqualified from further service as a member of any district board.

Amended by L.1953, c. 19, p. 327, § 9; L.1991, c. 91, § 240, eff. April 9, 1991.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶53, p. 696,  
amended by L.1936, c. 203, § 1, p. 500.

**19:6-5. Removal of members with or without cause; filling vacancies**

Any member of a district board in an election district may be summarily removed from office, with or without cause, and vacancies filled, at any time by the members of the county board of the county in which such election district is located in the manner hereinafter provided. In the case of a member of the district board who was appointed as a member of a political party, removal shall be made by the members of the county board of that political party, and in the case of a member of the district board unaffiliated with a political party at the time of appointment, removal shall be made by

the county board. Upon a removal the members of the county board so acting shall make a certificate of removal and file same with the county board.

The members of the county board removing such election officer shall forthwith proceed to fill the vacancy caused by the removal, and shall issue to the person selected to fill the vacancy a certificate which shall entitle that person to perform all the duties of a member of the district board for such election district.

Amended by L.1996, c. 120, § 4, eff. Oct. 31, 1996.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶54, p. 696.

### 19:6-6. Board may function notwithstanding vacancies

If there shall be a vacancy in the membership of any district board the remaining members shall function until the vacancy be filled.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶55, p. 696.

### 19:6-7. Assignment of members to election districts

Any person selected as a member of a district board may be assigned by the county board to any election district, or transferred from one district to another after having been so assigned, in the municipality for which such person was elected, and the county board shall, on or before April 15 in each year, certify to the clerk of the county and to the municipal clerk the names of the persons appointed to the district boards of registry and election in the election districts in the county, specifying the municipalities and the districts therein for which such members shall have been appointed.

Amended by L.1948, c. 2, p. 33, § 6; L.1965, c. 4, § 5.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶57, p. 696.

### 19:6-8. Term of office; notification of appointment

The terms of office of the members of the district boards shall be for 1 year, or until their successors are appointed, and shall begin on April 25 of each year. The county board shall notify the members of each district board of their appointment by forwarding a certificate to each member on or before April 20 in each year, specifying the district to which each member has been assigned.

Amended by L.1948, c. 2, p. 33, § 7; L.1965, c. 4, § 6.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §58, p. 697.

**19:6-9. Attendance of members**

Every person so assigned shall attend at the times and places now or hereafter fixed by law or by the county board for the performance of any duty now or hereafter required of any member of a district board.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §59, p. 697.

**19:6-9.1. Two shifts authorized for supervision of elections**

Notwithstanding any other provision of this Title to the contrary, in any election the county board may direct that responsibility for the conduct of that election in an election district shall be divided between a first shift and a second shift of the district board of that district, provided that the responsibility for performance of the duties of judge and inspector of any such district board shall not be so divided between shifts, and the members of such a board who shall have been selected as judge and inspector thereof shall serve on both shifts of that board. Whenever a county board shall have determined to direct such a division of responsibility in an election district, it shall, not later than the second day preceding the election, appoint such additional members to the district board of the district as may be required, in the same manner as provided for the appointment of district board members under R.S. 19:6-1, provided that no additional members shall be appointed for the purpose of dividing responsibility for performance of the duties of judge or inspector of that district board. The county board shall also, at the same time at which any such appointment of additional members is made, designate each member of the district board other than the judge or inspector of the board, whether that member was appointed under R.S. 19:6-1 or appointed as an additional member under this section, to serve either on the first or the second shift of the board; in making this designation, the county board of elections shall give due consideration to ensuring that district board members with experience in the conduct of elections are included in the membership of each shift. With respect to any district board of elections for which shifts have been established hereunder, the provisions of this section shall not be construed to prevent a county board of elections from designating a clerk member of that board to serve on both shifts of the board, or from establishing a preference, in appointing the clerk

members of that board, for the selection of individuals who are available to serve on both shifts of the board.

The county board shall establish the hours during which each shift shall serve, and shall timely notify the judge and inspector of the district board of the hours of the two shifts and the respective members of each shift of the hours of that shift's service. The two shifts shall be as nearly equal in duration as is practicable. The members of the second shift shall be required to be present at the polls not later than one-half hour prior to the end of the first shift, and the responsibility for the conduct of the election in the election district shall be transferred from the first shift to the second shift during that last half-hour period of the first shift's service under such rules as the county board shall prescribe.

The members of each shift of a district board of elections designated under this section shall have all of the responsibilities prescribed by law for the conduct of the election during the period in which that shift serves. In addition, the members of the first shift shall have responsibility, subject to the several duties specifically conferred by law upon the judge and inspector of the district board, for the receipt and custody, prior to the election, of election supplies and equipment; for preparation of the polling place for the election; and for the performance of all other duties relating to the election which are required by law to be carried out prior to the commencement of the balloting, up to and including the opening of the polls. Likewise, the members of the second shift shall have responsibility, subject to the several duties specifically conferred by law upon the judge and inspector of the district board, for closing the polls; for counting the votes cast in the election and ascertaining the results thereof; for the preparation and delivery of statements of those results; for the proper disposition of ballots in accordance with law; for the securing of the ballot boxes or voting machines; for the return of all election equipment and supplies; and for the performance of all other duties relating to the election which are required by law to be carried out following the closing of the polls.

The compensation of a member of a shift of the district board payable with respect to the member's service on that shift shall be equal to one-half of the amount, pursuant to R.S. 19:45-6, payable to members of a district board for which no division of responsibilities between a first shift and second shift, as provided by this section, has been established.

L.1991, c. 102, § 1, eff. April 17, 1991.

**Assembly State Government Committee Statement**

**Assembly, No. 110—L.1991, c. 102**

The Assembly State Government Committee reports favorably and with committee amendments Assembly Bill No. 110.

This bill allows a county board of elections to split the duties of the clerk members of any district board of elections within the county between two shifts; establishment of such shifts will not be allowed with respect to the judge or the inspector of the district board.

Under the bill, whenever a county board determines for a particular election to establish shifts for a district board, it must appoint the necessary additional clerks of election and allocate the clerks to those shifts no later than the second day preceding the election. The county board will also establish the hours for each shift; the shifts are to be as nearly equal in duration as is practicable.

The legislation provides that the pay applicable to a full election day's work by district board members is to be divided evenly between the members of the two shifts.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

**COMMITTEE AMENDMENTS**

The committee amended the bill (1) to clarify that, where a county board establishes a shift for a particular district board, it could still designate a clerk to work both shifts, and (2) to provide that, in appointing district board clerks, county boards could give preference to individuals who indicate that they are available to serve for the whole day of the election, and not just for one shift.

**Historical and Statutory Notes**

**Title of Act:**

An Act concerning district boards of registry and election and supplementing

article 1 of chapter 6 of Title 19 of the Revised Statutes.

**19:6-10. Organization meeting; judge and inspector; clerks of election**

Each district board shall, on or before the second Tuesday next preceding the primary election, meet and organize by the election of one of its members as judge, who shall be chairman of the board, and another of its members as inspector. The judge and inspector shall not be members or voters of the same political party. In case of failure to elect a judge as herein provided, after balloting or voting three times, the senior member of the board in respect to length of continuous service as a member of such district board shall become judge, and in case of failure to elect an inspector after balloting or voting three times, the next senior member of the board in respect to length of continuous service as a member of such district board shall become inspector; provided, that both the chairman and the inspec-



tor shall not be members or voters of the same political party. The other members of the board shall be clerks of election, and shall perform all the duties required by law of the clerks of district boards. Amended by L.1939, c. 81, p. 135, § 1; L.1946, c. 11, p. 27, § 4; L.1996, c. 120, § 5, eff. Oct. 31, 1996.

### Historical and Statutory Notes

Source: L.1933, c. 354, § 1, p. 957.  
L.1930, c. 187, ¶60, p. 697. L.1935, c. 9, § 7, p. 23.

### Library References

Elections ⇄54.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 54 et seq.

## 19:6-11. Oath of office of members; power to administer oaths

Each member of the district board shall before entering upon the performance of his duties take and subscribe an oath or affirmation in writing before a duly qualified officer, faithfully and impartially to discharge all his duties as such officer to the best of his skill and ability. Such oaths and affirmations shall be forthwith forwarded to the county clerk and by him filed in his office, and after so qualifying, any member of such board may at any meeting thereof administer any oath or affirmation required or permitted to be taken by this title.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶61, p. 698.

### Notes of Decisions

#### Lack of oath 1

##### 1. Lack of oath

A person who has been elected or appointed as an inspector of elections, and has undertaken even though imperfectly to qualify in that capacity and has sworn that he will faithfully perform all the duties of the office but has inadequately undertaken to swear that he will support

the Constitutions, cannot escape punishment for his illegal conduct by failure of notary public to subscribe the oath to support such Constitutions. *State v. Larison*, 134 N.J.L. 126, 46 A.2d 386 (1946), affirmed 134 N.J.L. 604, 48 A.2d 824.

The fact that the officers empowered to hold a special election were not sworn will not invalidate the result, if neither fraud nor other harm be shown. *State v. Howell*, 60 N.J.L. 384, 38 A. 180 (1897).

## 19:6-12. Member becoming candidate for office vacates office

The office of a member of a district board in an election district shall be deemed vacant upon such member becoming a candidate for an office to be voted upon at any primary, general election, school election, or special election for which he was appointed to serve,

such candidacy to be determined by the filing of a petition of nomination, duly accepted by such member, in the manner provided by law. The municipal or county clerk with whom such petition and acceptance may be filed shall forthwith notify the county board of the county in which such election district is located, giving the name and residence of the member of the district board who has thus become a candidate, and the vacancy shall be filled as provided by law. Amended by L.1995, c. 278, § 15, eff. March 14, 1996.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶62, p. 698.

**19:6-13. Vacancies; filling**

A vacancy arising in a district board otherwise than by expiration of term shall be filled for the unexpired term in the same manner as the original appointment. The board shall certify the name and address of the person so appointed and the name of the district in which the vacancy exists to the clerk of the county and to the municipal clerk, and the person so appointed shall be notified in the manner above provided.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶63, p. 698.

**19:6-14. Boards for changed or new election districts; appointment**

When the boundaries of an election district in a municipality shall have been changed or a new district created between the time of holding the general election and the time of holding the next primary or special election, or where the boundaries of an election district shall not be the same as at the general election, the county board on being notified thereof shall appoint a district board for such election district, in the manner hereinbefore provided for the appointment of district boards.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶64, p. 699.

**19:6-15. Constabulary powers of members; police assistance**

The district boards of every election district shall preserve the peace and maintain good order in their respective polling places, during the progress of all elections and the counting of the votes cast thereat. To that end each member of every such board, during the

progress of an election and the counting and canvassing of the votes, shall be and hereby is invested and charged with all the powers and duties of constables of this state in criminal matters.

Such election board, or any two members thereof, may, by writing under their hands whenever in their opinion it shall be necessary to do so, request the municipal authorities of any municipality within which their district is situate or the body or officer having charge and direction of the police force in such municipality, to detail one or more policemen to assist in preserving the peace and good order in and about such polling place, which request shall forthwith be complied with as far as possible by the body or officer to whom the same is made.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶65, p. 699.

#### **19:6-15.1. Police officers who are board members or challengers; uniforms or exposed weapons prohibited at polling place**

No person who is employed as a police officer, either full-time or part-time, by the State or an instrumentality thereof, or by a political subdivision of the State or an instrumentality thereof, and who is a member of a district board of elections or serves as a duly authorized challenger for a political party or a candidate or on a public question, shall wear a police officer's uniform or carry an exposed weapon while serving as a board member or a challenger, as the case may be, at a polling place on an election day. Any person who violates this section is guilty of a crime of the fourth degree.

L.1991, c. 306, § 2, eff. Nov. 7, 1991.

#### **19:6-16. Police assigned to district boards in municipalities; prohibited activities**

The commission, committee, board or official having charge of the police department in any municipality may assign one or more police officers to any district board in such municipality whenever the said commission, committee, board or official deems it necessary to do so. Any police officers so assigned shall, under the direction of the board, enforce the election laws, maintain order, peace and quiet during the hours of registry and election, and assist the members of the board in carrying the ballot box or boxes to the office of the municipal clerk after the ballots are counted. The police officers so assigned shall not assist the board by performing the duties of a board member, nor shall those police officers serve at the polling

place of that district board as challengers for a party or candidate or on a public question.

Amended by L.1953, c. 19, p. 327, § 10; L.1967, c. 126, § 1, eff. June 22, 1967; L.1991, c. 306, § 1, eff. Nov. 7, 1991.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶66, p. 700.

### ARTICLE 1A. SPECIAL HOSPITAL ELECTION [REPEALED]

**19:6-16.1 to 19:6-16.5.** Repealed by L.1969, c. 30, § 1, eff. May 8, 1969

#### Historical and Statutory Notes

These sections, enacted by L.1968, c. 290, §§ 1 to 5, provided for creation of special hospital election boards.

## ARTICLE 2. COUNTY BOARDS OF ELECTION

### Library References

Elections ¶49 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 56 et seq.

### Comments

Election administration, see New Jersey Practice vol. 35, Pane, § 462 et seq.

### **19:6-17. Membership; political affiliations; eligibility; vacancies; clerk; other employees; civil service; compensation**

The county board shall consist of 4 persons, who shall be legal voters of the counties for which they are respectively appointed. Two members of such county board shall be members of the political party which at the last preceding general election, held for the election of all of the members of the General Assembly, cast the largest number of votes in this State for members of the General Assembly, and the remaining 2 members of such board shall be members of the political party which at such election cast the next largest number of votes in the State for members of the General Assembly. No person who holds elective public office shall be eligible to serve as a member of the county board during the term of such elective office. The office of member of the county board shall

be deemed vacant upon such member becoming a candidate for an office to be voted upon at any primary, general election or special election, except for nomination for or election to membership in any county committee or State committee or for nomination for or election as a delegate at large or alternate delegate at large, or district delegate or alternate district delegate to any national political convention, such candidacy to be determined by the filing of a petition of nomination duly accepted by such member in the manner provided by law.

In all counties of the first class the county board may appoint some suitable person clerk of such board. In counties of the first class having a population of less than 800,000, the county board may appoint 4 additional office employees, and in counties of the first class having a population of more than 800,000, the county board may appoint not more than 6 additional office employees, all of whom when appointed by such county boards shall be appointed from the competitive class of civil service, provided, however, that any employee now serving and who has not been appointed from the competitive class of civil service shall be in the classified service of the civil service upon passage of this act. The compensation of the clerk of the county board of elections in counties of the first class shall be in an amount recommended by the county board of elections and subject to the approval of the board of chosen freeholders of the county affected, provided, however, that such compensation shall be not less than \$5,000.00 per annum. The compensation of such office employees shall be recommended by the county board and approved by the board of chosen freeholders. All persons now employed by the board in the competitive class of civil service and such other employees now performing assigned duties shall hold such employment in the competitive class of civil service.

Amended by L.1948, c. 438, p. 1697, § 5; L.1957, c. 83, p. 159, § 1; L.1960, c. 43, p. 176, § 1; L.1960, c. 164, p. 704, § 1; L.1961, c. 59, p. 549, § 1; L.1965, c. 166, § 1.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶67, p. 700.

#### Cross References

Classification of counties, see § 40A:6-1.

## Notes of Decisions

Actions of board 3  
 De facto members 2  
 Liability of board 4  
 Qualifications of members 1  
 Quo warranto 5

### 1. Qualifications of members

L.1929, p. 471, repealed, making elective officer ineligible to serve as member of county election board, had the effect of ousting from membership person who, at time of enactment, was member of city council. *Barr v. Geldziler*, 108 N.J.L. 397, 156 A. 644 (1931).

### 2. De facto members

County boards, even if the members were illegally appointed, are competent to perform all acts for which boards composed of persons lawfully chosen would be competent. *State v. Corrigan*, 72 N.J.L. 64, 60 A. 515 (1905); *Farrier v. Dugan*, 48 N.J.L. 613, 7 A. 881 (1887).

County boards of election are lawful entities, and hence capable of being constituted by de facto members. *State v. City of Camden*, 56 N.J.L. 244, 28 A. 82 (1893).

### 3. Actions of board

The county board of elections does not have the power to decide what the members thereof will do as a county board of canvassers or to decide that the canvassers will begin their services at a time and in a manner different from that required by law. *Young v. Board of Elections of Essex County*, 120 N.J.L. 529, 1 A.2d 38 (1938).

Certiorari, and not quo warranto, against a county board of elections is the

appropriate remedy for a district election officer to remove an alleged illegal resolution of the board impeding him in the performance of his public duty. *Hartley v. County Board of Elections of Passaic County*, 93 N.J.L. 313, 107 A. 817 (1919).

In matters of public importance, wherein the general public of a locality is directly concerned, a clerical oversight, omission, or deliction of the county board of elections, charged with the performance of a clerical administrative duty, such as the appointment of a district election officer, will not vitiate the result so as to compromise the public right. *Hartley v. County Board of Elections of Passaic County*, 93 N.J.L. 313, 107 A. 817 (1919).

### 4. Liability of board

The clerk of the county election board in counties of the first class, who was appointed from the competitive class of civil service, under L.1920, p. 641, art. 6, § 17, repealed, and paid a salary, under L.1920, p. 823, art. 30, § 7, repealed, is not the servant of the board whose negligence can be imputed to them, but was a salaried public officer, accountable for his own neglect. *Gardner v. Brevis*, 95 N.J.L. 21, 111 A. 321 (1920).

### 5. Quo warranto

Claimant to office of member of county board of elections had burden in proceeding in nature of quo warranto to show title in herself to office before she could properly question right of incumbent to such office. *Colton v. Kreutzinger*, 116 N.J.L. 456, 185 A. 18 (1936), affirmed 118 N.J.L. 183, 191 A. 878.

## 19:6-18. Nomination and appointment of members; commissions to; terms

During the 30-day period immediately preceding February 15 in each year, the chairman and vice-chairlady of each county committee and the State committeeman and State committeewoman of each of such two political parties, respectively shall meet and jointly, in writing, nominate one person residing in the county of such county committee chairman, duly qualified, for member of the county board in and for such county.

If more than two members are elected to the State committee of any party from a county, the State committeeman and State commit-

teewoman who shall participate in the process of nomination shall be those holding full votes who received the greatest number of votes in their respective elections for members of the State committee.

If nomination be so made, the said county committee chairman shall certify the nomination so made to the State chairman and to the Governor, and the Governor shall commission such appointees, who shall be members of opposite parties, on or before March 1. If nomination be not so made on account of a tie vote in the said meeting of the county committee chairman, county committee vice-chairlady, State committeeman and State committeewoman, in respect to such nomination, the said county committee chairman shall certify the fact of such a tie vote to the State chairman, who shall have the deciding vote and who shall certify, in writing, to the Governor, the nomination made by his deciding vote. Appointees to county boards of election pursuant to this section shall continue in office for 2 years from March 1 next after their appointment.

The first appointment having been made pursuant to law for terms of 1 and 2 years, respectively, the members subsequently appointed each year shall fill the offices of the appointees whose terms expire in that year.

Amended by L.1955, c. 243, p. 919, § 1; L.1968, c. 84, § 1, eff. June 21, 1968; L.1978, c. 15, § 2, eff. March 30, 1978.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶68, p. 701.

Statement: Introductory Statement to Senate, No. 956—L.1978, c. 15, see § 19:5-4.

### Library References

Elections ⇨51.

WESTLAW Topic No. 144.

C.J.S. Elections § 57 et seq.

### Notes of Decisions

Commissioning of appointee 2  
Irregularities in appointment 3  
Nominating committees 1

#### 1. Nominating committees

Statutory committee was required to meet, nominate in writing and, in absence of tie vote, certify to State Chairman and Governor its nominee for County Election Board on or before February 15, and failure to do so authorized governor to nominate and commission his own choice for Board member; two week ex-

tension of time for certification to Governor only applied in event of tie vote. Matter of Appointment to Hudson County Bd. of Elections, 220 N.J.Super. 367, 532 A.2d 269 (A.D.1987), certification denied 110 N.J. 187, 540 A.2d 182.

This section stating that county committee, State committeeman and State committeewoman of each political party shall meet and nominate person as member of county election board before February 15 is mandatory. Matter of Appointment to Hudson County Bd. of Elections, 220 N.J.Super. 367, 532 A.2d

269 (A.D.1987), certification denied 110 N.J. 187, 540 A.2d 182.

Under this section providing that state committeeman, state committeewoman, county chairman and county vice-chair lady of the two principal political parties should meet and jointly nominate a member of the county election board representing their party, provision for a meeting was directory rather than mandatory and legislative intent was primarily directed to securing the nomination by votes of those on whom that duty was cast by law; thus, when meeting was called for a time when state committeeman could not reasonably have been expected to attend, his cablegram vote should have been counted. *In re Atlantic County Bd. of Elections*, 117 N.J. Super. 244, 284 A.2d 368 (A.D.1971).

The executive committees of political parties, in nominating members of the county election board, act in matters of high public interest and are subject to constitutional restraint and may not act as local organizations may. *Driscoll v. Sakin*, 121 N.J.L. 225, 1 A.2d 881 (1938), affirmed 122 N.J.L. 414, 5 A.2d 699, dissenting opinion 122 N.J.L. 414, 5 A.2d 866.

## **2. Commissioning of appointee**

Where chairman of State Republican Committee nominated nominee for member of county board of elections but Governor refused to commission nominee and appointed respondent instead, appointment of respondent, not being in accordance with statute, was invalid. *Haines v. Appleton*, 123 N.J.L. 492, 9 A.2d 778 (1939).

The Supreme Court may not compel execution of any duty imposed by Constitution, such as commissioning of county election board members by the governor. *Driscoll v. Sakin*, 121 N.J.L. 225, 1 A.2d 881 (1938), affirmed 122 N.J.L. 414, 5 A.2d 699, dissenting opinion 122 N.J.L. 414, 5 A.2d 866.

Where Constitution is silent on matter, such as how a county election board member is to be named, Legislature may determine manner in which a public official may be named and may delegate selection to others, and executive may be clothed with no discretion in issuance of commission to official selected. *Driscoll v. Sakin*, 121 N.J.L. 225, 1 A.2d 881 (1938), affirmed 122 N.J.L. 414, 5 A.2d 699, dissenting opinion 122 N.J.L. 414, 5 A.2d 866.

## **3. Irregularities in appointment**

Where appointment of respondent as member of county board of election was not made in accordance with statute, laches was no defense in quo warranto proceeding since act questioned was ultra vires act by governmental officer and no hardship was inflicted on respondent. *Haines v. Appleton*, 123 N.J.L. 492, 9 A.2d 778 (1939).

A person, holding office of one of Republican members of county board of election, who had been commissioned by Governor under this section, but who had not been nominated by state chairman of his party as required by this section, was not entitled to the office. *Driscoll v. Sakin*, 121 N.J.L. 225, 1 A.2d 881 (1938), affirmed 122 N.J.L. 414, 5 A.2d 699, dissenting opinion 122 N.J.L. 414, 5 A.2d 866.

## **19:6-19. Filling vacancies**

If a vacancy arises in any county board from any cause other than expiration of the term, the secretary of the county board, within 5 days thereafter, shall in writing notify the Governor, the appropriate county committee chairman, county committee vice-chairlady, State chairman, State committeeman and State committeewoman of such vacancy, and within the same time notify the Governor in writing the date on which such notice was received by the county committee chairman. If the secretary fails to so notify, any member of the county board may make such notifications. Within 10 days after receipt of notice by such county committee chairman, the county committee chairman, county committee vice-chairlady, State chair-



man, State committeeman and State committeewoman shall jointly nominate a successor, and any such nomination shall be made and certified in the same manner as provided in section 19:6-18 of the Revised Statutes, and the person so nominated shall thereupon be commissioned by the Governor. All appointments to fill vacancies shall be for the unexpired term only.

Amended by L.1955, c. 243, p. 920, § 2; L.1956, c. 167, p. 660, § 1.

**Historical and Statutory Notes**

Source: L.1930, c. 187, 169, p. 701.

**Notes of Decisions**

Time of filling 1

expressly provides method of filling vacancy. . Haines v. Appleton, 123 N.J.L. 492, 9 A.2d 778 (1939).

**1. Time of filling**

Where Governor refused to appoint person nominated for member of county board of elections by state chairman, but appointed respondent instead, defense in quo warranto proceeding that vacancy could not be filled until the following March was insufficient since this section

Party chairman's nomination to fill vacancy in county election board not made within ten days after notice was delivered to his office, though within ten days after he actually "received" it, was too late under L.1929, p. 471, repealed. Barr v. Geldziler, 108 N.J.L. 397, 156 A. 644 (1931).

**19:6-20. Appointments by Governor in absence of nomination**

If any nomination is not made and certified in writing to the Governor within the time specified, the Governor shall make such appointments of his own selection from the citizens of the county in which such failure occurs.

Amended by L.1955, c. 243, p. 920, § 3.

**Historical and Statutory Notes**

Source: L.1930, c. 187, 170, p. 702.

**Notes of Decisions**

Right to office 1

commissioned by Governor, but who had not been nominated by state chairman of his party as required by § 19:6-18, was not entitled to the office. Driscoll v. Sakin, 121 N.J.L. 225, 1 A.2d 881 (1938), affirmed 122 N.J.L. 414, 5 A.2d 699, dissenting opinion 122 N.J.L. 414, 5 A.2d 866.

**1. Right to office**

Under this section, a person, holding office of one of Republican members of county board of election, who had been

**19:6-21. Board office; equipment; supplies**

The county boards shall be provided by the board of chosen freeholders of the respective counties with a suitable office or offices,

furniture and such other equipment as the county boards deem necessary. The county board in counties of the first class shall have power to purchase office equipment, furniture, furnishings, books, stationery, materials, supplies and other articles or equipment necessary in the judgment of the board, to carry out the provisions of this Title, and the board of chosen freeholders of the respective counties shall pay for the same, including the expenses of the board and the clerk thereof, upon certification of the county board. Nothing in subtitle two of the Title Municipalities and Counties (§ 40:16-1 et seq.) shall in anywise be construed to affect, restrict or abridge the powers herein conferred on the county boards.

Amended by L.1951, c. 10, p. 36, § 1.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶71, p. 702.

**Library References**

Elections ⇨54.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 54 et seq.

**Notes of Decisions**

**Office 1  
Powers of freeholders 2**

**1. Office**

Clear intent and effect of 1951 amendment to this section striking out statutory provision directing that county boards of elections be provided with an office in the court house of the county for which they are respectively appointed or in a building as near as possible adjacent thereto, and the addition of provision directing that there be provided an office or offices, is to authorize freeholders to provide more than one office for election board,

and to remove any requirement that office be at county seat. Kantor v. Perth Amboy Nat. Bank, 13 N.J.Super. 266, 80 A.2d 446 (A.D.1951).

**2. Powers of freeholders**

Board of freeholders could not refuse to provide resources to either board of elections or superintendent of elections, since statutory provisions relating to needs of the board and superintendent are not discretionary, but mandatory. Trainor v. Burlington County Bd. of Chosen Freeholders, 200 N.J.Super. 288, 491 A.2d 69 (L.1984).

**19:6-22. Organization meeting; chairman; secretary; other meetings**

a. (1) The county boards shall, at 10 a.m., on the second Tuesday in March or on such other day as they may agree on within the first 15 days in March, in each year, meet at the courthouse, or other place as provided for, in their respective counties, and , subject to the provisions of paragraph (2) of this subsection, organize by electing one of their number to be chairman and one to be secretary; but the chairman and secretary shall not be members of the same political party.

(2) In case of failure to elect a chairman after three ballots or viva voce votes, the member having the greatest seniority on the board shall be the chairman thereof, except that if the member having the greatest seniority on the board so chooses, that member shall instead be secretary of the board; in the event that that senior member so chooses to become secretary, no election shall be held to choose a secretary of the board, the board shall elect one of its members who is not of the same political party as the secretary to be the chairman of the board, and in the case of a failure again to elect a chairman after three ballots or viva voce votes, the person among those members having the greatest seniority on the board shall be the chairman thereof.

In any case of failure to elect a chairman, if two or more members of the board who are eligible to become chairman have greatest and equal seniority on the board, then the board shall, not later than the fifth day following the organization meeting, notify the Governor of an inability to fill the position of chairman either by election or on the basis of seniority, including in that notice a certification of the names of those senior members of the board. In addition, if the position of secretary has not otherwise been filled under the foregoing provisions of this paragraph, the board shall defer for the time being the election of a secretary. Not later than the fifth day following receipt of the notice, the Governor shall designate one of those senior members to be chairman of the board and certify that designation to the board. If the position of secretary was not filled at the initial meeting of the county board to organize, then not later than the fifth day following receipt of that certification, the board shall reconvene at the call of the chairman so designated and shall elect a secretary of the board.

In case of failure to elect a secretary after three ballots or viva voce votes, the member of the board having the greatest seniority shall be secretary of the board, except that if that member has become chairman because of election to that position or because of designation as a result of the failure to elect a chairman, the member with the next greatest seniority shall be secretary. In no case, however, shall the chairman and secretary be members of the same political party.

Seniority for the purposes of this section shall be determined by the total amount of time that a person has served as a member of the board, beginning from the date that that person took the oath of office as a member.

b. The boards shall have power in their discretion to hold their meetings for any purpose, except organization, in any part of their

respective counties. Meetings may be called by either the chairman or the secretary of the board, or at the request of any two members. Amended by L.1948, c. 2, p. 34, § 8; L.1973, c. 179, § 1, eff. June 8, 1973; L.1996, c. 90, § 1.

**Historical and Statutory Notes**

L.1996, c. 90, § 2, approved July 26, 1996, provided:  
"This act shall take effect immediately [July 26, 1996], and shall be applicable to the first annual organization meeting of

each county board of elections that is held following the effective date of the act and thereafter."

Source: L.1930, c. 187, ¶72, p. 702.

**Law Review and Journal Commentaries**

Wisdom of the ages vs. the county board of elections. Alvin B. Lebar (Winter 1974) No. 66 N.J.St.B.J. 24.

**Notes of Decisions**

**Adjournments 1**

**1. Adjournments**

Refusal to adjourn meeting of county board of elections until open Democratic

position had been filled was not arbitrary or unreasonable. In re Atlantic County Bd. of Elections, 117 N.J.Super. 244, 284 A.2d 368 (A.D.1971).

**19:6-23. Oath of office of members; power to administer oaths**

Each member of the county board shall, before entering upon the performance of his duties, take and subscribe an oath or affirmation, in writing, before the clerk of the county for which he is appointed, faithfully and impartially to discharge all his duties as such officer, to the best of his skill and ability. Such oath or affirmation shall be forthwith recorded in the office of the county clerk, and after so qualifying any member of such board may at any meeting thereof administer any oath or affirmation required or permitted to be taken by this title.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶73, p. 703.

**19:6-24. Powers and duties of board delegated to clerk**

Wherever under the provisions of this Title any powers or duties are given or conferred upon the county boards in counties of the first class, the county board may, if it so determines, authorize or direct the clerk thereof, if there is a clerk, to perform such duties and exercise such powers under its supervision or in its absence.

The clerk of the county board in counties of the first class, if there is a clerk, shall have full power and authority in the conduct of the

business and clerical affairs of the office of the county board, shall conduct the same in an impartial manner, and shall exercise full authority and direction over the employees in the office.

Amended by L.1961, c. 59, p. 550, § 2.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶74, p. 703.

#### Cross References

Classification of counties for legislative purposes, see § 40A:6-1.

### 19:6-25. Sitting on general election days required

The county boards in each of the counties shall sit on the day of the general election at the office of the county boards between the hours of six A.M. and midnight.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶56, p. 696.

## ARTICLE 3. BOARDS OF COUNTY CANVASSERS

#### Library References

Elections ⇌258.

WESTLAW Topic No. 144.

C.J.S. Elections § 236.

### 19:6-26. County boards of elections as; clerk

For the purposes of this title, the county board in each county shall be and act as a board of county canvassers for such county. The clerk of the county shall be the clerk of the board.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶75, p. 704.

#### Library References

#### Forms

9 Am Jur Pl & Pr Forms, Rev, Elections, Form 1.

#### Texts and Treatises

26 Am Jur 2d, Elections § 299.

## Notes of Decisions

## Powers of board 1

## 1. Powers of board

The county board of canvassers is a statutory creation and all of its powers are found in the statute. *Young v. Board of Elections of Essex County*, 120 N.J.L. 529, 1 A.2d 38 (1938).

Resolutions of a county board of elections, providing that the board of elec-

tions should, acting as a county board of canvassers, proceed on election night to determine election results directly from district election board returns rather than by making such determination upon the following Monday upon the basis of the county clerk's canvass in the manner required by the statute, were void. *Young v. Board of Elections of Essex County*, 120 N.J.L. 529, 1 A.2d 38 (1938).

## ARTICLE 4. BOARD OF STATE CANVASSERS

## Library References

Elections ⇨258.

WESTLAW Topic No. 144.

C.J.S. Elections § 236.

## 19:6-27. Membership; clerk; meetings

The Board of State Canvassers shall consist of five persons, including the chairman, who shall be the Governor of this State. In the absence of the Governor, the Secretary of State shall serve as the chairman of the board and in the absence of the Secretary of State, the Assistant Secretary of State shall serve as the chairman of the board. The remaining members of the board shall consist of four members of the Legislature appointed by the Governor. No more than two of the legislators shall be from the same political party. When the Governor is serving as chairman of the board, the Secretary of State shall be the clerk of the board. When the Secretary of State is serving as chairman of the board, the Assistant Secretary of State shall be the clerk of the board. When the Assistant Secretary of State is serving as chairman of the board, that person shall designate another person to be clerk of the board and shall administer to that person the oath prescribed in R.S. 19:21-4. The board shall meet at such times and places as the chairman thereof shall determine pursuant to the provisions of R.S. 19:21-1.

Amended by L.1987, c. 338, § 1, eff. Dec. 23, 1987.

## Historical and Statutory Notes

Source: L.1930, c. 187, 176, p. 704.

## Cross References

Board of State Canvassers in Department of State, see § 52:16A-10.

## ARTICLE 5. ALL ELECTION OFFICIALS

**Library References**

Elections  $\Leftrightarrow$ 54, 259.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 54 et seq., 237.

**19:6-28. Proceedings open and public**

All the proceedings of the district boards, county boards, boards of county canvassers and board of state canvassers shall be open and public.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §77, p. 704.

**Cross References**

Open Public Meetings Act, see § 10:4-6 et seq.

**19:6-29. Majority necessary for decisions; dissents**

A decision of the major part of the members thereof, who shall be present at a meeting, shall be deemed to be the decision of such board. If any member shall dissent from a decision of the board, and shall desire to protect himself against any consequences which may result from such decision, he shall state his dissent in writing, and deliver the same in the case of the state board of canvassers to the secretary of state and in all other cases to the clerk of the county, who shall file the same in his office.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §78, p. 704.

**Library References****Texts and Treatises**

2 Am Jur 2d, Administrative Law  
§§230, 231.

**Notes of Decisions****Dissents 1****1. Dissents**

In proceeding upon order to show cause why publication of list of names of registered voters to be removed from vot-

ing registry should not be restrained, determination that publication would be authorize only upon majority vote and that, in absence of evidence that one of two equally divided factions on county election board had arbitrarily refused to consent to the publication prior to primary election, earlier publication was illegal

would be affirmed. *Greenan v. Braca*, 18 N.J. 361, 113 A.2d 772 (1955).

**19:6-30. Maintenance of regularity and order; powers; commitment of offenders**

The district board in each election district, the county board, and the clerk thereof, the board of county canvassers and the board of State canvassers and the Superior Court shall, respectively, possess full power and authority to direct the police on duty to maintain regularity and order, and to enforce obedience to their lawful commands during their sessions respectively.

If a person shall refuse to obey the lawful command of any such board, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may by an order in writing, signed by its chairman and attested by its clerk, commit the person so offending to the common jail of the county in which the board shall have met, for a period not exceeding three days. Such order shall be executed by any sheriff or constable to whom it shall be delivered; or if a sheriff or constable shall not be present or shall refuse to act, by any other person deputed by the board in writing, and the keeper of such jail shall receive the person so committed, and safely keep him for such time as shall be provided in the commitment.

Amended by L.1953, c. 19, p. 328, § 11; L.1991, c. 91, § 241, eff. April 9, 1991.

**Historical and Statutory Notes**

Source: L.1930, c. 187, § 79, p. 705.



## CHAPTER 7

### CHALLENGERS

#### Section

- 19:7-1. Appointment by chairmen of committees.
- 19:7-2. Appointment of challengers.
- 19:7-3. Filing of appointments or applications.
- 19:7-4. Permits to challengers; revocation.
- 19:7-5. Powers.
- 19:7-6. Badge.
- 19:7-6.1. Number of challengers.

#### Library References

- Elections  $\Leftrightarrow$  210, 223.
- WESTLAW Topic No. 144.
- C.J.S. Elections §§ 200, 209.

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#### 19:7-1. Appointment by chairmen of committees

The chairman of the county committee of any political party that has duly nominated any candidate for public office to be voted for at an election by all the voters within the county or any political division thereof greater than a single municipality, or where the election is within and for a single municipality only, or any subdivision thereof, then the chairman of the municipal committee of the political party making such nomination within and for such single municipality, or subdivision thereof, may appoint two challengers for each election district in his county or municipality, as the case may be.

The chairman of the county committee of each political party may also appoint two challengers to serve and exercise the powers of challengers, in each election district in the county at any primary election.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶80, p. 705.

### **19:7-2. Appointment of challengers**

A candidate who has filed a petition for an office to be voted for at the primary election, and a candidate for an office whose name may appear upon the ballot to be used in any election, may also act as a challenger as herein provided and may likewise appoint 2 challengers for each district in which he is to be voted for; but only 2 challengers shall be allowed for each election district to represent all the candidates nominated in and by the same original petition. The appointment of the challengers shall be in writing under the hand of the person or persons making same and shall specify the names and residences of the challengers and the election districts for which they are severally appointed. Whenever a public question shall appear on the ballot to be voted upon by the voters of an election district and application has been made by the proponents or opponents of such public question for the appointment of challengers, the county board may in its discretion appoint 2 challengers each to represent such proponents or opponents. Such challengers shall be in addition to those provided for in section 19:7-1 of this Title.

Amended by L.1956, c. 66, p. 151, § 1.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶81, p. 706.

#### **Library References**

Elections ⇄210.

WESTLAW Topic No. 144.

C.J.S. Elections § 200.

#### **Notes of Decisions**

##### **In general 1**

##### **1. In general**

Election irregularities consisting of list of challengers failing to be signed by candidates and failing to include their names

and addresses and of failure of board secretary to make certificate of appointment of challengers were insufficient to invalidate school board election. Matter of School Election Held in School Dist. Borough of Fairview, Bergen County, 93 N.J.A.R.2d (EDU) 409 (1993).

**19:7-3. Filing of appointments or applications**

The appointment of or application for challengers shall be filed with the county board not later than the second Tuesday preceding any election. No person shall be appointed a challenger under this Title who is not a registered voter in the county in which the district is located in which such person is appointed to serve, and no appointed challenger shall serve in any district other than that to which appointed.

Amended by L.1956, c. 66, p. 151, § 2.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶82, p. 706, amended by L.1935, c. 227, § 1, p. 563.

**19:7-4. Permits to challengers; revocation**

The county board shall thereupon issue, under the hands of its members, to the persons named in such appointment papers, or application, permits for them to act as challengers for their respective parties or candidates or for or against a public question at the election district specified. Such permits shall be filed by the persons named therein with the district board named therein, as evidence of their authority to be present in the polling place, and they may be issued and revoked and others issued in their stead at any time up to and including the day of election. When a permit shall be revoked, the permit in the place thereof shall be issued upon the nomination of the same person or officer upon whose nomination the original permit was issued.

Amended by L.1956, c. 66, p. 152, § 3.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶83, p. 706.

**19:7-5. Powers**

Such challengers shall be the authorized challengers for their respective political parties and candidates or for the proponents or opponents of a public question. They shall have the power to challenge the right to vote therein of any person claiming such right and shall have power to ask all necessary questions to determine this right. They may be present while the votes cast at any election are being counted, hear and see the ballots counted and shall have the right and power to challenge the counting or rejecting of any ballot or any part of a ballot.

Amended by L.1956, c. 66, p. 152, § 4.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶84, p. 707.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections § 233.

**19:7-6. Badge**

Every such challenger shall at any election wear a badge, to be furnished by the county board, which shall show to any person the political party or candidate or group of candidates or the side for whom or for which the challenger is acting.

Amended by L.1956, c. 66, p. 153, § 5.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶85, p. 707.

**19:7-6.1. Number of challengers**

Unless express permission be given by the district board, not more than 1 challenger appointed for a party, candidate, or on a public question, shall be present at any one time in any polling place while serving and exercising the powers of a challenger and during the hours when the polls are open for voting. If the district board shall in any case give permission for more than 1 challenger so appointed to be present at any one time in any polling place, it shall on the same grounds and on request permit a like number to be present on behalf of any opposing party, or on behalf of any other candidate for the same office, or on the other side of any public question.

L.1960, c. 82, p. 563, § 1.

**Historical and Statutory Notes****Title of Act:**

An Act concerning elections and supplementing chapter 7 of Title 19 of the Revised Statutes. L.1960, c. 82, p. 563.

## CHAPTER 8

### POLLING PLACES; BALLOT BOXES; EQUIPMENT

#### ARTICLE 1. POLLING PLACES

##### Section

- 19:8-1. Location.
- 19:8-2. Tentative list of available places, selections.
- 19:8-3. Schoolhouses and public buildings; other locations; certification of expenses.
- 19:8-3.1. Polling places; accessibility to the elderly and physically disabled.
- 19:8-3.2. Rules and regulations; elderly and physically disabled permitted to vote at closest alternative accessible polling place.
- 19:8-3.3. Standards of accessibility determined by barrier free sub-code.
- 19:8-3.4. Annual report by county boards of election of polling places found inaccessible.
- 19:8-3.5. Review of reports.
- 19:8-3.6. Expired.
- 19:8-3.7. Voting Accessibility Advisory Committee; members; walking tours of polling locations.
- 19:8-4. Selected places certified.
- 19:8-5. Display of American flag.

#### ARTICLE 2. POLLING PLACE EQUIPMENT

- 19:8-6. Equipment required; county boards and municipal clerks to provide.
- 19:8-7. Booths; size; doors or curtains; shelf.
- 19:8-8. Number of booths.
- 19:8-9. Location of booths.
- 19:8-10. Location of ballot boxes in polling places.

#### ARTICLE 3. BALLOT BOXES

- 19:8-11. By whom provided and repaired.
- 19:8-12. Size and construction of boxes.

#### Library References

- Elections  $\S$  200 et seq.
- WESTLAW Topic No. 144.
- C.J.S. Elections  $\S$  193 et seq.

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**ARTICLE 1. POLLING PLACES****19:8-1. Location**

For the purpose of this title a polling place or room shall be within a building wherein a district board is directed as hereinafter provided to meet for the purpose of registering voters or conducting elections.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §86, p. 707.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections § 228.

**19:8-2. Tentative list of available places, selections**

The clerk of every municipality, on or before April 1 shall certify to the county board of every county wherein such municipality is located a suggested list of places in the municipality suitable for polling places. The county board shall select the polling places for the election districts in the municipalities of the county for all elections in the municipalities thereof, including all commission government elections in the county. The county boards shall not be obliged to select the polling places so suggested by the municipal clerks, but may choose others where they may deem it expedient. Preference in locations shall be given to schools and public buildings where space shall be made available by the authorities in charge, upon request, if same can be done without detrimental interruption of school or the usual public services thereof, and for which the authority in charge shall be reimbursed, by agreement, for expenses of light, janitorial and other attending services arising from such use. In no case shall the authorities in charge of a public school or other public building deny the request of the county board for the use, as a polling place, of any building they own or lease.

Where the county board shall fail to agree as to the selection of the polling place or places for any election district, within 5 days of an

election, the county clerk shall select and designate the polling place or places in any such election district.

The county board may select a polling place other than a schoolhouse or public building outside of the district but such polling place shall not be located more than 1,000 feet distant from the boundary line of the district.

Amended by L.1938, c. 280, p. 607, § 1; L.1948, c. 2, p. 34, § 9; L.1959, c. 116, p. 527, § 1; L.1965, c. 4, § 7, eff. Feb. 17, 1965; L.1989, c. 292, § 1, eff. Jan. 12, 1990.

### Historical and Statutory Notes

Source: L.1930, c. 187, 187, p. 707.

Amendment to this section by L.1946, c. 11, p. 27, § 5, was repealed by L.1948, c. 2, p. 46, § 32.

### Library References

Elections ⇄37.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 76, 78.

### Notes of Decisions

#### Polling places 1

##### 1. Polling places

Director of United States Public Housing Administration had no authority to prohibit use of "community room" in

housing project as a polling place, and use of such room as a polling place did not violate Hatch Act, and its selection by appropriate county and municipal authorities was not an abuse of discretion. *Jones v. Middlesex County Bd. of Elections*, D.C.N.J.1966, 259 F.Supp. 931.

### 19:8-3. Schoolhouses and public buildings; other locations; certification of expenses

The county board may select the schoolhouse or schoolhouses, public building or public buildings as the polling places in any municipality in the county whether or not such schoolhouses or public buildings are located within the election district for which the polling place is established; and shall designate the rooms or places, entrances and exits to be used in the schoolhouses or public buildings.

The county board may select a polling place other than a schoolhouse or public building for an election district, when the location of the election district and of the schoolhouses and public buildings in the municipality in which the election district is located is such that inconvenience would be caused the voters of such election district by locating the polling place thereof in a schoolhouse or public building. In the selection of a polling place other than a schoolhouse or public

building for an election district, consideration shall be given to the use of buildings accessible to elderly and physically disabled persons.

The county board shall determine and certify to the board of chosen freeholders the amount to be paid the several boards of education or municipalities, as the case may be, for expenses in connection with the use of schoolhouses or public buildings for election purposes; not to exceed in any case the amount paid for polling places in private premises.

Amended by L.1977, c. 326, § 1, eff. Jan. 10, 1978.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶88, p. 708.

### **19:8-3.1. Polling places; accessibility to the elderly and physically disabled**

Each polling place selected by the county board of elections for use in any election shall be accessible to elderly and physically disabled voters unless:

a. the Secretary of State determines that a state of emergency exists that would otherwise interfere with the efficient administration of that election; or

b. the Secretary of State grants a waiver based upon a determination that all potential polling places have been surveyed and no accessible polling place is available, nor is the municipality able to make one temporarily accessible in or near the election district involved.

L.1991, c. 429, § 1.

#### **Historical and Statutory Notes**

L.1991, c. 429, § 18, approved Jan. 18, 1992, provides:

"This act shall take effect immediately and shall be applicable to elections occurring on or after the July 1st following enactment, and sections 6 and 17 [§ 19:8-3.6 and § 18A:14-5.5] shall expire on January 1, 1995."

#### **Title of Act:**

An Act providing for the accessibility of polling places and voter registration facilities to the elderly and physically disabled, amending various parts of the statutory law, and supplementing chapter 8 of Title 19 of the Revised Statutes and article 2 of chapter 14 of Title 18A of the New Jersey Statutes.

#### **Library References**

Civil Rights ⇐107(2).  
WESTLAW Topic No. 78.

C.J.S. Civil Rights §§ 18, 20, 49 to 55,  
61.



**19:8-3.2. Rules and regulations; elderly and physically disabled permitted to vote at closest alternative accessible polling place**

The Secretary of State shall establish, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), the rules and regulations necessary to insure that in any election any elderly or physically disabled voter assigned to an inaccessible polling place will, upon advance request of that voter, either be permitted to vote at the alternative, accessible polling place nearest to that voter's residence which has a common ballot or be provided with a civilian absentee ballot, pursuant to section 4 of P.L.1953, c. 211 (C. 19:57-4), as an alternative means of casting a ballot on the day of the election.

L.1991, c. 429, § 2.

**Historical and Statutory Notes**

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

**Library References**

Civil Rights ⇨107(2).  
WESTLAW Topic No. 78.

C.J.S. Civil Rights §§ 18, 20, 49 to 55,  
61.

**19:8-3.3. Standards of accessibility determined by barrier free sub-code**

The Secretary of State shall use the barrier free sub-code of the State building code to determine the standards of accessibility for polling places.

L.1991, c. 429, § 3.

**Historical and Statutory Notes**

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

**Library References**

Civil Rights ⇨107(2).  
WESTLAW Topic No. 78.

C.J.S. Civil Rights §§ 18, 20, 49 to 55,  
61.

**19:8-3.4. Annual report by county boards of election of polling places found inaccessible**

No later than May 15th of each year, each county board of elections shall report to the Secretary of State, on the form provided by the Secretary of State, a list of all polling places in the county,

specifying any found inaccessible. The county board of elections shall indicate the reasons for inaccessibility, and the efforts made pursuant to this act to locate alternative polling places or to make the existing facilities accessible. Each county board of elections shall notify the Secretary of State of any changes in polling place locations before the next general election, including any changes required due to the alteration of district boundaries.

L.1991, c. 429, § 4.

#### **Historical and Statutory Notes**

For effective date and application of  
L.1991, c. 429, see note set out under  
§ 19:8-3.1.

#### **Library References**

Civil Rights ⇨107(2).  
WESTLAW Topic No. 78.

C.J.S. Civil Rights §§ 18, 20, 49 to 55,  
61.

### **19:8-3.5. Review of reports**

No later than July 1st of each year, the Secretary of State shall review the reports of the county boards of elections and shall ensure that every possible effort has been made to comply with the provisions of this act.

L.1991, c. 429, § 5.

#### **Historical and Statutory Notes**

For effective date and application of  
L.1991, c. 429, see note set out under  
§ 19:8-3.1.

#### **Library References**

Civil Rights ⇨107(2).  
WESTLAW Topic No. 78.

C.J.S. Civil Rights §§ 18, 20, 49 to 55,  
61.

### **19:8-3.6. Expired**

#### **Historical and Statutory Notes**

Section, L.1991, c. 429, § 6, related to reporting to Federal Election Commission on number of accessible and inaccessible polling places and why any were inaccessible; it expired Jan. 1, 1995, pursuant to L.1991, c. 429, § 18.

### **19:8-3.7. Voting Accessibility Advisory Committee; members; walking tours of polling locations**

a. In order to assist and advise county election officers in implementing the provisions of this 1991 amendatory and supplementary

act, the county executive in each county in which that office is established, or the governing body of the county in any other county, shall establish a Voting Accessibility Advisory Committee, which shall be consist<sup>1</sup> of at least seven and not more than 11 members as follows:

- (1) The four members of the county board of elections; and
- (2) Three or more public members, to be appointed by the county executive or county governing body as follows:
  - (a) A representative of the county executive or a member of the county governing body, as appropriate;
  - (b) At least one elderly and handicapped individual representing one or more organizations of such individuals;
  - (c) At least one person trained in the provisions of the barrier free sub-code; and
  - (d) If the county executive or governing body so elects, any other person deemed able by the executive or governing body to be of assistance in the implementation of the act.

b. In order to accurately evaluate the accessibility of all polling locations, the Voting Accessibility Advisory Committee shall undertake a "walking tour" of each polling location in the county. Any elderly and handicapped committee member should participate in any such tour.

c. On and after January 1, 1994, the continuance in any county of a Voting Accessibility Advisory Committee for that county shall be optional.

L.1991, c. 429, § 11.

<sup>1</sup> So in original.

### Historical and Statutory Notes

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

### Library References

Civil Rights  $\S$  107(2).  
WESTLAW Topic No. 78.

C.J.S. Civil Rights  $\S\S$  18, 20, 49 to 55,  
61.

### 19:8-4. Selected places certified

The county board before May 15 each year shall certify a list of polling places so selected to the sheriff and to the clerk of the county and to the superintendent of elections of the county if any there be and to each municipal clerk in the county.

Amended by L.1938, c. 281, p. 608, § 1; L.1948, c. 2, p. 35, § 10; L.1965, c. 4, § 8.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶89, p. 709.

Amendment to this section by L.1946, c. 11, p. 28, § 6, was repealed by L.1948, c. 2, p. 46, § 32.

**19:8-5. Display of American flag**

An American flag, approximately 3 feet by 5 feet in size, shall be displayed at the outside entrance of each polling place in this State by the district boards during the hours when the boards are in session; except that, when more than one polling place is located in the same building the prominent display of one such flag at the outside entrance used in common to reach more than one polling place shall constitute compliance with the provisions of this section. Such flag shall be furnished by the clerk of the county and delivered to the municipal clerks for distribution.

Amended by L.1964, c. 46, § 1.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶90, p. 709.

**Library References**

**Texts and Treatises**

35 Am Jur 2d, Flag § 2.

**ARTICLE 2. POLLING PLACE EQUIPMENT**

**Library References**

Elections ¶216, 217.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 194, 204 et seq.

**19:8-6. Equipment required; county boards and municipal clerks to provide**

The county boards in counties of the first class and the municipal clerks in counties other than counties of the first class shall purchase or lease and furnish the proper equipment of polling places, to enable the district boards to carry out the duties imposed upon them by this title. The equipment shall consist of tables, chairs, lights, booths and all other things necessary for the performance of such duties, and shall be ready for use by the district boards in ample time to enable them to perform their duties. Also to be included, for conspicuous display at each polling place on the days of any election during each year, shall be the voting and registration instructions provided by the county board of elections.

The clerks of the several municipalities shall keep in repair, store and deliver the polling booths, ballot boxes and other equipment in time for use by the district boards at the cost and expense of the municipality.

In case of any election to be held in and for a municipality only, the duties imposed upon the county boards in counties of the first class regarding the equipment of polling places shall devolve upon the clerk of the municipality wherein the election is to be held. Any equipment in possession of the county board may be used in a municipal election upon requisition.

Amended by L.1991, c. 429, § 7.

#### Historical and Statutory Notes

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

Source: L.1930, c. 187, ¶93, p. 710.

#### 19:8-7. Booths; size; doors or curtains; shelf

The booths shall be sufficiently large to enable the voter to conveniently prepare his ballot as provided for and shall have swinging doors or curtains so arranged that some part of the person of the voters standing in the booths may be seen from the outside thereof when the door or curtains are closed.

Each booth shall contain a counter or shelf suitably placed to enable voters to place their ballots thereon while preparing the same for voting.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶94, p. 710.

#### 19:8-8. Number of booths

In municipalities having permanent registration the number of booths in each election district shall not be less than one for every one hundred persons registered in such district at the last preceding general election and not less than three booths shall be provided in any polling place.

In municipalities not having permanent registration the number of booths in each election district shall not be less than one for every one hundred and fifty persons registered in the district at the last preceding general election and not less than four booths shall be provided in any polling place.

The booths shall be provided and delivered to each polling place by the municipal clerk in time to be used at any election.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶95, p. 711.

**19:8-9. Location of booths**

The booths shall be erected within the polling room or place and so arranged that all the officers conducting the election can see whether more than one person enters or is in any booth at the same time.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶96, p. 711.

**19:8-10. Location of ballot boxes in polling places**

The ballot boxes at every polling place shall be within the polling room or place, and so placed that the voter shall be able to deliver his ballot to the election officers after emerging from the booth before leaving the room or place within which the booths and ballot boxes are placed.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶97, p. 711.

**ARTICLE 3. BALLOT BOXES**

**Library References**

- Elections ¶217.
- WESTLAW Topic No. 144.
- C.J.S. Elections §§ 194, 204.

**19:8-11. By whom provided and repaired**

The county board in counties of the first class and the board of chosen freeholders in counties other than counties of the first class shall provide sufficient ballot boxes for use in the polling places of each election district within the county; and the clerks of the several municipalities shall keep in repair and store the ballot boxes at the cost and expense of the municipality.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶91, p. 709.

**19:8-12. Size and construction of boxes**

The boxes shall be at least one foot in depth, width, and length, measuring the same on the exterior thereof, and shall be constructed

with wooden or metal tops and bottoms and wooden or metal frames and glass or metal sides.

Each box shall be provided with a door at least six inches square on the top of the box, which shall be secured by not less than three locks, no two keys of which shall be alike, and shall have an aperture measuring at least three inches by one-half inch and not more than six inches long by one inch wide for the reception of the ballots, and a device which will close said aperture when the election is over or when the box is not in use, which device shall be so constructed that it cannot be operated without first opening the door of the box. The box shall have no stamping or marking devices.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, §92, p. 709.

## CHAPTER 9

### ELECTION SUPPLIES

#### Section

- 19:9-1. "Election supplies" defined.  
19:9-2. Preparation of books, blank forms and other supplies.  
19:9-3. Distribution of supplies by secretary of state.  
19:9-4. Distribution of supplies by county clerks.  
19:9-5. Distribution of supplies by municipal clerks.

#### Library References

- |                                   |   |
|-----------------------------------|---|
| Counties $\S$ 89.                 | C.J.S. Counties $\S$ 130.               |
| Municipal Corporations $\S$ 170.  | C.J.S. Municipal Corporations $\S$ 545. |
| States $\S$ 73.                   | C.J.S. States $\S\S$ 130 to 136, 140.   |
| WESTLAW Topic Nos. 104, 268, 360. |   |

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#### 19:9-1. "Election supplies" defined

As used in this title the term "election supplies" shall be deemed to mean such blank books, blank forms, pamphlets and things other than ballots and equipment as may be necessary to enable the provisions of this title to be carried out properly.

#### Historical and Statutory Notes

Source: L.1930, c. 187,  $\S$ 98, p. 711.



## Notes of Decisions

## Forms 1

**1. Forms**

Petition forms for county-wide referenda are "election supplies" within this section. Atty.Gen.F.O.1959, No. 15.

**19:9-2. Preparation of books, blank forms and other supplies**

The Secretary of State shall prepare and distribute on or before April 1 in each year prior to the primary election for the general election and the general election the following information and election supplies: pamphlets of the election laws and instructions; precinct returns; electors of President and Vice-President; United States Senator; member of the House of Representatives; Governor; State Senator; General Assembly and county officers; public questions submitted to the voters of the entire State; self-addressed envelopes, plain and stamped, to each district; returns for the county board of canvassers for the above officers; primary return sheets.

The county board of elections shall prepare and distribute on or before April 1 of each year, registration and voting instructions printed in at least 14-point type for conspicuous display at each polling place at any election.

All other books, ballots, envelopes and other blank forms which the county clerk is required to furnish under any other section of this Title, stationery and supplies for the primary election for the general election, the primary election for delegates and alternates to national conventions and the general election, shall be furnished, prepared and distributed by the clerks of the various counties; except that all books, blank forms, stationery and supplies, articles and equipment which may be deemed necessary to be furnished, used or issued by the county board or superintendent shall be furnished, used or issued, prepared and distributed by such county board or superintendent, as the case may be.

The county board in counties having a superintendent of elections shall furnish and deliver to the county clerk, the municipal clerks and the district boards in municipalities having more than one election district, a map or description of the district lines of their respective election districts, together with the street and house numbers where possible in such election districts. In counties not having a superintendent of elections the municipal clerks shall furnish and deliver such map or description of district lines to the county clerk, the county board and the district board in municipalities having more than one election district.

Nothing in subtitle 2 of the Title, Municipalities and Counties (section 40:16-1 et seq.), shall in anywise be construed to affect, restrict, or abridge the powers conferred on the county clerks, county boards or superintendents by this Title.

Amended by L.1947, c. 168, p. 739, § 2; L.1948, c. 2, p. 35, § 11; L.1953, c. 19, p. 328, § 12; L.1965, c. 4, § 9; L.1966, c. 19, § 4; L.1967, c. 7, § 3; L.1967, c. 26, § 3, eff. April 21, 1967; L.1968, c. 292, § 3, eff. Sept. 6, 1968; L.1991, c. 429, § 8.

### Historical and Statutory Notes

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

**Source:** L.1930, c. 187, ¶99, p. 712, amended by L.1935, c. 9, § 8, p. 24.

Amendment to this section by L.1946, c. 11, p. 28, § 7, was repealed by L.1948, c. 2, p. 46, § 32.

#### Title of Act:

An Act relating to the powers of the Secretary of State and authorizing the reimbursement of certain expenditures by counties and municipalities. L.1967, c. 27.

### Library References

Elections ⇨ 197.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 192, 196.

### Notes of Decisions

#### Blank forms 1 Polling place 2

##### 1. Blank forms

Petition forms for county-wide referenda on the application of the new Sunday Closing Law should be furnished by the county clerks of the respective counties and may be in any reasonable form. Atty.Gen.F.O.1959, No. 15.

##### 2. Polling place

The presence and availability in polling places of rubber stamps containing names of persons seeking nomination in primary election is in violation of election statute. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

### 19:9-3. Distribution of supplies by secretary of state

Where such supplies to be prepared and distributed by the secretary of state shall be required in any county or municipality thereof he shall deliver same to the county clerk on or before the time herein set forth and take a receipt for the same, which receipt shall indicate the time when the supplies were delivered by the secretary of state and the time when they were received by the clerk of the county. The secretary of state shall file such receipt in his office for at least a year.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶100, p. 713.

**19:9-4. Distribution of supplies by county clerks**

Where such supplies prepared either by the secretary of state or the county clerk shall be required in a municipality the county clerk shall deliver the same to a member of the district board at his office, or in any other way that he sees fit, on or before the time they are so required and take a receipt for the same, which receipt shall indicate the time when the supplies were delivered by the county clerk and the time when they were received by such member. The county clerk shall file such receipt in his office for at least one year.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶101, p. 713.

**19:9-5. Distribution of supplies by municipal clerks**

Where supplies are delivered by the county clerk or the county board to the municipal clerk for distribution, the municipal clerk shall deliver the same at his office, or in any other way that he sees fit, to a member of the district board and take a proper receipt therefor and file the same in his office.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶102, p. 713.

**Notes of Decisions****Discretion of clerk 1****1. Discretion of clerk**

Under provisions of election law imposing on city clerk duty to furnish certain

election supplies, clerk has measure of discretion in adopting proper course to discharge duty so imposed. *Reichenstein v. Board of Com'rs of City of Newark*, 130 N.J.L. 115, 31 A.2d 814 (1943).

## CHAPTER 10

# PRESERVATION OF ELECTION DOCUMENTS AND PAPERS

### Section

19:10-1. Custodial officer to preserve two years.

### Library References

Elections  $\S$  139, 145.

WESTLAW Topic No. 144.

C.J.S. Elections  $\S$  137.

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### 19:10-1. Custodial officer to preserve two years

All petitions of nomination, affidavits attached thereto, acceptances, objections thereto and determinations of officers or courts relative to such objections and all other documents relating to elections not otherwise provided for, shall be preserved by the officer with whom they have been filed for two years from any election at which the candidates named therein are to be voted for.

### Historical and Statutory Notes

Source: L.1930, c. 187,  $\S$  561, p. 940.

## CHAPTER 11

### SUNDAYS AND LEGAL HOLIDAYS

#### **Section**

**19:11-1.** Day for filing documents or performing official duties falling on Sunday or legal holiday.

#### **Library References**

Time ⇐ 10(1).

WESTLAW Topic No. 378.

C.J.S. Time § 14(1) et seq.

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#### **19:11-1. Day for filing documents or performing official duties falling on Sunday or legal holiday**

Should the day for the filing of any petition, declination, resignation, instrument in writing or other paper or document required to be filed in any office under the provisions of this title, or for the performance of any duty required by this title by any person, candidate or official, fall upon the first day of the week, commonly called Sunday, or any legal holiday, such filing or performance of duty shall be effected upon the next following business day.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, 1562, p. 941.

**Notes of Decisions****Legal holidays 1****Sunday or holiday hours 2**  
\_\_\_\_\_**1. Legal holidays**

The Appellate Division takes judicial notice of fact that Good Friday is and has been observed as a legal holiday in all public offices throughout the State, including municipal offices. *Pritel v. Burris*, 94 N.J. Super. 485, 229 A.2d 257 (A.D. 1967).

**2. Sunday or holiday hours**

Nominating petitions for office of councilman-at-large for township should have

been accepted by township clerk on March 27, 1967, which was less than 46 days prior to regular municipal election, in view of fact that March 24, which would have been the last day for filing, fell on Good Friday which was a legal holiday on which day township offices were closed even though clerk was in his office for part of the day for purpose of accepting nominating petitions. *Pritel v. Burris*, 94 N.J. Super. 485, 229 A.2d 257 (A.D. 1967).

## SUBTITLE 2

# GENERAL ELECTIONS

### Chapter

12. Certificates and Notices.
13. Nomination of Candidates.
14. Ballots.
15. Balloting.
16. Counting Ballots by District Boards.
17. Returns by District Boards.
18. Disposition of Ballot Boxes, Election Records and Equipment.
19. Canvass of Returns by Board of County Canvassers.
20. Determination of Results by Board of County Canvassers.
21. Canvass of Returns by Board of State Canvassers.
22. Determination of Results by Board of State Canvassers.

## CHAPTER 12

### CERTIFICATES AND NOTICES

#### ARTICLE 1. OFFICIALS TO OFFICIALS

##### Section

- 19:12-1. Secretary of state to county clerks and county boards; party vote; officers to be elected and public questions submitted.
- 19:12-2. Repealed.
- 19:12-3. County clerks to municipal clerks; copies of certificate of party vote and notice of officers to be elected.
- 19:12-4. County clerks to district clerks; register of voters for school election.
- 19:12-5. County clerks to county boards and municipal clerks; notice of offices to be filled.
- 19:12-6. Municipal clerks to county clerks and county boards; statement of public offices to be filled.

#### ARTICLE 2. OFFICIALS TO PUBLIC

- 19:12-7. Newspaper notice of election days, registration and offices to be filled.
- 19:12-8. Contents of notice.
- 19:12-9. Publication of notice of challenge procedure; contents.

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## ARTICLE 1. OFFICIALS TO OFFICIALS

### Library References

Elections ⇨39 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 71 et seq.

### **19:12-1. Secretary of state to county clerks and county boards; party vote; officers to be elected and public questions submitted**

The Secretary of State shall within thirty days after the completion of the canvass by the board of State canvassers, certify to each county clerk and county board the fact that at the next preceding general election held for the election of all of the members of the General Assembly ten per centum (10%) of the total vote cast in the State for members of the General Assembly had been cast for candidates having the same designation, thereby creating, within the meaning of this Title, a political party, to be known and recognized as such under the same designation as used by the candidates for whom the required number of votes were cast.

He shall also not later than the sixtieth day preceding the primary election for the general election in every year, in which electors of President and Vice-President of the United States, a representative of the United States Senate, members of the House of Representatives, a Governor, or Senator, or member or members of the General Assembly for any county, or any of them, are to be elected or any public question is to be submitted to the voters of the entire State, direct and cause to be delivered to the clerk of the county and the county board wherein any such election is to be held, a notice stating that such officer or officers are to be elected and that such public question is to be submitted to the voters of the entire State at the ensuing general election.

Amended by L.1948, c. 2, p. 36, § 12.



**Historical and Statutory Notes****Source:**

L.1930, c. 187, §103, p. 714.  
 L.1935, c. 9, § 9, p. 26.  
 L.1935, c. 299, § 3, p. 936.

Amendment to this section by L.1946,  
 c. 11, p. 29, § 8, was repealed by L.1948,  
 c. 2, p. 46, § 32.

**Library References**

Elections ☞41, 168(1).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 73, 159.

**Texts and Treatises**

26 Am Jur 2d, Elections § 304.

**19:12-2. Repealed by L.1953, c. 19, p. 329, § 13****Historical and Statutory Notes**

The repealed section, amended by L.1948, c. 2, p. 37, § 13 and derived from L.1930, c. 187, p. 714, § 104, amended by L.1935, c. 9, p. 26, § 10; L.1935, c. 240, p. 750, § 1; L.1935, c. 299, p. 936, § 4 required notice of number of justices of the peace to be elected.

**19:12-3. County clerks to municipal clerks; copies of certificate of party vote and notice of officers to be elected**

The clerk of each county shall immediately upon the receipt of the certificate from the Secretary of State setting forth that a political party has been created, forward a certified copy of such certificate to each municipal clerk of his county.

He shall also not later than the fiftieth day preceding the primary election for the general election in every year cause a copy of the notice received from the Secretary of State of the officer or officers to be elected at the ensuing general election, certified under his hand to be true and correct, to be delivered to the clerk of each municipality in the county.

Amended by L.1948, c. 2, p. 37, § 14.

**Historical and Statutory Notes****Source:**

L.1930, c. 187, §104, p. 714.  
 L.1935, c. 9, § 10, p. 26.  
 L.1935, c. 240, § 1, p. 750.

L.1935, c. 299, § 4, p. 936.  
 Amendment to this section by L.1946,  
 c. 11, p. 30, § 10, was repealed by  
 L.1948, c. 2, p. 46, § 32.

**19:12-4. County clerks to district clerks; register of voters for school election**

The county clerk shall when application shall be made to him by the district clerk of the board of education in any municipality in the

county, turn over at once to such district clerk in accordance with such application the register of voters of the last preceding general election to be used in connection with any annual or special school election; but such register shall be returned to the county clerk by the district clerk within two days after the annual or special school election in connection with which it was used.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶105, p. 715.  
amended by L.1931, c. 374, § 4, p. 950.

**19:12-5. County clerks to county boards and municipal clerks; notice of offices to be filled**

The clerk of every county shall, not later than the fiftieth day preceding the primary election for the general election, immediately preceding the expiration of the term of office of all other officers who are voted for by the voters of the entire county or of more than one municipality within the county, direct and cause to be delivered to the clerk of each municipality and the county board in counties of the first class, a notice that such officer or officers, as the case may be, will be chosen at the ensuing general election.

Amended by L.1948, c. 2, p. 38, § 15.

**Historical and Statutory Notes**

Source:	Amendment to this section by L.1946,
L.1930, c. 187, ¶106, p. 715.	c. 11, p. 31, § 11, was repealed by
L.1935, c. 9, § 11, p. 27.	L.1948, c. 2, p. 46, § 32.
L.1935, c. 299, § 5, p. 937.	

**Library References**

Elections ¶41.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 73.

**Texts and Treatises**

26 Am Jur 2d, Elections §§185 to 187.

**19:12-6. Municipal clerks to county clerks and county boards; statement of public offices to be filled**

All municipal clerks, not later than the fiftieth day preceding the primary election for the general election, shall make and certify under their hands and seals of office and forward to the clerk of the county in which the municipality is located a statement designating the public offices to be filled at such election, and the number of

persons to be voted for each office. In counties of the first class such statement shall also be forwarded to the county board.

Amended by L.1948, c. 2, p. 38, § 16.

### Historical and Statutory Notes

#### Source:

L.1930, c. 187, ¶107, p. 715.  
L.1935, c. 9, § 12, p. 28.  
L.1935, c. 299, § 6, p. 937.

Amendment to this section by L.1946,  
c. 11, p. 31, § 12, was repealed by  
L.1948, c. 2, p. 46, § 32.

### Cross References

Classification of counties for legislative purposes, see § 40A:6-1.

### Library References

Elections ⇐41.

WESTLAW Topic No. 144.

C.J.S. Elections § 73.

## ARTICLE 2. OFFICIALS TO PUBLIC

### 19:12-7. Newspaper notice of election days, registration and offices to be filled

a. The county board in each county shall cause to be published in a newspaper or newspapers which, singly or in combination, are of general circulation throughout the county, a notice containing the information specified in subsection b. hereof, except for such of the contents as may be omitted pursuant to subsection c. or d. hereof. Such notice shall be published once during the 30 days next preceding the day fixed for the closing of the registration books for the primary election, once during the calendar week next preceding the week in which the primary election is held, once during the 30 days next preceding the day fixed for the closing of the registration books for the general election, and once during the calendar week next preceding the week in which the general election is held.

b. Such notice shall set forth:

(1) For the primary election:

(a) That a primary election for making nominations for the general election, for the selection of members of the county committees of each political party, and in each presidential year for the selection of delegates and alternates to national conventions of political parties, will be held on the day and between the hours and at the places provided for by or pursuant to this Title.

(b) The place or places at which and hours during which a person may register; the procedure for the transfer of registration, and the

date on which the books are closed for registration or transfer of registration.

(c) The several State, county, municipal and party offices or positions to be filled, or for which nominations are to be made, at such primary election.

(d) The existence of registration and voting aids, including: (i) the availability of registration and voting instructions at places of registration as provided under R.S. 19:31-6; and (ii), if available, the accessibility of voter information to the deaf by means of a telecommunications device.

(e) The availability of assistance to a person unable to vote due to blindness, disability or inability to read or write.

(2) For the general election:

(a) That a general election will be held on the day and between the hours and at the places provided for by or pursuant to this Title.

(b) The place or places at which and hours during which a person may register; the procedure for transfer of registration, and the date on which the books are closed for registration or transfer of registration.

(c) The several State, county and municipal offices to be filled and, except as provided in section 19:14-33 of this Title as to publication of notice of any Statewide proposition directed by the Legislature to be submitted to the people, the State, county and municipal public questions to be voted upon at such general election.

(d) The existence of registration and voting aids, including: (i) the availability of registration and voting instructions at places of registration as provided under R.S. 19:31-6; and (ii) the accessibility of voter information to the deaf by means of a telecommunications device.

(e) The availability of assistance to a person unable to vote due to blindness, disability or inability to read or write.

(3) For a school election:

(a) The day, time and place thereof,

(b) The offices, if any, to be filled at the election,

(c) The substance of any public question to be submitted to the voters thereat,

(d) Such other information as may be required by law.

c. If such publication is made in more than one newspaper, it shall not be necessary to duplicate in the notice published in each

such newspaper all the information required under this section, so long as:

(1) The municipal officers or party positions to be filled, or nominations made, or municipal public questions to be voted upon by the voters of any municipality, shall be set forth in at least one newspaper having general circulation in such municipality;

(2) All offices to be filled, or nominations made therefor, or public questions to be voted upon, by the voters of the entire State or of the entire county shall be set forth in a newspaper or newspapers which, singly or in combination, have general circulation throughout the county;

(3) Information relating to nominations and elections in each Legislative District comprised in whole or part in the county, shall be published in at least a newspaper or newspapers which singly or in combination, have general circulation in every municipality of the county which is comprised in such legislative district.

d. Such part or parts of the original notices as published which pertain to day of registration or primary election which has occurred shall be eliminated from such notice in succeeding insertions.

e. Notwithstanding anything to the contrary in this section, in a school election the county board shall give notice of each election not less than 10 days prior to the date fixed for the election, by posting at least 7 copies of the notice, one on each schoolhouse in the district and the others at such public places therein as the board shall direct and causing a copy thereof to be published at least once, in at least one newspaper published in each municipality in the district and, if no newspaper is published in any such municipality or such a newspaper will not be published in time to publish the notice in accordance with this section, then, as to the municipality, in at least one newspaper published in the county or State and circulating in the municipality.

f. The cost of publishing the notices required by this section shall be paid by the respective counties, or for school elections, by the respective school district.

Amended by L.1945, c. 184, p. 619, § 1; L.1962, c. 26, § 1; L.1975, c. 289, § 1; L.1991, c. 429, § 9; L.1995, c. 278, § 16, eff. March 14, 1996.

#### Historical and Statutory Notes

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

Source: L.1930, c. 187, ¶108, p. 716.

Section 2 of L.1975, c. 289, approved Jan. 12, 1976, provides:

"This act shall take effect upon the sixtieth day next preceding the date of the next primary election occurring not sooner than 60 days from the date of its enactment."

Library References

Elections  $\S$ 39 et seq., 105.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S\S$  39, 71 et seq.

Texts and Treatises

26 Am Jur 2d, Elections  $\S$ 193 et seq.

Notes of Decisions

Defective notice 2  
 Failure to give notice 1

1. Failure to give notice

A local option election would not be set aside because of failure to advertise specifically that the question was to be submitted at the general election, as required by L.1898, c. 239,  $\S$  7, as amended by L.1910, p. 473, repealed, when it appeared there was a full and fair expression of the popular will (as where four hundred and forty-two votes were cast on the question out of a total number of legal ballots of five hundred and three and a registry list of six hundred and forty-three), and it further appeared that knowledge that the question was to be submitted at the election was brought home to the voters by mailing sample ballots (being a true copy of the official ballot) to every registered voter on or before the Wednesday preceding election day as required. *Lindabury v. Clinton Tp.*, in *Hunterdon County*, 93 N.J.L. 37, 106 A. 463 (1919) certiorari dismissed 93 N.J.L. 96, 106 A. 465; *Lindabury v. Clinton Tp.*, 42 N.J.L.J. 45 (1919).

Although there was an admitted failure to publish notice of the proposed public question at general election as required by this section, in view of the mailing of sample ballots to all township residents showing such question thereon and the vast amount of publicity concerning the issue of the charter study commission embodied in public question which was approved by nearly a two to one vote of those who actually voted on question, it could not be said that the procedural omission had the effect of imposing so vital an influence on election that the election should be vitiated, and the election was valid. *Richards v. Barone*, 114 N.J.Super. 243, 275 A.2d 771 (L.1971).

Where notice of local option election was published 11 days before election instead of 15 days, as required by statute, the election was invalid and would be set aside, as the procedure is statutory and must be strictly construed in the interest of the public. *Reed v. Independence Tp. in Warren County*, 92 N.J.L. 102, 105 A. 8 (1918).

The failure of a township clerk to give public notice of an election in a street lighting district, as required in general elections, by L.1898, p. 239,  $\S\S$  7, 8, repealed, and L.1899, p. 373,  $\S$  3,  $\S\S$  40:143-1 to 40:143-3, would not invalidate the election, where the will of the people had been fairly expressed. *Brown v. Street Lighting Dist. No. 1 in Woodbridge Tp.*, 70 N.J.L. 762, 58 A. 339 (1904).

In quo warranto to oust respondent from the office of alderman in a city it appeared that the city clerk omitted to mention the office in question in the notices set up by him, as required by L.1898, p. 239,  $\S$  7, repealed, but it was inferable from the pleadings that there was a full and fair election; the result of the election could not be ignored by reason of the failure of the clerk to give the statutory notice. *Winters v. Warmolts*, 70 N.J.L. 615, 56 A. 245 (1903).

2. Defective notice

Board of education vacancy was result of improper election procedures, and not improper campaign practices, where board's secretary failed to give proper notice that three rather than two seats were to be filled at annual school election, and thus special election had to be held to fill vacancy, and write in candidate who placed third in election held for two open seats was not entitled to the third open seat. *Matter of Annual School Election held in School Dist. of Mullica*

**Note 2**

Tp., Atlantic County, 92 N.J.A.R.2d (EDU)  
432 (1992).

**19:12-8. Contents of notice**

The notice required by section 19:12-7 of this Title shall include the address of each polling place and the place and telephone number and times at which a voter may make inquiry as to the location of the polling place in the district in which he resides. Amended by L.1969, c. 162, § 1, eff. Sept. 9, 1969.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶109, p. 720.

**Library References**

Elections ⇨41.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 73.

**Texts and Treatises**

26 Am Jur 2d, Elections § 198.

**19:12-9. Publication of notice of challenge procedure; contents**

a. The county board in each county shall cause to be published in a daily newspaper of general circulation throughout the county, a notice containing the information specified in subsection b. hereof. This notice shall be published once on the seventh day preceding the day fixed for a municipal, primary, general or special election and once on the day preceding the day fixed for a primary, general or special election.

b. At the top of the notice the words "Public Notice to All Registered Voters of [insert appropriate name] County" shall be printed in at least 30-point bold-faced capital type. Next underneath, the words "You are hereby advised of the following procedure to be used for the [insert appropriate date and type of election] election:" shall be printed in at least 12-point bold-faced type.

The body of the notice shall be printed in at least 10-point bold-faced type and shall set forth:

(1) that any person attempting to vote may be challenged by a duly authorized challenger for a political party or a candidate or on a public question, or by a member of the district board of elections, because the voter's name appears on a challenge list prepared by the superintendent of elections of the county or because the challenger or

board member has good cause to believe that the voter is not entitled to vote;

(2) that members of the district board and all duly authorized challengers are prohibited from challenging, delaying or preventing the right to vote of any person because of that person's race, color, national origin, expected manner of casting a vote or residence in a particular ward, housing complex or section of a municipality or county;

(3) the means by which any person who is challenged because that person's name appears on a challenge list prepared by the superintendent of elections of the county may seek to establish the person's right to vote, as provided in R.S. 19:32-18;

(4) the means by which any person whose name does not appear on a challenge list prepared by the superintendent of elections of the county but who is challenged by a duly authorized challenger or by a member of the district board of elections may seek to establish the person's right to vote, as provided in section 2 of P.L.1991, c. 249, (C. 19:15-18.1);

(5) that any challenger who succeeds in denying a voter the right to vote must sign an affidavit stating the reason why the voter is not entitled to vote and must furnish a copy of the affidavit to the challenged voter, as provided in section 3 of P.L.1991, c. 249 (C. 19:15-18.2);

(6) the legal remedy which any person whose name does not appear on a challenge list prepared by the superintendent but who is challenged by a duly authorized challenger or by a member of the district board of elections and denied the right to vote may use to seek permission to vote, as provided in section 6 of P.L.1991, c. 249 (C. 19:15-18.3);

(7) that forms to register complaints about the conduct of an election shall be available at each polling place in the county; and

(8) the names of the chairman, secretary, clerk and members of the county board of elections and a telephone number at which they may be reached for more information.

c. In counties in which the primary language of 10% or more of the registered voters is Spanish, two notices containing the information in subsection b. of this section shall appear side-by-side, one in English and one in Spanish. The notices shall be identical in size, content and type face.

d. The cost of publishing the notices required by this section shall be paid by the respective counties.

L.1991, c. 249, § 8, eff. Nov. 6, 1991.



**Historical and Statutory Notes**

**Statement:** Committee statement to Assembly, No. 2079—L.1991, c. 249, see § 19:15-18.1.

## CHAPTER 13

### NOMINATION OF CANDIDATES

#### ARTICLE 1. METHODS ENUMERATED

##### Section

- 19:13-1. Direct petition and primary election.
- 19:13-2. State convention; presidential and vice presidential electors.

#### ARTICLE 2. DIRECT NOMINATIONS BY PETITION

- 19:13-3. To whom petition addressed.
- 19:13-4. Contents of petition.
- 19:13-5. Signatures to petition; number.
- 19:13-6. Signing of petition; addresses.
- 19:13-7. Certification of petition.
- 19:13-8. Acceptance of nomination; annexation of oath of allegiance.
- 19:13-8.1. Direct nomination of unsuccessful primary candidate prohibited.
- 19:13-9. Filing petitions and acceptances; public inspection; transmittals to election law enforcement commission.
- 19:13-10. Validity of and objections to petition.
- 19:13-11. Determination of validity of objections.
- 19:13-12. Recourse to court by candidates for protection of rights.
- 19:13-13. Amendment of defective petitions; time for.

#### ARTICLE 3. BY PRIMARY ELECTION

- 19:13-14. Procedure; highest aggregate of votes to determine party candidates.
- 19:13-14.1. Candidate of political party in primary ineligible to be candidate of other political party in general election.

#### ARTICLE 4. BY STATE CONVENTION [COMMITTEE]

- 19:13-15. Presidential and vice presidential electors; presidential candidates; committees on vacancies; acceptances; objections to certificates.

#### ARTICLE 5. VACANCIES AMONG NOMINEES

##### A. RESIGNATIONS

- 19:13-16. Notice to election official; time for.
- 19:13-17. Notice of declination to signers of petition or committees to fill vacancies.

##### B. FILLING VACANCIES

- 19:13-18. In general.
- 19:13-19. Vacancies among direct petition nominees filled by direct nomination.
- 19:13-20. Vacancies among primary election nominees; procedure for filling.
- 19:13-20.1. Candidate vacancy not filled.
- 19:13-21. Vacancies among state convention nominees; certificate; oath of allegiance.

**Section**

**ARTICLE 6. CERTIFICATION OF NOMINEES**

- 19:13-22. Secretary of State; statement to county clerks of nominations; vacancies.  
19:13-23. Secretary of State to county clerks of vacancy nominations; contents.

**Library References**

- Elections ⇔ 120 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 83 et seq.

**Comments**

Candidate selection, see *New Jersey Practice* vol. 35, Pane, § 470 et seq.

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**ARTICLE 1. METHODS ENUMERATED**

**19:13-1. Direct petition and primary election**

Candidates for all public offices to be voted for at the general election in this state or in any political division thereof, except electors of president and vice president of the United States nominated by the political parties at state conventions, shall be nominated directly by petition as hereinafter provided, or at the primary for the general election held pursuant to this title.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶110, p. 720.

Library References

Texts and Treatises

25 Am Jur 2d, Elections §§147 et seq.

Notes of Decisions

Independent candidates 2  
 Municipal elections 3  
 Purpose 1  
 Successive nominations 4

3. Municipal elections

Procedural nomination requirements for candidates in election for vacant offices under Faulkner Act Mayor-Council Plan C form of government were to be governed by provisions of title of general election laws relating to direct nominations by petition for a general election rather than the procedural nomination requirements of Faulkner Act applying to candidates seeking office in regular municipal election. *Smith v. Hayes*, 116 N.J.Super. 133, 281 A.2d 279 (A.D.1971), remanded 59 N.J. 236, 281 A.2d 276.

4. Successive nominations

Candidate for office may proceed by direct petition of nomination as independent or may seek nomination by affiliation with political party in primary election; the two methods are mutually exclusive, and candidate who chooses to seek nomination in primary election is precluded from subsequent attempt at nomination by direct petition. *Riecker v. Hartmann*, 130 N.J.Super. 266, 326 A.2d 101 (L.1974).

1. Purpose

The statutory scheme of direct nomination by petition, designed as alternative to nomination by primary election, reveals legislative scheme and intent to insure honesty of such nominations. *McCasky v. Kirchoff*, 56 N.J.Super. 178, 152 A.2d 140 (A.D.1959).

2. Independent candidates

So long as differences in nominating process between party and independent nominees are reasonably taken in pursuit of vital state objectives that cannot be served equally well in significantly less burdensome ways, they are constitutionally valid. *Marotta v. Burgio*, 185 N.J.Super. 172, 447 A.2d 937 (L.1982).

19:13-2. State convention; presidential and vice presidential electors

In presidential years the state conventions shall severally nominate for their respective parties such number of candidates for electors of president and vice president of the United States as this state shall be entitled to elect or appoint.

Historical and Statutory Notes

Source: L.1930, c. 187, §111, p. 720.

Library References

United States ☞25.  
 WESTLAW Topic No. 393.  
 C.J.S. United States § 28.

Texts and Treatises

25 Am Jur 2d, Elections §164 et seq.

## ARTICLE 2. DIRECT NOMINATIONS BY PETITION

## Library References

Elections ⇨ 141 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 91, 106 et seq.

**19:13-3. To whom petition addressed**

Direct nomination by petition for the general election shall be as follows: Petitions naming candidates for office to be filled by voters of the entire State, or of any congressional district, or of any political division greater than a single county, shall be addressed to the Secretary of State; petitions nominating candidates for election to the Senate or General Assembly shall be addressed to the Secretary of State; petitions naming candidates to be voted for by all the voters of a single county, or more than a single political division thereof, and all other petitions naming candidates to be voted for at the general election, shall be addressed to the clerks of the respective counties wherein the officers nominated are to be voted for.

Amended by L.1967, c. 22, § 1, eff. March 23, 1967.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶112, p. 721.

## Notes of Decisions

**Purpose 2**  
**Related statutes 1**

**1. Related statutes**

Provision of § 19:14-12 directing that drawing of names for position on ballots shall take place on day following last day for filing petitions for general election must be construed with provisions of this section and § 19:13-9 relating to direct nomination of candidates by petition and providing that petitions naming candidates for office to be filled by voters of entire state be addressed to the Secretary of State and that all petitions be filed with officer to whom they were addressed

five days previous to day of primary election. In re Murray, 119 N.J.L. 98, 194 A. 443 (1937).

**2. Purpose**

The Election Act, § 19:13-3 et seq., has salutary purpose of purifying politics of State by preventing fraud and wrongdoing in nominating procedure. McCaskey v. Kirchoff, 56 N.J.Super. 178, 152 A.2d 140 (A.D.1959).

One of the purposes of Election Law is to purify the politics of State by preventing fraud and wrongdoing in the nominating procedure. Sadloch v. Allan, 25 N.J. 118, 135 A.2d 173 (1957).

**19:13-4. Contents of petition**

Such petition shall set forth the names, places of residence and post-office addresses of the candidates for the offices to be filled, the title of the office for which each candidate is named, that the petitioners are legally qualified to vote for such candidates and

pledge themselves to support and vote for the persons named in such petition and that they have not signed any other petition of nomination for the primary or for the general election for such office.

In the case of a petition or petitions nominating electors of president and vice president of the United States, the names of the candidates for president and vice president for whom such electors are to vote may be included in the petition or petitions, but the petition or petitions shall not include the names of any candidates for president or vice president who have been nominated at a convention of a political party, as defined by this title.

The petition shall also state in not more than three words the designation of the party or principles which the candidates therein named represent, but such designation shall not contain the designation name, derivative, or any part thereof as a noun or an adjective of any political party entitled to participate in the primary election.

The petition shall also include the request that the names of the candidates and their designations of party or principles be printed upon the ballots to be used at the ensuing general election.

No such petition shall undertake to nominate any candidate who has accepted the nomination for the primary for such position.

Each petition shall be arranged to contain double spacing between the signature lines of the petition, so that each signer thereof is afforded sufficient space to provide his or her printed name, address and signature.

Any form of a petition of nomination, other than petitions for federal office, which is provided to candidates by the Secretary of State, the county clerk, or the municipal clerk shall contain the following notice: "Notice: All candidates are required by law to comply with the provisions of the 'New Jersey Campaign Contributions and Expenditures Reporting Act.' For further information, please call (insert phone number of the Election Law Enforcement Commission)."

Amended by L.1983, c. 579, § 1, eff. Jan. 17, 1984; L.1984, c. 12, § 1, eff. March 6, 1984; L.1994, c. 77, § 5, eff. Jan. 1, 1995.

### **Historical and Statutory Notes**

Source: L.1930, c. 187, ¶113, p. 721.

### **Library References**

#### **Comments**

Petition for independent candidate in November general election, see 35A

New Jersey Practice, Pane, App.M. 4.

## United States Code Annotated

Disclosure of federal campaign funds, see 2 USCA § 431 et seq.

## Notes of Decisions

**Ballots** 3  
**Modification or amendment** 5  
**Party designation** 2  
**Presidential electors** 4  
**Validity** 1

## 1. Validity

This section which prohibits independent candidate from having slogan "Life Long Democrat" beneath his name on ballot was not unconstitutional. *Voltaggio v. Caputo*, D.C.N.J.1962, 210 F.Supp. 337, appeal dismissed 83 S.Ct. 325, 371 U.S. 232, 9 L.Ed.2d 494.

## 2. Party designation

Candidates other than those of a political party may be nominated by petition containing a party designation. *Richardson v. Caputo*, 46 N.J. 3, 214 A.2d 385 (1965).

A candidate for elective office may be nominated to run as an independent candidate at general election by a petition signed by the requisite number of qualified persons and filed 40 days before primary election, or he may seek the nomination of the political party with which he is affiliated at primary election, in which event, 40 days prior to such election he must file a petition signed by specified number of qualified voters who are members of his political party. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

## 3. Ballots

Prospective independent candidate's supporters, who had right to cast write-in votes for him as mayor, did not have constitutional right to have candidate's name listed on ballot where candidate

was not constitutionally aggrieved by his inability to have his name appear on ballot. *Mammon v. Schatzman*, C.A.3 (N.J.)1972, 472 F.2d 114.

Where nominating petition stated that title of office sought was that of borough "councilman," county clerk's placement of candidate's name on ballot as the candidate for councilman for full term rather than as a candidate for "Councilman 1-Year Unexpired Term" was proper. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650 (L.1974).

## 4. Presidential electors

Secretary of State was authorized to reject a petition for electors of president and vice-president to represent a party whose candidates for president and vice-president were both inhabitants of the same state as the electors. *Atty.Gen.F.O. 1960, No. 5.*

## 5. Modification or amendment

For candidate, who asserted that it had been his intent to run for unexpired term on borough council, to be entitled to have designation of his candidacy changed, after deadline for filing, from "borough council" to "Councilman 1-Year Unexpired Term" candidate had to offer clear and convincing proof that he did not properly designate office he was seeking and that signers of petition were informed that office sought was not office stated in petition; such evidential requirement was not met by candidate's bare assertion that he advised all signers that he was running for office different than that stated in petition. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650 (L.1974).

## 19:13-5. Signatures to petition; number

The petition shall be signed by legally qualified voters of this State residing within the district or political division in and for which the officer or officers nominated are to be elected, equal in number to at least two per centum (2%) of the entire vote cast for members of the General Assembly at the last preceding general election, held for the election of all of the members of the General Assembly, in the State,

county, district or other political division in and for which the nominations are made; except that when the nomination is for an office to be filled by the voters of the entire State eight hundred signatures in the aggregate for each candidate nominated in the petition shall be sufficient; and except that no more than one hundred signatures shall be required to any petition for any officers to be elected save only such as are to be voted for by the voters of the State at large.

In case of a first general election to be held in a newly established election district, county, city or other political division, the number of fifty signatures to a petition shall be sufficient to nominate a candidate to be voted for only in such election district, county, city or other political division.

Amended by L.1948, c. 438, p. 1698, § 6.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶114, p. 722.

**Library References**

- Elections ¶143.
- WESTLAW Topic No. 144.
- C.J.S. Elections §§ 109, 110.

**Texts and Treatises**

25 Am Jur 2d, Elections § 156.

**Notes of Decisions**

- Deletion of signatures** 2
- Qualified persons** 1

**1. Qualified persons**

Individuals, who signed candidate's direct nominating petition for office of state senator on April 27 but who did not register to vote until April 29, which was day on which petition was filed and which was final filing day for direct nominating petitions for November general election as well as registration deadline for June primary election, were qualified to sup-

port candidate by petition as early as any citizen had to be qualified to support a party candidate in primary election. In re Ross, 116 N.J.Super. 178, 281 A.2d 393 (A.D.1971).

**2. Deletion of signatures**

Once time for filing direct nominating petition for office of state senator had expired, there was no impropriety in refusing to delete signatures of individuals who indicated a desire to withdraw their names from petition. In re Ross, 116 N.J.Super. 178, 281 A.2d 393 (A.D.1971).

**19:13-6. Signing of petition; addresses**

Every voter signing a petition shall add to his signature his place of residence, post-office address and street number, if any. Such voter may sign one petition for each officer and no more, but all the names need not be signed to one petition.



### Historical and Statutory Notes

Source: L.1930, c. 187, ¶115, p. 722.

### American Law Reports

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor, 27 ALR2d 604.

### Notes of Decisions

#### Irregularities 1

##### 1. Irregularities

Irregularities shown as to a handful of 1474 signatures on nominating petition

were insufficient to show any pattern of fraud so as to invalidate the entire petition. *Petition of Job*, 111 N.J.Super. 170, 268 A.2d 29 (A.D.1970), certification denied 57 N.J. 124, 270 A.2d 27.

### 19:13-7. Certification of petition

Before any petition shall be filed as hereinafter provided, at least one of the voters signing the same shall make oath before a duly qualified officer that the petition is made in good faith, that the affiant saw all the signatures made thereto and verily believes that the signers are duly qualified voters.

Amended by L.1973, c. 135, § 1, eff. May 17, 1973.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶116, p. 722.

### Cross References

Oaths and affidavits, see § 41:1-1 et seq.

### Law Review and Journal Commentaries

The new math for nominating petition cases. Francis X. Hayes (1971) No. 57 N.J.St.B.J. 15.

### Library References

Elections ⇨144.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 108, 135.

### Notes of Decisions

#### Exceptions 4

#### Irregularities in petitions 3

#### Multiple petitions or sheets 1

#### Oath 2

##### 1. Multiple petitions or sheets

This section prescribing procedure for certifying nominating petition means that

each petition, or sheet if separately circulated, should contain affidavit or affidavits clearly signifying which signatory has witnessed what signatures, if any, of the others, and that every signature should be specifically verified by affidavit of at least one other signer who witnessed it. *Lawson v. Davis*, 116 N.J.Super. 487, 282 A.2d 784 (A.D.1971).

Where each of two component "sheets" filed with direct nominating petition of candidate for office of state senator was certified by five voters, statutory requirements were met, and fact that same five voters did not certify both "sheets" did not serve to invalidate petition. In re *Ross*, 116 N.J.Super. 178, 281 A.2d 393 (A.D.1971).

This section prescribing procedure for certifying a nominating petition requires only that each set of signature sheets be witnessed and certified by five persons and not that all of signatures on petition be witnessed and certified by same five persons. *Petition of Job*, 111 N.J.Super. 170, 268 A.2d 29 (A.D.1970), certification denied 57 N.J. 124, 270 A.2d 27.

**2. Oath**

Affiant attesting to validity of nominating petition who signed affidavit which began "the undersigned being duly sworn upon his oath" but who was not verbally sworn by township clerk accepting petition was properly sworn where she read language in affidavit and knew that she was under oath. *Lebak v. Freck*, 212 N.J.Super. 234, 514 A.2d 856 (L.1986).

Where intent or purpose of candidate or carriers of petition or sheets of petition was not fraudulent and underlying purpose of statutory verification procedure

was attained by independent check of signatures made, pending proceedings, by election clerk's office, testified to in Law Division and found credible by trial judge, and far more than requisite number of qualified signatories in fact signed petition, petition would be upheld though making of verifications was patently careless and affidavits including corrective affidavit were false. *Lawson v. Davis*, 116 N.J.Super. 487, 282 A.2d 784 (A.D.1971).

Where three of the five persons who swore to petition for direct nomination sought nomination by the petition, and, as at least two of them knew that two of the signatures were not genuine, they swore falsely, such falsity rendered petition invalid, even if, eliminating the admittedly false signatures, there still remained the minimum number of signatures required by this section for nomination. *McCaskey v. Kirchoff*, 56 N.J.Super. 178, 152 A.2d 140 (A.D. 1959).

**3. Irregularities in petitions**

Irregularities shown as to a handful of 1474 signatures on nominating petition were insufficient to show any pattern of fraud so as to invalidate the entire petition. *Petition of Job*, 111 N.J.Super. 170, 268 A.2d 29 (A.D.1970), certification denied 57 N.J. 124, 270 A.2d 27.

**4. Exceptions**

The verification provisions in General Election Law do not apply to a petition for special election to adopt municipal-manager form of government for city. *Steger v. Schellenger*, 33 N.J. 293, 163 A.2d 377 (1960).

**19:13-8. Acceptance of nomination; annexation of oath of allegiance**

A candidate nominated for an office in a petition shall manifest his acceptance of such nomination by a written acceptance thereof, signed by his hand, upon or annexed to such petition, to which shall be annexed the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes duly taken and subscribed by him before an officer authorized to take oaths in this State, or if the same person be named for the same office in more than one petition, annexed to one of such petitions. Such acceptance shall certify that the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made. No candidate so named shall sign such

acceptance if he has signed an acceptance for the primary nomination or any other petition of nomination under this chapter for such office. In addition, no candidate named in a petition for the office of member of the House of Representatives shall sign an acceptance if the candidate has signed an acceptance for the primary nomination or any other petition of nomination for the office of member of the House of Representatives in another congressional district in the same calendar year.

Amended by L.1949, c. 24, p. 71, § 2; L.1998, c. 147, § 1, eff. Jan. 1, 1999.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶117, p. 723.

### Library References

Elections ¶146.

WESTLAW Topic No. 144.

C.J.S. Elections § 95.

### Comments

Petition for independent candidate in November general election, see 35A

New Jersey Practice, Pane, App.M. 4.

### Notes of Decisions

Exceptions 3

Oath 5

Qualification of nominee 2

Signature 4

Validity 1

#### 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

#### 2. Qualification of nominee

Candidate for election to the legislature must meet the qualifications for minimum age at the time he is sworn into office, for citizenship and residency by election day, and for entitlement to the

right of suffrage on the day he files a certificate of acceptance with the Secretary of State, be that at the time of filing a petition or upon accepting a write-in nomination. *Atty.Gen.F.O.1980, No. 5.*

#### 3. Exceptions

This section requiring candidate nominated for office in petition to manifest his acceptance of such nomination by written acceptance was inapplicable where plaintiff was not petitioner by direct petition of nomination. *Riecker v. Hartmann*, 130 N.J.Super. 266, 326 A.2d 101 (L.1974).

#### 4. Signature

Any technical defects in municipal council candidate's nomination acceptance and oath of allegiance documents which arose because candidate's signature was "faxed" were cured, where candidate filed his "original" signatures the day after he timely filed the "faxed" petition. *Madden v. Hegadorn*, 236 N.J.Super. 280, 565 A.2d 725 (L.1989), affirmed 239 N.J.Super. 268, 571 A.2d 296.

#### 5. Oath

Any technical defects in candidates' nomination petitions for municipal coun-

cil, due to purported incomplete oath-of-allegiance forms on petitions, were cured where both candidates, within hours of receiving notice of defect, filed amended petitions with clerk, which contained "new" oath-of-allegiance forms, and were

duly sworn and executed before person authorized to take oaths. *Madden v. He-gadorn*, 236 N.J.Super. 280, 565 A.2d 725 (L.1989), affirmed 239 N.J.Super. 268, 571 A.2d 296.

### **19:13-8.1. Direct nomination of unsuccessful primary candidate prohibited**

No petition for direct nomination, including a petition filed pursuant to R.S.19:13-19, which, for any reason, is filed after the deadline established in R.S.19:13-9 shall nominate to any elective public office a candidate who unsuccessfully sought the nomination of a political party to that office in the primary election held in the same calendar year and no unsuccessful primary candidate shall sign an acceptance of such a petition for direct nomination.

L.1998, c. 147, § 7, eff. Jan. 1, 1999.

### **19:13-9. Filing petitions and acceptances; public inspection; transmittals to election law enforcement commission**

All such petitions and acceptances thereof shall be filed with the officer or officers to whom they are addressed before 4:00 p.m. of the day of the holding of the primary election for the general election in this Title provided. All petitions when filed shall be open under proper regulations for public inspection.

Notwithstanding the above provision, all petitions and acceptances thereof nominating electors of candidates for President and Vice President of the United States, which candidates have not been nominated at a convention of a political party as defined by this Title, shall be filed with the Secretary of State before 4:00 p.m. of the 99th day preceding the general election in this Title provided. All petitions when filed shall be opened under proper regulations for public inspection.

The officer or officers shall transmit to the Election Law Enforcement Commission the names of all candidates, other than candidates for federal office, nominated by petition and any other information required by the commission in the form and manner prescribed by the commission and shall notify the commission immediately upon the withdrawal of a petition of nomination.

Amended by L.1948, c. 2, p. 38, § 17; L.1956, c. 53, p. 104, § 1; L.1983, c. 579, § 2, eff. Jan. 17, 1984; L.1984, c. 12, § 2, eff. March 6, 1984; L.1985, c. 92, § 7, eff. March 26, 1985; L.1989, c. 70, § 1, eff. April 14, 1989; L.1998, c. 147, § 2, eff. Jan. 1, 1999.

Assembly State Government Committee Statement  
Assembly No. 2885—L.1989, c. 70

\* \* \* \* \*

This change is proposed because the current law that requires independent candidates for President and Vice President to have their petitions for nomination filed with the Secretary of State at the same time as petitions for nomination for the primary elections are due was found to be unconstitutional in the case of LaRouche v. Burgio, 594 F.Supp. 614 (1984).

Historical and Statutory Notes

Source: L.1930, c. 187, ¶1118, p. 723, Statement: Committee statement to amended by L.1935, c. 253, ¶1, p. 777. Senate, No. 2244—L.1985, c. 92, see Effective date and application of § 18A:9-10. L.1985, c. 92, see Historical Note under § 18A:9-10.

Library References

Elections ⇔145, 146, 156, 157.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 95, 96, 135, 137.

United States Supreme Court

Selection of candidates upon ability to pay fees, see Lubin v. Panish, U.S.Cal. 1974, 94 S.Ct. 1315, 415 U.S. 709, 39 L.Ed.2d 702.

Notes of Decisions

Petitions 3  
Related statutes 2  
Validity 1

1. Validity

Plaintiffs challenging constitutionality of New Jersey statute governing filing of nominating petitions for alternative party candidates established likelihood of success on the merits, as required for preliminary injunction; state advanced no interests which justified statute's early filing deadline, which substantially restricted ability of alternative political parties to react to events occurring after deadline and burdened voters by precluding possibility of independent or alternative party candidates emerging in response to disaffection with major parties, required candidates to gather signatures when election was remote and voters generally

uninterested in campaign, and burdened alternative political parties aspiring to official "party" status. Council of Alternative Political Parties v. Hooks, C.A.3 (N.J.)1997, 121 F.3d 876, on remand 999 F.Supp. 607.

Early filing deadline established in statute governing filing of nominating petitions for alternative party candidates could not be defended on grounds that it prevented major party candidates from reacting to actual or anticipated defeat in primary election by launching independent or alternative party campaign against major party nominee; grounds were too broad, by preventing candidacies of individuals who did not or could not participate in primary election, and too narrow, by allowing candidacies of former major-party candidates breaking with parties before deadline. Council of Alternative Political Parties v. Hooks,

C.A.3 (N.J.)1997, 121 F.3d 876, on remand 999 F.Supp. 607.

Plaintiffs challenging constitutionality of New Jersey statute governing filing of nominating petitions for alternative party candidates seeking placement on general election ballot would be irreparably harmed by denial of preliminary injunctive relief; plaintiffs' voting and associational rights were burdened by their inability to nominate, support, and vote for candidates representing their beliefs, and inadequate opportunity to gain placement on ballot for upcoming election could not be alleviated after election. Council of Alternative Political Parties v. Hooks, C.A.3 (N.J.)1997, 121 F.3d 876, on remand 999 F.Supp. 607.

Finding that harm to New Jersey Secretary of State from grant of preliminary injunction outweighed harm of denial to plaintiffs challenging constitutionality of New Jersey statute governing filing of nominating petitions for alternative political party candidates was clearly erroneous, given that Secretary did not argue this basis in opposition to injunction below, was unable to cite record evidence supporting finding, did not cite any cases denying relief on such basis, and failed to demonstrate state interests justifying statute. Council of Alternative Political Parties v. Hooks, C.A.3 (N.J.)1997, 121 F.3d 876, on remand 999 F.Supp. 607.

Public interest favored granting of preliminary injunctive relief to plaintiffs challenging constitutionality of New Jersey statute governing filing of nominating petitions for alternative political party candidates, in that public interest favored protection of voting and associational rights of alternative political parties, their candidates, and their potential supporters, and given absence of basis for concluding that preliminary relief would negatively impact upcoming election. Council of Alternative Political Parties v. Hooks, C.A.3 (N.J.)1997, 121 F.3d 876, on remand 999 F.Supp. 607.

New Jersey statute establishing deadline for filing petitions necessary to secure place on November general election ballot imposed unconstitutional burden on independent candidate access to general election ballot. Council of Alternative Political Parties v. Hooks, D.N.J. 1998, 999 F.Supp. 607.

Statute setting deadline of 40 days prior to primary election for filing petitions for independent candidates for President and Vice-President of the United States to be placed on ballot was unconstitutional where primary was held on June 5, 1984. LaRouche v. Burgio, D.C.N.J. 1984, 594 F.Supp. 614.

L.1948, c. 2, pp. 29, 38, §§ 1, 17, amending this section and 19:2-1, and changing final day for filing nominating petitions for general election from five to 40 days prior to primary day and changing primary date from first Tuesday in June to third Tuesday in April were not unreasonable, capricious, or arbitrary as applied to one whose direct nominating petition as candidate for representative in Congress was not timely filed under amended statutes, and amended statutes were constitutional. Ring v. Marsh, D.C.N.J.1948, 78 F.Supp. 914, appeal dismissed 69 S.Ct. 84, 335 U.S. 849, 93 L.Ed. 398.

## 2. Related statutes

This section, fixing final day for filing nominating petitions for general elections as forty days prior to primary day must be read in conjunction with § 19:2-1, providing that primary election for delegates and alternates to national conventions and for general election shall be held on third Tuesday in April in each year. Ring v. Marsh, D.C.N.J.1948, 78 F.Supp. 914, appeal dismissed 69 S.Ct. 84, 335 U.S. 849, 93 L.Ed. 398.

Section 19:14-12 directing that drawing of names for position on ballots shall take place on day following last day for filing petitions for general election must be construed with provisions of this section that petitions naming candidates for office to be filled by voters of entire state be addressed to the Secretary of State and that all petitions be filed with officer to whom they were addressed five days previous to day of primary election. In re Murray, 119 N.J.L. 98, 194 A. 443 (1937).

## 3. Petitions

A candidate for elective office may be nominated to run as an independent candidate at general election by a petition signed by the requisite number of qualified persons and filed 40 days before primary election, or he may seek the nomination of the political party with which

## Note 3

he is affiliated at primary election, in which event, 40 days prior to such election he must file a petition signed by specified number of qualified voters who

are members of his political party. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

## 19:13-10. Validity of and objections to petition

Every petition of nomination in apparent conformity with the provisions of this Title shall be deemed to be valid, unless objection thereto be duly made in writing and filed with the officer with whom the original petition was filed not later than the fourth day after the last day for filing of petitions. If such objection is made, notice thereof signed by such officer shall forthwith be mailed to the candidate who may be affected thereby, addressed to him at his place of residence as given in the petition of nomination.

Amended by L.1985, c. 92, § 8, eff. March 26, 1985.

## Historical and Statutory Notes

**Source:** L.1930, c. 187, §119, p. 723.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

## Library References

Elections ⇨ 148 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 120 et seq.

## Notes of Decisions

**Curing of defects 2****Remedies 3****Time of objection 1****1. Time of objection**

Registration on or before final day for filing a direct nominating petition presents no administrative problem with respect to an objector's opportunity to challenge validity of petition, or with respect to verification of signatures by secretary of state. In re *Ross*, 116 N.J.Super. 178, 281 A.2d 393 (A.D.1971).

Action contesting county clerk's certification of defendant as a candidate for office of municipal tax assessor was not an attack on a petition for nomination, and this section imposing a stringent two-day limitation period within which to attack petitions for nomination in apparent conformity with election laws was not applicable in determining whether action

was timely. *Alongi v. Schatzman*, 57 N.J. 564, 274 A.2d 33 (1971).

**2. Curing of defects**

Any technical defects in candidates' nomination petitions for municipal council, due to purported incomplete oath-of-allegiance forms on petitions, were cured where both candidates, within hours of receiving notice of defect, filed amended petitions with clerk, which contained "new" oath-of-allegiance forms, and were duly sworn and executed before person authorized to take oaths. *Madden v. Hegadorn*, 236 N.J.Super. 280, 565 A.2d 725 (L.1989), affirmed 239 N.J.Super. 268, 571 A.2d 296.

**3. Remedies**

Successful candidate at primary election for party nomination for office of mayor could maintain summary proceeding to prevent name of his defeated adversary from being placed on official

ballot as successor independent candidate for same office at general election, without first exhausting administrative remedies by filing written objections to petition of nomination as successor independent candidate and obtaining ruling of county clerk thereon, where clerk had accepted petition for filing and had announced that nominee's name would be placed on ballot. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

Under this section and § 19:13-11, review of officer's action is by a proceeding in lieu of a prerogative writ. *Murray v. Murray*, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

If objection to a candidate's petition of nomination is that although in apparent

conformity with provisions of election law, it in fact fails to comply therewith, remedy is not by complaint to assignment judge under § 19:13-12, but by filing of a written objection under this section with officer with whom petition was filed. *Murray v. Murray*, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

Court action under § 19:13-12 can be maintained whether or not a proceeding has been brought under this section, provided that grounds of alleged invasion of candidate's rights are not concerned solely with sufficiency under election law of a challenged petition of another candidate. *Murray v. Murray*, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

### 19:13-11. Determination of validity of objections

The officer with whom the original petition was filed shall in the first instance pass upon the validity of such objection in a summary way unless an order shall be made in the matter by a court of competent jurisdiction and for this purpose such officer shall have power to subpoena witnesses and take testimony or depositions. He shall file his determination in writing in his office on or before the tenth day after the last day for the filing of petitions, which determination shall be open for public inspection.

In the case of petitions nominating electors of candidates for President and Vice President of the United States, which candidates have not been nominated at a convention of a political party as defined by this Title, the Secretary of State shall file his or her determination in writing in his or her office on or before the 93rd day before the general election, which determination shall be open for public inspection.

Amended by L.1942, c. 50, p. 277, § 1; L.1948, c. 2, p. 39, § 18; L.1985, c. 92, § 9, eff. March 26, 1985; L.1989, c. 70, § 2, eff. April 14, 1989; L.1998, c. 147, § 3, eff. Jan. 1, 1999.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶120, p. 724.

**Effective date and application of** L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statements:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

Committee statement to Assembly, No. 2885—L.1989, c. 70, see § 19:13-9.

#### Library References

Elections ⇄ 153.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 120, 147.



## Notes of Decisions

**Gubernatorial elections 2****Hearings 1****1. Hearings**

Where objector, who occupied an official position on local election board, was afforded two hearing opportunities on his challenge to direct nominating petition of candidate for office of state senator and an extended time to present and sustain his objections, and where reception of challenges to additional signatures after "shut-off date" would have necessitated, in fairness to candidate, still another hearing to afford him an opportunity to refute objector's belated claims, refusal of

hearing officer to consider evidence proffered after fixed deadline was not an unreasonable exercise of his administrative discretion. *In re Ross*, 116 N.J. Super. 178, 281 A.2d 393 (A.D.1971).

**2. Gubernatorial elections**

Secretary of State had jurisdiction to adjudicate objections to nomination petition filed for primary election for office of governor and properly referred dispute to office of administrative law. *Lesniak v. Budzash*, 265 N.J. Super. 165, 625 A.2d 1139 (A.D.1993), certification granted, affirmed 133 N.J. 425, 627 A.2d 1133, affirmed as modified 133 N.J. 1, 626 A.2d 1073.

**19:13-12. Recourse to court by candidates for protection of rights**

Any judge of the Superior Court, in the case of candidates to be voted for by the electors of the entire State or of more than one county thereof, and in all other cases a judge of the Superior Court assigned to the county in which any petition of nomination shall be filed, on the application or complaint, duly verified, of any candidate, which application or complaint shall be made on or before the twelfth day after the last day for the filing of petitions, setting forth any invasion or threatened invasion of his rights under the petition of nomination filed with the Secretary of State or with any county clerk, shall hear such application or complaint in a summary way and make such order thereon as will protect and enforce the rights of such candidates, which order or determination shall be filed within three days after the filing of the application or complaint.

Notwithstanding the above provision, in the case of a nomination petition or petitions for electors of candidates for President and Vice President of the United States, which candidates have not been nominated at a convention of a political party as defined by this Title, any judge of the Superior Court, on the application or complaint, duly verified, of any candidate, which application or complaint shall be made at least 95 days before the general election, setting forth any invasion or threatened invasion of his or her rights under the petition of nomination filed with the Secretary of State, shall hear such application or complaint in a summary way and make such order thereon as will protect and enforce the rights of such candidates,

which order or determination shall be filed within three days after the filing of the application or complaint.

Amended by L.1942, c. 50, p. 278, § 1a; L.1953, c. 19, p. 330, § 14; L.1985, c. 92, § 10, eff. March 26, 1985; L.1989, c. 70, § 3, eff. April 14, 1989; L.1998, c. 147, § 4, eff. Jan. 1, 1999.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶121, p. 724. Committee statement to Assembly, No. 2885—L.1989, c. 70, see § 19:13-9.  
 Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.  
**Statements:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

**Library References**

Elections ⇐154(1) to (13).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 120 to 129, 148.

**Texts and Treatises**

25 Am Jur 2d, Elections §§126, 127.

**Notes of Decisions**

- Hearing 4**
- Invasion of rights 1**
- Municipal elections 3**
- Public rights 2**
- Remedies 5**

Murray, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

Complaint alleging that defendant did not file his candidacy, in good faith but for sole purpose of deceiving, defrauding and confusing electorate by reason of substantial identity of names of plaintiff and defendant would, if proved, constitute an invasion of plaintiff's rights. Murray v. Murray, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

Under this section authorizing Supreme Court justice to protect threatened invasion of candidate's rights under any petition of nomination, the justice is not limited to consideration of rights of candidate directly nominated by petition, notwithstanding that the section appears in this article dealing with "direct nominations by petition." Conroy v. Nulton, 134 N.J.L. 471, 48 A.2d 831 (1946).

**1. Invasion of rights**

Rule that petition for office may not be amended after deadline for filing petition so as to change the office being sought does not invalidate a candidate's rights under this section pertaining to recourse to court by candidates for protection of rights. Lepre v. Caputo, 131 N.J.Super. 118, 328 A.2d 650 (L.1974).

Where federal and state Constitutions did not fix time when qualifications for a member of House of Representatives must be satisfied, and state statute did not deny person right to be candidate despite his lack of age, which might delay, if not prevent, his being seated, if he were nominated and elected, candidacy of defendant, not 25 years of age, for House of Representatives was not an invasion of another candidate's rights within meaning of this section. Murray v.

The refusal of county clerk to accept resignation of candidate by petition of nomination was so closely tied up with petition of nomination as to be a threatened invasion of candidate's rights under petition of nomination within this section authorizing supreme court justice to pro-

## Note 1

tect such a threatened invasion. *Conroy v. Nulton*, 134 N.J.L. 471, 48 A.2d 831 (1946).

**2. Public rights**

This section authorizing a Superior Court justice to protect a threatened invasion of a candidate's rights under any petition of nomination if complaint is made at least 36 days before election does not apply to an action instituted by a resident and voter to vindicate the public right by requiring public officials to comply with the law; thus, although plaintiff in action contesting county clerk's certification of defendant as a candidate for office of municipal tax assessor was a candidate for such office, where he was also a citizen and taxpayer, and was complaining in this latter capacity, this section was not applicable for purpose of determining whether action was timely. *Alongi v. Schatzman*, 57 N.J. 564, 274 A.2d 33 (1971).

This section does not apply to an action which could be instituted by any resident and voter to vindicate the public right to require public officials to comply with provisions of pertinent statutes in the conduct of primary elections, hence a candidate seeking to vindicate such public right is not barred by the limitation prescribed in the statute. *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

**3. Municipal elections**

This section has no application to municipal elections under the Walsh Act, which makes no provision for recourse to court for such protection, and hence proceeding in lieu of prerogative writs would lie to compel city clerk to remove name

of withdrawn candidate from ballot as a proceeding to review acts of a public official for which no other method of review is provided. *Introcaso v. Burke*, 3 N.J.Super. 276, 65 A.2d 786 (L.1949).

**4. Hearing**

Testimony limited to challenges of validity of signatures on defendant's petition, and to sufficiency of execution of affidavit appended to it, were insufficient to show that irregularities claimed were incidents of a scheme or plan by defendant to confuse voters and adversely affect plaintiff's candidacy, and plaintiff was not entitled to relief. *Murray v. Murray*, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

**5. Remedies**

Under this section judge performs his duty as legislative agent in a summary way, but the power granted is not one which court is required to exercise in every case, and relief which may be justified in given cases between candidates, or between candidates and public officials, may be granted only partly, or denied altogether, when private interests of candidate conflict with overriding public consideration. *Murray v. Murray*, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

If objection to a candidate's petition of nomination is that although in apparent conformity with provisions of election law, it in fact fails to comply therewith, remedy is not by complaint to assignment judge under this section, but by filing of a written objection under § 19:13-10, with officer with whom petition was filed. *Murray v. Murray*, 7 N.J.Super. 549, 72 A.2d 421 (L.1950).

**19:13-13. Amendment of defective petitions; time for**

A candidate whose petition of nomination, or any affidavit or affidavits thereto, is defective may cause such petition, or the affidavit or affidavits thereto, to be amended in matters of substance or of form as may be necessary, but not to add signatures, or such amendment or amendments may be made by filing a new or substitute petition, or affidavit or affidavits, and the same when so amended shall be of the same effect as if originally filed in such amended form; but every amendment shall be made on or before the tenth day after the last day for the filing of petitions. This provision shall be liberally construed to protect the interest of candidates.

Notwithstanding the above provision, in the case of nomination petitions for electors for candidates for President and Vice President of the United States, which candidates have not been nominated at a convention of a political party as defined by this Title, every statutorily authorized amendment shall be made on or before the 93rd day before the general election.

Amended by L.1948, c. 2, p. 39, § 19; L.1985, c. 92, § 11, eff. March 26, 1985; L.1989, c. 70, § 4, eff. April 14, 1989; L.1998, c. 147, § 5, eff. Jan. 1, 1999.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶122, p. 725.

Committee statement to Assembly, No. 2885—L.1989, c. 70, see § 19:13-9.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statements:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

**Library References**

Elections ⇨141 et seq., 155.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 91, 106 et seq., 138.

**Notes of Decisions**

**Evidence 6**

**New petitions 5**

**Purpose of amendment 2**

**Related statutes 1**

**Signatures 4**

**Time for filing 3**

**1. Related statutes**

Where § 19:23-12 prior to 1942 amendment required certificate of nomination to fill a vacancy to be filed 17 days prior to the election, amendment thereof requiring certificate to be filed 34 days prior to election required exclusion of candidates from ballot for General Assembly and certain county offices, where certificate of acceptance, nomination and affidavit correcting prior irregularities was filed on the 34th day prior to the primary election, as against the contention that this section permitting amendment of defective petitions up to 20 (now 34 days) days before the election governed in view of § 19:23-58. *Berry v. Gates*, 129 N.J.L. 1, 28 A.2d 59 (1942).

**2. Purpose of amendment**

This section which allows amendments to nominating petition does so only to let a defective petition be corrected. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650 (L.1974).

Positions of borough councilman for three-year term and of councilman for unexpired one-year term were separate and distinct offices for purposes of rule that petition for office may not be amended after deadline for filing petition so as to change the office being sought. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650 (L.1974).

**3. Time for filing**

Any technical defects in municipal council candidate's nomination acceptance and oath of allegiance documents which arose because candidate's signature was "faxed" were cured, where candidate filed his "original" signatures the day after he timely filed the "faxed" petition. *Madden v. Hegadorn*, 236 N.J.Super. 280, 565 A.2d 725 (L.1989), affirmed 239 N.J.Super. 268, 571 A.2d 296.

Right of petitioners to amend nomination petitions prior to primary election so as to cure any defects found present should not be defeated by delay necessitated because of petitioners' recourse to court rather than to township clerk for handling of objections. *In re Chirico*, 87 N.J.Super. 587, 210 A.2d 415 (A.D.1965).

After nominating petitions had been timely filed and township clerk was prevented from disposing of objections when petitioners went immediately before assignment judge of county to have him deal with objections, which he did as promptly as possible, objectors could not invoke statutory rule requiring filing of corrective amendments 34 days before primary election, and corrective amendments filed within the 3-day period allowed by court were timely. *In re Chirico*, 87 N.J.Super. 587, 210 A.2d 415 (A.D. 1965).

#### 4. Signatures

Prohibition against added signatures in this section pertaining to amendment of petition of nomination of candidate or affidavit thereto did not refer to those who executed certification but to those who appended their names to main part of nominating petitions and trial judge could properly permit plaintiffs to amend their petitions by having five of voters who had signed them execute certification instead of the one, two or three who were affiants to original petitions. *Petition of Feldman*, 116 N.J.Super. 127, 281 A.2d 212 (A.D.1971).

#### 5. New petitions

Nominating petition challenger whose challenge to petition filed by candidate on

last permissible date was upheld was entitled to challenge new petition which was filed on same day where this section otherwise provided for no effective protection for challenger against defective new or amended nominating petition, provided challenge was filed within reasonable time and not later than 45 days after accrual of right to review, hearing, or relief claimed, and provided filing occurred within time for county clerk to arrange for printing of ballots. *Lebak v. Freck*, 212 N.J.Super. 234, 514 A.2d 856 (L.1986).

Candidate whose nominating petition was declared invalid could amend defective petition by circulating and filing entirely new petition, correctly executed. *Lebak v. Freck*, 212 N.J.Super. 234, 514 A.2d 856 (L.1986).

#### 6. Evidence

For candidate, who asserted that it had been his intent to run for unexpired term on borough council, to be entitled to have designation of his candidacy changed, after deadline for filing, from "borough council" to "Councilman 1-Year Unexpired Term" candidate had to offer clear and convincing proof that he did not properly designate office he was seeking and that signers of petition were informed that office sought was not office stated in petition; such evidential requirement was not met by candidate's bare assertion that he advised all signers that he was running for office different than that stated in petition. *Lepre v. Caputo*, 131 N.J.Super. 118, 328 A.2d 650 (L.1974).

### ARTICLE 3. BY PRIMARY ELECTION

#### Library References

Elections ⇨ 126(1) et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 111 et seq.

#### 19:13-14. Procedure; highest aggregate of votes to determine party candidates

The nomination of candidates for the general election by means of the primary election shall be carried out in the manner hereinafter provided, and in such election the person having in the aggregate the

highest number of votes shall be the candidate of his respective party for the office to be filled. In case more than one person is to be elected to the same or similar office, the persons having the highest number of votes to the extent of the number of offices to be filled shall be the candidates of their respective parties for such offices.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §123, p. 725.

**Library References**

**Texts and Treatises**

25 Am Jur 2d, Elections § 147.

**United States Supreme Court**

Access to ballots by minor party candidates, minimum number of primary votes required, see *Munro v. Socialist Workers*

Party, U.S.Wash.1986, 107 S.Ct. 533, 479 U.S. 189, 93 L.Ed.2d 499.

**Notes of Decisions**

**Absence or failure of nomination 1  
Deceased, disqualified or ineligible candidate 2**

**1. Absence or failure of nomination**

Where a vacancy existed in the board of chosen freeholders, which electors could fill, an election was not void because no one was nominated at the primaries; failure, through neglect or ignorance, to name candidates in the prescribed manner not depriving qualified electors of their rights. *Wescott v. Scull*, 87 N.J.L. 410, 96 A. 407 (1915).

**2. Deceased, disqualified or ineligible candidate**

Votes cast for a deceased, disqualified or ineligible person, although ineffective

to elect such person, are not to be treated as void or thrown away but are to be counted in determining result as regards other candidates. *Petition of Keogh-Dwyer*, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

Where a candidate dies after time limited for replacing his name on primary ballot but before the election, and yet holds sufficient votes for nomination, his nomination is not null and void but creates a vacancy to be filled by party committee. *Petition of Keogh-Dwyer*, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

**19:13-14.1. Candidate of political party in primary ineligible to be candidate of other political party in general election**

A person whose name appears on the ballot at a primary election as a candidate for nomination by a political party for any municipal office shall not be eligible to serve as the candidate of any other political party for that office in that municipality at the general election following that primary.

L.1990, c. 57, § 3, eff. July 6, 1990.

### Historical and Statutory Notes

**Title of Act:** amending N.J.S. 40A:16-11 and 40A:16-13 and supplementing Title 19 of the Revised Statutes.  
 An Act concerning the filling of certain vacancies in municipal government and among candidates in municipal elections,

#### ARTICLE 4. BY STATE CONVENTION [COMMITTEE]

### 19:13-15. Presidential and vice presidential electors; presidential candidates; committees on vacancies; acceptances; objections to certificates

In presidential years the State committee of a political party shall meet at the call of its chairman, within 1 week following the closing of the party's national convention, for the purpose of nominating candidates for electors of President and Vice-President of the United States and shall certify such nomination in a written or printed or partly written and partly printed certificate of nomination.

The certificate of nomination shall contain the name of each person nominated, his residence and post-office address, the office for which he is named, and shall also contain in not more than 3 words the designation of the party the nominating body represents. The names of the candidates for President and Vice-President for whom such electors are to vote may be included in the certificate. The State committee may also appoint a committee to whom shall be delegated the power to fill vacancies, howsoever caused, and the names and addresses of such committee shall be included in the certificate.

The certificate shall be signed by the State chairman who shall make oath before an officer authorized to administer the same that he is the State chairman of the political party and that the certificate and statements therein contained are true to the best of his knowledge and belief. A certificate that such oath has been taken shall be made and signed by the officer administering the same and indorsed upon or attached to the certificate of nomination. Inclosed upon or attached to the certificate shall be statements in writing that the persons named therein accept such nominations and the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes duly taken and subscribed by each or all of them before an officer or officers authorized to take oaths in this State.

The certificate of nomination and the acceptance thereof shall be filed with the Secretary of State not later than 1 week after the nomination of such electors of President and Vice-President of the United States.

The procedure for all objections to the certificates of nomination, the determination of the validity of such objections, the correction of defective certificates, and the presentation of such certificates and any documents attached thereto, shall be the same as herein provided for direct petitions of nominations.

Amended by L.1944, c. 157, p. 588, § 1; L.1949, c. 24, p. 72, § 3; L.1968, c. 87, § 1, June 21, 1967.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶124, p. 725.

**Library References**

Elections ⇨138, 146, 154(1).  
WESTLAW Topic No. 144.

C.J.S. Elections §§ 95, 120, 123, 135, 148.

**Texts and Treatises**

25 Am Jur 2d, Elections § 145.

**Notes of Decisions**

**Validity 1**

**1. Validity**

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party posi-

tion, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

**ARTICLE 5. VACANCIES AMONG NOMINEES**

**A. RESIGNATIONS**

**Library References**

Elections ⇨146, 147.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 93, 95, 136.

**19:13-16. Notice to election official; time for**

When a person nominated as herein provided by direct petition or State convention for election to public office at the general election shall, at least 60 days before the day of the general election, in a writing signed by him and duly acknowledged, notify the officer with whom the original petition or certificate of nomination was filed that he declines the nomination, the nomination shall be void.

Amended by L.1942, c. 50, p. 278, § 2; L.1985, c. 92, § 12, eff. March 26, 1985.



### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶125, p. 726.  
**Effective date and application of**  
 L.1985, c. 92, see Historical Note under  
 § 18A:9-10.

**Statement:** Committee statement to  
 Senate, No. 2244—L.1985, c. 92, see  
 § 18A:9-10.

### Notes of Decisions

#### Definitions 1

#### Limitations on withdrawal 2

#### Time of notice 3

##### 1. Definitions

The words "nominee," "nomination," and "vacancy" as used in the election law should be given their common meaning in absence of a specific definition or indication that the words have an unusual or different meaning. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

##### 2. Limitations on withdrawal

A candidate for public office has an inherent right to resign as such candidate, subject to reasonable legislative restrictions and overriding public considerations in any circumstances where to accord the right of withdrawal would be inimical to the public interest. *Introcaso v. Burke*, 3 N.J.Super. 276, 65 A.2d 786 (L.1949).

##### 3. Time of notice

Evidence disclosed no such overriding public consideration as would preclude

candidate for office of city commissioner from withdrawing his candidacy after last day for filing nominating petitions but 35 days (now 60 days) before election, since withdrawn candidate's name could be deleted from ballot strips for use in voting machines or new strips printed and new military service ballots with his name deleted could be substituted. *Introcaso v. Burke*, 3 N.J.Super. 276, 65 A.2d 786 (L.1949).

Where 30th day before election [now 60 days] falls on Sunday, candidate desiring to withdraw could do so by presenting certificate of declination to Secretary of State on following Monday. In *re Scott*, 2 N.J. Misc. 1058 (1924).

Under provision for a withdrawal from candidacy 30 days before election [now 60 days], where the final day for withdrawal falls on a Sunday, if the declination be made the following Monday, it would not be filed too late to take effect. *Seglie v. McGovern*, 2 N.J. Misc. 1018 (1924).

### 19:13-17. Notice of declination to signers of petition or committees to fill vacancies

The officer to whom the notification of declination is given shall forthwith, by mail or otherwise, inform at least 5 of the persons who signed the original petition that such nomination has been declined; except that in the case of the nomination of electors of President and Vice-President of the United States by the State committee of a political party he shall inform the committee appointed by the State committee to fill vacancies, or if there be no such committee, the chairman of the State committee.

Amended by L.1968, c. 87, § 2, eff. June 21, 1968.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶126, p. 727.

B. FILLING VACANCIES

19:13-18. In general

When a person so declines his nomination, or if a petition or certificate of nomination, or if any nomination, be insufficient or inoperative, or if a nominee shall die, or for any reason vacate his nomination, the vacancy so occasioned may be filled in the manner outlined in the succeeding sections.

Historical and Statutory Notes

Source: L.1930, c. 187, ¶127, p. 727.

Library References

Texts and Treatises

25 Am Jur 2d, Elections §§137 et seq.

Notes of Decisions

Nomination 1

refer as well to process by which one's name is, by write-in process, offered or proposed for place on ballot. *Fields v. Hoffman*, 105 N.J. 262, 520 A.2d 751 (1987).

1. Nomination

"Nomination" as used in this section relating to nomination of candidate in event of vacancy was not intended to refer exclusively to gaining of sufficient number of votes, either write-ins or those for candidate named by petition process, to permit one's name to be placed on general election ballot; it was intended to

The words "nominee," "nomination," and "vacancy" as used in the election law should be given their common meaning, in absence of a specific definition or indication that the words have an unusual or different meaning. *Fiscella v. Nulton*, 22 N.J. Super. 367, 92 A.2d 103 (A.D.1952).

19:13-19. Vacancies among direct petition nominees filled by direct nomination

If the candidate vacating the nomination was nominated directly by petition his successor shall be nominated in the same manner by direct petition, which new petition of nomination must be filed with the Secretary of State or county clerk, as the case may require, not later than 54 days before the day of election whereat such candidate is to be voted for.

Amended by L.1942, c. 50, p. 278, § 3; L.1985, c. 92, § 13, eff. March 26, 1985.

Historical and Statutory Notes

Source: L.1930, c. 187, ¶128, p. 727.

Statement: Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

## Library References

Elections ⇨ 147.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 93, 136.

## Texts and Treatises

25 Am Jur 2d, Elections § 138.

## Notes of Decisions

Filing date 3

Primary election candidates 1

Purpose 2

### 1. Primary election candidates

Though independent candidate for office of mayor, nominated by direct petition, withdrew after primary election, unsuccessful candidate at primary election for party nomination for such office could not have his name printed on official ballot as successor independent candidate for office of mayor at general election, notwithstanding compliance with provision of this section for nominating successor to candidate nominated by direct petition who has withdrawn. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

Though his name could not be printed on official ballot as independent candidate for office of mayor at general election, unsuccessful candidate at primary election for party nomination for such office was nevertheless entitled to be a candidate for such office at general election on a write-in or sticker basis, and qualified electors were entitled to vote for

him by such means. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

### 2. Purpose

Intent of Legislature in requiring that vacancies in nominations for election to county office at general election be filled 34 days before general election is to afford election officials sufficient time in which to attend mechanics of preparing for general election. *Kilmurray v. Gilfert*, 10 N.J. 435, 91 A.2d 865 (1952).

### 3. Filing date

Disqualifying candidate for city council on ground that petition for nomination was not filed at least 54 days prior to election would be inappropriate after court found inapplicable statutory procedure of committee on vacancies that nominated candidate; although 29 days remained before election, municipal clerk still had time to print ballots and give notice to local newspapers, and disqualifying candidate would be against public policy of affording voters opportunity to make a choice. *Fulbrook v. Reynolds*, 304 N.J.Super. 125, 698 A.2d 564 (L.1997).

## 19:13-20. Vacancies among primary election nominees; procedure for filling

In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the 51st day before the general election, or in the event of inability to select a candidate because of a tie vote at such primary, a candidate shall be selected in the following manner:

a. (1) In the case of an office to be filled by the voters of the entire State, the candidate shall be selected by the State committee of the political party wherein such vacancy has occurred.

(2) In the case of an office to be filled by the voters of a single and entire county, the candidate shall be selected by the county commit-

tee in such county of the political party wherein such vacancy has occurred.

(3) In the case of an office to be filled by the voters of a portion of the State comprising all or part of two or more counties, the candidate shall be selected by those members of the county committees of the party wherein the vacancy has occurred who represent those portions of the respective counties which are comprised in the district from which the candidate is to be elected.

(4) In the case of an office to be filled by the voters of a portion of a single county, the candidate shall be selected by those members of the county committee of the party wherein the vacancy has occurred who represent those portions of the county which are comprised in the district from which the candidate is to be elected.

At any meeting held for the selection of a candidate under this subsection, a majority of the persons eligible to vote thereat shall be required to be present for the conduct of any business, and no person shall be entitled to vote at that meeting who is appointed to the State committee or county committee after the seventh day preceding the date of the meeting.

In the case of a meeting held to select a candidate for other than a Statewide office, the chairman of the meeting shall be chosen by majority vote of the persons present and entitled to vote thereat. The chairman so chosen may propose rules to govern the determination of credentials and the procedures under which the meeting shall be conducted, and those rules shall be adopted upon a majority vote of the persons entitled to vote upon the selection. If a majority vote is not obtained for those rules, the delegates shall determine credentials and conduct the business of the meeting under such other rules as may be adopted by a majority vote. All contested votes taken at the selection meeting shall be by secret ballot.

b. (1) Whenever in accordance with subsection a. of this section members of two or more county committees are empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairmen of said county committees, acting jointly not later in any case than the seventh day following the occurrence of the vacancy, to give notice to each of the members of their respective committees who are so empowered of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

(2) Whenever in accordance with the provisions of subsection a. of this section members of a county committee are empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of such county committee, not later in any case than the seventh day following the occurrence of the vacancy, to give notice to

each of the members of the committee who are so empowered of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

(3) A county committee chairman or chairmen who call a meeting pursuant to paragraph (1) or (2) of this subsection shall not be entitled to vote upon the selection of a candidate at such meeting unless he or they are so entitled pursuant to subsection a.

(4) Whenever in accordance with the provisions of subsection a. of this section the State committee of a political party is empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of that State committee to give notice to each of the members of the committee of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

c. Whenever a selection is to be made pursuant to this section to fill a vacancy resulting from inability to select a candidate because of a tie vote at a primary election, the selection shall be made from among those who have thus received the same number of votes at the primary.

d. A selection made pursuant to this section shall be made not later than the 48th day preceding the date of the general election, and a statement of such selection shall be filed with the Secretary of State or the appropriate county clerk, as the case may be, not later than said 48th day, and in the following manner:

(1) A selection made by a State committee of a political party shall be certified to the Secretary of State by the State chairman of the political party.

(2) A selection made by a county committee of a political party, or a portion of the members thereof, shall be certified to the county clerk of the county by the county chairman of such political party; except that when such selection is of a candidate for the Senate or General Assembly or the United States House of Representatives the county chairman shall certify the selection to the State chairman of such political party, who shall certify the same to the Secretary of State.

(3) A selection made by members of two or more county committees of a political party acting jointly shall be certified by the chairmen of said committees, acting jointly, to the State chairman of such political party, who shall certify the same to the Secretary of State.

e. A statement filed pursuant to subsection d. of this section shall state the residence and post office address of the person so selected,

and shall certify that the person so selected is qualified under the laws of this State to be a candidate for such office, and is a member of the political party filling the vacancy. Accompanying the statement the person endorsed therein shall file a certificate stating that he is qualified under the laws of this State to be a candidate for the office mentioned in the statement, that he consents to stand as a candidate at the ensuing general election and that he is a member of the political party named in said statement, and further that he is not a member of, or identified with, any other political party or any political organization espousing the cause of candidates of any other political party, to which shall be annexed the oath of allegiance prescribed in R.S. 41:1-1 duly taken and subscribed by him before an officer authorized to take oaths in this State. The person so selected shall be the candidate of the party for such office at the ensuing general election.

Amended by L.1942, c. 50, p. 279, § 1; L.1945, c. 263, p. 794, § 1; L.1948, c. 261, p. 1136, § 1; L.1949, c. 24, p. 73, § 4; L.1972, c. 181, § 1, eff. Dec. 12, 1972; L.1981, c. 346, § 1, eff. Dec. 22, 1981; L.1985, c. 92, § 14, eff. March 26, 1985; L.1988, c. 126, § 1, eff. Sept. 16, 1988, operative Nov. 8, 1988.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187 ¶129, p. 727.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

Section 12 of L.1988, c. 126, approved Sept. 16, 1988, provides:

"This act shall take effect immediately but shall remain inoperative until the

adoption of Assembly Concurrent Resolution No. 40 of 1988 [adopted at general election on Nov. 8, 1988] or legislation having like effect."

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

**Notes of Decisions**

- Defects or irregularities** 5
- Independent candidates** 4
- Limitations** 2
- Removal of name from ballot** 6
- Vacancy** 3
- Validity** 1

view of fact that it relates to eligibility to run as nominee of particular party, not to eligibility to hold office. *Stevenson v. Gilfert*, 13 N.J. 496, 100 A.2d 490 (1953).

Requirement of this section that candidate must be a member of the political party filling the vacancy is constitutional. *Stevenson v. Gilfert*, 13 N.J. 496, 100 A.2d 490 (1953).

**1. Validity**

This section does not limit the privilege of voters to choose whom they please at the election, does not restrict any candidate from standing for office as a write-in candidate or as an independent candidate where statutory provisions relating to direct nominations have been fulfilled, and does not constitute an additional qualification or eligibility requirement for office beyond those required in constitution, in

Portion of this section requiring party candidate to certify that he was member of political party which nominated him and that he was not member of or identified with any other party and that he had not voted in primary election for any other political party within two years or contributed to campaign funds of any other political party within one year prior to last primary election was invalid. *Ganz*

## Note 1

v. Johnson, 9 N.J.Super. 565, 75 A.2d 831 (L.1950).

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

## 2. Limitations

Intent of Legislature in requiring by statute that vacancies in nominations for election to county office at general election be filled 34 days before general election is to afford election officials sufficient time in which to attend mechanics of preparing for general election. *Kilmurray v. Gilfert*, 10 N.J. 435, 91 A.2d 865 (1952).

## 3. Vacancy

Vacancy existing in party's candidacy for state legislative seat was properly filled by county party organizations' selection of candidate to run for special election, even though chairpersons did not give notice of meeting to be held for purpose of filling that vacancy within seven days after its occurrence; that time limit was not mandatory. *Catania v. Haberle*, 123 N.J. 438, 588 A.2d 374 (1990).

Where there was no Democratic nominee for mayor on Democratic ballot and plaintiff received largest number of write-in votes, plaintiff was properly nominated, and there was no "vacancy" to be filled pursuant to this section. *Riecker v. Hartmann*, 130 N.J.Super. 266, 326 A.2d 101 (L.1974).

When a candidate dies after time limited for replacing his name on primary ballot but before the election, and yet holds sufficient votes for nomination, his nomination is not null and void but creates a vacancy to be filled by party com-

mittee. *Petition of Keogh-Dwyer*, 106 N.J.Super. 567, 256 A.2d 314 (L.1969), affirmed 54 N.J. 523, 257 A.2d 697.

Legislature intended that this section should be applicable regardless of the cause of the vacancy. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D. 1952).

## 4. Independent candidates

This section applies only to party candidates nominated by petition to run in primaries. *Hutchinson v. McDermott*, 5 N.J. Misc. 917, 138 A. 706 (1927).

## 5. Defects or irregularities

Candidate whose name was certified to county clerk by political party and whose certificate of acceptance complied with this section in all respects, except that it did not set forth that candidate was not member of, or identified with any other political party or political organization espousing cause of candidates of any other political party and that he had not voted in primary election of any other political party in last two primary elections, or contributed to campaign funds of any other political party within one year prior to last primary election, was entitled to have his name placed on official and sample ballots as candidate for office. *Ganz v. Johnson*, 9 N.J.Super. 565, 75 A.2d 831 (L.1950).

## 6. Removal of name from ballot

Where efforts were made by both plaintiffs to seek a remedy through offices of the county clerk, the local Republican Party and the state board of elections without success, ultimately culminating in one plaintiff retaining present counsel to file action seeking to have name of defendant removed from ballot, or, in the alternative, the ballots having already been printed, exclusion of defendant's name in tabulation of results, there was no bar under this section to present action nor was action barred by laches. *Mays v. Penza*, 179 N.J.Super. 175, 430 A.2d 1140 (L.1980).

## 19:13-20.1. Candidate vacancy not filled

If there is no candidate on the primary election ballot of a political party for nomination for election to a public office in the general election and no write-in candidate for nomination for that office

receives the minimum number of write-in votes necessary for nomination at a primary election pursuant to section 1 of P.L.1981, c. 264 (C. 19:14-2.1) and R.S. 19:23-8, a vacancy shall not be deemed to exist and the provisions of R.S. 19:13-20 shall not be applicable. L.1990, c. 56, § 1, eff. July 6, 1990.

**Senate State Government and Federal and Interstate  
Relations Committee Statement**

**Senate, No. 272—L.1990, c. 56**

The Senate State Government and Federal and Interstate Relations Committee reports favorably and with committee amendments Senate, No. 272.

This bill provides that if there is no candidate on a primary election ballot of a political party for nomination for election to a public office in a general election and no write-in candidate for nomination to that office receives the minimum number of write-in votes necessary for nomination at a primary election, a vacancy shall not be deemed to exist and the provisions of R.S. 19:13-20 (which establishes a procedure for filling vacancies among primary election nominees) shall not be applicable.

The bill also eliminates the use of the procedure under R.S. 19:13-20 in selecting a candidate to fill a legislative vacancy at a general election if that vacancy occurs on or before the sixth day preceding the last day for filing petitions for nomination for the primary election (such a selection in these circumstances would be made at the primary election).

This bill was pre-filed for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

**COMMITTEE AMENDMENTS**

The committee amended the bill to eliminate the use of R.S. 19:13-20 for candidate selection to fill a legislative vacancy at a general election if that vacancy occurs on or before the sixth day preceding the last day for filing petitions for nomination for the primary election.

**Historical and Statutory Notes**

**Title of Act:**

An Act concerning primary elections, amending P.L.1988, c. 126, and supplementing Title 19 of the Revised Statutes.

**19:13-21. Vacancies among state convention nominees; certificate; oath of allegiance**

If the nomination vacated is that of a candidate for elector of the President and Vice-President of the United States, the vacancy shall be filled by the committee to whom power shall have been delegated



to fill vacancies if such there be, otherwise by the State committee of the political party which nominated the elector whose nomination is vacated. The chairman and secretary of the vacancy committee or State committee shall file with the Secretary of State on or before the 48th day prior to the general election a certificate of nomination for filling the vacancy. This certificate shall be made and filed in the same manner and form as heretofore provided for filling vacancies among candidates nominated at the primary and there shall be annexed thereto the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes duly taken and subscribed by the person so nominated before an officer authorized to take oaths in this State. Amended by L.1942, c. 50, p. 280, § 5; L.1949, c. 24, p. 75, § 5; L.1968, c. 87, § 3, eff. June 21, 1968; L.1985, c. 92, § 15, eff. March 26, 1985.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶130, p. 728. **Statement:** Committee statement to Senate, No. 2244-L.1985, c. 92, see § 18A:9-10.  
**Effective date and application of** L.1985, c. 92 see Historical Note under § 18A:9-10.

### Notes of Decisions

#### Validity 1

#### 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party posi-

tion, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

## ARTICLE 6. CERTIFICATION OF NOMINEES

### Library References

Elections ⇌ 156.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 135.

### 19:13-22. Secretary of State; statement to county clerks of nominations; vacancies

The Secretary of State, not later than eighty-six days before any election whereat any candidates nominated in any direct petition or primary certificate of nomination or State convention certificate filed with him are to be voted for, shall make and certify, under his hand and seal of office, and forward to the clerks of the several counties of the State a statement of all such candidates for whom the voters

within such county may be by law entitled to vote at such election. This statement, in addition to the names of the candidates for President and Vice-President of the United States, if any such have been included in any such certificate or petition filed with him, shall contain the names and residences of all other candidates, the offices for which they are respectively nominated, and the names of the parties by which or the political appellation under which they are respectively nominated. Candidates nominated directly by petition, without distinctive political appellation, shall be certified as independent candidates. Similar statements shall be made, certified and forwarded, when vacancies are filled subsequently, according to law. Amended by L.1942, c. 50, p. 280, § 6; L.1948, c. 2, p. 39, § 20; L.1977, c. 431, § 2, eff. Feb. 28, 1978.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §131, p. 729.

**Notes of Decisions**

**Validity 1**

**1. Validity**

New Jersey requirements, that Secretary of State certify to county clerks names of all candidates nominated by direct petition not more than 86 days

before general election, that county clerks conduct drawing 86 days before election to determine ballot positions of candidates and print ballots thereafter, are valid reasonable regulations ensuring fairness among candidates, notice to public, and administrative ease in conducting elections. *LaRouche v. Burgio*, D.C.N.J. 1984, 594 F.Supp. 614.

**19:13-23. Secretary of State to county clerks of vacancy nominations; contents**

In the event of vacancies among the candidates whose petitions or certificate of nomination are on file with him, the Secretary of State in certifying the nominations of candidates to fill such vacancies to the various county clerks shall insert the name of the person who has been nominated as herein provided to fill the vacancy. In the event that he has already sent forward his certificate of nomination, as herein provided, he shall forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom such nominee is submitted.

Amended by L.1942, c. 50, p. 281, § 6a.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §132, p. 729.

## CHAPTER 14

### BALLOTS

#### ARTICLE 1. OFFICIAL BALLOT

##### Section

- 19:14-1. Printer's copy; time for delivery; office copy for public inspection.
- 19:14-2. Contents; names of candidates; public questions.
- 19:14-2.1. Inclusion on general election ballot of candidate with votes in primary by irregular ballot or write-in vote; requirements.
- 19:14-3. Detachable coupon; printing thereon.
- 19:14-4. Head of the ballot; form and contents; instructions.
- 19:14-5. Printing body of ballot.
- 19:14-6. Column designations; accompanying instructions.
- 19:14-7. Printed rulings on ballot.
- 19:14-8. Arrangement of titles of office and names of candidates in party columns and personal choice column.
- 19:14-8.1. Ballots for presidential electors.
- 19:14-9. Duplicate nominations for same office; selection of column and designation.
- 19:14-10. Nomination by petition columns; arrangement of titles of offices; groupings.
- 19:14-11. Repealed.
- 19:14-12. Drawing for position on ballot; procedure; public announcement; bracketing names.
- 19:14-13. Arrangement of public questions.
- 19:14-14. Public questions at foot of ballot; instructions to voters.
- 19:14-15. Repealed.
- 19:14-16. Style of type, rulings and spacings.
- 19:14-17. Repealed.
- 19:14-18. Number of ballots on hand.
- 19:14-19. Custody of printed ballots.
- 19:14-20. Correction of errors.

#### ARTICLE 2. SAMPLE BALLOTS

- 19:14-21. Preparation; delivery of sample ballots and envelopes to municipal clerk or commissioner of registration.
- 19:14-22. Form and contents; color of paper.
- 19:14-23. Envelopes for mailing official general election sample ballots.
- 19:14-24. Delivery by municipal clerks to district boards.
- 19:14-25. Mailing by district board or commissioner of registration; duties of county board of elections.
- 19:14-26. Preservation of envelopes and ballots returned by postmaster.

#### ARTICLE 3. PRINTING AND DISTRIBUTION WITH SAMPLE BALLOTS OF REFERENDUM INFORMATION

- 19:14-27. Inclusion with sample ballot; other arrangements in certain counties.
- 19:14-28. Descriptive marks in case of amendments.
- 19:14-29. Relation to statute or constitution made clear.

**Section**

- 19:14-30. Attorney general to designate information to be sent.  
19:14-31. Summary statement sufficient.  
19:14-32. Printing and delivery by secretary of state.  
19:14-33. When referendum notices unnecessary.

**ARTICLE 4. DELIVERY OF BALLOTS, EQUIPMENT AND SUPPLIES**

- 19:14-34. County clerks to municipal clerks; packages sealed; record of delivery; receipts.  
19:14-35. Municipal clerk to member of district board; delivery by member of board to board; receipts.

**Library References**

- Elections ⇨ 161 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 149 et seq.

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**ARTICLE 1. OFFICIAL BALLOT****19:14-1. Printer's copy; time for delivery; office copy for public inspection**

Every county clerk shall have ready for the printer on or before the 43rd day prior to the general election a copy of the contents of official ballots as hereinafter required to be printed for use at such election. He shall also on or before that time place another copy of such contents on file in his office and keep the same open to public inspection until the sample ballots hereinafter provided to be printed shall have been distributed.

Amended by L.1985, c. 92, § 16, eff. March 26, 1985.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶134, p. 731. **Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.  
**Effective date and application of** L.1985, c. 92, see Historical Note under § 18A:9-10.

### Cross References

Counties with voting machines, printing of ballots, see § 19:49-2.

### Notes of Decisions

**Construction with other laws** 1  
**Duty of clerk** 3  
**Removal of matter from ballot** 2

#### 1. Construction with other laws

Section 19:14-1 et seq., which regulate official and sample ballots generally, and § 19:49-1 et seq., which regulate machine ballots, had to be read together, since first statute, many provisions of which were drafted for application to paper ballots, remained in force, even though paper ballots were no longer in use anywhere in state. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

#### 2. Removal of matter from ballot

A taxpayer's action to set aside borough resolution requesting county clerk to print upon official ballots to be used at the general election on November 4, 1958, the question as to whether any action should be considered to effect a deconsolidation of consolidated school district and to direct a county clerk to remove the question from the ballot was not dismissible as coming too late be-

cause county clerk already had printed and delivered sample and official ballots, where portion of ballot setting forth the question could be removed from voting machines without practical difficulty. *Botkin v. Mayor and Borough Council of Borough of Westwood*, 52 N.J.Super. 416, 145 A.2d 618 (A.D. 1958), appeal dismissed 28 N.J. 218, 146 A.2d 121.

#### 3. Duty of clerk

While county clerk has discretion in matters relating to ballot when necessary legislative directions have not been provided, that rule provides no license for his addition of unnecessary material. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

Where township clerk had failed to certify to county clerk that vacancies existed on township committee, county clerk was not under any duty to reprint ballots for general election for such township to provide extra spaces in personal choice column or under party columns to permit voters to vote for such offices. *Michaels v. Johnson*, 33 N.J.Super. 77, 109 A.2d 452 (A.D.1954).

### 19:14-2. Contents; names of candidates; public questions

There shall be a single or blanket form of ballot, upon which shall be printed the names of all the candidates of every party or group of petitioners having candidates to be voted for at such election. The name of a candidate nominated at the primary who shall fail to accept his nomination, or file the oath of allegiance executed, in the manner herein provided shall not be printed on the ballot. The name of a candidate whose nomination has been vacated as hereinbefore provided shall not be printed on the ballot. The name of a candidate shall appear but once upon the ballot for the same office.

Except as to the requirements of section 19:14-15 of this Title as to State-wide propositions, any public question which is to be submitted

to the people of the State, county or municipality at the general election, shall be printed in a separate space at the foot of the ballot with appropriate instructions to the voter.

Amended by L.1949, c. 24, p. 75, § 6.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶135, p. 731.

### Cross References

Form and content of ballot in,

Certain municipalities, see § 40:45-15.

Election in municipality having a commission form government, see § 40:74-17.

Election to establish district welfare-house, see § 44:1-40.

### American Law Reports

Right to seek nomination, or to become candidate, for more than one office in the same election, 94 ALR2d 557.

### Library References

Elections ⇄166 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 156 et seq.

### Forms

9 Am Jur Pl & Pr Forms, Rev, Elections, Forms 91 to 94.

### Texts and Treatises

26 Am Jur 2d, Elections §§ 205, 207 to 211, 213 to 219, 221.

### Notes of Decisions

Discretion of clerk 5  
 Names of candidates 7  
 Placement on ballot 4  
 Political party designation 6  
 Purpose of ballot 9  
 Reprinting of ballots 3  
 Validity 1  
 Validity of ballot 2  
 Write-in space 8

tion, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

#### 2. Validity of ballot

Ballots cast in one voting precinct having an official endorsement indicating that they were prepared for another precinct were properly rejected. *Lippincott v. Felton*, 61 N.J.L. 291, 39 A. 646 (1898).

#### 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party posi-

### 3. Reprinting of ballots

Fact that official ballot would appear in somewhat different form from sample ballot did not affect decision to require reprinting of official ballot, which contained not too serious errors, because they could be reprinted and inserted in voting machines before general election was held, while not requiring reprinting of sample ballots, which contained same errors, because of lack of time, where differences were not so significant as to mislead voters, and it was only when matters of substance, not appearing on sample ballot, were added to official ballot that such became a problem. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

### 4. Placement on ballot

County clerk's proper exercise of discretion required that all of party candidates be placed on same line on general election voting machine ballot even though party was not political party as defined in Election Law and not all of positions in prior line were filled. *Richardson v. Caputo*, 46 N.J. 3, 214 A.2d 385 (1965).

### 5. Discretion of clerk

While county clerks have large measure of discretion in arranging primary ballot, where there is clear statutory direction of a specific procedure to be followed, county clerk is governed thereby and has no discretionary authority. *Tomasin v. Quinn*, 150 N.J.Super. 593, 376 A.2d 233 (L.1977).

### 6. Political party designation

Where names of candidates for election law had already properly been bracketed with a certain party designation, applications to be bracketed with the same designation afterward made by other candidates for the same offices will be refused. *Evans v. McCutcheon*, 1923, 1 N.J. Misc. 440.

## 19:14-2.1. Inclusion on general election ballot of candidate with votes in primary by irregular ballot or write-in vote; requirements

The name of a person for whom votes are cast by irregular ballot or by write-in vote in a primary election to nominate candidates for

### 7. Names of candidates

Right of electorate to ballot bearing names of independent candidates, as well as those of both major political parties, is matter of paramount public interest and is within general intent of election laws. *Marotta v. Burgio*, 185 N.J.Super. 172, 447 A.2d 937 (L.1982).

Section 53 of L.1911, p. 313, as amended by L.1915, p. 155, repealed, prohibited the printing on the official ballot at the general election the name of any person nominated by petition whose name was printed upon the official ballot of any party at the preceding primary election, who failed of nomination, and this prohibition applied even where the successful candidate at the primary election shall die or decline the nomination before the day upon which the general election was to be held. *Rose v. Parker*, 91 N.J.L. 84, 102 A. 145 (1917).

Election Act, § 53, as amended by L.1915, p. 155, repealed, prohibiting printing on official ballot at general election, the name of any person nominated by petition who failed of primary nomination, applied where successful candidate at primary dies or declined nomination before general election. *Rose v. Parker*, 91 N.J.L. 84, 102 A. 145 (1917).

### 8. Write-in space

Official ballot for general election must contain names of primary nominees of various political parties and names of those candidates nominated by direct petition, and space must be allowed either in paper ballot or on voting machine for casting vote by write-in or sticker for a candidate whose name is not listed on ballot. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

### 9. Purpose of ballot

Purpose of a ballot is to permit voters to record their will, and Legislature must be assumed to have intended a ballot so arranged that all voters may find their candidates with least difficulty the total content of ballot will permit. *Richardson v. Caputo*, 46 N.J. 3, 214 A.2d 385 (1965).

elective office shall not be included on the ballot at the general election unless he received a number of irregular ballots or write-in votes for that office at the primary election at least equal to the number of signatures required on a petition to place upon the primary election ballot the name of a candidate for that office, pursuant to R.S. 19:23-8.

L.1981, c. 264, § 1, eff. Aug. 14, 1981.

#### **Historical and Statutory Notes**

<b>Title of Act:</b> An Act concerning nominations for elective office by irregular ballot or write-	in votes and supplementing Title 19 of the Revised Statutes. L.1981, c. 264.
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#### **Library References**

Elections ⇨ 172.

WESTLAW Topic No. 144.

C.J.S. Elections § 161 et seq.

### **19:14-3. Detachable coupon; printing thereon**

Each ballot shall have at the top a detachable coupon the width of the ballot above a perforated line not less than two inches from and parallel to the upper edge of the paper. These coupons shall be numbered consecutively from one to the number of ballots delivered to and received by the member or members of the district board for their respective election district.

Upon the coupon and above the perforated line shall be the words: "Ballot No. (number in figures)" as near the center of the coupon as may be practical, and below said number, and above perforated line shall be printed the following words: "To be torn off by the member of the board of registry and election in charge of the ballot box on election day." "Fold to this line."

#### **Historical and Statutory Notes**

Source: L.1930, c. 187, ¶136, p. 731.

### **19:14-4. Head of the ballot; form and contents; instructions**

In the center of the ballot immediately below the perforated line shall be printed in bold-faced type the words "Official general election ballot." Below these words and extending across the ballot shall appear the words: "Name of (municipality), ward, election district, date of election, John Doe, county clerk." The blank spaces shall be filled in with the name of the proper municipality, the ward and district numbers and the date of the election. For school elections the name of the school district and of the municipality or



municipalities comprising the district shall also be indicated thereon. The name of the county clerk shall be a facsimile of his signature. Below the last stated words extending across the ballot and at the extreme left shall be printed the words "Instructions to the voter," and immediately to the right there shall be a bracket embracing the following instructions numbered consecutively:

(1) The only kind of a mark to be made on this ballot in voting shall be a cross x, plus + or check √.

(2) To mark a cross x, plus +, check √ or when writing a name on this ballot use only ink or pencil.

(3) To vote for any candidates whose names are printed in any column, mark a cross x, plus + or check √ in the square at the left of the names of such candidates not in excess of the number to be elected to the office.

(4) To vote for any person whose name is not printed on this ballot, write or paste the name of such person under the proper title of office in the column designated personal choice and mark a cross x, plus + or check √ in the square to the left of the name so written or pasted.

(5) To vote upon any public question printed on this ballot if in favor thereof, mark a cross x, plus + or check √ in the square at the left of the word "Yes," and if opposed thereto, mark a cross x, plus + or check √ in the square at the left of the word "No."

(6) Do not mark this ballot in any other manner than above provided for and make no erasures. Should this ballot be wrongly marked, defaced, torn or any erasure made thereon or otherwise rendered unfit for use return it and obtain another. In presidential years, the following instructions shall be printed upon the general election ballot:

(7) To vote for all the electors of any party, mark a cross x, plus + or check √ in ink or pencil in the square at the left of the surnames of the candidates for president and vice-president for whom you desire to vote.

Below the above-stated instructions and information and, except when compliance with section 19:14-15 of this Title as to State-wide propositions otherwise requires, three inches below the perforated line and parallel to it, there shall be printed a six-point diagram rule extending across the ballot to within not less than a half inch to the right and left edges of the paper.

Amended by L.1941, c. 166, p. 526, § 2; L.1947, c. 104, p. 519, § 1; L.1994, c. 77, § 6, eff. Jan. 1, 1995; L.1995, c. 278, § 17, eff. March 14, 1996.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶137, p. 732.

**Cross References**

- Form and content of ballot in,
  - Certain municipalities, see § 40:45-15.
  - Election in municipality having a commission form government, see § 40:74-17.
  - Election to establish district welfare-house, see § 44:1-40.

**Library References**

- Elections ⇄166.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 156 et seq.

**Notes of Decisions**

- Marks on ballots 4
- Rubber stamps 5
- Stickers, use of 6
- Use of stickers 6
- Validity of ballots 2
- Validity of election 1
- Voting machines 3

**1. Validity of election**

Statutory regulations as to printing and composition, which were violated in sample ballots, were not mandatory, but, rather, were directory only, because use of sample ballots, as printed, would not invalidate election, where errors therein were not that serious, sample ballots provided complete and accurate information notwithstanding their failure to meet numerous statutory requirements, they were not calculated to confuse voter, they had been used in nearly identical form in certain county for many years without complaint, and other counties had used ballots with similar errors and omissions. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

Laws for regulation of elections in respect to form and contents of ballots or balloting procedure are directory only, not mandatory, and mere irregularities therein will not vitiate election which is fair in other respects. Application of *Wene*, 26 N.J.Super. 363, 97 A.2d 748 (1953) affirmed 13 N.J. 185, 98 A.2d 573. See, also, *Attorney General v. Town of Belleville*, 81 N.J.L. 200, 80 A. 116 (1911).

**2. Validity of ballots**

The form of a primary election ballot is not judicial function but a legislative one, and the court's ruling on the validity of the primary election ballots neither gives nor deprives any person the right of franchise to vote. *Petition for Recheck of Voting Machines and Irregular Ballots in Third Ward of Jersey City*, 19 N.J.Super. 449, 88 A.2d 678 (L.1952), appeal dismissed 19 N.J.Super. 187, 88 A.2d 227.

**3. Voting machines**

Where, in action brought by county clerk candidate to restrain distribution of sample ballots and use of official ballots to be inserted in voting machines, and to require all these ballots to be reprinted, based on allegation of violations of election law pertaining to their wording and arrangement, uncontradicted testimony was that this section, which sets forth specific instructions for arrangement of "yes" and "no" block, could not be followed when using a machine ballot, such statute was intended to apply to paper ballots only. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

In order for voter to cast vote for persons on irregular ballot on voting machine by either writing in or affixing name of person by any legal means, it is not necessary for voter to make a cross, plus, or check at left or right of such name. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953),

## Note 3

vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

This section and § 19:15-28 apply only to paper ballots and not to voting machines. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

#### 4. Marks on ballots

Statutes providing that personal choice candidate may be voted for by writing or pasting his name in column designated personal choice and placing mark in square to left of such name are mandatory, not directory. Petition of Keogh-Dwyer, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

Where voters placed name of personal choice candidate in personal choice column but failed to place mark in square to left of name, such votes could not be counted. Petition of Keogh-Dwyer, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

Vote with name of candidate written in proper place, without cross or plus as required by law, could not be counted in view of this section. In re Election for Mayor, Borough of Lavallette, 9 N.J. Misc. 25, 152 A. 641 (1930).

Section 39 of the Ballot Reform Act of 1890, L.1890, p. 384, repealed, provided "that if any ballot voted at any election shall have thereon, either on its face or on its back, any mark, sign, designation or device, other than is permitted by this act, whereby such ballot can or may be distinguished from other ballots cast at such election, such ballot shall be absolutely void and shall not be canvassed or counted for any candidate named thereon." Section 33 provided that the ballots should on the back contain the designa-

tion of the election district or voting precinct for which the ballot was prepared. It appeared that fifty ballots cast in the third district of the thirteenth ward of Newark had on the back the designation eighth district, thirteenth ward. These ballots did contain a designation by which they could and might be distinguished from other ballots cast at the election and were properly rejected. Ulrich v. Freinsehner, 15 N.J.L.J. 74 (1892).

#### 5. Rubber stamps

The presence and availability in polling places of rubber stamps containing names of persons seeking nomination in primary election is in violation of election statute. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

Where names of all candidates at primary were not printed on the ballots but were placed thereon in different colors on a rubber stamp and were not pasted in under the proper title of office in the column designated "personal choice," so that the voter could mark a cross or check in the square to the left of the name so written or pasted, ballots so voted were void and could not be counted. Petition for Recheck of Voting Machines and Irregular Ballots in Third Ward of Jersey City, 19 N.J.Super. 449, 88 A.2d 678 (L.1952), appeal dismissed 19 N.J.Super. 187, 88 A.2d 227.

#### 6. Use of stickers

In cases where sticker for personal choice candidate was not placed in personal choice column but over rival candidate's printed name, such votes could not be counted. Petition of Keogh-Dwyer, 85 N.J.Super. 188, 204 A.2d 351 (A.D. 1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

### 19:14-5. Printing body of ballot

From each end of such six-point diagram rule there shall be printed a four-point diagram rule extending at right angles and from such six-point rule to within not less than a half inch of the lower edge of the paper. Between these four-point rules and parallel to them and beginning at the six-point rule there shall be printed eight-point diagram rules to divide the ballot into vertical columns.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶138, p. 733,  
amended by L.1931, c. 374, § 5, p. 950.

**19:14-6. Column designations; accompanying instructions**

In each column, immediately below the six-point rule, shall be printed the proper word or words to designate the column, to be known as the "column designation."

In the columns at the extreme left shall be printed the name of each of the political parties which made nominations at the next preceding primary election, directly under which shall appear the words "to vote for any candidate whose name appears in the column below, mark a cross ×, plus + or check / in the square at the left of the name of such candidate. Do not vote for more candidates than are to be elected to any office." Such columns shall be three inches in width.

The column next to the right of such columns shall be designated "personal choice," under which shall appear the words "in the blank column below, under the proper title of office, the voter may write or paste the name of any person for whom he desires to vote, whose name is not printed on this ballot, and shall mark a cross ×, plus + or check / in the square at the left of such name. Do not vote for more candidates than are to be elected to any office." There shall also be the same instructions regarding electors of president and vice-president which now appear at the head of all other columns. This column shall be four inches in width.

The remaining column or columns, as the case may be, shall each be designated "Nomination by Petition," under which shall be printed the words "to vote for any candidate whose name appears in the column below mark a cross ×, plus + or check / in the square at the left of the name of such candidate. Do not vote for more candidates than are to be elected to any office." These columns shall be four inches in width.

Below the column designations and accompanying instructions and not more than one and one-half inches below the six-point diagram rule and parallel thereto, shall be printed a six-point diagram rule extending across the entire ballot from one four point rule to the other.

Amended by L.1947, c. 104, p. 520, § 2.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶139, p. 733.

### Cross References

Form and content of ballot in,

Certain municipalities, see § 40:45-15.

Election in municipality having a commission form government, see § 40:74-17.

Election to establish district welfare-house, see § 44:1-40.

### Library References

Elections ⇐ 167.

WESTLAW Topic No. 144.

C.J.S. Elections § 158 et seq.

### Notes of Decisions

**Personal choice** 3

**Validity** 1

**Voting machines** 2

#### 1. Validity

New Jersey statutes directing manner of listing of candidates' names on ballot did not deprive independent candidate of rights under Fourteenth Amendment even though independent candidate was denied opportunity to have his name in top group. *Voltaggio v. Caputo*, D.C.N.J. 1962, 210 F.Supp. 337, appeal dismissed 83 S.Ct. 325, 371 U.S. 232, 9 L.Ed.2d 494.

#### 2. Voting machines

This section, which requires voting instructions to appear at head of each column on sample ballot applied only to paper ballots, where voting machines could not accommodate such arrangement, because they provided voting instructions on permanent plate at top of ballot, except in case of public questions. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

#### 3. Personal choice

Sample ballots in evidence did not contain any column for personal choice although this must appear on official ballot, and thus in future this must be corrected, since § 19:49-4 provides that a sample ballot is to be arranged in form of dia-

gram showing such portion of face of voting machine as it will appear after official ballots are arranged thereon or therein for voting on election day and also requires that sample ballots are to be printed in form of facsimile of face of machine. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

There is nothing in the Election Law of this state that prevents a voter from writing on an official ballot the name of any person for whom he desires to vote for any office the name of which is printed on such ballot; or, if the name of any office to be filled at such election be not printed on such ballot, from writing also the name of such office on such ballot in conjunction with the name of the person for whom he desires to vote to fill said office. *Carlough v. Ackerman*, 74 N.J.L. 16, 64 A. 964 (1906).

The fact that a voter may be compelled, in exercising his right to vote, to deposit a ballot having upon it the name or style of a party of whose principles he disapproves, is not an illegal deprivation of a right to vote; for if a voter exercises his right to erase the names of all the candidates on the ticket, and inserts the names of persons who stand for an entirely different principle, the heading of the ticket becomes meaningless as an expression of the voter's sentiments. *State v. Black*, 54 N.J.L. 446, 24 A. 489 (1892), affirmed 65 N.J.L. 688, 51 A. 1109.

### 19:14-7. Printed rulings on ballot

Below such six-point rule and parallel thereto, extending across the entire ballot from one four-point rule to the other, shall be printed two-point hair line rules approximately five-sixteenths inch and not over twenty-four points apart of a number sufficient to meet the requirements of the party columns.

In place of the last two-point hair line rule there shall be printed a six-point diagram rule, extending across the entire ballot from one four-point rule to the other, at which the eight-point diagram rules dividing the ballot into vertical columns shall terminate.

### **Historical and Statutory Notes**

Source: L.1930, c. 187, ¶140, p. 734.

### **19:14-8. Arrangement of titles of office and names of candidates in party columns and personal choice column**

In the columns of each of the political parties which made nominations at the next preceding primary election and in the personal choice column, within the space between the two-point hair line rules, there shall be printed the title of each office to be filled at such election, except as hereinafter provided.

Such titles of office shall be arranged in the following order: electors of President and Vice-President of the United States; member of the United States Senate; Governor; member of the House of Representatives; member of the State Senate; members of the General Assembly; county executive, in counties that have adopted the county executive plan of the "Optional County Charter Law," P.L. 1972, c. 154 (C. 40:41A-1 et seq.); sheriff; county clerk; surrogate; register of deeds and mortgages; county supervisor; members of the board of chosen freeholders; coroners; mayor and members of municipal governing bodies, and any other titles of office. Above each of such titles of office, except the one at the top, shall be printed a two-point diagram rule in place of the two-point hair line rule. Below the titles of such offices shall be printed the names of the candidates for the offices.

The arrangement of the names of candidates for any office for which more than one are to be elected shall be determined in the manner hereinafter provided, as in the case of candidates nominated by petition.

When no nomination for an office has been made the words "No Nomination Made" in type large enough to fill the entire space or spaces below the title of office shall be printed upon the ballot.

Immediately to the left of the name of each candidate, at the extreme left of each column, including the personal choice column, shall be printed a square, one-quarter of an inch in size, formed by two-point diagram rules. In the personal choice column no names of candidates shall be printed.

To the right of the title of each office in the party columns and the personal choice column shall be printed the words "Vote for," inserting in words the number of persons to be elected to such office. Amended by L.1951, c. 315, p. 1120, § 1; L.1995, c. 191, § 1, eff. Aug. 2, 1995.

### Historical and Statutory Notes

L.1995, c. 191, § 4, approved Aug. 2, 1995, provided:

"This act shall take effect immediately [Aug. 2, 1995] and shall first apply to the

primary or general election occurring not less than 90 days after the effective date of this act."

Source: L.1930, c. 187, §141, p. 735.

### Library References

Elections ¶167.

WESTLAW Topic No. 144.

C.J.S. Elections § 158 et seq.

### Notes of Decisions

**Personal choice** 3  
**Placement on ballot** 2  
**Validity** 1

#### 1. Validity

New Jersey statutes directing manner of listing of candidates' names on ballot did not deprive independent candidate of rights under Fourteenth Amendment even though independent candidate was denied opportunity to have his name in top group. *Voltaggio v. Caputo*, D.C.N.J. 1962, 210 F.Supp. 337, appeal dismissed 83 S.Ct. 325, 371 U.S. 232, 9 L.Ed.2d 494.

#### 2. Placement on ballot

County clerk's proper exercise of discretion required that all of party candidates be placed on same line on general election voting machine ballot even though party was not political party as defined in Election Law and not all of positions in prior line were filled. *Richardson v. Caputo*, 46 N.J. 3, 214 A.2d 385 (1965).

L.1911, p. 276, repealed, provided that, in preparing a primary ballot, the names of candidates for any office for which more than one are to be elected shall be arranged in groups as presented in the several certificates of nomination or petitions, provided that any candidate receiving the nominations of more than one

political party or group of petitioners may file with the official printer of the ballots a notice directing him in what group of candidates he desires his name to appear, and provided that such candidate's name shall appear but once, and shall not appear as a nominee of a party or group of petitioners, except such party or group of petitioners as have nominated him. Section 54 provides that following the nomination of each candidate upon the same line of the ballot shall be printed the name of the party or group of petitioners making the nomination and any candidate receiving the nomination of more than one group of petitioners may file with the official printer of the ballots a notice directing him in what order the several nominations shall be added to his name upon the ballot. Held, that one party or group of petitioners may name as a candidate a person who is nominated by another group of petitioners of another party. In re City Clerk of Paterson, 88 A. 694 (1913).

#### 3. Personal choice

Official ballot for general election must contain names of primary nominees of various political parties and names of those candidates nominated by direct petition, and space must be allowed either in paper ballot or on voting machine for casting vote by write-in or sticker for a candidate whose name is not listed on

ballot. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

### **19:14-8.1. Ballots for presidential electors**

When Presidential Electors are to be elected, their names shall not be printed upon the ballot, either paper or voting machine, but in lieu thereof, the names of the candidates of their respective parties or political bodies for President and Vice-President of the United States shall be printed together in pairs under the title "Presidential Electors for." All ballots marked for the candidates for President and Vice-President of a party or political body, shall be counted as votes for each candidate for Presidential Elector of such party or political body.

L.1944, c. 16, p. 41, § 1.

### **Historical and Statutory Notes**

#### **Title of Act:**

An Act concerning elections, and supplementing Title 19 of the Revised Statutes. L.1944, c. 16, p. 41.

### **Library References**

Elections ⇨172.

WESTLAW Topic No. 144.

C.J.S. Elections § 161 et seq.

### **Notes of Decisions**

#### **Rejection of candidates 1**

##### **1. Rejection of candidates**

Secretary of State was authorized to reject a petition for electors of president

and vice-president to represent a party whose candidates for president and vice-president were both inhabitants of the same state as the electors. Atty.Gen. F.O. 1960, No. 5.

### **19:14-9. Duplicate nominations for same office; selection of column and designation**

A candidate who receives more than one nomination for the same office, either from more than one political party or from more than one group of petitioners, or from one or more political parties and one or more groups of petitioners, shall have his name printed on the official general election ballot in only one column to be selected by him from among the columns to which his nominations entitle him, and shall have such designations after his name as he shall select, consisting of the names of the political parties nominating him, with the words "Indorsed By", if he so desires, and the several designa-



tions to which he is entitled by the other nominations, if any, and printed in such order as he shall select.

The candidate shall file with the secretary of state or county clerk, as the case may be, his selection of his column, and the designations to follow his name and their order. Unless such selection is so filed within seven days after the primary election, the secretary of state or county clerk, as the case may be, shall determine in what column and with what designations his name shall be printed. The designations shall be printed in small type, and if necessary, in several lines or in a line below his name and may be abbreviated.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶133, p. 730.

### Library References

Elections ¶168(4).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 159, 169.

### Notes of Decisions

**Nomination by two parties** 1  
**Selection by party** 2

Hand v. Larason, 163 N.J.Super. 68, 394 A.2d 163 (L.1978).

#### 1. Nomination by two parties

Candidate, who won Republican primary for mayor and who also received a majority of Democratic write-in votes, did not file a valid acceptance of Democratic write-in nomination with result that there was a vacancy in Democratic nomination which could be filled by borough members of Democratic county committee, where her document was designed to serve as an election by her under this section to have her name submitted to voters in general election as a Republican, which precluded her name from also being submitted to voters in Democratic column, although she had right to have phrase "Indorsed by Democratic Party" follow her name in Republican column.

#### 2. Selection by party

Where each of two Republican candidates in primary election to nominate candidates for office of a township committeeman, received same number of Republican votes, and members of Republican county committee to which selection of candidate was submitted pursuant to statute, divided their votes, and one candidate thereafter received Democratic nomination by having his name written upon Democratic primary ballot, and consented to stand as Democratic candidate at general election, court could not direct Republican county committee to select the candidate who had not received Democratic nomination. *Brower v. Gray*, 5 N.J.Super. 145, 68 A.2d 553 (A.D. 1949).

### 19:14-10. Nomination by petition columns; arrangement of titles of offices; groupings

In the column or columns designated as nominations by petition, within the space between the two-point hair line rules, there shall be printed the title of each office for which nominations by petition have been made.

Such titles of office shall be arranged in the following order: electors of President and Vice-President of the United States; member of the United States Senate; Governor; member of the House of Representatives; member of the State Senate; members of the General Assembly; county executive, in counties that have adopted the county executive plan of the "Optional County Charter Law," P.L. 1972, c. 154 (C. 40:41A-1 et seq.); sheriff; county clerk; surrogate; register of deeds and mortgages; county supervisor; members of the board of chosen freeholders; coroners; mayor and members of municipal governing bodies, and any other titles of office.

Above each of the titles of office, except the one on the top, shall be printed a two-point diagram rule in place of the two-point hair line rule. Below the titles of each of the offices shall be printed the names of each of the candidates for each of such offices followed by the designation or designations mentioned in the petitions filed.

Immediately to the left of the name of each candidate, at the extreme left of the column, shall be printed a square, one-quarter of an inch in size formed by two-point diagram rules.

The names of candidates for any office for which more than one are to be elected shall be arranged in groups as presented in the several certificates of nominations or petitions, which groups shall be separated from other groups and candidates by two two-point hair line rules.

To the right of the title of each office shall be printed the words "Vote for \_\_\_\_\_" inserting in words the number of candidates to be elected to such office.

Amended by L.1951, c. 315, p. 1121, § 2; L.1995, c. 191, § 2, eff. Aug. 2, 1995.

**Historical and Statutory Notes**

<p>L.1995, c. 191, § 4, approved Aug. 2, 1995, provided:                  "This act shall take effect immediately [Aug. 2, 1995] and shall first apply to the</p>	<p>primary or general election occurring not less than 90 days after the effective date of this act."                  Source: L.1930, c. 187, ¶142, p. 736.</p>
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**Library References**

- Elections ⇄ 173.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 161.

## Notes of Decisions

Designation 2  
 Vacancy in office 3  
 Validity 1

## 1. Validity

Section 19:13-4 and this section which prohibits independent candidate from having slogan "Life Long Democrat" beneath his name on ballot were not unconstitutional. *Voltaggio v. Caputo*, D.C.N.J. 1962, 210 F.Supp. 337, appeal dismissed 83 S.Ct. 325, 371 U.S. 232, 9 L.Ed.2d 494.

## 2. Designation

Under the Faulkner Act, § 40:69A-2, providing that candidates for charter commission "shall be listed without any

designation or slogan," "bracketing" which is a form of designation and which groups certain of the candidates on the ballot under a mark or symbol distinguishing them from other candidates is contrary to said section and illegal. *Dios v. Ronnie*, 76 N.J.Super. 390, 184 A.2d 745 (A.D.1962).

## 3. Vacancy in office

Candidates for vacancy in office of township committee resulting from expiration of three-year term and candidates for vacancy in office of township committee resulting from a census promulgation increasing membership of township committee were properly grouped on the ballot. *Ehrhardt v. Bergen*, 69 N.J.Super. 390, 174 A.2d 365 (A.D.1961).

## 19:14-11. Repealed by L.1947, c. 104, p. 529, § 9

## Historical and Statutory Notes

The repealed section, which derived from L.1930, c. 187, p. 737, § 143, provided for the arrangement of nominees

for electors of president and vice president and included directions to voters.

## 19:14-12. Drawing for position on ballot; procedure; public announcement; bracketing names

The county clerk shall draw lots in his county to determine which columns the political parties which made nominations at the next preceding primary election shall occupy on the ballot in the county. The name of the party first drawn shall occupy the first column at the left of the ballot, and the name of the party next drawn shall occupy the second column, and so forth.

The position which the names of candidates, and bracketed groups of names of candidates nominated by petitions for all offices, shall have upon the general election ballot, shall be determined by the county clerks in their respective counties.

The manner of drawing the lots shall be as follows: paper slips with the names of each political party written thereon, shall be placed in capsules of the same size, shape, color and substance and then placed in a covered box with an aperture in the top large enough to admit a man's hand and to allow the capsules to be drawn therefrom. The box shall be well shaken and turned over to thoroughly intermingle the capsules. The county clerk or his deputy shall at his office, draw from the box each capsule separately without knowledge on his part as to which capsule he is drawing.

The person making the drawing shall open the capsule and shall make public announcement at the drawing of each name, the order in which name is drawn and the office for which the drawing is made.

Where there is but one person to be elected to an office, the names of the several candidates who have filed petitions for such office shall be written upon paper slips and placed in separate capsules of the same size, shape, color and substance. The capsules shall be placed in a covered box with an aperture in the top large enough to admit a man's hand and to allow the capsules to be drawn therefrom. The box shall be turned and shaken thoroughly to mix the capsules and the capsules shall be withdrawn one at a time.

When there is more than one person to be elected to an office where petitions have designated that certain candidates shall be bracketed, the position of such bracketed names on the ballot (each bracketed group to be treated as a single name), together with individuals who have filed petitions for such office, shall be determined as above described.

Any legal voter of the county or municipality, as the case may be, shall have the privilege of witnessing the drawing.

The name or names of the candidate or bracketed group of candidates first drawn from the box shall be printed directly below the proper title of the office for which they were nominated, and the name or names of the candidate or bracketed group of candidates next drawn shall be printed next in order, and so on, until the last name or bracketed group of names shall be drawn from the box.

The arrangement of names of any bracketed group of candidates for any office for which more than one are to be elected shall be printed in the same order on the ballot as they were arranged on the petition of nomination.

The drawing for the positions which the names of candidates and bracketed groups of names of candidates, nominated by petition for office, and for the columns which the political parties which made nominations at the next preceding primary election shall occupy upon the general election ballot, shall be held at 3 o'clock in the afternoon of the eighty-fifth day prior to the day of the general election.

Amended by L.1942, c. 50, p. 281, § 7; L.1948, c. 2, p. 40, § 21; L.1949, c. 207, p. 677, § 1; L.1968, c. 226, § 1, eff. July 1, 1968; L.1977, c. 431, § 1, eff. Feb. 28, 1978.

#### **Historical and Statutory Notes**

Source: L.1930, c. 187, §144, p. 737.

### Law Review and Journal Commentaries

Survey of laws on municipal corporations. (1958) 13 Rutgers L.Rev. 78.

### Library References

Elections ◊167.

WESTLAW Topic No. 144.

C.J.S. Elections § 158 et seq.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

### Notes of Decisions

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#### 1. Validity

New Jersey requirements, that Secretary of State certify to county clerks names of all candidates nominated by direct petition not more than 86 days before general election, that county clerks conduct drawing 86 days before election to determine ballot positions of candidates and print ballots thereafter, are valid reasonable regulations ensuring fairness among candidates, notice to public, and administrative ease in conducting elections. *LaRouche v. Burgio*, D.C.N.J. 1984, 594 F.Supp. 614.

This section is not unconstitutional on ground that it gives clerk discretion in positioning names of independent candidates on ballot. *Voltaggio v. Caputo*, D.C.N.J.1962, 210 F.Supp. 337, appeal dismissed 83 S.Ct. 325, 371 U.S. 232, 9 L.Ed.2d 494.

#### 2. Purpose

This section requiring that box used for drawing party positions on ballot for general election shall be well shaken and turned over to thoroughly intermingle the cards is prophylactic in purpose, designed to frustrate any possible effort at fraud in drawing the cards, whether patent or devious. *Dimon v. Ehrlich*, 97 N.J.Super. 83, 234 A.2d 419 (A.D.1967).

#### 3. Construction with other laws

This section must be construed with provisions in § 19:13-3 et seq., relating to direct nomination of candidates by petition and provisions of § 19:13-9, that petitions naming candidates for office to be filled by voters of entire state be addressed to the Secretary of State and that all petitions be filed with officer to whom they were addressed five days previous to day of primary election. In re *Murray*, 119 N.J.L. 98, 194 A. 443 (1937).

#### 4. Draw—In general

County election officials should conduct draw to determine which party's candidate will head ballot in a way so that voters witnessing draw can see entire process and thus be confident in fairness of outcome. *Mochary v. Caputo*, 100 N.J. 119, 494 A.2d 1028 (1985).

#### 5. — Time of draw

Former provision of this section directing the drawing of names for position on ballots on day following last day for filing petition for general election, as respects independent candidate for Governor, requires drawing for positions on ballots to be held on day following day on which such petitions are required to be filed, as

against contention that, under provision of § 19:27-11 relating to special elections and filling vacancies, a petition nominating a candidate might be filed up to 22 days prior to the general election and that the drawing should be held on day following filing of the petition. In re Murray, 119 N.J.L. 98, 194 A. 443 (1937).

**6. — Shaking of box**

"Shaking of the box" within this section means its manual lifting and its agitation with a regular vibratory motion. Dimon v. Ehrlich, 97 N.J.Super. 83, 234 A.2d 419 (A.D.1967).

Spinning of cylindrically-shaped jury selection box which aside from the spinning remained motionless did not constitute substantial compliance with this section, and hence drawing was invalid. Dimon v. Ehrlich, 97 N.J.Super. 83, 234 A.2d 419 (A.D.1967).

**7. — Person making drawing**

Fact that deputy county clerk who performed drawing for party positions on ballot for general election was also the chairman of the Democratic County Committee did not render drawing invalid on ground of conflict on interest since function of drawing the ballot position card is entirely ministerial and principle of conflict of interests or incompatible offices is therefore not implicated. Dimon v. Ehrlich, 97 N.J.Super. 83, 234 A.2d 419 (A.D. 1967).

**8. — Redrawing**

In action challenging drawing for ballot positions for general election, trial court properly denied redrawing after draw had already occurred, notwithstanding fact that party chosen in draw to head ballot had also been chosen 39 of the last 40 times draw had been made. Mochary v. Caputo, 100 N.J. 119, 494 A.2d 1028 (1985).

**9. Columns**

Because of use of horizontal-line voting machines in county the word "column" in this section stating that the name of party first drawn should occupy the first column and party next drawn should oc-

cupy second column is to be read as "horizontal row". Axtell v. Caputo, 85 N.J.Super. 80, 204 A.2d 7 (A.D.1964).

**10. Position on ballot**

With respect to general election voting machine ballot a county clerk should first draw for position for the political parties as defined in Election Law, assigning to them the top lines in accordance with the draw. Richardson v. Caputo, 46 N.J. 3, 214 A.2d 385 (1965).

Where more than one is to be elected to an office, candidates who request in their petitions to be joined under designation of a party or principle may not participate in draw for specific offices but are to be placed on general election voting machine ballot so as to appear on the same line where feasible. Richardson v. Caputo, 46 N.J. 3, 214 A.2d 385 (1965).

This section authorizing county clerk to draw lots to determine which columns political parties should occupy on ballot gives clerk a clear direction as to what lines were to be used and clerk had to use lines in precise order in which they appeared on machine and could not leave a blank line. Axtell v. Caputo, 85 N.J.Super. 80, 204 A.2d 7 (A.D.1964).

**11. Bracketing**

Concerning general election voting machine ballot there should be, after position for political parties is drawn, a drawing among candidates for specific offices and, for purposes of draw, where more than one is to be elected to an office those bracketed are to be deemed to be a single candidate for that office. Richardson v. Caputo, 46 N.J. 3, 214 A.2d 385 (1965).

Under provision of the Faulkner Act, § 40:69A-2, that candidates for charter commission "shall be listed without any designation or slogan," "bracketing" which is a form of designation and which groups certain of the candidates on the ballot under a mark or symbol distinguishing them from other candidates is contrary to § 40:69A-2 and illegal. Dios v. Ronnie, 76 N.J.Super. 390, 184 A.2d 745 (A.D.1962).

**19:14-13. Arrangement of public questions**

All public questions to be voted upon by the voters of the entire State shall be placed first and shall be printed in the order as

certified by the Secretary of State. All public questions to be voted for by the voters of a municipality shall be placed second and shall be printed in the order as determined by the drawing of lots by the county clerk. All public questions to be voted for by the voters of a county shall be placed last and shall be printed in the order as determined by the drawing of lots by the county clerk. The county clerk shall draw lots in substantially the same manner as the drawing is made for the arrangement of candidates' names upon the ballot. Amended by L.1979, c. 191, § 1, eff. Sept. 13, 1979.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶145, p. 739, amended by L.1931, c. 374, § 6, p. 950.

### Notes of Decisions

#### Columns 1

##### 1. Columns

While this section, which requires order in which public questions must appear on ballot to be state questions municipal questions and county questions, was not explicit, it was clear that all questions should be in same column, and

argument of county clerk and county printers that their arrangement was better than that required by law because it grouped municipal questions with municipal candidates and enabled length of ballot to be shortened, saving money, provided no persuasive argument for ignoring such statute. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

#### 19:14-14. Public questions at foot of ballot; instructions to voters

Immediately below the six-point diagram rule to be printed in place of the last two-point hair line rule across the entire ballot, from one four-point rule to the other, shall be printed as near to the center of the ballot as possible the following words: "Public Questions to be voted upon". Below these words and above the first public question, beginning one and one-half inches to the right of the four-point rule at the left of the ballot and extending to not more than one and one-half inches from the four-point rule at the right of the ballot, shall be printed in one line, if possible, the following instructions: "To vote upon the Public Questions printed below, if in favor thereof mark a cross × or plus + in the square at the left of the word 'Yes', and if opposed thereto, mark a cross × or plus + in the square at the left of the word 'No'," underscored with a two-point diagram rule. Below and flush with the left end of said two-point diagram rule shall be printed two separate squares, one under the other, three-eighths of an inch in size formed by two-point diagram rules. Immediately to the right of the upper square shall be printed the word "Yes", and immediately to the right of the lower square shall be printed the word "No". To the right of the words "Yes" and "No" shall be

printed a bracket embracing these words and to the right of the bracket shall be printed across the ballot, to not nearer than one and one-half inches from the four-point diagram rule at the right of the ballot, each public question to be voted upon. Below each such public question shall be printed two-point diagram rule beginning one and one-half inches to the right of the four-point rule at the left of the ballot and extending to not nearer than one and one-half inches from the four-point rule at the right of the ballot. In place of the last two-point diagram rule there shall be printed a four-point diagram rule extending across the entire ballot not less than a half inch from the lower edge of the paper and terminating at the lower ends of the four-point diagram rules at either side of the ballot. Amended by L.1947, c. 104, p. 522, § 3; L.1979, c. 191, § 2, eff. Sept. 13, 1979.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶146, p. 739.

**Library References**

- Elections ¶175.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 170.

**Notes of Decisions**

**Headings 1**

**1. Headings**

This section requires that sample ballot column containing public questions must be headed by words "Public Questions to be Voted Upon," but applicable column in sample ballots in question was headed by words "State Public Questions to be Voted Upon," and thus this must be cor-

rected in future sample ballots, but there was no impropriety in further heading each class of questions with words "State Public Questions," "County Public Questions" and "Municipal Public Questions," thus improving clarity of ballot in manner which was within discretion of county clerk, as there were no statutory directions in this respect. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

**19:14-15. Repealed by L.1979, c. 191, § 3, eff. Sept. 13, 1979**

**Historical and Statutory Notes**

The repealed section, derived from L.1932, c. 254, § 2, p. 562, required state-wide propositions be placed at the head of the ballot.

See, now, § 19:14-13.

**19:14-16. Style of type, rulings and spacings**

The words to be printed on the perforated coupon shall be printed in twelve-point bold-faced capital letters and the figures in eighteen



and twenty-two-point bold-faced type. At the head of the ballot the words "Official General Election Ballot" shall be printed in at least thirty-point bold-faced capital letters. The name of municipality, ward, election district, and date shall be printed in twelve-point bold-faced capital letters. The words "Instructions to the voter" shall be printed in twelve-point bold-faced capitals and small letters, while the instructions embraced within the brackets shall be printed in eight-point bold-faced capital and small letters. The column designations shall be printed in eighteen-point bold-faced capital letters and the accompanying instructions shall be printed in eight-point capitals and small letters. The titles of office and accompanying instructions shall be printed in ten-point bold-faced capital and small letters. When there is no nomination made at the primary for an office, the title shall be printed in the space where such title should appear, and the words "No Nomination Made" in type large enough to fill the entire space or spaces shall be printed therein. The names of all candidates shall be printed in ten-point capital letters. The designations following the candidates' names in the nomination by petition column or columns shall be printed in ten-point capitals and small letters, except that where they overrun the space within the column the designations may be abbreviated, and all spaces between the two-point hair line rules not occupied by the titles of office and names of candidates shall be printed in with scroll or filling to guide the voter against wrongly marking the ballot. On the foot of the ballot the words "Public Questions to be Voted Upon" shall be printed in eighteen-point bold-faced capital letters. The accompanying instructions shall be printed in eight-point capital and small letters. The public questions to be voted upon shall be printed in ten-point capital and small letters, and the words "Yes" and "No" shall be printed in twelve-point bold-faced capital letters.

#### Historical and Statutory Notes

Source: L.1930; c. 187, §147, p. 740.

#### 19:14-17. Repealed by L.1947, c. 104, p. 529, § 9

#### Historical and Statutory Notes

The repealed section, which derived from L.1930, c. 187, p. 741, § 148, set out form of face of ballot.

#### 19:14-18. Number of ballots on hand

Not later than noon of the fifth day preceding the general election the county clerk shall have printed and on hand in his office one and one-fifth times as many official ballots for each election district in

each municipality in the county as there are voters registered in such election district.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶161, p. 746.

**Notes of Decisions**

**Excess ballots** 1

**1. Excess ballots**

Under the provisions of L.1911, p. 276, repealed, the authorization by the county

clerk, who is the designated authority to decide, to print a certain number of sample ballots is clear, and any excess is beyond the authority of the proper official and constitutes a crime. *State v. Voorhees*, 84 N.J.L. 584, 87 A. 118 (1913).

**19:14-19. Custody of printed ballots**

The county clerk shall keep such ballots in his custody and be responsible therefor until they shall be delivered to the municipal clerks as hereinafter provided.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶162, p. 746.

**19:14-20. Correction of errors**

When it shall appear that an error or omission has occurred in the copy prepared by the county clerk for the printer or in the printing of the ballots by any county clerk, any voter resident in the county may present to a judge of the Superior Court assigned to the county a verified petition setting forth such error or omission; and such judge being satisfied thereof, shall thereupon summarily, by his order, require the county clerk to correct such error or show cause before the judge at the shortest possible day, why same should not be corrected. The county clerk shall correct the same by causing new ballots to be immediately printed in place of those found to be inaccurate or incomplete; and those found to be inaccurate or incomplete shall be immediately destroyed.

Amended by L.1953, c. 19, p. 330, § 15.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶163, p. 746.

**Library References**

Elections ⇨179.

WESTLAW Topic No. 144.

C.J.S. Elections § 173.

## Notes of Decisions

Errors or omissions	2
Jurisdiction	3
Omissions or errors	2
Reprinting of ballots	4
Sample ballots	1

## 1. Sample ballots

Statutory regulations as to printing and composition, which were violated in sample ballots, were not mandatory, but, rather, were directory only, because use of sample ballots, as printed, would not invalidate election, where errors therein were not that serious, sample ballots provided complete and accurate information notwithstanding their failure to meet numerous statutory requirements, they were not calculated to confuse voter, they had been used in nearly identical form in certain county for many years without complaint, and other counties had used ballots with similar errors and omissions. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

## 2. Errors or omissions

A taxpayer's action to set aside borough resolution requesting county clerk to print upon official ballots a question whether any action should be considered to effect a deconsolidation of consolidated school district was not dismissible on ground that taxpayer should have proceeded under this section, since matter involved was not an "error" within contemplation of section. *Botkin v. Mayor and Borough Council of Borough of Westwood*, 52 N.J.Super. 416, 145 A.2d 618 (A.D.1958), appeal dismissed 28 N.J. 218, 146 A.2d 121.

## 3. Jurisdiction

Under Election Law, § 53, L.1898, p. 264, repealed, authorizing any voter to present to a justice of the Supreme Court a verified petition setting forth errors or omissions in the ballots prepared for an election, and providing that the justice,

on being satisfied thereof, shall summarily require the correction of the same, etc., when considered in connection with § 46, declaring that all certificates of nomination which are in apparent conformity with the act shall be valid unless objection shall be filed with the officer with whom the original certificate was filed, a justice of the Supreme Court has no authority to adjudge nominations for public office a nullity; the jurisdiction of the justice relating only to mistakes or inaccuracies in the printing of ballots. *Lee v. County Clerk of Monmouth*, 69 A. 246 (1907).

## 4. Reprinting of ballots

Where petitioners had filed nominating petitions as independent candidates for alleged vacancies in township committee with wrong official and had waited almost one month, after being informed by county clerk that he would not provide spaces on ballots for the alleged vacancies without a court order, to bring proceedings to obtain such order, petitioners were not entitled to have county clerk compelled to reprint official ballot so that additional spaces would be provided for their names and for any personal choice of voter. *Michaels v. Johnson*, 33 N.J.Super. 77, 109 A.2d 452 (A.D.1954).

Proceeding to compel county clerk to reprint official ballot for general election for certain townships so that additional names and spaces could be provided for voters to indicate their choice for two additional township committeemen did not constitute an action which came within this section authorizing Superior Court judge to direct the reprinting of ballots in view of fact that there was not any error, so far as county clerk was concerned, because township clerk had not certified to county clerk the existence of any vacancies. *Michaels v. Johnson*, 33 N.J.Super. 77, 109 A.2d 452 (A.D. 1954).

## ARTICLE 2. SAMPLE BALLOTS

## Library References

Elections ⇨163.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 155.

**19:14-21. Preparation; delivery of sample ballots and envelopes to municipal clerk or commissioner of registration**

The county clerk shall cause samples of the official general election ballot to be printed in English, but for each election district within the county in which the primary language of 10% or more of the registered voters is Spanish, shall cause samples of the official general election ballot to be printed bilingually in English and Spanish.

a. In counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, the county clerk not later than noon of the eighth day prior to the general election shall furnish to the municipal clerk of each municipality in his county one and one-tenth times as many such sample ballots and stamped envelopes as there are voters registered, to enable each district board in each municipality to mail one of such sample ballots to each voter who is registered in the municipality for such election and shall take a receipt for the same from each of the municipal clerks, which receipt shall indicate the number of such sample ballots and stamped envelopes delivered by the county clerk and the date and hour of their delivery.

b. In counties having a superintendent of elections, and in other counties where the county board of elections may have the equipment or facilities to prepare a properly stamped envelope addressed to each registered voter in the county for mailing, the county clerk, not later than the thirtieth day preceding the general election, shall furnish to the commissioner of registration located in his county one and one-tenth times as many stamped envelopes as there are registered voters in the county and not later than noon of the twelfth day preceding the general election shall furnish to the commissioner of registration located in the county, one and one-tenth times as many sample ballots as there are registered voters in the county to enable the commissioner of registration of the county to mail one of such sample ballots to each voter registered in the county for such election and shall take a receipt for the same from the commissioner of registration, which receipt shall indicate the number of such sample ballots and stamped envelopes delivered by the county clerk and the date and hour of their delivery. County boards of elections which elect to operate under the provisions of this paragraph shall notify their county clerk in sufficient time to enable him to make the necessary arrangements the first year.

c. The county clerk in counties having a superintendent of elections shall also deliver to the county board not later than the twelfth

day preceding the general election 10 such sample ballots of each election district of each municipality in the county.

Amended by L.1941, c. 275, p. 739, § 1; L.1946, c. 261, p. 913, § 1; L.1947, c. 168, p. 740, § 3; L.1974, c. 30, § 2.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶149, p. 742.

#### Library References

Elections ⇨163.

WESTLAW Topic No. 144.

C.J.S. Elections § 155.

#### Notes of Decisions

Costs 1

borne by the counties. Atty.Gen.F.O.  
1961, No. 1.

##### 1. Costs

Cost of printing sample ballots and official ballots for general election is to be

#### 19:14-22. Form and contents; color of paper

The official general election sample ballots shall be as nearly as possible facsimiles of the official general election ballot to be voted at such election and shall have printed thereon, after the words which indicate the number of the election district for which such sample ballots are printed, the street address or location of the polling place in the election district, the hours between which the polls shall be open, and shall be printed on paper different in color from the official general election ballot, and have the following words printed in large type at the top: "This ballot cannot be voted. It is a sample copy of the official general election ballot used on election day."

Amended by L.1959, c. 139, p. 581, § 1.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶150, p. 742.

#### Cross References

Form and contents of ballot in,

Certain municipalities, see § 40:45-15.

Election in municipality having a commission form government, see § 40:74-17.

Election to establish district welfare-house, see § 44:1-40.

**Notes of Decisions**

**Voting machines 1**

**1. Voting machines**

This section, which requires sample ballots to be of color different from official ballots and to contain at top words "This ballot cannot be voted. It is a sample copy of the official general elec-

tion ballot used on election day," related to paper ballots only, and could be ignored, where there was no possibility of sample ballots being voted when voting machines were in use; color coding was not necessary, where ballots inserted in machines could not be confused with sample ballots. *Millman v. Kelly*, 171 N.J.Super. 589, 410 A.2d 283 (L.1979).

**19:14-23. Envelopes for mailing official general election sample ballots**

The stamped envelopes shall be of sufficient size and have sufficient postage to enable the official general election sample ballots and anything else required to be enclosed therewith to be mailed therein.

On the face of each of the envelopes shall be printed the words "Official General Election Sample Ballot" in large type and in small type in the upper left-hand corner, the words: "If not delivered in two days return to the 'Superintendent of Elections'" in counties having a superintendent of elections and to the "Commissioner of Registration" in all other counties and in the lower left-hand corner shall be printed the words "Municipality" followed by a line ".....," "Ward" followed by a line ".....," and "district" followed by a line ".....," arranged in three lines one under the other.

Amended by L.1947, c. 168, p. 742, § 4.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶151, p. 743.

**19:14-24. Delivery by municipal clerks to district boards**

The municipal clerk to whom the sample ballots and stamped envelopes have been so delivered by the county clerk shall deliver the same at his office, or in any other way he sees fit, on or before noon of the Tuesday preceding the general election, to a member or members of each district board, and shall take a receipt for the same from the member or members of the district boards of such municipality, which receipt shall indicate the number of sample ballots and stamped envelopes delivered by the municipal clerk and the date and hour of their delivery.

## Historical and Statutory Notes

Source: L.1930, c. 187, §152, p. 743.

**19:14-25. Mailing by district board or commissioner of registration; duties of county board of elections**

In counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, all the members of each of the district boards shall prepare and deposit in the post office, on or before 12 noon on Wednesday preceding the general election day, a properly stamped envelope containing a copy of the sample ballot printed in English, addressed to each registered voter in the district of such board at the address shown on the register, except that for districts in which the primary language of 10% or more of the registered voters is Spanish, a properly stamped envelope containing a copy of the bilingual sample ballot, addressed to each registered voter in the district of such board at the address shown on the register shall be prepared and deposited. The board shall also post the appropriate sample ballots in the polling place in its district.

The board shall return to the municipal clerk all ballots and envelopes not mailed or posted by it, with a sworn statement in writing signed by a majority of the board that all the remainder of such ballots and envelopes had been mailed.

In counties having a superintendent of elections, and in other counties where the county board of elections shall elect to operate under the provisions of subsection b. of section 19:14-21 of this Title, the commissioner of registration shall prepare and deposit in the post office on or before 12:00 o'clock noon, on the Wednesday preceding the general election day, a properly stamped envelope containing a copy of the sample ballot printed in English addressed to each registered voter in the county at the address shown on the registry, except that for districts in which the primary language of 10% or more of the registered voters is Spanish, a properly stamped envelope containing a copy of the bilingual sample ballot, addressed to each registered voter in the district of such board at the address shown on the register shall be prepared and deposited. The commissioner of registration shall return to the county clerk all ballots and envelopes not mailed or posted by him, with a sworn statement in writing signed by him that all the remainder of such ballots and envelopes have been mailed.

The county board of elections, in all counties having a superintendent of elections, and in other counties where the county board of elections shall elect to operate under the provisions of subsection b. of section 19:14-21 of this Title, shall, not later than noon of the

second Monday preceding the election, deliver or mail to the members of the district board three appropriate sample ballots for their respective election district. The board shall post the appropriate sample ballots in the polling place in its district.

Amended by L.1941, c. 275, p. 740, § 2; L.1946, c. 261, p. 914, § 2; L.1947, c. 168, p. 742, § 5; L.1952, c. 61, p. 382, § 1; L.1974, c. 30, § 3.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶153, p. 743.

**19:14-26. Preservation of envelopes and ballots returned by postmaster**

The county board, commissioner, or superintendent, as the case may be, shall preserve all envelopes and sample ballots which shall have been mailed by the district boards but returned to it or him by the postmasters of the various municipalities of the county, for the space of six months and the same shall be open to public inspection for the space of three months after the primary or the general or other election, as the case may be.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶154, p. 744.

**Library References**

Elections ⇨175.	C.J.S. Elections § 170.
Statutes ⇨320, 360.	C.J.S. Statutes § 138 et seq.
WESTLAW Topic Nos. 144, 361.	

**ARTICLE 3. PRINTING AND DISTRIBUTION WITH SAMPLE BALLOTS OF REFERENDUM INFORMATION**

**Library References**

Elections ⇨175.  
 WESTLAW Topic No. 144:  
 C.J.S. Elections § 170.

**19:14-27. Inclusion with sample ballot; other arrangements in certain counties**

Except as provided by section 19:14-33 of this Title, when any question or proposition shall be submitted to the people of the State at any general election or at any election held to vote on a constitutional amendment, there shall be mailed to each registered voter in the same envelope with the sample ballot a printed copy of the act of



the Legislature or constitutional amendment which is so submitted; provided, however, in counties where sample ballots are so folded that they can be mailed to the registrants without being inserted in envelopes, as permitted by section 19:49-4 of this Title, the commissioner of registration shall make such arrangements for mailing the printed copy of the act of the Legislature or constitutional amendment as are practical to enable each registrant to receive a copy thereof.

Amended by L.1947, c. 53, p. 188, § 1.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶155, p. 744.

#### 19:14-28. Descriptive marks in case of amendments

When an amendment to the constitution or to a statute is so mailed, such part thereof as is new and not contained in the existing constitution or statute shall be underscored, and if any portion of the existing law or constitution is to be omitted in the proposed amendment, such portion shall be enclosed in brackets in the printed copies of the existing law or constitution so mailed, and there shall be annexed a note explaining the significance of the brackets and underscoring.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶156, p. 744.

#### 19:14-29. Relation to statute or constitution made clear

When a copy of an act of the legislature is required by section 19:14-27 of this title to be printed and mailed to each registered voter, and such act is an amendment or supplement to a statute of this state, there shall be printed and mailed to each registered voter as hereinbefore provided, in addition to the copy of the act submitted, such portion of the statute to which the same is an amendment or supplement as shall be necessary clearly to disclose to the voter the relation of the act submitted to the existing statute law.

When a copy of a constitutional amendment is required by said section 19:14-27 to be printed and mailed, then in addition to the copy of the constitutional amendments submitted, there shall be printed and mailed to each registered voter as hereinbefore provided, such portion of the constitution as shall be necessary clearly to disclose to the voter the relation of the amendment submitted to the existing constitution.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶157, p. 745.

**19:14-30. Attorney general to designate information to be sent**

When under the provisions of this title it shall be necessary to mail to the voters any portion of the statute law of the state or any portion of the state constitution, the attorney general shall designate by writing filed with the secretary of state what portion of the statute law or state constitution shall be so printed and mailed.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶158, p. 745.

**19:14-31. Summary statement sufficient**

The attorney general, in place of or in addition to designating any portion of the statute law or state constitution to be so printed and mailed, may, if he deems proper, make a summary statement of the existing law or constitutional provisions upon the subject so far as necessary to inform the voters of the effect which the adoption or rejection of the question or proposition submitted to them will have upon such statute law or state constitution, and the mailing of such summary statement shall be a compliance with the provisions of this title.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶159, p. 745.

**Notes of Decisions**

**Participation of attorney general 1**

**1. Participation of attorney general**

Fact that attorney general took position against proposed constitutional amend-

ment did not bar him from further participation with respect to the content of the interpretive statement to appear on the ballot explaining the amendment. *Gormley v. Lan*, 88 N.J. 26, 438 A.2d 519 (1981).

**19:14-32. Printing and delivery by secretary of state**

When by section 19:14-27 of this title copies of an act of the legislature or of a constitutional amendment are required to be printed and mailed, the secretary of state shall cause to be printed and, at least twenty days before the election at which the question or proposition is to be submitted, shall deliver to each county clerk a number of copies of the printed matter to be mailed as hereinbefore required, at least twenty per cent greater than the number of registered voters in the county.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶160, p. 746.

**19:14-33. When referendum notices unnecessary**

It shall not be necessary for the secretary of state, or any other official, to cause notice to be published of any state-wide proposition directed by the legislature to be submitted to the people, nor shall it be necessary for the secretary of state, or any other official, to cause to be printed and mailed to the registered voters copies of the act or acts to be voted upon.

**Historical and Statutory Notes**

Source: L.1932, c. 254, § 1, p. 562.

**ARTICLE 4. DELIVERY OF BALLOTS,  
EQUIPMENT AND SUPPLIES**

**Library References**

Counties ⇄89.

WESTLAW Topic No. 104.

C.J.S. Counties § 130.

**19:14-34. County clerks to municipal clerks; packages sealed; record of delivery; receipts**

The county clerks of the several counties, not later than three days prior to the general election shall cause to be delivered to the clerk of each municipality within their respective counties, the number of ballots hereinbefore required to be provided for each election district within his municipality at such election. The same shall be delivered in sealed packages, one for each election district of the municipality, with marks or directions on the outside of each clearly stating the election district for which it is intended, together with the number of ballots. The county clerk shall also keep a record of the time when and the manner in which each of the packages was delivered. Receipts for the ballots thus delivered shall be given by the clerk receiving the same and filed with the county clerk, and shall be preserved by such clerk for the period of one year.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶164, p. 747.

**19:14-35. Municipal clerk to member of district board; delivery by member of board to board; receipts**

The municipal clerk shall on the day preceding any such general election, deliver, at his office or in any other way that he sees fit, to one of the members of each district board within his municipality, the ballot box, the ballot box keys, the ballots, and all other equipment and supplies received from the county clerk or the county board for such election district, and in addition shall deliver to the member all other equipment and supplies as herein provided to be furnished by the municipal clerk to the district boards of his municipality for balloting at the general election, and take the receipt of the member therefor, which last mentioned receipt the clerk of the municipality shall file and preserve for one year.

The member of each district board shall on the morning of election and before the proclamation of the opening of the polls, deliver the ballot box, the packages of ballots and all other equipment and supplies by him received to the district board of which he is a member, with the seals thereof unbroken, and shall take a receipt therefor from the board, which receipt the member shall file and preserve for one year.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §165, p. 747.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§230, 231.

## CHAPTER 15

### BALLOTING

#### ARTICLE 1. GENERAL REGULATIONS

##### Section

- 19:15-1. Supervision of district boards by county board; district boards to hold and conduct elections.
- 19:15-2. Opening and closing of polls; number of members of district board present.
- 19:15-3. Lighting and equipment of booths.
- 19:15-4. Official ballots only used; place of keeping and distribution; no envelopes.
- 19:15-5. Emergency ballots; preparation; use.
- 19:15-6. Unofficial ballots; use permitted.
- 19:15-7. Repealed.
- 19:15-8. Persons allowed in polling place.
- 19:15-9. Persons in polling place allowed to vote at closing of polls.

#### ARTICLE 2. BALLOTING PROCEDURE

- 19:15-10. Proclamation of opening of polls.
- 19:15-11. Distribution and use of ballot box keys; locking ballot boxes.
- 19:15-12. Ballot box shown to be empty; locking.
- 19:15-13 to 19:15-16. Repealed.
- 19:15-17. Comparison of signatures or statements made openly.
- 19:15-18. Challenges; right to make; questions asked; prohibited challenges; violation.
- 19:15-18.1. Challenged voter whose name does not appear on challenge list permitted to establish right to vote; affidavits.
- 19:15-18.2. Grounds for challenge to be specified in signed document; official form; contents.
- 19:15-18.3. Application by challenged voter for permission to vote; facts to be established by preponderance of the evidence; good faith attempt to register.
- 19:15-19. Challenge on ground of conviction of crime; questions and answers.
- 19:15-20. Challenge on ground of alienage; evidence of citizenship.
- 19:15-21. Challenge on ground of disqualification; oath.
- 19:15-22. Examination of challenged voter.
- 19:15-23. Questions asked persons challenged in municipalities having permanent registration.
- 19:15-24. Determination of challenge; arrest of persons attempting to vote illegally; record of challenges; violations of section by members of district board.
- 19:15-25. Ballot given to voter; instructions.
- 19:15-26. Ballots marked secretly in booth; violation a misdemeanor.
- 19:15-27. Method of marking ballot.
- 19:15-28. Writing or pasting in names by voter.
- 19:15-29. Ballot spoiled by voter; procedure to obtain another.
- 19:15-30. Folding ballot; retention by voter until received by board.
- 19:15-31. Delivery of ballot by voter to board; procedure thereon.

**Section**

- 19:15-32. Ballot deposited in ballot box by member of board.  
19:15-33. Ballot box filled.  
19:15-34. Time limit for challenging.  
19:15-35, 19:15-36. Repealed.
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**ARTICLE 1. GENERAL REGULATIONS****Library References**

Elections ☞ 197 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 191 et seq.

**19:15-1. Supervision of district boards by county board; district boards to hold and conduct elections**

The county board shall have supervision and direction of and authority over the district boards at all elections, including commission form of government elections held within the county.

The district boards shall in their respective election districts hold and conduct all elections at which the method of voting hereinafter prescribed shall be observed.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §166, p. 748.

Notes of Decisions

Regulations 1

regulations not required by statute, or, in the absence of statutory requirement, not necessary to a fair and honest expression of choice on the part of the voter. In re Chester Township, 43 N.J.L.J. 240 (1920).

1. Regulations

The officers of an election for fire commissioners could not arbitrarily impose

19:15-2. Opening and closing of polls; number of members of district board present

The district boards shall open the polls for such election at seven o'clock in the morning and close them at eight o'clock in the evening, and shall keep them open during the whole day of election between these hours; except that for a school election the polls shall be open between the hours of five and nine P.M. and during any additional time which the school board may designate between the hours of seven A.M. and nine P.M.

The board may allow one member thereof at a time to be absent from the polling place and room for a period not exceeding one hour between the hours of one o'clock and five o'clock in the afternoon or for such shorter time as it shall see fit.

At no time from the opening of the polls to the completion of the canvass shall there be less than a majority of the board present in the polling room or place, except that during a school election there shall always be at least one member of each district election board present or if more than two district board members are designated to serve at the polling place, at least two members present.

Amended by L.1995, c. 278, § 18, March 14, 1996; L.1996, c. 3, § 4, eff. Feb. 29, 1996.

Historical and Statutory Notes

Source: L.1930, c. 187, ¶167, p. 748.

Library References

Elections ¶206, 208.

WESTLAW Topic No. 144.

C.J.S. Elections § 198.

Texts and Treatises

26 Am Jur 2d, Elections §§224, 227, 230, 233, 254.

## Notes of Decisions

**Malconduct of election 1**  
**Opening of polls 2****1. Malconduct of election**

Where voters in district were unable to cast ballots between 7 a.m. and 9:30 a.m. due to malfunction in only voting machine at polling place, there had been "malconduct" within § 19:29-1 which provides that election may be contested for malconduct on part of members of any district board, or of any members of board of county canvassers, sufficient to change the result. *Magura v. Smith*, 131 N.J.Super. 395, 330 A.2d 52 (L.1974).

**2. Opening of polls**

An order which required the polls to be open for one hour less than prescribed by

statute was fatally defective, though the result of the election may not have been affected thereby. *State v. Woodruff*, 57 N.J.L. 530, 31 A. 224 (1895).

If members of a district election board intended the election should not be conducted, and by their conduct in rejecting all votes offered, prevented its being conducted, then they willfully did prevent the opening of the polls. *State v. Reilly*, 29 N.J.L.J. 16 (1906).

An indictment should be found against the entire board of registry and elections for its willful refusal to open the polls and hold the election, thus willfully depriving citizens of their right of suffrage. Charge to the Grand Jury, 27 N.J.L.J. 358 (1904).

**19:15-3. Lighting and equipment of booths**

The board shall cause the booths of the polling places to be at all hours well and sufficiently lighted to enable voters to read and prepare their ballots with ease, and shall cause each booth to be kept provided with sufficient lead pencils to enable the voters to mark their ballots.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶168, p. 748.

**19:15-4. Official ballots only used; place of keeping and distribution; no envelopes**

The board shall permit no other ballots to be used at the general election except the ballots which are by this title provided for. It shall confine the distribution and use of such ballots to the polling room in the manner herein directed, and shall distribute no ballots (other than official sample ballots as herein provided) outside the polling place.

The board shall keep no ballots in the polling booths and shall not permit the use of envelopes for enclosing ballots on election day.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶169, p. 749.



## Notes of Decisions

Ballots 2  
Envelopes 1

## 1. Envelopes

Statute providing that election boards keep no ballots in polling booths and that envelopes not be used for enclosing ballots on election day, N.J.S.A. 19:15-4, was violated by election board when marked paper ballots used in election for township council were forwarded to county board of elections in envelope

supplied by superintendent of elections for that purpose. In re 1984 General Election for the Office of Council of the Tp. of Maple Shade Burlington County, 203 N.J.Super. 563, 497 A.2d 577 (L.1985).

## 2. Ballots

Ballots cast in one voting precinct having an official indorsement indicating that they were prepared for another precinct were properly rejected. Lippincott v. Felton, 61 N.J.L. 291, 39 A. 646 (1898).

## 19:15-5. Emergency ballots; preparation; use

If at any election the ballots to be furnished therefor shall not be delivered at the time above mentioned, or if after delivery they shall be destroyed or stolen and other official ballots cannot be obtained in time for such election, the clerk of the county or municipality, or the district board, as the case may require, shall cause other ballots to be prepared as nearly in the form heretofore prescribed as practicable, but without the indorsement on the top.

Upon the receipt of ballots thus prepared from the clerk of the county or municipality, accompanied by a statement, under oath, of the person preparing the same, that they have been so prepared and furnished because the original ballots have so failed to be received or have been destroyed or stolen, and that other official ballots could not be obtained in time for such election, or where the district board has caused such unofficial ballots to be prepared, the board shall cause the ballots so substituted to be used at the election.

## Historical and Statutory Notes

Source: L.1930, c. 187, §200, p. 762.

## 19:15-6. Unofficial ballots; use permitted

If from any cause neither the official ballot nor ballots otherwise prepared as herein prescribed shall be ready for distribution at any polling place, or if the supply of ballots shall be exhausted before the polls are closed, unofficial ballots, made as nearly as possible in the form of the official ballot, may be used. The mode and manner of voting such unofficial ballots shall, nevertheless, in all respects conform as nearly as possible to the mode and manner of voting herein prescribed.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶201, p. 763.

**19:15-7. Repealed by L.1944, c. 230, p. 786, § 4****Historical and Statutory Notes**

The repealed section, which derived from L.1930, c. 187, p. 749, § 170, amended by L.1931, c. 374, p. 951, § 7, provided that only persons whose names were on registers would be allowed to vote, and was amended by L.1939, c. 354, § 1. For provisions relating to similar subject matter see § 19:31A-8.

**19:15-8. Persons allowed in polling place**

No person shall be allowed or permitted to be present in the polling place or polling room during the progress of the election except the officers connected with the election, the several candidates, the duly authorized challengers, such voters as are present for the purpose of voting and their dependent children, and such officers as may be duly detailed to be present, pursuant to this title, for preserving the peace or enforcing the provisions hereof.

Amended by L.1994, c. 154, § 1, eff. Dec. 9, 1994.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶171, p. 750.

**Library References**

Elections ⇄209 to 211.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 192, 200.

**19:15-9. Persons in polling place allowed to vote at closing of polls**

After the hour fixed for closing the polls voters already within such place or room or in line shall be permitted to prepare and cast their ballots.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶172, p. 750.

## Notes of Decisions

## Person in polling place 1

## 1. Person in polling place

Voter who was within polling place before 8 p.m. when door was closed but was not allowed to vote was a legal voter rejected in election to fill two seats on

township committee; however, that vote would be treated as open ballot where court did not know for whom he would have voted. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

## ARTICLE 2. BALLOTING PROCEDURE

## Library References

Elections ¶216 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 204 et seq.

## 19:15-10. Proclamation of opening of polls

The district boards, before they receive any vote, shall make public proclamation of the opening of the election and of their readiness to receive the votes of the voters, and thereupon the election shall be opened.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶173, p. 750.

## 19:15-11. Distribution and use of ballot box keys; locking ballot boxes

At the opening of the election each of the keys of the locks of the ballot box shall be taken by a different member of the board, who shall keep the same until the statement of the result of the election shall be made and certified, as directed by this title, and shall not during that time suffer any other member of the board, or any other person, on any pretense to take or have the same.

In all cases in which the members of the board are directed to lock the ballot box, each of the locks thereof shall be locked by the member who shall have the key belonging thereto, as directed by this title.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶174, p. 750.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§231,  
298-305.

**19:15-12. Ballot box shown to be empty; locking**

Immediately before proceeding to receive the votes the board shall in an open and public manner exhibit the ballot box so that those present may see that there is nothing contained therein, and thereupon close and lock the same, leaving open the aperture in the lid thereof.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶175, p. 751.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections § 231.

**19:15-13 to 19:15-16. Repealed by L.1944, c. 230, p. 786, § 4****Historical and Statutory Notes**

Sections 19:15-13 to 19:15-16, were derived from L.1930, c. 187, pp. 751 to 753, §§ 176 to 179, and related to the form and contents of and entries in the poll book and the comparison of the voter's signature, and provided for the procedure where a voter was unable to sign

the poll book in municipalities having permanent registration and for the claiming of the right to vote personally and for the entering of the ballot number in the poll book.

For provisions relating to similar matter, see §§ 19:31A-7 and 19:31A-8.

**19:15-17. Comparison of signatures or statements made openly**

The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶180, p. 754.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections § 237.

## Notes of Decisions

## Duty of officials 1

## 1. Duty of officials

The failure of election officers in charge of election districts to perform a directory duty, such as comparing signatures, cannot invalidate result of election. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

The board of registry and election has a duty to see that some one member com-

pares the signatures in the poll books with the registry book before accepting the ballot, and if they do that, and are innocently misled by the one who is to make the comparisons, they will not be guilty of violating their duty, but the members of such board cannot stand by with knowledge that such comparisons are not being made and proceed without violating the law. *State v. Ungar*, 94 N.J.L. 495, 111 A. 37 (1920).

### 19:15-18. Challenges; right to make; questions asked; prohibited challenges; violation

The members of the district boards and any duly authorized challenger, respectively, shall at any election challenge every person who shall claim to have a right to vote therein whom they or he shall know, suspect or believe not to be qualified or entitled to so vote, and said members of the district board or challenger shall have the power and right to ask all questions which are suitable and necessary to determine such person's right.

No member of the district board and no duly authorized challenger shall, however, challenge, delay or prevent the right to vote of any person because of that person's race, color, national origin, expected manner of casting a vote or residence in a particular ward, housing complex or section of a municipality or county, provided that nothing herein shall be construed to prohibit a challenge based upon the failure of the challenged voter to meet the applicable statutory residency qualification for voting in the particular election district. Any member of the district board or duly authorized challenger who violates this section is guilty of a disorderly persons offense.

Amended by L.1991, c. 249, § 1, eff. Nov. 6, 1991.

#### Historical and Statutory Notes

**Statement:** Committee statement to Assembly, No. 2079—L.1991, c. 249, see § 19:15-18.1.

**Source:** L.1930, c. 187, ¶181, p. 754.

#### Library References

Elections ⇨12(2.1, 4), 223, 319.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 8, 209, 330.

**19:15-18.1. Challenged voter whose name does not appear on challenge list permitted to establish right to vote; affidavits**

a. Any voter whose name does not appear on a challenge list prepared by the superintendent of elections of the county but who is challenged as not qualified or entitled to vote by a duly authorized challenger or by a member of a district board of elections shall be permitted to establish his right to vote by:

(1) signing an affidavit which states the voter's qualifications to vote on forms to be supplied by the superintendent of elections in those counties having a superintendent of elections or by the commissioner of registration in all other counties, and;

(2) presenting for inspection a suitable identifying document, which may be, but is not limited to, the following:

(a) a valid New Jersey driver's license;

(b) a sample ballot which lists the voter's name and address;

(c) an official federal, State, county or municipal document which lists the voter's name and address;

(d) a utility or telephone bill or tax or rent receipt dated; or

(e) a piece of mail postmarked, on or after the 60th day before the day of the election at which the voter is challenged.

b. A copy of the affidavit signed by the challenged voter shall be given to that person.

c. The affidavit, or a form attached to it, shall state:

(1) the means by which a person whose name does not appear on a challenge list prepared by the superintendent of elections of the county but who is challenged by a duly authorized challenger or by a member of the district board of elections may seek to establish the person's right to vote, as provided in subsection a. of this section;

(2) that a challenger who succeeds in denying a voter the right to vote must sign an affidavit stating the reason why the voter is not entitled to vote and must furnish a copy of the affidavit to the challenged voter, as provided in section 3 of P.L.1991, c. 249 (C. 19:15-18.2);

(3) the legal remedy which a person whose name does not appear on a challenge list prepared by the superintendent of elections of the county but who is challenged by a duly authorized challenger or by a member of the district board of elections and denied the right to vote may use to seek permission to vote, as provided in section 6 of P.L.1991, c. 249 (C. 19:15-18.3).

d. In counties in which the primary language of 10% or more of the registered voters is Spanish, the affidavit and instructions for its completion and the information required by subsection c. of this section shall appear in both English and Spanish.

L.1991, c. 249, § 2, eff. Nov. 6, 1991.

**Assembly State Government Committee Statement**

**Assembly, No. 2079—L.1991, c. 249**

The Assembly State Government Committee reports favorably and with committee amendments Assembly Bill No. 2079.

This bill revises and extends the statutory provisions governing election day challenges to a person's right to vote.

With respect to questions posed by district board members and authorized challengers to a person claiming the right to vote on the day of an election, the bill adds to the existing requirement that these questions be necessary for further requirement that they be suitable. It disallows challenges based upon a person's race, color, national origin, expected manner of casting a vote or residence, except that a challenge based upon the person's failure to meet the statutory residency qualification for voting in the particular election district would not be prohibited. Any violation of these provisions is made a disorderly persons offense.

Under the bill, if a voter whose name does not appear on an official challenge list is duly challenged, that voter may establish a right to vote by (1) signing an affidavit stating voting qualifications, and (2) presenting suitable identifying documents, such as a New Jersey driver's license, a sample ballot or other official government document listing the voter's name and address, a dated receipt for a utility, tax or rent bill, or a piece of mail bearing a recent postmark. In determining such a voter's right to vote, the district board is to give due weight to the evidence provided by the affidavit and documentation. If the board sustains the challenge, the challenger must specify the grounds thereof in a signed affidavit, which shall also contain both a statement that the voter has sought to establish a right to vote by affidavit of qualification and a specification of the documentation accompanying that affidavit. A copy of this challenger's affidavit must be given to the challenged voter.

A voter whose right to vote has been successfully challenged at the polls may apply to Superior Court for permission to vote. The application shall be heard in informal proceedings at which the rules of evidence shall not apply. The application shall be granted if the court finds that the challenged voter is qualified to vote and either (1) is properly registered at the proper location or (2) was properly so registered as of the last election but has since moved within the county and made a timely good faith attempt to register from the new address.

The bill requires the county board of elections to publish, in a newspaper of countywide circulation, a notice setting forth: the legally authorized procedure by which a person who attempts to vote may be challenged; the legal prohibition against the use of

superfluous grounds for challenging or interfering with a person's right to vote; the means by which a person challenged may establish that right and may appeal the denial of that right following a successful challenge thereof; and other information that could aid a person seeking to vindicate the right to vote.

Finally, the bill requires that each polling place shall be provided on election day with forms on which a voter or person seeking to vote may register any complaint regarding the conduct of the election; it also authorizes the use of information entered on such a form in any official investigation into possible violation of the State election laws.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

#### **COMMITTEE AMENDMENTS**

The committee amended the bill (1) to clarify that the restriction against residency-based challenges does not apply to challenges directed at a person's failure to meet the statutory residency qualification for voting in the district, and (2) to provide that a violation of the restrictions on questions and challenges is to be a disorderly persons offense rather than a crime of the fourth degree.

#### **Historical and Statutory Notes**

<b>Title of Act:</b>	R.S. 19:15-24 and R.S. 19:32-10 and
An Act concerning voter challenges, amending R.S. 19:15-18, R.S. 19:15-21,	supplementing chapters 12, 15 and 32 of Title 19 of the Revised Statutes.

#### **Library References**

Elections ⇐223.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 209.

#### **Texts and Treatises**

26 Am Jur 2d, Elect § 237.

### **19:15-18.2. Grounds for challenge to be specified in signed document; official form; contents**

If a person whose name does not appear on a challenge list prepared by the superintendent of elections of the county is challenged as not qualified or entitled to vote by a duly authorized challenger or by a member of the district board of elections and if this challenge is sustained by the district board of elections, the person making the challenge shall specify the grounds for the challenge in a signed affidavit on forms to be supplied by the superintendent of elections in those counties having a superintendent of elections or by the county clerk in all other counties. This document also shall state that the challenged voter has sought to establish his right



to vote by signing an affidavit which states the challenged voter's qualifications to vote and by presenting a suitable identifying document, the identity of which shall be specified by the challenger. A copy of the challenger's affidavit shall be given to the challenged voter.

L.1991, c. 249, § 3, eff. Nov. 6, 1991.

#### Historical and Statutory Notes

**Statement:** Committee statement to Assembly, No. 2079—L.1991, c. 249, see § 19:15-18.1.

#### Library References

Elections ⇨223.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 209.

### **19:15-18.3. Application by challenged voter for permission to vote; facts to be established by preponderance of the evidence; good faith attempt to register**

Any person whose name does not appear on a challenge list prepared by the superintendent of elections of the county but who is challenged and denied the right to vote on the day of a municipal, primary, general, or special election by a duly authorized challenger or by a member of a district board of elections, may apply to a Superior Court judge sitting at the county seat for permission to vote. No papers need be filed; the court shall entertain oral applications. The challenged voter may appear pro se or with counsel. The challenger or the member of the district board, as the case may be, may appear or be represented by counsel. The challenged voter shall be permitted to state by oath or affirmation the facts which the voter believes establish eligibility to vote, shall furnish a copy of the affidavit the voter signed when challenged, a copy of the affidavit signed by the challenger and the identifying document found invalid by the challenger and the district board. The rules of evidence shall not apply to those proceedings. The judge shall grant the application and provide the challenged voter with written authorization to vote on that day if the judge finds the following facts to be established by the testimony of the applicant or, in the case of a dispute of facts or some questions as to the challenged voter's credibility, by a preponderance of the following evidence:

a. The challenged voter is at least 18 years old and a citizen of the United States and of this State, has resided in the county at least 30 days prior to the date of the election, and has not been convicted of a

crime which would disenfranchise a person under the laws of this State, and either:

- b. The challenged voter is properly registered at his location; or
- c. The challenged voter was properly registered at his location as of the last election at which the challenged voter voted but has moved to another location within the county since then and in good faith attempted to register at the new address within the time prescribed by law.

For the purposes of this section, a good faith attempt to register shall include: completing the prescribed registration form no later than 29 days before the election in the presence of a person who appears to be over 18 years old and says that he or she can and will witness the form and mail it to the register for the applicant; completing a form received in the mail from the commissioner of registration, superintendent of elections or the county board which states that information has been received that the applicant has moved and placing the completed form in a proper mailbox with proper postage, if necessary, no later than 29 days before the election; completing a registration form in any government office; and reasonably relying upon the oral statements of an official at a polling place that they will insure proper reregistration.

The judge of the Superior Court having the application shall cause a full record of the proceeding to be taken stenographically, transcribed and filed in the office of the county clerk of the county, which record shall be open and public record. All costs and expenses of such proceedings shall be paid by the county.

L.1991, c. 249, § 6, eff. Nov. 6, 1991.

### **Historical and Statutory Notes**

**Statement:** Committee statement to Assembly, No. 2079—L.1991, c. 249, see § 19:15-18.1.

### **Library References**

Elections ⇨ 223.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 209.

## **19:15-19. Challenge on ground of conviction of crime; questions and answers**

If a person be challenged as convicted of a crime which bars him from exercising the right to vote, he shall be required to answer in relation to such alleged conviction, and if he shall admit that he has been so convicted, he shall not be permitted to vote unless he shall

make oath that he has been pardoned or restored by law to the right of suffrage; but if he shall deny that he has been so convicted, no proof of such conviction shall be received, other than the duly authenticated record thereof, except such proof as may be necessary to establish his identity with the person named in such record, or may be adduced by him to rebut the evidence of identity produced on behalf of the challenge.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶182, p. 754.

#### Library References

Elections ⇨223.

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

#### 19:15-20. Challenge on ground of alienage; evidence of citizenship

If a person shall be challenged as not qualified or entitled to vote, and the person challenging him shall specify a ground for such challenge to be that the person so challenged is an alien, the judge of election may forthwith tender to him an oath or affirmation, in the following form: "You do swear (or affirm, as the case may be), that to the best of your knowledge, information and belief, you were born a citizen of the United States, and that you do not owe allegiance to any foreign prince, potentate, state or sovereignty", and if the person so challenged shall refuse to take the oath or affirmation so tendered to him, he shall be deemed to be an alien, unless he shall produce at the time of claiming his vote, to the board, a lawful certificate, issued out of and under the seal of some court of record, having authority to admit aliens to the rights of a citizen of the United States, showing that he has been admitted to the rights of a citizen of the United States. In this case the judge shall tender to the person so challenged an oath or affirmation in the following form:

"You do swear (or affirm, as the case may be), that you are the person named in the certificate of naturalization which you have produced to the board." In case the person producing the same shall claim to have derived the rights of such citizen through the naturalization of his parent, such certificate shall show that the person alleged to be such parent has been admitted to the rights of such citizen. In this event, an oath or affirmation, in the following form, shall be tendered to such person:

"You do swear (or affirm, as the case may be), that to the best of your knowledge, information and belief, the person named in the

certificate of naturalization which you have produced to this board was your parent, and that you were at the time of the naturalization of your parent under the age of twenty-one years, and resident of the United States." If the person so challenged shall in either case refuse to take the oath or affirmation so tendered to him, he shall be deemed to be an alien.

### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶183, p. 755.

### **Cross References**

Naturalization not to be granted within 30 days of an election, see § 2A:53-2.  
Political committees and candidates forbidden to pay fees of naturalization, see § 2A:53-3.

### **Library References**

Elections ⇐223

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

### **Texts and Treatises**

25 Am Jur 2d, Elections §§62, 63, 66 et seq., 94; 26 Am Jur 2d, Elections §§ 237, 280, 281.

## **19:15-21. Challenge on ground of disqualification; oath**

If a person shall be challenged as not qualified or entitled to vote, the judge may forthwith tender to him an oath or affirmation, in the following form:

"You do swear (or affirm, as the case may be), that you are a citizen of the United States; that you have resided in this State and in this county for 30 days next before this election, and not elsewhere; that you are now a resident of this election district; that, as far as you know and verily believe, you are 18 years of age, and in all respects qualified to vote in this election, in this election district, and that you have not voted elsewhere in this election," and if the person so challenged shall refuse to take the oath or affirmation so tendered to him, he shall be deemed not to be qualified or entitled to vote.

Amended by L.1962, c. 85, § 1; L.1964, c. 7, § 2; L.1991, c. 249, § 4, eff. Nov. 6, 1991.

### Historical and Statutory Notes

**Statement:** Committee statement to Assembly, No. 2079—L.1991, c. 249, see § 19:15-18.1.

**Source:** L.1930, c. 187, ¶184, p. 756.

### Library References

Elections ⇨223.

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

### Notes of Decisions

#### Residence 1

##### 1. Residence

WPA workers from other states and other sections of the state, who resided in federal camp within borough for over a year before general election, and who

were properly registered and who took statutory oath of qualification when challenged, were not qualified to vote in general election in the borough, where there was no showing of change of residence outside of attendance at camp. *Schweitzer v. Buser*, 15 N.J. Misc. 217, 190 A. 89 (1936).

### 19:15-22. Examination of challenged voter

Upon any question or challenge of a voter duly registered it shall be the duty of the board, and the privilege of all its members, to put all such questions as are proper to determine the right of the voter to vote.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶185, p. 756.

### Library References

Elections ⇨223.

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

### Notes of Decisions

#### Validity 1

##### 1. Validity

To extent that challengers and district election board members ask "necessary and proper" questions of individual, re-

garding individual's qualifications or disqualifications to vote, burden on individual's right to vote without undue interference is outweighed by legitimate interest in preventing election fraud. *Vargas v. Calabrese*, D.N.J.1986, 634 F.Supp. 910.

### 19:15-23. Questions asked persons challenged in municipalities having permanent registration

In municipalities having permanent registration, if a voter is challenged, the board shall ask him the questions which were asked him

upon registration, the answers to which appear on the signature copy register and if the answers do not correspond a note of such fact shall be entered in the column of the poll book entitled "remarks". If the signatures of the voter or the answers to the questions made by the voter do not correspond, then it shall be the privilege of the challengers to challenge, and the duty of each member of the district board to challenge, unless some other authorized person shall challenge.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶186, p. 756.

#### **Library References**

Elections ⇄223.

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

#### **19:15-24. Determination of challenge; arrest of persons attempting to vote illegally; record of challenges; violations of section by members of district board**

The district boards shall not give a ballot to any person unless they shall be satisfied that such person is in all respects qualified and entitled to vote; and for the purpose of satisfying themselves as to the right of any person who shall claim a right to vote they shall have power to examine such person, and any other person or persons, under oath or affirmation, touching such right, except as hereinbefore restricted. The board shall determine the right of the voter to vote, after making use of, and giving due weight to, the evidence afforded by his signature, if any, such answers, and an affidavit which states the challenged voter's qualifications to vote and a suitable identifying document, as provided under section 2 of P.L. 1991, c. 249 (C. 19:15-18.1). If any member of the board shall give or assent to give a ballot to any person challenged, without requiring him to take the oath or affirmation hereinbefore prescribed to be made upon such challenge, and the person shall not be qualified and entitled to vote, the member so giving or assenting to give a ballot, shall be deemed to have given to such person a ballot, knowing it to be illegal. The question as to the giving of the ballot to the person shall be put in the following form: "Shall a ballot be given to this person by this board?"

If a majority of the board shall decide to give a ballot to such voter or in case of a tie vote, the voter shall be given a ballot and allowed to vote. If a majority of the board shall decide against giving a ballot to the voter no ballot shall be given. The board upon demand of a

member of the board or any other citizen shall forthwith issue a warrant for the arrest of such person and deliver the same to a peace officer, who shall forthwith arrest him, and the right to challenge voters shall exist until the ballot shall have been deposited in the ballot box.

Every such challenge and the determination of the board shall in every instance be recorded in the signature comparison record, in the column "Sig. Comp. by," used at the election at which the challenge has been made.

Any member of a district board who refuses or neglects to comply with the provisions of this section may be summarily removed from office by the county board, or any judge of the Superior Court assigned to the county .

Amended by L.1953, c. 19, p. 331, § 16; L.1991, c. 91, § 242, eff. April 9, 1991; L.1991, c. 249, § 5, eff. Nov. 6, 1991.

### Historical and Statutory Notes

**Statement:** Committee statement to Assembly, No. 2079—L.1991, c. 249, see § 19:15-18.1.

**Source:** L.1930, c. 187, ¶187, p. 757, amended by L.1931, c. 374, § 8, p. 952.

### Library References

Elections ☞223.

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

### Notes of Decisions

#### Challenge of voter 1, 2

##### In general 1

##### Deposit of ballot after challenge of voter 2

#### Deposit of ballot after challenge of voter 2

#### Examination of voter 3

#### 1. Challenge of voter—In general

The requirement that a challenge of a voter at a party primary shall be tried by the two members of the election board belonging to his political party in the case of the two larger parties, and by the whole board in the case of the smaller parties, does not deprive voters of the larger parties of the equal protection of the law. *Heath v. Rotherham*, 79 N.J.L. 22, 77 A. 520 (1909).

#### 2. — Deposit of ballot after challenge of voter

A judge of election was a public officer under, L.1898, p. 237, repealed, on whom a duty was imposed, and the deposit by him of a ballot of a voter who had been challenged, before the board had decided to receive the ballot, made him guilty of a misdemeanor under § 197, repealed. *State v. Lockman*, 83 N.J.L. 168, 83 A. 689 (1912).

#### 3. Examination of voter

Provision of General Election Law, L.1898, p. 274 et seq., § 75 repealed, relating to the oath required of a person desiring to vote at an election, when read in connection with the "Primary Election Law," L.1903, p. 614 et seq., repealed, authorized a board of registry and election, where a person presented himself to vote at a primary election, to examine such person under oath as to his name

and residence. *State v. Cooney*, 72 N.J.L. 76, 60 A. 60 (1905).

**19:15-25. Ballot given to voter; instructions**

In all municipalities after the district board shall have ascertained that a voter is properly registered and qualified to vote the inspector of election shall furnish to the voter one official ballot numbered to correspond with the poll number of the voter, allowing for spoiled ballots, if any.

No ballot shall be handed to a voter until there is a booth ready for occupancy. The members of the district board shall not allow a voter to mark his ballot outside of an election booth unless the voter is unable to enter the booth by reason of his physical disability.

The inspector shall instruct the voter how to fold the ballot and shall crease the ballot so as to indicate the point where the voter shall fold the ballot, but before handing the ballot to the voter the inspector shall see that the face of the ballot including the coupon is exposed, and at the same time shall call off the ballot number to the member having charge of the polling book, who shall make certain that the ballot number and poll number agree, allowing for spoiled ballots, if any.

If the number of the ballot does not follow consecutively the missing number or numbers shall be written on a blank sheet of paper signed by the members of the district board and placed on the string with the coupons in its or their proper place or places.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶188, p. 758.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§ 236, 238-241.

**19:15-26. Ballots marked secretly in booth; violation a misdemeanor**

Every voter to whom a ballot is given shall thereupon retire into the polling booth. Not more than one voter, except as hereinafter provided, shall be permitted to enter or be in the same booth, at one time. The voter shall prepare his ballot in the booth secretly and screened from the observation of others.

Any person or voter who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and shall be punished by a



fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both at the discretion of the court.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶189, p. 758.

### Notes of Decisions

#### Violations 1

##### 1. Violations

Voters in township council election who used emergency paper ballots due to breakdown of voting machine violated statute governing voting booths, N.J.S.A. 19:15-26, as they did not vote in booths, and as they were not screened from observation. In re 1984 General Election for the Office of Council of the Tp. of Maple Shade Burlington County, 203 N.J.Super. 563, 497 A.2d 577 (L.1985).

Will of people was thwarted, and irregularities and deviations from election laws were sufficient to void election to fill two seats of school district board of education; irregularities included transportation to poll of mental health care facility residents, many of whom were on medication such as Thorazine, Novane, Coget, Prolixin and Stellazine by facility manager, and manager's instructing residents for whom to vote and how to mark ballot. Matter of Annual School Election Held in Chesilhurst School Dist., Camden County, 92 N.J.A.R.2d (EDU) 213 (1992), affirmed 92 N.J.A.R.2d (EDU) 427.

### 19:15-27. Method of marking ballot

To vote for any candidates whose names are printed in any column, the voter shall mark a cross x, plus + or check √ in ink or pencil in the square at the left of the name of each candidate in any column for whom he desires to vote to the number to be elected for each office.

To vote upon the public questions printed on the ballot the voter shall indicate his choice by marking a cross x, plus + or check √ in ink or pencil in the square at the left of either the word "Yes" or "No" of each public question.

Amended by L.1947, c. 104, p. 523, § 4; L.1994, c. 77, § 7, eff. Jan. 1, 1995.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶190, p. 759.

### Cross References

Marking ballot in election to establish district welfare-house, see § 44:1-41.

### Library References

Elections ⇨180(1) et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 174 et seq.

**Texts and Treatises**

26 Am Jur 2d, Elections §257 et seq.

**Notes of Decisions**

**Absence of mark 2**  
**Particular marks 1**

**1. Particular marks**

In election to fill two seats on township committee, Board of Elections wrongfully rejected absentee ballot which they declared to be "identified" and having "distinguishing marks" on basis that blue ink pen had been used to complete ballot and notation had been made thereon of fact that pen had been given to voter by clerk's office, and location of that office; Board failed to make necessary finding regarding voter's intent to identify or distinguish ballot and could not have reasonably done so. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

Evidence in election recount proceeding sustained county judge's determination that ballot had been invalidated because of use of asterisks in marking ballot on ground that voter thereby intended to distinguish his ballot. Application of Sadlon, 88 N.J.Super. 37, 210 A.2d 630 (A.D.1965).

Mark on ballot consisting of diagonal line with very small line straight down from top of diagonal line did not substantially conform to this section indicating three kinds of marks authorized for indicating choice. Petition of Keogh-Dwyer, 85 N.J.Super. 188, 204 A.2d 351 (A.D. 1964), reversed 45 N.J. 117, 211 A.2d 778.

Where voter in box opposite name of candidate for freeholder drew a diagonal line running from the upper left to the lower right corner of the box and then

drew a series of very closely spaced lines over the mark, and filling the box and extending beyond it, the vote for the freeholder was nullity. Petition of Wade, 39 N.J.Super. 520, 121 A.2d 552 (A.D.1956).

Where voter marked box in ballot opposite name of candidate for freeholder with a straight line beginning in lower left-hand part of the box and running upward to the right beyond the outline of the box, without any hook at the end, so as to make a check mark, the vote for freeholder was a nullity. Petition of Wade, 39 N.J.Super. 520, 121 A.2d 552 (A.D.1956).

In order for voter to cast vote for persons on irregular ballot on voting machine by either writing in or affixing name of person by any legal means, it is not necessary for voter to make a cross, plus, or check at left or right of such name. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

**2. Absence of mark**

Vote with name of candidate written in proper place, without cross or plus as required by law, could not be counted. In re Election for Mayor, Borough of Lavallette, 9 N.J. Misc. 25, 152 A. 641 (1930).

There being no statutory requirement for the marking of an "X" in front of the name written on a ballot for the office of fire commissioner in order to indicate a choice, the rejected ballots in question should be counted. In re Chester Township, 43 N.J.L.J. 240 (1920).

**19:15-28. Writing or pasting in names by voter**

Nothing in this Title shall prevent any voter from writing or pasting under the proper title of office in the column designated personal choice the name or names of any person or persons for whom he desires to vote whose name or names are not printed upon the ballot for the same office or offices, and who shall mark a cross x,

plus + or check / in the square at the left of such name or names. Such writing shall be in ink or pencil. All pasters shall be printed with black ink on white paper.

Amended by L.1947, c. 104, p. 523, § 5; L.1994, c. 77, § 8, eff. Jan. 1, 1995.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶191, p. 759, amended by L.1931, c. 374, § 9, p. 953.

**American Law Reports**

Validity of write-in vote where candidate's surname only is written in on ballot, 86 ALR2d 1025@ec.

**Library References**

Elections ⇔159, 181.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 90, 130, 180, 181.

**Texts and Treatises**

26 Am Jur 2d, Elections §§267-269.

**Notes of Decisions**

- In general** 1
- Candidate eligible for write-in vote** 6
- Marking ballot** 4
- Name of office** 3
- Paper ballots** 2
- Party of candidate** 7
- Pasting over other names** 5

candidate whose name is not listed on ballot. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

This section and § 19:14-4 apply only to paper ballots and not to voting machines. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

**1. In general**

Statutes providing that personal choice candidate may be voted for by writing or pasting his name in column designated personal choice and placing mark in square to left of such name are mandatory, not directory. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

**2. Paper ballots**

Official ballot for general election must contain names of primary nominees of various political parties and names of those candidates nominated by direct petition, and space must be allowed either in paper ballot or on voting machine for casting vote by write-in or sticker for a

**3. Name of office**

There is nothing in the election law preventing a voter from writing on an official ballot the name of any person for whom he desires to vote for any office, the name of which is printed on such ballot, or, if the name of any office to be filled at such election be not printed on such ballot, from writing also the name of such office in conjunction with the name of the person for whom he desires to vote to fill such office. *Carlough v. Ackerman*, 74 N.J.L. 16, 64 A. 964 (1906).

An objection to a ballot that the name "John E. Davis," written in ink over the printed name of the incumbent erased

with ink, is so written as to cover the printed name of the office, but the name of the office can still be discerned, and the overlapping was due to inadvertence and not to design, was overruled. *Davis v. Bell*, 27 N.J.L.J. 76.

#### 4. Marking ballot

Personal choice votes would not be counted where voters wrote or pasted in candidate's name on ballot but failed to make a proper mark next to candidate's name. *Petition of Keogh-Dwyer*, 45 N.J. 117, 211 A.2d 778 (1965).

Where voters placed name of personal choice candidate in personal choice column but failed to place mark in square to left of name, such votes could not be counted. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

#### 5. Pasting over other names

In cases where sticker for personal choice candidate was not placed in personal choice column but over rival candidate's printed name, such votes could not be counted. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

#### 6. Candidate eligible for write-in vote

Though his name could not be printed on official ballot as independent candi-

date for office of mayor at general election, unsuccessful candidate at primary election for party nomination for such office was nevertheless entitled to be a candidate for such office at general election on a write-in or sticker basis, and qualified electors were entitled to vote for him by such means. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

Where candidate received 125 write-in votes in primary election for the office of councilman and no other persons appeared on the party ballot for that position, candidate was nominated. *Fiscella v. Nulton*, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).

#### 7. Party of candidate

Under L.1898, p. 268, § 59, concerning general elections, now repealed, providing that a voter may erase from his ballot any name, or write thereon the name of any person for whom he desires to vote, and L.1903, p. 603, concerning primary elections, now repealed, making § 59 applicable to primary elections, a member of one party could vote for a member of another party as the nominee of such voter's party, and there was nothing in the general object of the 1903 act denying such right. *Freeman v. Board of Registry & Election of Metuchen*, 76 N.J.L. 83, 67 A. 713 (1907).

### 19:15-29. Ballot spoiled by voter; procedure to obtain another

Should any voter to whom any official ballot has been handed spoil or render the same unfit for use, he may return it and obtain another from the district board, but no more than two official ballots shall be furnished to any voter, except at the discretion of the board.

The board shall preserve all the ballots, with their coupons attached, returned by a voter as spoiled or unfit for use, and after the proper correction has been made in the poll book and signature copy register or register of voters such ballot or ballots shall be placed upon the same string with the coupons.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §192, p. 759.

### 19:15-30. Folding ballot; retention by voter until received by board

Before leaving the booth the voter shall fold his ballot so that no part of the face of it shall be visible and so as to display the face of

the numbered coupon, and the ballot of such claimant shall remain in his hand until the board shall have decided to receive the same.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶193, p. 760.

**Library References**

**Texts and Treatises**

26 Am Jur 2d, Elections §§ 236, 256.

**Notes of Decisions**

**In general 1**

**1. In general**

Former section expressly provided that a person claiming the right to vote must keep his ballot in his own hand until the board had decided to receive it. The

judge of election had no right to take the ballot or deposit it until its admission had been decided on. To deposit a challenged ballot before it was decided by the majority to receive it, was a willful violation of duty, for which a judge of election should be indicted. Such an act nullified the statute. Charge to the Grand Jury, 27 N.J.L.J. 358 (1904).

**19:15-31. Delivery of ballot by voter to board; procedure thereon**

He shall then hand the ballot with the coupon undetached to the member of the election board having charge of the ballot box, which member shall call off the number of the ballot and the name of the voter. If the name and number agree with the record in the poll book, the election officer having charge of the poll book shall so announce and place the word "voted" opposite the poll number to indicate that the person shown thereon as receiving the ballot has voted.

In districts having permanent registration the member of the board having charge of the signature copy register shall record the ballot number in the proper column of the record of voting form.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶194, p. 760.

**19:15-32. Ballot deposited in ballot box by member of board**

Thereupon the member of the board having charge of the ballot box, without displaying any part of the face of the ballot, shall remove the coupon from the top of the ballot and place the ballot in the box and the coupon on a file string. The member of the board having charge of the ballot box shall keep the ballot in full view of the voter and the other election officers until it is deposited and the voter may take hold thereof, with the member of the board having charge of the ballot box, until it is actually deposited.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §195, p. 760.

**Notes of Decisions****Ballot box 1****1. Ballot box**

Voting district which did not use ballot box in township council election because none was furnished for election board's

use acted in contravention to this section which requires that paper ballots be placed in ballot boxes after being marked. In re 1984 General Election for the Office of Council of the Tp. of Maple Shade Burlington County, 203 N.J.Super. 563, 497 A.2d 577 (L.1985).

**19:15-33. Ballot box filled**

When one ballot box is filled with ballots the board shall seal the same and provide another box.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §196, p. 761.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§231, 254.

**19:15-34. Time limit for challenging**

The right to challenge voters shall exist until the ballot shall have been deposited in the ballot box, and the procedure in case the right of a person to vote is challenged shall be the same as herein prescribed when the right of a person to receive a ballot is challenged.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §197, p. 761.

**Library References**

Elections ⇔223.

WESTLAW Topic No. 144.

C.J.S. Elections § 209.

**Texts and Treatises**

26 Am Jur 2d, Elections § 237.

19:15-35, 19:15-36  
Repealed

## ELECTIONS

**19:15-35, 19:15-36.** Repealed by L.1944, c. 230, p. 786, § 4

### Historical and Statutory Notes

The repealed sections were derived from L.1930, c. 187, pp. 761, 762, §§ 198, 199, and related to procedure for assistance of voters unable to prepare

ballots and for procedure where voter's name was marked as already having voted.

See, now, § 19:31A-8.

## CHAPTER 16

### COUNTING BALLOTS BY DISTRICT BOARDS

#### Section

- 19:16-1. Repealed.  
19:16-2. Votes counted publicly without adjournment.  
19:16-3. Counting votes; distinguishing marks; ballots improperly prepared.  
19:16-4. Void ballots; distinguishing marks.  
19:16-5. Numbering and stringing void and partially void ballots.  
19:16-6. Majority decision of board final; dissents entered.  
19:16-7. Reading and stringing of ballots.  
19:16-8. Tally sheets; entries; disposition.  
19:16-9. Casting of totals; notation on tally sheets.  
19:16-10. Public announcement of results.

#### Library References

Elections ⇨ 126(7), 235 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 119, 221 et seq.

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#### 19:16-1. Repealed by L.1947, c. 104, p. 529, § 9

##### Historical and Statutory Notes

Section, which derived from L.1930, c. 187, p. 763, § 202, provided for summary statement in poll book.

#### 19:16-2. Votes counted publicly without adjournment

The district board shall then proceed forthwith to count the votes for each candidate or proposition and shall complete such count



without delay or adjournment. The counting shall be open and public, but not to the extent that the number present shall hinder, delay or inconvenience the election officers in counting the ballots and ascertaining the result.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶203, p. 763.

#### Cross References

Counting ballots, procedure in certain municipalities, see § 40:45-16.

#### Library References

##### Texts and Treatises

26 Am Jur 2d, Elections §§257 et seq.,  
291, 292, 298-300.

### 19:16-3. Counting votes; distinguishing marks; ballots improperly prepared

In canvassing the ballots the district board shall count the votes as follows:

a. If proper marks are made in the squares to the left of the names of any candidates in any column and the total number voted for, for each office, does not exceed the number of candidates to be elected to each office, a vote shall be counted for each candidate so marked.

b. If proper marks are made in the squares to the left of any names of any candidates in any column and in addition thereto, proper marks are made to the right of said names, a vote shall be counted for each candidate so marked; but if the district board canvassing the ballots or the county board, judge of the Superior Court or other judge or officer conducting a recount thereof, shall be satisfied that the placing of such marks to the left and right of the names was intended to identify or distinguish the ballot, then the ballot shall not be counted and shall be declared null and void.

c. If no marks are made in the squares to the left of the names of any candidates in any column, but are made to the right of said names, a vote shall not be counted for the candidates so marked, but shall be counted for such other candidates as are properly marked; but if the district board canvassing the ballot or the county board, judge of the Superior Court or other judge or officer conducting a recount thereof, shall be satisfied that the placing of the marks to the right of the names was intended to identify or distinguish the ballot, the ballot shall be declared null and void.

d. Where the name of any person is written or pasted in the column designated personal choice, and a cross ×, plus + or check / appears in the square to the left of the name, it shall be counted as a vote for such person.

e. In the case of any public question printed on the ballot where a proper mark is made in the square to the left of the word "Yes," it shall be counted as a vote in favor of such public question. If a proper mark is made in the square to the left of the word "No," it shall be counted as a vote against same. If no mark is made in the square to the left of either the word "Yes," or "No," it shall not be counted as a vote either in favor of or against said public question. If a mark is made in each of the squares to the left of both the words "Yes" and "No," it shall not be counted either as a vote in favor of or against the public question nor shall it invalidate the ballot.

f. If a voter marks more names than there are persons to be elected to an office, or writes or pastes the name of any person in the column designated personal choice, whose name is printed upon the ballot as a candidate under the same title of office, or his choice cannot be determined, his ballot shall not be counted for that office, but shall be counted for such other offices as are plainly marked.

g. If the mark made for any candidate or public question is substantially a cross ×, plus + or check / and is substantially within the square, it shall be counted for the candidate or for or against the public question, as the case may be. No vote shall be counted for any candidate in any column or for or against any public question unless the mark made is substantially a cross ×, plus + or check / and is substantially within the square.

Amended by L.1947, c. 104, p. 523, § 6; L.1953, c. 19, p. 332, § 17.

### Historical and Statutory Notes

Source: L.1930, c. 187, §204, p. 764.

### Cross References

Canvass, return and result of vote to establish district welfare-house, see § 44:1-42.

Counting ballots, procedure in certain municipalities, see § 40:45-16.

Marking ballots in election to establish district welfare-house, see § 44:1-41.

### Library References

Elections ⇨194(1) et seq., 241, 244.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 183 et seq., 224, 226.

## Notes of Decisions

**Ballots with invalid mark 1**  
**Personal choice candidates 2**

**1. Ballots with invalid mark**

In election to fill two seats on township committee, Board of Elections wrongfully rejected absentee ballot which they declared to be "identified" and having "distinguishing marks" on basis that blue ink pen had been used to complete ballot and notation had been made thereon of fact that pen had been given to voter by clerk's office, and location of that office; Board failed to make necessary finding regarding voter's intent to identify or distinguish ballot and could not have reasonably done so. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

Voter who places mark next to candidate's printed name on paper ballot and then writes in name of same candidate for same office is still entitled to have vote counted under statute governing the counting of paper ballots, which disqualifies votes when there are different names voted for same office or voter disregards printed name and writes in name of someone already on ballot. Matter of General Election Held in the Tp. of Monroe, Gloucester County, N.J., on Tuesday, Nov. 6, 1990., 245 N.J.Super. 70, 583 A.2d 1154 (A.D.1990), certification denied 127 N.J. 325, 604 A.2d 600.

Generally, votes cast for an ineligible person, although ineffective to elect that person to office, are not treated as void, but are counted in determining results of election as regards other candidates. *Alongi v. Schatzman*, 57 N.J. 564, 274 A.2d 33 (1971).

Legislative purpose of provisions of this section providing that if mark is made in squares to left of both "Yes" and "No" on ballot, ballot shall not be counted as vote in favor of or against the public question and it shall not invalidate ballot and that ballot shall not be counted for office for which voter marks more names than there are persons to be elected but shall be counted for other offices plainly marked is to save from invalidity such part of ballot as is properly marked. Ap-

plication of *Sadlon*, 88 N.J.Super. 37, 210 A.2d 630 (A.D.1965).

Subsec. d of this section providing that where name of person is written or pasted in personal choice column and marked in square to left it shall be counted as vote for such person may be fairly interpreted as meaning that board is not to count vote if name is not so written or pasted, and a failure by board to follow such clear mandate will subject it to possible criminal prosecution. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

In cases where sticker for personal choice candidate was not placed in personal choice column but over rival candidate's printed name, such votes could not be counted. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

Where voter in box opposite name of candidate for freeholder drew a diagonal line running from the upper left to the lower right corner of the box and then drew a series of very closely spaced lines over the mark, and filling the box and extending beyond it, the vote for the freeholder was nullity. *Petition of Wade*, 39 N.J.Super. 520, 121 A.2d 552 (A.D.1956).

Where voter marked box in ballot opposite name of candidate for freeholder with a straight line beginning in lower left-hand part of the box and running upward to the right beyond the outline of the box, without any hook at the end so as to make a check mark, the vote for freeholder was a nullity. *Petition of Wade*, 39 N.J.Super. 520, 121 A.2d 552 (A.D.1956).

**2. Personal choice candidates**

Where voters placed name of personal choice candidate in personal choice column but failed to place mark in square to left of name, such notes could not be counted. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

Where voter wrote name of persons in personal choice column whose names were printed on ballot as candidate under same title of office, his ballot was improv-

erly counted. Petition of Keogh-Dwyer, 1964), reversed on other grounds 45 N.J. 85 N.J.Super. 188, 204 A.2d 351 (A.D. 117, 211 A.2d 778.

### 19:16-4. Void ballots; distinguishing marks

In counting the ballots the board shall deem null and void all ballots which are wholly blank, or on which more names have been marked for every office than there are persons to be elected to such office, and on which both "Yes" and "No" have been marked upon every public question. All ballots still remaining in the ballot box after ballots equal in number to the number of names of voters in the registry binders who have voted at such election inclusive of void ballots, have been counted shall be deemed null and void.

No ballot which shall have, either on its face or back, any mark, sign, erasure, designation or device whatsoever, other than is permitted by this Title, by which such ballot can be distinguished from another ballot, shall be declared null and void, unless the district board canvassing such ballots, or the county board, judge of the Superior Court or other judge or officer conducting the recount thereof, shall be satisfied that the placing of the mark, sign, erasure, designation or device upon the ballot was intended to identify or distinguish the ballot.

No ballot shall be declared invalid by reason of the fact that the mark made with ink or the mark made with lead pencil appears other than black.

No ballot cast for any candidate shall be invalid by reason of the fact that the name of such candidate may be misprinted, or his Christian name or his initials may be omitted.

No ballot cast for any candidate shall be invalid by reason of the use of any paster permitted by this Title on which the title of office may be printed or the name of such candidate may be misprinted or part of his Christian or surname or initials may be omitted, or because the voter in writing the name of such candidate may misspell the same or omit part of his Christian name or surname or initials.

No ballot shall be declared null and void or invalid, by reason of having a cross ×, plus + or check / appearing in a square at the left of a blank space, or a space wherein no name is printed.

Amended by L.1947, c. 104, p. 525, § 7; L.1953, c. 19, p. 333, § 18.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶205, p. 765.

### Cross References

Counting ballots, procedure in certain municipalities, see § 40:45-16.

## Library References

Elections  $\S$  194(1) et seq.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S$  183 et seq.

## Notes of Decisions

**In general** 1  
**Distinguishing mark** 3  
**Incorrectly marked ballots** 4  
**Name of candidate** 5  
**Nonfeasance of election officer** 6  
**Purpose** 2

## 1. In general

It will not be presumed to be the legislative intent, nor is it proper statutory construction, to defeat the vote of the citizen by an act for which he was neither directly or indirectly responsible, nor for a negligent or willful act of a municipal officer, nor for the misconception of any legal duty or form required in the preparation of ballots issued by such an official for distribution to voters. In re *Canvassers' Returns*, 25 N.J.L.J. 115.

## 2. Purpose

The legislative purpose of L.1898, p. 280,  $\S$  85 (see, now, this section) was to prevent a voter, or one acting for him, from distinguishing his ballot by any mark, sign, designation, or device. *Bliss v. Wooley*, 68 N.J.L. 51, 52 A. 835 (1902).

## 3. Distinguishing mark

In election to fill two seats on township committee, Board of Elections wrongfully rejected absentee ballot which they declared to be "identified" and having "distinguishing marks" on basis that blue ink pen had been used to complete ballot and notation had been made thereon of fact that pen had been given to voter by clerk's office, and location of that office; Board failed to make necessary finding regarding voter's intent to identify or distinguish ballot and could not have reasonably done so. In re *General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County*, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

Evidence in election recount proceeding sustained county judge's determination that ballot had been invalidated be-

cause of use of asterisks in marking ballot on ground that voter thereby intended to distinguish his ballot. Application of *Sadlon*, 88 N.J.Super. 37, 210 A.2d 630 (A.D.1965).

Intent to identify ballot was not shown by ballot on which voter had marked "yes" and "no" on public question but had stricken out one mark and improperly placed and marked vote for candidate, or by ballot on which "x" had been inserted and crossed out in personal choice column for freeholder without pasting or writing name, but properly placing and marking vote for candidate in question. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

Where voter made a distinct and careful X in box on ballot opposite Democratic candidate for freeholder, and in box opposite name of Republican candidate for freeholder there was evidence that an X had originally been marked there and that voter had tried to erase it, and County Court judge was satisfied that erasure and impressions in box opposite Republican candidate's name were not intended by voter to identify or distinguish the ballots, the ballot was not void and should be counted in favor of Democratic candidate. *Petition of Wade*, 39 N.J.Super. 520, 121 A.2d 552 (A.D.1956).

Ballots on which there were erasures which were not intended to identify or distinguish the ballots were properly counted. *Goddard v. Kelly*, 27 N.J.Super. 517, 99 A.2d 667 (A.D.1953).

Under  $\S$  58 of the act to regulate elections, L.1898, p. 267, repealed, providing that any ballot bearing any mark, sign, etc., other than is permitted by the act, whereby such ballot may be distinguished from other ballots, shall be void, ballots printed with a small curved black line on their faces near the end of and slightly below the line of the name of one of the candidates, and ballots containing blue marks along the top edge of the ballots,

all of which marks were plainly perceptible to one looking carefully at the ballots, were void. In re Sheriff of Monmouth County, 69 A. 305 (1906).

At an election at which the office of borough mayor was to be filled, the writing of the words "For Mayor, Charles S. Roswell" upon official ballots on which the name of such office had not been printed did not constitute such ballots "marked ballots," within the meaning of § 58, L.1898, p. 267, repealed. *Carlough v. Ackerman*, 74 N.J.L. 16, 64 A. 964 (1906).

Official ballots furnished to the electors by a municipal clerk under his construction of a statute, such as L.1898, p. 280, § 85, repealed, concerning the application of the general election law to city elections, of uncertain meaning, and indorsed with a facsimile of his signature, were not upon that account marked ballots, within that concerning distinguishing marks, but were to be treated, at the election for which they were provided, in all respects as legal votes, irrespective of the correctness of the clerk's construction of the law. *Bliss v. Wooley*, 68 N.J.L. 51, 52 A. 835 (1902).

Even though ballots filled in by writing might thus be identified or distinguished from other ballots cast at the election, still such a ballot was not invalid if the alteration occurred by the act of the voter in erasing a name upon a ticket or in writing or pasting thereon the name or names of any person or persons for whom he desired to vote, pursuant to § 59 of the Election Law, L.1898, p. 268, repealed. *Davis v. Bell*, 27 N.J.L.J. 76 (1904).

Where a large class of ballots used have the same accidental or intentional mark or designation upon them, but for which mark or designation the voter is in no way responsible, such a ballot is not within the interdiction of the statute which makes a marked ballot void. In re *Canvassers' Returns*, 25 N.J.L.J. 115 (1902).

#### 4. Incorrectly marked ballots

Fact that absentee ballots designed to have certain portions punched out to be counted by machine were marked with pen instead of or in addition to having portions removed did not render ballots void, inasmuch as marks were not placed by voters with intention to identify or distinguish the ballots. *Matter of Mallon*,

232 N.J.Super. 249, 556 A.2d 1271 (A.D. 1989), certification denied 117 N.J. 166, 564 A.2d 883.

Fact that voter had marked both "Yes" and "No" squares opposite two public questions on ballot did not invalidate otherwise proper vote on ballot for one candidate for office of township committeeman. *Application of Sadlon*, 88 N.J.Super. 37, 210 A.2d 630 (A.D.1965).

A "Yes" and "No" vote on every public question and vote for more names than there are persons to be elected for every office is required before ballot may be declared null and void under provision of this section declaring void ballots on which more names have been marked for every office than there are persons to be elected to such office and on which vote "Yes" and "No" have been marked on every public question. *Application of Sadlon*, 88 N.J.Super. 37, 210 A.2d 630 (A.D.1965).

Vote with name of candidate written in proper place, without cross or plus as required by law, could not be counted. In re *Election for Mayor, Borough of Lavallette*, 9 N.J. Misc. 25, 152 A. 641 (1930).

#### 5. Name of candidate

Write-in votes for candidate for township council should be counted for "Harry C. Wright," an active candidate for the office, and such votes should not have been disregarded because the votes were for "Wright" or "Mr. Wright," and were without a first name or initial, where there was no suggestion in the record that any "Wright" other than "Harry" sought the office or, indeed, authorized a candidacy, either directly or indirectly, and where "Harry Wright" campaigned vigorously for a write-in vote from the day he was denied a place on the printed ballot, when his nominating petitions were held to be untimely filed, up until the day of election. *Petition of Fifteen Registered Voters of Sussex County on Behalf of Flanagan*, 129 N.J.Super. 296, 323 A.2d 521 (A.D.1974).

Objection to ballot No. 113 on the ground that the contestant's name is written over the erasure as John Davis, leaving out the middle letter was invalid. *Davis v. Bell*, 27 N.J.L.J. 76 (1904).

## Note 6

**6. Nonfeasance of election officer**

In prosecution of election officer for nonfeasance in failing to reject illegal ballots, carefully count and truly note on tally sheet votes for each candidate, and personally examine such sheets, verdict of conviction was not against weight of evidence. *State v. Tulenko*, 133 N.J.L. 385, 44 A.2d 350 (1945).

In trial of election officers for nonfeasance in failing to reject illegal ballots,

truly note total votes for each candidate on tally sheets, and examine sheets personally, original ballots and tally sheets, clearly proved to be genuine and kept in proper custody, were admissible in absence of evidence that they were not in same condition when offered in evidence as when they left defendants' custody. *State v. Monia*, 132 N.J.L. 91, 38 A.2d 893 (1944).

**19:16-5. Numbering and stringing void and partially void ballots**

In every case in which a ballot shall be declared invalid, the same shall not be canvassed or counted, but shall be marked "void" on the outside thereof, and shall be numbered consecutively along with valid ballots, and shall be preserved like other ballots and placed in proper order on the string or wire with the valid ballots.

Ballots which shall be declared invalid with respect to a part of the officers to be voted for or public questions to be voted upon shall be canvassed, estimated and numbered with respect to the part which is not invalid and preserved as other ballots and placed in their proper order on the string with the valid ballots.

Amended by L.1992, c. 3, § 1.

**Historical and Statutory Notes**

L.1992, c. 3, § 30, approved April 24, 1992, provides:

"This act [L.1992, c. 3] shall take effect immediately [April 24, 1992] and shall be applicable to the first primary for the

general election or the first general election which occurs after the 60th day following the enactment of this act."

Source: L.1930, c. 187, ¶206, p. 766.

**Cross References**

Counting ballots, procedure in certain municipalities, see § 40:45-16.

**19:16-6. Majority decision of board final; dissents entered**

The decision of a majority of the district board on any question shall be deemed the decision of the board and final. If any member of the board shall dissent from any such decision and shall desire to protect himself from the consequences which may result from such decision, such member may record his dissent, in cases relating to registration, in the register, and in all other cases, in the poll book of such election, signing his name to such record with his own hand, and unless he shall do so, he shall be deemed to have assented to the decision so made.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶207, p. 767.

## Cross References

Counting ballots, procedure in certain municipalities, see § 40:45-16.

**19:16-7. Reading and stringing of ballots**

The board in the actual procedure of counting the ballots shall thereupon unlock and open the ballot box; the ballots shall then be taken singly and separately therefrom by the judge of the election, and while each ballot shall remain in his hands, he shall audibly and publicly read the same in full view of the inspector. The inspector shall be satisfied that the ballot is being correctly read by the judge.

After the reading of the ballot, including a ballot determined to be void, and before taking another ballot from the box, the judge shall fold the ballot to a size about five inches square, and shall deliver the same so folded to the inspector, who shall write on the back thereof the number of such ballot from one onward, in the order in which the same shall have been taken from the box; and shall string the ballot as one ticket in the order in which the same shall be taken from the box and numbered, by means of a needle and string to be provided for that purpose.

Amended by L.1992, c. 3, § 2.

## Historical and Statutory Notes

L.1992, c. 3, § 30, approved April 24, 1992, provides:

"This act [L.1992, c. 3] shall take effect immediately [April 24, 1992] and shall be applicable to the first primary for the

general election or the first general election which occurs after the 60th day following the enactment of this act."

Source: L.1930, c. 187, ¶208, p. 767.

## Cross References

Counting ballots, procedure in certain municipalities, see § 40:45-16.

**19:16-8. Tally sheets; entries; disposition**

The clerks of the board, under its inspection and direction, shall each, upon a tally sheet provided for that purpose, make a list of the names of all persons for whom one or more votes shall have been given, designating the office which such person shall be voted for or any public question voted upon, upon two sheets known as tally sheets provided for that purpose; and as each ballot shall be read they shall write the figure "1" opposite the name of each person whose name shall be contained thereon, as designated for any office or in the proper column designating the vote upon the public ques-



tion. One of the tally sheets shall be placed in the ballot box and the other shall be filed with the county clerk at the same time the statements of results are delivered.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §209, p. 768.

#### Cross References

Counting ballots, procedure in certain municipalities, see § 40:45-16.

### 19:16-9. Casting of totals; notation on tally sheets

When all the votes which shall have been received shall have been read, examined, numbered and strung, as above directed, the board shall carefully and accurately add up the votes given for each person for any office to be filled at such election or any public question and note the same upon the tally sheets, which tally sheets shall be signed by all the members of the district board.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §210, p. 768.

#### Cross References

Counting ballots, procedure in certain municipalities, see § 40:45-16.

#### Notes of Decisions

##### Nonfeasance of election officer 1

##### 1. Nonfeasance of election officer

In trial of election officers for nonfeasance in failing to reject illegal ballots, truly note total votes for each candidate on tally sheets, and examine sheets per-

sonally, original ballots and tally sheets, clearly proved to be genuine and kept in proper custody, were admissible in absence of evidence that they were not in same condition when offered in evidence as when they left defendants' custody. *State v. Monia*, 132 N.J.L. 91, 38 A.2d 893 (1944).

### 19:16-10. Public announcement of results

After completing the same the chairman of the board shall audibly and publicly announce the result thereof, particularly specifying the whole number of the votes in the poll book, the name of each person for whom any vote shall have been given for any office to be filled by such election, and the number of votes for each person for the office designated for him by such votes, together with those cast upon any public question.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §211, p. 768.

**Cross References**

Counting ballots, procedure in certain municipalities, see § 40:45-16.

**Library References**

**Texts and Treatises**

26 Am Jur 2d, Elections §§304, 305.

**CHAPTER 17**  
**RETURNS BY DISTRICT BOARDS**

**Section**

- 19:17-1. Statements of result of count of votes; number; form.
- 19:17-2. Certification of statement of result of count of votes; form.
- 19:17-3. Statements filed.
- 19:17-4. Repealed.
- 19:17-5. Penalty for failure to deliver proper statements, books and other articles.

**Library References**

- Elections  $\S$  247 et seq.
- WESTLAW Topic No. 144.
- C.J.S. Elections  $\S$  229 et seq.

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**19:17-1. Statements of result of count of votes; number; form**

After the district board shall have counted the ballots cast at such election it shall make quadruplicate statements of the result thereof in substantially the following form; provided, that if no officers or public questions were voted upon at the election by the voters of the entire State or of more than one county thereof or of a congressional district, such statements need only be made in triplicate:

**Form of Statement**

A statement of the result of an election held in the ..... ward of the ..... election district of the ..... of ..... in the county of ..... , on the ..... day of November, in the year of

our Lord one thousand nine hundred and . . . . ., for a member of the Senate, members of the General Assembly, a sheriff and three coroners, for said county or as the case may be.

The whole number of names on the signature copy register or register of voters is . . . . .

The whole number of names on the poll book is . . . . .

The whole number of ballots rejected is . . . . .

For member of Senate,		
received		votes.
received		votes.
For members of the General Assembly,		
received		votes.
received		votes.
For sheriff,		
received		votes.
received		votes.
For coroners,		
received		votes.
received		votes.
For each public question,		
received	Yes	votes.
received	No	votes.

Make under each head a list of the names of all the persons for whom any vote or votes were cast for the office or offices or cast upon any public question designated therein; state opposite to the same, in words written at full length, the number of votes cast for each person for such office or offices or votes cast upon any public question and fill in all other blanks in the form above given to conform to the facts of the case.

Amended by L.1945, c. 76, p. 405, § 1.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §212, p. 769.

**American Law Reports**

Power to enjoin canvassing votes and declaring result of election, 1 ALR2d 588.

**Library References**

- Elections ⇨248.
- WESTLAW Topic No. 144.
- C.J.S. Elections § 230.

Texts and Treatises

26 Am Jur 2d, Elections §§304, 305.

Notes of Decisions

Count of votes 2  
Results of election 3  
Statement 1

1. Statement

In a recount of ballots ordered by court under L.1895, p. 667, § 13, repealed, the "Statement of result", provided for in Rev.1877, § 42, repealed, was not controlling, but the whole number of ballots in the box were to be counted. *State v. Felton*, 61 N.J.L. 121, 38 A. 821 (1897).

The board of county canvassers must make their statement of the result upon the statement laid before them; they have no authority to examine the regularity of the proceedings of the township boards, or to look behind the official returns made by them. *Gledhill v. Governor*, 25 N.J.L. 331 (1856).

2. Count of votes

Generally, votes cast for an ineligible person, although ineffective to elect that

person to office, are not treated as void, but are counted in determining results of election as regards other candidates. *Alongi v. Schatzman*, 57 N.J. 564, 274 A.2d 33 (1971).

3. Results of election

Official returns or canvass, when duly certified, are prima facie evidence that the result is as declared, but are not conclusive, and the ballots are receivable in evidence for the purpose of controverting the official count. *State v. Larison*, 134 N.J.L. 604, 48 A.2d 824 (1946).

Under L.1911, p. 317, § 58, repealed, where votes in a township election were cast for two different amounts to be appropriated for a certain object, but neither by itself had a majority of all votes cast, but more for than against it, the larger could not, but the smaller might, be held to have carried. *Woodbridge Tp. v. Keyes*, 90 N.J.L. 67, 100 A. 845 (1917).

19:17-2. Certification of statement of result of count of votes; form

The district board shall then certify such statement in substantially the following form:

"We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned.

In witness whereof, we have hereunto set our hands, this ..... day of November, in the year of our Lord one thousand nine hundred and

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

District Board  
of Registry  
and Election."

No member of any district board shall sign any returns of election until after the completion of the counting of votes and his personal examination of the tally sheets to determine the correctness of the results.

Historical and Statutory Notes

Source: L.1930, c. 187, §213, p. 770.

Notes of Decisions

Nonfeasance of election officer 1

1. Nonfeasance of election officer

In trial of election officers for nonfeasance in failing to reject illegal ballots, truly note total votes for each candidate on tally sheets, and examine sheets per-

sonally, original ballots and tally sheets, clearly proved to be genuine and kept in proper custody, were admissible in absence of evidence that they were not in same condition when offered in evidence as when they left defendants' custody. *State v. Monia*, 132 N.J.L. 91, 38 A.2d 893 (1944).

19:17-3. Statements filed

After the district board shall have made up and certified such statements, it shall at the same time and with the ballot boxes, as hereinafter provided, deliver or safely transmit one of the statements to the clerk of the municipality wherein such election is held, who shall forthwith file the same. In counties having a superintendent of elections one of such statements shall forthwith be filed with the superintendent of elections of the county. The superintendent may arrange to accept such certificates in such municipality within the county at the office of the clerk of such municipality or some other convenient place. Any municipal clerk who shall refuse to permit such superintendent or his deputies or assistants access to his office for the purpose of collecting such certificates or any municipal clerk or other person who shall interfere or obstruct the superintendent, his deputies or assistants in the collection of such certificates, or any member of a district board who shall willfully fail or refuse to deliver such statement to the superintendent, his deputies or assistants as the case may be, shall be guilty of a misdemeanor. In all counties the board shall, immediately after election, deliver or safely transmit another of the statements to the clerk of the county, who shall forthwith file the same.

For a school election a statement shall also be delivered to the board of education of the district holding the election and to the county superintendent of schools in the county in which the district is situated.

If officers were voted for or public questions were voted upon at the election by the voters of the entire State or of more than one county thereof, or of a congressional district, then the board shall, immediately after the election, inclose, seal up and transmit the fourth statement to the Secretary of State by mail in stamped envelopes to be furnished by the Secretary of State, addressing the same in the following manner: "To the Secretary of State of New

Jersey, Trenton, New Jersey." Upon receiving such statements the Secretary of State shall forthwith file the same in his office.

Amended by L.1945, c. 76, p. 407, § 2; L.1947, c. 168, p. 743, § 6; L.1953, c. 19, p. 334, § 19; L.1995, c. 278, § 19, eff. March 14, 1996.

#### Historical and Statutory Notes

Source: L.1930, c. 187, § 214, p. 770.

#### Library References

Elections ⇄ 250.

WESTLAW Topic No. 144.

C.J.S. Elections § 231.

#### Notes of Decisions

##### Certification of return 1

##### 1. Certification of return

Mandamus will issue to local board of election to compel them to make return

to county canvassers certifying what is correct figure in ambiguous return, where both parties are satisfied that figure credited to relator by duplicate return was correct. In re Board of Election, Fourteenth District, Twelfth Ward of New Jersey, 89 N.J.L. 382, 99 A. 380 (1916).

#### 19:17-4. Repealed by L.1953, c. 19, p. 335, § 20

#### Historical and Statutory Notes

The repealed section, which derived from L.1909, c. 168, p. 253, § 1 [C.S. p. 3018, § 10], provided for certification

and transmittal of statement as to election for justice of the peace.

#### 19:17-5. Penalty for failure to deliver proper statements, books and other articles

If any district board neglects to give the following information on the statements of results: the total number of names on the signature copy register or register of voters, the total number of ballots rejected, the number of votes given for each person, and the number of votes given for or against each public question, or fails to deliver or safely transmit any statement of the result of any election, tally sheet, signature copy registers, register of voters, ballot box or boxes, ballot box keys, flag or any other document or book pertaining to any election, within the time required by this Title, or destroys or damages, or causes or allows any loose leaf binder, registry book or other book or document to be destroyed or damaged or fails to perform any duties provided by this Title or imposed by the county board or by the commissioner, the payment of part or all of the compensation of the members of the board shall be withheld by the county treasurer or collector, as the case may be, by order of the county board or

the commissioner, as the case may be, or may be forfeited by like order; and the Secretary of State or the clerk of the county or the municipal clerk, as the case may be, shall certify to the county board the name of any district board so failing to deliver or transmit such statements, books, documents or articles as hereinbefore mentioned.

In case of failure of a district board to produce the required statements, books or other documents within twenty-four hours after being notified, the county board may make application to the Superior Court for an order to show cause why the members of such district board shall not be held in contempt of court for such neglect or failure, and punished accordingly.

Amended by L.1953, c. 19, p. 335, § 21; L.1991, c. 91, § 243, eff. April 9, 1991.

### **Historical and Statutory Notes**

Source: L.1930, c. 187, ¶215, p. 771.

### **Library References**

Elections ¶323.

WESTLAW Topic No. 144.

C.J.S. Elections § 355.

### **Texts and Treatises**

26 Am Jur 2d, Elections § 376.

### **Notes of Decisions**

#### **Mandamus 1**

##### **1. Mandamus**

Mandamus will issue to a local board of election to compel them to make a return to the board of county canvassers,

certifying what is the correct figure in an ambiguous return, where both parties are satisfied that a figure credited to relator by the duplicate return was correct. In re Board of Election, Fourteenth District, Twelfth Ward of New Jersey, 89 N.J.L. 382, 99 A. 380 (1916).



## CHAPTER 18

### DISPOSITION OF BALLOT BOXES, ELECTION RECORDS AND EQUIPMENT

#### Section

- 19:18-1. Election records placed in ballot box; inspection of signature copy records in counties having superintendent of elections; compelling production.
- 19:18-2. Ballot boxes delivered to municipal clerks.
- 19:18-3. Municipal clerk's office open until all ballot boxes delivered; record of times of delivery.
- 19:18-4. Preservation of ballot boxes and contents; when contents removable.
- 19:18-5. Register of voters in municipalities not having permanent registration filed with county clerk.
- 19:18-6. Ballot box keys deposited with county clerk.
- 19:18-7. Preservation of records; sale as waste paper.
- 19:18-8. Inspection of ballot boxes, books and documents by Superior Court.

#### Library References

Elections ⇐255.

WESTLAW Topic No. 144.

C.J.S. Elections § 234.

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#### 19:18-1. Election records placed in ballot box; inspection of signature copy records in counties having superintendent of elections; compelling production

As soon as the election shall be finished and the votes canvassed and the statements made and certified by the district board as herein

required, all ballots which have been cast, whether the same have been canvassed and counted or rejected for any cause, and one tally sheet, spoiled and unused ballots, shall be carefully collected and deposited in the ballot box.

In all municipalities the signature copy registers shall not be placed in the ballot box but shall be delivered immediately by the district board to the commissioner of registration.

In order to carry out his duties, any superintendent of elections in counties having a superintendent of elections shall have access and be permitted to inspect and examine any and all signature copy registers for said county for any election which may have been or shall be held in said county and any official or person having possession or custody of same who shall refuse to deliver said signature copy registers to the office of said superintendent of elections forthwith upon demand having been made upon him by said superintendent of elections as aforesaid shall be guilty of a misdemeanor. Unless the said official having custody or possession of said signature copy registers shall forthwith produce the same at the office of the superintendent of elections when demanded by him so to do, the said superintendent of elections may apply to a judge of the Superior Court assigned to the county and such judge shall forthwith make an order directing the official having possession or custody of the said signature copy registers to produce them at once in the court in which said judge may be sitting, and upon their being produced said judge shall deliver the same to the superintendent of elections.

Amended by L.1940, c. 196, p. 844, § 1; L.1947, c. 168, p. 745, § 7; L.1953, c. 19, p. 336, § 22; L.1991, c. 91, § 244, eff. April 9, 1991.

### **Historical and Statutory Notes**

Source: L.1930, c. 187, § 1216, p. 772,  
amended by L.1931, c. 374, § 10, p. 953.

### **Library References**

Elections ⇨ 255.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 234.

### **Notes of Decisions**

#### **Compelling production of books 1**

##### **1. Compelling production of books**

In proceeding under this section before  
Supreme Court Justice on application of

county superintendent of elections for order to obtain production of poll books, the Justice was without authority to determine whether act of municipal clerk in burning poll books of 1936 and 1937, two years after the election, violated any state

## Note 1

law, such as § 47:3-1 (repealed) relating to destruction of public records, and arguing the question could not confer jurisdiction to consider it. Application of Su-

perintendent of Elections in Hudson County, 125 N.J.L. 246, 15 A.2d 813 (1940).

**19:18-2. Ballot boxes delivered to municipal clerks**

The ballot box, after being locked and bound with tape and sealed, shall in all municipalities be immediately taken in charge by 2 members of the district board. It shall then be delivered to the office of the clerk of the municipality in which the election may be held, by said members or by said members with the assistance of an officer or officers to be designated by the governing body thereof, by the most direct route and without delay, and such members or officers shall not stop at any place between the polls and the municipal clerk's office.

When the municipal governing body designates an officer or officers to assist said members in transmitting the ballot boxes it shall provide for suitable transportation.

Amended by L.1967, c. 170, § 1, eff. July 25, 1967.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶217, p. 772.

**19:18-3. Municipal clerk's office open until all ballot boxes delivered; record of times of delivery**

The clerk of the municipality shall attend at his office on election day, or appoint one of the clerks in his office to act for him, and keep his office open from the time the polls shall be closed until all the ballot boxes used at the various polls in the municipality at such election shall have been delivered at his office.

The clerk of the municipality or his subordinate whom he may have appointed to act in his stead shall enter in a book to be kept for that purpose the exact time when each ballot box may be delivered at such office, the district whence it was brought, names of the members of the district board delivering it, and the name of the police officer or other witness who may accompany them, and any other particulars he may deem important; such book shall be filed in the office of the municipal clerk and be preserved by him for two years.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶218, p. 772.

**19:18-4. Preservation of ballot boxes and contents; when contents removable**

Every municipal clerk to whom the ballot boxes shall be delivered shall thereupon keep the same, with their contents, but shall not have the keys thereof in his possession until required for the next ensuing election, and shall not open or permit to be taken or opened any ballot box for the space of three months after the same has been so deposited, except when he shall be called upon by some court or other tribunal authorized to try the merits of such election or to take testimony regarding the same; and after such trial or investigation the clerk shall have such box or boxes returned to be held for any purpose within the time that same are required to remain in his custody.

After the space of three months the municipal clerk may remove the contents thereof and preserve the same for two years, and permit the ballot boxes to be used at any election, unless an order shall have been made directing a recount of the ballots contained therein, or a petition filed contesting any nomination or election necessitating the use of the ballots contained in such boxes, within the time limited by law.

When any election is required to be held for any purpose within such three months, the judge of the Superior Court assigned to the county, upon application of the governing body of any municipality, may direct that the contents of such ballot boxes be removed and preserved for two years and that these ballot boxes be used at such election.

Amended by L.1953, c. 19, p. 337, § 23; L.1991, c. 91, § 245, eff. April 9, 1991.

**Historical and Statutory Notes**

Source: L.1930, c. 187, § 1219, p. 773.

**Library References**

Elections ⇨ 255.

WESTLAW Topic No. 144.

C.J.S. Elections § 234.

**Texts and Treatises**

26 Am Jur 2d, Elections § 386.

**19:18-5. Register of voters in municipalities not having permanent registration filed with county clerk**

Not later than noon of the day following the canvass of the votes cast at the general election the register of voters, kept and checked by

the district boards in municipalities not having permanent registration, shall be filed by the boards with the county clerk.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶221, p. 774,  
amended by L.1931, c. 374, § 12, p. 954.

#### 19:18-6. Ballot box keys deposited with county clerk

Not later than noon of the day following the canvass of the votes the keys of each ballot box shall be deposited by a member of the district board with the county clerk.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶222, p. 774.

#### 19:18-7. Preservation of records; sale as waste paper

All registry books and statements of results of elections required to be filed with the Secretary of State, the superintendent of elections, the county clerks of the various counties and the municipal clerks of the various municipalities shall be preserved by such officials for a period of five years after the holding of any election at which they were used, and all ballots, used or unused, for any election shall be preserved by such officials for a period of two years after the holding of any election, and thereafter shall be sold by such officials as waste paper, the proceeds to be paid into the State, county and municipal treasuries, respectively. The several county and municipal clerks may also sell all registry books which have been on file in their office for a period of five years, the proceeds to be paid into the county and municipal treasury, respectively.

Amended by L.1945, c. 76, p. 408, § 3.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶223, p. 774.

#### Library References

Elections ⇄255.

WESTLAW Topic No. 144.

C.J.S. Elections § 234.

#### 19:18-8. Inspection of ballot boxes, books and documents by Superior Court

A judge of the Superior Court may at any time for satisfactory reasons shown, and when he deems it necessary, issue an order for

the opening of any ballot box or boxes and the removal of the contents thereof and for the removal from the file of any municipal or county office of any documents and books for any necessary purpose, which order shall also set forth the return of such contents to the ballot box or boxes and their return together with the documents and books to the files of the office from which the same were removed.

Amended by L.1953, c. 19, p. 338, § 24.

### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶224, p. 775.

### **Library References**

Elections ¶255.

WESTLAW Topic No. 144.

C.J.S. Elections § 234.

### **Notes of Decisions**

**Inspection of ballots 2**  
**Production of documents 1**

#### **1. Production of documents**

A party contesting an election was not entitled to order permitting examination of poll books and signature copy registers in advance of trial under this section authorizing Supreme Court, when necessary, to issue order for opening ballot boxes and for removal of documents and books from file of any municipal or county office, in view of §§ 19:29-5 and 19:29-6 providing for plenary process in election contests to compel production of

ballot boxes, books, and other documents which may be required at hearing. *Clee v. Moore*, 119 N.J.L. 215, 195 A. 530 (1937).

#### **2. Inspection of ballots**

Refusal under this section and § 19:32-11, of Chief Justice sitting as statutory officer to grant application of superintendent of elections for authorization to open ballot boxes was proper, where proposed inspection of ballots was unrelated to registration of voters. *Ferguson v. Brogan*, 112 N.J.L. 471, 171 A. 685 (1934).

## CHAPTER 19

### CANVASS OF RETURNS BY BOARD OF COUNTY CANVASSERS

#### ARTICLE 1. MEETING AND ADJOURNMENTS

##### Section

- 19:19-1. Time and place of meeting; tabulation by clerk of statements of district boards and combined results.
- 19:19-2. Absence of county clerk; substitute.
- 19:19-3. Oath of substitute clerk.
- 19:19-4. Adjournment of meeting.
- 19:19-5. Statements obtained.
- 19:19-6. Second adjournment of meeting.
- 19:19-7. Custody of statements during adjournment.

#### ARTICLE 2. PROCEDURE ON CANVASS; STATEMENTS AND CERTIFICATES

- 19:19-8. Canvass and statement of result of election.
- 19:19-9. Contents of statement of canvass; certification.
- 19:19-10. Form of statement of canvass.
- 19:19-11. Form of certificate to statement of canvass.
- 19:19-12. Statements to county clerk and chairmen of Republican and Democratic State Committees.
- 19:19-13. Other statement delivered to secretary of state.
- 19:19-14. Statements of results by district boards preserved.
- 19:19-15. Secretary of state to procure missing statements.
- 19:19-16. Defective statements completed by secretary of state.
- 19:19-17. Statements delivered to messenger of secretary of state.

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## ARTICLE 1. MEETING AND ADJOURNMENTS

## Library References

Elections ⇨257 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 235 et seq.

**19:19-1. Time and place of meeting; tabulation by clerk of statements of district boards and combined results**

The board of county canvassers of each county shall meet on the Monday next, after any such election, at 12 o'clock noon, at the courthouse of the county, for the purpose of checking the canvass which shall have been made by the county clerk from the statements of the district boards filed in his office as hereinbefore provided. For such purpose the county clerk shall have prepared a compilation in tabulated form of such statements and the combined results shown thereby for the use of the board of canvassers.

Amended by L.1959, c. 117, p. 528, § 1.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶225, p. 775.

## Library References

Elections ⇨257.

WESTLAW Topic No. 144.

C.J.S. Elections § 235.

## Texts and Treatises

26 Am Jur 2d, Elections § 301.

## Notes of Decisions

**In general 1**  
**Time of meeting 2****1. In general**

The county board of elections does not have the power to decide what the members thereof will do as a county board of canvassers or to decide that the canvassers will begin their services at a time and in a manner different from the mandate of this section. *Young v. Board of Elections of Essex County*, 120 N.J.L. 529, 1 A.2d 38 (1938).

**2. Time of meeting**

Resolutions of a county board of elections, providing that such board should, acting as a county board of canvassers, proceed on election night to determine election results directly from district election board returns rather than by making such determination upon the following Monday upon the basis of the county clerk's canvass in the manner required by this section, were void. *Young v. Board of Elections of Essex County*, 120 N.J.L. 529, 1 A.2d 38 (1938).



**19:19-2. Absence of county clerk; substitute**

If the clerk of the county shall be absent from the meeting at the time appointed therefor, the board shall forthwith proceed to appoint a fit person to be its clerk, who shall obtain such statements from the office of such clerk.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §226, p. 776.

**19:19-3. Oath of substitute clerk**

Before proceeding to canvass and estimate the votes the chairman of the board shall administer to the person appointed as clerk in the absence of the county clerk an oath or affirmation in the following form: "You do swear (or affirm, as the case may be) that you will faithfully execute the duties of the clerk of this board according to law."

**Historical and Statutory Notes**

Source: L.1930, c. 187, §227, p. 776.

**Library References****Texts and Treatises**

63A Am Jur 2d, Public Officers and  
Employees § 4.

**19:19-4. Adjournment of meeting**

If on the day appointed for the meeting of such board, a major part thereof shall not attend at the courthouse of the county at the hour of twelve o'clock noon, or if at that time the statements of the result of such election from every election district in the county shall not be produced, the members of the board present shall adjourn to some convenient hour on the next day.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §228, p. 776.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§ 297, 300,  
302.

**19:19-5. Statements obtained**

If such adjournment is occasioned by the fact that at the time fixed for the meeting of the board the statements from every election district have not been filed with the clerk of the county, such clerk shall forthwith, by a special messenger, or otherwise, at the expense of the county, obtain the statement or statements that shall be lacking, in time to be produced to the board at its next meeting, and for this purpose the statements directed to be filed with the clerk of any municipality wherein such election was held, or those directed to be filed with the county clerk, or a copy certified by the secretary of state of the statements transmitted to him, shall be sufficient. The clerk of the board shall lay before it, at its subsequent meeting, all the statements and certified copies that he shall have obtained as above directed.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §229, p. 776.

**19:19-6. Second adjournment of meeting**

At the hour to which such adjournment shall have been ordered, the member or members present may proceed as hereinafter directed, or may again adjourn for a period not exceeding three days, at which time the member or members present shall so proceed. The board is hereby authorized to reconvene at any time for the purpose of correcting any errors.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §230, p. 777.

**19:19-7. Custody of statements during adjournment**

When such board shall find it necessary to adjourn, as herein provided, all statements of the result of an election which shall have been delivered to it or to any member thereof, shall in the presence of the board, and before it shall adjourn, be securely inclosed and sealed and delivered to the county clerk for safe-keeping until the next meeting of the board.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §231, p. 777.

## ARTICLE 2. PROCEDURE ON CANVASS; STATEMENTS AND CERTIFICATES

### Library References

Elections ⇄259.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 237.

### 19:19-8. Canvass and statement of result of election

The members of the board shall proceed to examine the statements and copies of statements produced before them and shall canvass and determine the votes cast at such election; and shall forthwith make four statements of the result of such election; but if no officers were voted for or public questions were voted upon at the election by the voters of the entire State or of more than one county thereof or of a congressional district, one statement shall be sufficient.

Amended by L.1938, c. 399, p. 988, § 1, eff. June 21, 1938.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶232, p. 777.

### Library References

#### Texts and Treatises

26 Am Jur 2d, Elections §§302, 304,  
305.

### Notes of Decisions

**Canvass of vote** 1  
**Certificates of election** 3  
**Certification of return** 2

#### 1. Canvass of vote

In provisions of this article, setting out duties of election canvassing boards and requiring meetings to check canvass made by county clerk from statements of district boards, legislative purpose was to confine canvass and determination of votes cast to statements made by several district boards where such statements are free from ambiguity and sufficient on their face, and canvassing board may not canvass and determine votes cast without any limitation whatsoever. *Reed v. Board of Canvassers of Essex County*, 119 N.J.L. 115, 194 A. 280 (1937).

County canvassers' statement filed with secretary of state showing that certain candidate received greatest number of votes held legally equivalent, in so far as canvassers' authority extended, to declaration that such candidate was elected, and hence such candidate was the "incumbent" within § 19:29-1, authorizing election contest, notwithstanding canvassers, acting under misconception of court's order, crossed off his name on certificate. In *re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

Board of County Canvassers can only determine votes cast from statements produced by clerk. In *re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

#### 2. Certification of return

Where the return of an election laid before the board of county canvassers is not unambiguous, but suggests a doubt as

to its own correctness, the board can seek information in duplicate return by the local board of elections, and, if not satisfied, can have a return, certifying what is the correct return. In re Board of Election, Fourteenth District, Twelfth Ward of New Jersey, 89 N.J.L. 382, 99 A. 380 (1916).

### 3. Certificates of election

Official returns or canvass, when duly certified, are prima facie evidence that the result is as declared, but are not con-

clusive, and the ballots are receivable in evidence for the purpose of controverting the official count. *State v. Larison*, 134 N.J.L. 604, 48 A.2d 824 (1946).

The vacation of peremptory writs of mandamus commanding canvassing board to issue certificates of election would not nullify certificates issued in conformance with statutory command prior to actual issuance of writs. *Reed v. Board of Canvassers of Essex County*, 119 N.J.L. 115, 194 A. 280 (1937).

## 19:19-9. Contents of statement of canvass; certification

Each of such statements shall contain the name of each election district, the number of names on the signature copy register or the register of voters, the number of names of the voters on the poll books of each election district, and of the ballots rejected, and the whole number of such names registered and rejected ballots in all of such election districts; the number of votes cast in each election district for each person for whom any vote or votes shall have been cast for any office to be filled or any public question to be voted upon at the election, mentioning the office for which each person shall have been designated and the name of such person (which numbers of names and numbers of votes cast, and of ballots rejected, may be in figures), and the whole number of votes which shall have been given for each person for any such office, mentioning the office for which each person shall have been designated, and the name of the person (which numbers of votes and the names of persons and election districts shall be in words, written at full length).

There shall also be specified in the statements each public question voted upon at the election and the votes cast thereupon.

Each of the statements shall be certified to be true and correct by a certificate which shall be appended to the same, signed by the members of the board making the canvass.

### Historical and Statutory Notes

Source: L.1930, c. 187, §233, p. 777.

## 19:19-10. Form of statement of canvass

The statements shall be in substantially the following form: "A statement of the result of election held in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of November, in the year of our Lord one thousand nine hundred and \_\_\_\_\_, to elect a member of the senate, members of the general assembly, a sheriff and coroners of said county (naming the officers as the case may be), together with the public

questions voted upon, made by the board of county canvassers of said county."

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶234, p. 778.

#### 19:19-11. Form of certificate to statement of canvass

The certificate shall be in substantially the following form: "I do hereby certify that the foregoing is a true, full and correct statement of the result of the election above-mentioned, as the same is exhibited by the statements produced and laid before the board of county canvassers according to law, and that the same exhibits the number of the names in the signature copy registers and the registers of voters, the number of names of the voters in the poll books of the election districts, respectively, and of the ballots rejected, the whole number of the names in the signature copy registers and the registers of voters, the whole number of names of the voters in the poll books of the several election districts, the name of each person for whom any vote or votes were cast, the number of votes cast for each person in each election district, and the whole number of votes cast for each person for each office designated, and also specifies each public question voted upon and the number of votes cast thereupon in each election district respectively, and the whole number of votes cast thereupon in the several election districts as they appear by the statements so produced and laid before the said board. In witness whereof, I have hereunto set my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand nine hundred and \_\_\_\_\_ Chairman of the board of county canvassers.

Attest: \_\_\_\_\_, Clerk."

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶235, p. 778.

#### 19:19-12. Statements to county clerk and chairmen of Republican and Democratic State Committees

The board shall deliver one of the statements to the clerk of the county, who shall forthwith file the same, and one statement to the respective chairmen of the Republican and Democratic State Committees.

Amended by L.1938, c. 399, p. 989, § 2, eff. June 21, 1938.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶236, p. 779.

**19:19-13. Other statement delivered to secretary of state**

The clerk of the board shall inclose and seal up the other statement and deliver or safely transmit the same so inclosed and sealed up, to the secretary of state at Trenton, so that he shall receive the same within three days next after the meeting of the board, and he shall forthwith file the same.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶237, p. 779.

**19:19-14. Statements of results by district boards preserved**

All the statements made by the district boards and copies of such statements which shall be produced and laid before the board shall, by it be delivered to the clerk of the county, and shall be filed and preserved by him in his office for a period of five years.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶238, p. 779.

**19:19-15. Secretary of state to procure missing statements**

If the secretary of state shall not, on or before the seventh day after the time appointed for the meeting of the board of canvassers in the several counties, have received the statements of the result of such election in every county hereinbefore directed to be delivered or transmitted to him by the clerk of the board, such secretary shall forthwith, by a special messenger or otherwise, obtain the statement or statements as are lacking; and for this purpose a copy of the statement directed to be filed with the clerk of the county, certified by such clerk, shall be sufficient.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶239, p. 780.

**19:19-16. Defective statements completed by secretary of state**

When and as soon as such secretary shall receive or obtain any statement of the result of such election, in any county, in the manner hereinbefore provided for, he shall ascertain whether or not the statement includes the statement of the results of the election in every election district of the county; and if it appears to him that the

statement of the result of election in any election district is not exhibited by or included in the statement of the result of the election in the county, he shall forthwith ascertain whether or not a copy of the lacking statement has been received in his office; and if it appears to him that such copy has not been so received, he shall forthwith, by special messenger or otherwise, obtain a copy of the statement directed to be filed with the clerk of the county, or with the clerk of any municipality within the county, certified by such clerk, which shall be sufficient.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶240, p. 780.

#### 19:19-17. Statements delivered to messenger of secretary of state

The district board, the clerk or the chairman of the board of canvassers of any county, or any other person who shall be in possession of any statement, or copy of any statement, which shall have been made and subscribed under the provisions of this title, shall forthwith, on application by any messenger who shall have been dispatched for the same by the secretary of state, deliver to the messenger such statement or copy. The messenger shall be commissioned as such in writing, under the hand and official seal of the secretary of state, and shall exhibit his commission to the person to whom he shall apply for such statement or copy; and when he shall have obtained the statement or copy he shall forthwith deliver the same to the secretary of state.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶241, p. 781.

## CHAPTER 20

### DETERMINATION OF RESULTS BY BOARD OF COUNTY CANVASSERS

#### Section

- 19:20-1. Scope of authority.
- 19:20-2. Statement of determination.
- 19:20-3. Certification of statement; form.
- 19:20-4. Statements and certifications filed with county clerk.
- 19:20-5. Certificates to successful candidates; signing and attestation.
- 19:20-6. Statement of result of canvass for secretary of state.
- 19:20-7. Certificate prima facie evidence of legislator's right to seat.
- 19:20-8. Statements and certificates filed with municipal clerks.
- 19:20-9. Certificates issued to successful municipal candidates; signing and attestation.

#### Library References

Elections ☞259.

WESTLAW Topic No. 144.

C.J.S. Elections § 237.

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#### 19:20-1. Scope of authority

The board of county canvassers, in case of officers voted for or public questions voted upon exclusively by the voters of a single county or any political subdivision thereof, except for any congressional district or part of a congressional district, shall proceed to determine what officers have been elected, and the result of the vote cast upon any public question setting forth that it was approved or rejected.



### Historical and Statutory Notes

Source: L.1930, c. 187, ¶242, p. 781.

### Library References

#### Texts and Treatises

26 Am Jur 2d, Elections § 300.

### Notes of Decisions

#### Conclusiveness of board's findings 3

#### Correctness of return 2

#### Power of board 1

#### 1. Power of board

Canvassing boards, in casting up the returns of an election, act in a purely ministerial capacity, and have no power to go behind returns, or reject those regular on their face and not shown to be spurious. *Gledhill v. Governor*, 25 N.J.L. 331 (1856); *Gledhill v. Passaic County Clerk*, 25 N.J.L. 354 (1856); *Williams v. Common Council of City of Rahway*, 33 N.J.L. 111 (1868).

Where county election returns made by district boards were in proper legal form and sufficient to enable board of canvassers to discharge its statutory duty to certify election results, board of canvassers had no authority to open ballot boxes for purpose of proving returns. *Reed v. Board of Canvassers of Essex County*, 119 N.J.L. 115, 194 A. 280 (1937).

Since the Act of 1905, L. p. 14, incorporated in §§ 40:45-1 and 40:45-2, by which local elections in municipalities other than cities were directed to be held on the day of the general election, the board of county canvassers is the only board authorized to canvass the votes. *Attorney General v. Town of Belleville*, 81 N.J.L. 200, 80 A. 116 (1911).

#### 2. Correctness of return

Where return of election laid before board of county canvassers is not unambiguous, but suggests a doubt as to its own correctness, board can seek information in duplicate return by local board of elections, and, if not satisfied, can have a return certifying what is correct return. *In re Board of Election, Fourteenth District, Twelfth Ward of New Jersey*, 89 N.J.L. 382, 99 A. 380 (1916).

#### 3. Conclusiveness of board's findings

In mandamus proceedings by relator, who according to the official determination of the board of county canvassers had been elected county collector, against the board of chosen freeholders, to compel the board to accept his official bond, which the board rejected on the sole ground that he had not been duly elected, the determination of the board of canvassers is conclusive. *Stokes v. Board of Chosen Freeholders of Camden County*, 35 N.J.L. 217 (1871).

Where the governor was required by law (as the statutes stood in 1856) to issue a commission in accordance with the determination of the board of county canvassers, the court will not award a mandamus directing a commission to be issued in conflict with such determination, although it appear affirmatively that the decision of the board of county canvassers was based upon illegal evidence, and is contrary to the truth of the case. *Gledhill v. Governor*, 25 N.J.L. 331 (1856).

### 19:20-2. Statement of determination

The board in the case of an election for a member of the senate, members of the general assembly, or other officer elected or public question approved or rejected by all of the voters of the county, except for members of the house of representatives, shall make two statements of its determination in substantially the following form:

"A statement of the determination of the board of county canvassers relative to an election held in the county of \_\_\_\_\_ on the \_\_\_\_\_ day of November, in the year of our Lord one thousand nine hundred and \_\_\_\_\_, for the election of a member of the senate, members of the general assembly of this state, and a sheriff and coroners for said county and public questions (naming the officers and public questions, as the case may be).

The said board does determine that at the said election, \_\_\_\_\_ was duly elected a member of the senate of this state; \_\_\_\_\_ were duly elected members of the general assembly; \_\_\_\_\_ was duly elected sheriff and \_\_\_\_\_ were duly elected coroners for said county, and \_\_\_\_\_ public questions were approved or rejected (as the case may be)."

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶243, p. 781.

**Notes of Decisions**

**Conclusiveness of determination 2  
Proceedings by board 1**

**1. Proceedings by board**

The board of county canvassers are to make their statement of the result, and their determination as to the persons who shall be elected, upon, and only upon, the statements which are produced and laid before the board, as directed in the act. *Gledhill v. Governor*, 25 N.J.L. 331 (1856).

**2. Conclusiveness of determination**

The determination of the board of county canvassers has no such final or

conclusive effect as to interfere with a full and free investigation of the legal result of an election by a writ of quo warranto. *Gledhill v. Clerk of Passaic County*, 25 N.J.L. 354 (1856); *Love v. Board of Chosen Freeholders of Hudson County*, 35 N.J.L. 269 (1871).

On an application for a mandamus, by one claiming to have been elected to a county office, to compel the acceptance of his bond, the determination of the board of county canvassers as to the election of relator was conclusive, as between him and the board of chosen freeholders. *Stokes v. Board of Chosen Freeholders of Camden County*, 35 N.J.L. 217 (1871).

**19:20-3. Certification of statement; form**

The board shall thereupon certify such statement to be true and correct, by a certificate appended to the same, and signed by the chairman of the board in the presence of the clerk of the board:

"I do certify that the foregoing is a true, full and correct statement of the determination of the board of canvassers therein mentioned.

In Witness whereof I have hereunto set my hand this \_\_\_\_\_ day of November, in the year of our Lord one thousand nine hundred and \_\_\_\_\_

Chairman of the board of county canvassers.

Attest: \_\_\_\_\_, Clerk."

The clerk of the board shall attest the signing of the same by the chairman by signing his name thereto.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶244, p. 782.

#### 19:20-4. Statements and certifications filed with county clerk

One of the statements of such determination, and the certificate thereto, shall be annexed to one of the statements of the results of the canvass of the election, and delivered therewith to the clerk of the county and filed in his office.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶245, p. 782.

#### Library References

Elections ⇐265.

WESTLAW Topic No. 144.

C.J.S. Elections § 240.

#### 19:20-5. Certificates to successful candidates; signing and attestation

The chairman of the board, in the case of an election for senator or members of the assembly, or for any officer voted for by the voters of the entire county or of any subdivision thereof, except for members of the house of representatives, shall issue a certificate to the successful candidate based upon the statement of the determination of the board, and shall sign his name thereto, which shall be attested by the clerk of the board by signing his name and affixing the seal of the county. The clerk shall without delay deliver one of such certificates to each person who shall be so elected.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶246, p. 783.

#### Library References

Elections ⇐265½.

WESTLAW Topic No. 144.

C.J.S. Elections § 240.

**19:20-6. Statement of result of canvass for secretary of state**

In the case of a state senator, member of the general assembly or any county officer, or any public questions to be voted upon by the voters of the entire state or any political subdivision thereof greater than a county, the board shall inclose, seal up and transmit one of the statements of the results of the canvass of the election, together with one of the statements of the determination and the certificate thereto annexed, to the secretary of state at Trenton within five days next after the meeting of the board, who shall file the same in his office.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶247, p. 783.

**19:20-7. Certificate prima facie evidence of legislator's right to seat**

In the organization of the senate and general assembly the certificates so issued by the board based upon such statements of its determination shall be deemed prima facie evidence of the right of the persons therein mentioned to seats in the houses, respectively, to which they shall have been so determined to be elected.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶248, p. 783.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections § 305.

**19:20-8. Statements and certificates filed with municipal clerks**

The board in the case of officers elected or public questions approved or rejected by the voters of a municipality or part thereof shall in the same manner and form make, certify and sign as many statements as to its determination and certificates thereto annexed, together with the statements of the results of the canvass of the election, as there are municipalities concerned, and file the same with the clerks of such municipalities.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶249, p. 784.

## Notes of Decisions

## Statements 1

## 1. Statements

Since order issued by court concerning validity of ballots and certificates of election issued by county board of canvassers were writings required to be filed by Title

19 with office of clerk of municipality each constituted a "statement" filed under Title 19, subsequent to the election, providing 30 days for filing contest petition unless ground of action is discovered from statements, deposit slips or vouchers filed under Title 19. In Matter of Tyler, 167 N.J. Super. 115, 400 A.2d 541 (L.1979).

### 19:20-9. Certificates issued to successful municipal candidates; signing and attestation

The chairman of the board, in the case of an election of officers of a municipality or part thereof, or public questions voted upon in such municipalities, shall issue a certificate to the successful candidate and also a certificate of the approval or rejection of any public question, based upon the statement of the determination of the board, and shall sign his name thereto, which shall be attested by the clerk of the board by signing his name and affixing the seal of the county. The clerk shall without delay deliver such certificates to the various municipal clerks, who shall without delay deliver one of the same to each person who shall be elected.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §250, p. 784.

**CHAPTER 21**  
**CANVASS OF RETURNS BY BOARD**  
**OF STATE CANVASSERS**

**ARTICLE 1. MEETING**

**Section**

- 19:21-1. Time and place.  
19:21-2. Substitutes for absentee members.  
19:21-3. Oath of members.  
19:21-4. Clerk of board absent; appointment of replacement; oath.

**ARTICLE 2. PROCEDURE ON CANVASS**

- 19:21-5. Statements presented by secretary of state or designee.  
19:21-6. Statement and certification of canvass.  
19:21-7. Form of statement and certificate.

**Library References**

- Elections  $\S$  257 et seq.  
WESTLAW Topic No. 144.  
C.J.S. Elections  $\S$  235 et seq.

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**ARTICLE 1. MEETING**

**19:21-1. Time and place**

a. The Board of State Canvassers shall meet at Trenton as soon as practicable but no later than the 28th day after the day of election, for the purpose of canvassing and estimating the votes cast for each person for whom any vote or votes shall have been cast for one or

more members of the United States senate or of the house of representatives, or for electors of president and vice president, or for governor, or for members of the Legislature, and upon each public question voted upon by the voters of the entire state or political division thereof greater than a county and of determining and declaring the person or persons who shall, by the greatest number of votes, have been duly elected to such office or offices, and the result of the vote cast upon any public question setting forth that it was approved or rejected.

b. For the purpose of canvassing and estimating the votes cast for each person for whom any vote or votes shall have been cast in any special election, the board shall meet in Trenton as soon as practicable but no later than the 28th day after the day of the special election.

Amended by L.1987, c. 338, § 2, eff. Dec. 23, 1987.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §251, p. 784.

#### Library References

##### Texts and Treatises

26 Am Jur 2d, Elections §§299, 301.

### 19:21-2. Substitutes for absentee members

If a number of the members of the Legislature who shall have been summoned as members of the board sufficient to constitute it shall not attend the meeting thereof, the chairman shall summon as members of the board as many fit persons who shall possess the qualifications required for members of the General Assembly as shall be necessary to complete the number required to constitute the board.

Amended by L.1987, c. 338, § 3, eff. Dec. 23, 1987.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §252, p. 785.

### 19:21-3. Oath of members

The chairman of the board shall administer, and each member thereof shall take, an oath or affirmation in the following form: "You do swear (or affirm, as the case may be) that you will faithfully and impartially execute the duties of a member of this board according to law"; and thereupon one of the members of the board, to be appointed by it for that purpose, shall administer to the chairman thereof an oath or affirmation in the same form as that which shall have been taken by the other members.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶253, p. 785.

**Library References****Texts and Treatises**

63A Am Jur 2d, Public Officers and  
Employees § 4.

**19:21-4. Clerk of board absent; appointment of replacement;  
oath**

If the clerk of the board be absent from such meeting at the time appointed therefor, the chairman of the board shall forthwith, after the oaths or affirmations shall have been administered and taken, proceed to appoint a fit person to be the clerk of the board; and before proceeding to canvass and estimate the votes, the chairman of the board shall administer to the clerk thereof, and such clerk shall take, an oath or affirmation in the following form: "You do swear (or affirm, as the case may be) that you will faithfully execute the duties of clerk of this board."

Amended by L.1987, c. 338, § 4, eff. Dec. 23, 1987.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶254, p. 785.

**ARTICLE 2. PROCEDURE ON CANVASS****Library References**

Elections ¶257 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 235 et seq.

**19:21-5. Statements presented by secretary of state or designee**

The Secretary of State or the secretary's designee shall thereupon produce and lay before the board all statements and copies relating to such election which the secretary shall have received or obtained, as hereinbefore provided. If he shall neglect to produce and lay before the board or shall withhold any such statement or copy received or obtained by him, the chairman of the board shall forthwith summon the secretary or the secretary's designee, as appropriate, to appear and produce and lay before the board the statement or copy, and thereupon the secretary or the secretary's designee shall forthwith produce and lay the same before the board.

Amended by L.1987, c. 338, § 5, eff. Dec. 23, 1987.



**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶255, p. 786.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§298, 304,  
305.

**19:21-6. Statement and certification of canvass**

The board shall forthwith canvass such statements and proceed to make a statement of the result of the election in the state; the statement shall contain the whole number of names of the voters in all the signature copy registers and registers of voters, the whole number of the names of the voters in all the poll books and the whole number of ballots rejected in the state, the names of all the persons for whom any vote or votes shall have been given for any office or offices to be filled at such election, and the whole number of the votes which shall have been given to each person for any such office or offices, mentioning the office or offices for which each person shall have been designated, together with the results of the votes cast upon any public questions voted upon by the voters of the entire state or of any political subdivision thereof greater than a county, and shall contain the name of each county, the number of names in the poll books in the counties respectively, the number of votes given for each person in each county for any such office or offices. In such statement the name of each person for whom any vote or votes shall have been given, the whole number of votes given for each person, and the name of each county, shall be in words written at full length.

The whole number of names of the voters in all the signature copy registers and registers of voters, and the whole number of the names of the voters in all the poll books and the whole number of ballots rejected in the state, together with the result of the votes cast upon any public questions voted upon by the voters of the entire state or any political subdivision thereof greater than a county, the number of names of the voters in all the signature copy registers and registers of voters and the number of names in the poll books and the number of ballots rejected in the counties respectively, together with the result of the votes cast upon any public questions voted upon by the voters of the entire state or any political subdivision thereof greater than a county, and the number of votes given for each person in each county may be in figures.

Such statement shall be certified to be true and correct by a certificate appended to the same; and the chairman of the board

shall sign his name thereto in the presence of the clerk of the board, which such clerk shall attest by signing his name thereto.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §256, p. 786.

**Notes of Decisions**

**Evidentiary effect of certificate** 1                      fice. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

**1. Evidentiary effect of certificate**

Certificate of election constitutes prima facie evidence of candidate's title to of-

**19:21-7. Form of statement and certificate**

Such statement and certificate appended thereto shall be in a form similar to that hereinbefore prescribed for the board of county canvassers, as far as the nature of such election will admit.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §257, p. 787.

## CHAPTER 22

### DETERMINATION OF RESULTS BY BOARD OF STATE CANVASSERS

#### Section

- 19:22-1. Statement of determination.
- 19:22-2. Basis of statement.
- 19:22-3. Certification and signing of statement.
- 19:22-4. Form of statement and certificate.
- 19:22-5. Statements filed with secretary of state.
- 19:22-6. Certificates to successful candidates by secretary of state.
- 19:22-7. Certificates of election of United States senators and congressmen.
- 19:22-8. Certificates of election of presidential and vice presidential electors.

#### Library References

- Elections  $\S$  257 et seq.
- WESTLAW Topic No. 144.
- C.J.S. Elections  $\S$  235 et seq.

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#### 19:22-1. Statement of determination

When such statement and certificate shall have been made and subscribed, the board shall proceed to determine the person or persons who shall, by the greatest number of votes, have been duly elected to the office or offices for which he or they shall have been designated, together with the result of the vote cast upon any public question setting forth that it was approved or rejected; and thereupon the board shall make a statement of its determination.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶258, p. 788.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§300, 302,  
304.

**19:22-2. Basis of statement**

The board shall base the statement of the result of the canvass of such election in the state and its determination as to the person or persons who shall have been elected, or any public question approved or rejected therein upon the statements of the result of the election, or the copies of the statements which shall have been made by the board of county canvassers in the several counties, and laid before the board.

If it appears by any such statement from any county, that the statement of the result of such election in any election district of the county is not exhibited by or included in such statement, the board shall give full force and effect to the statement of the result of the election in such district, or the copy of the statement, which shall be laid before it by the secretary of state as hereinbefore directed.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶259, p. 788.

**19:22-3. Certification and signing of statement**

Such statement shall be certified to be true and correct by a certificate appended to same; and the chairman of the board shall sign his name thereto, in the presence of the clerk thereof, which such clerk shall attest by signing his name thereto.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶260, p. 788.

**19:22-4. Form of statement and certificate**

The statement of such determination and the certificate appended thereto shall be in a form similar to that hereinbefore prescribed for the board of county canvassers, as far as the nature of such election will admit.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶261, p. 789.

**19:22-5. Statements filed with secretary of state**

The statement of determination shall be annexed to the statement of the result of the canvass of such election; and both of the statements and certificates attached thereto shall forthwith be delivered to the secretary of state, who shall file the same in his office. All the statements and copies of statements which shall have been produced and laid before the board shall be delivered to the secretary of state, and by him filed in his office.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶262, p. 789.

**19:22-6. Certificates to successful candidates by secretary of state**

The secretary of state shall issue a certificate to each successful candidate, based upon a statement of the determination of the board of state canvassers, and shall sign his name thereto and affix the seal of the state, and shall without delay deliver the same to each of the persons who shall be so elected.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶263, p. 789.

**19:22-7. Certificates of election of United States senators and congressmen**

In case of an election for one or more members of the United States senate or of the house of representatives, the secretary of state shall prepare a general certificate of the election of such member or members of the United States senate and one of the member or members of the house of representatives, and lay the same before the governor, who shall sign his name thereto in the presence of such secretary, which the secretary shall attest by signing his name thereto, and shall thereupon affix the seal of the state thereto and transmit the same forthwith to the clerk of the United States senate and of the house of representatives, as the case may be, if they shall then be in session, and if not, then at their first meeting.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶264, p. 789.

**19:22-8. Certificates of election of presidential and vice presidential electors**

In case of an election for electors of president and vice president of the United States, such secretary shall prepare a general certificate of the election of such electors, and lay the same before the governor, who shall sign his name thereto, in the presence of such secretary, which the secretary shall attest by signing his name thereto, and shall thereupon affix the seal of the state thereto, and deliver the same to the president of the college of electors of this state, on the day and at the time and place appointed for the meeting of such college.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §265, p. 790.

## SUBTITLE 3

# PRIMARY ELECTIONS

### Chapter

- 23. Primary for General Election.
- 24. Primary for Delegates and Alternates to National Conventions.
- 25. Petition Indorsing Candidate for President.
- 26. Any Primary.

## CHAPTER 23

# PRIMARY FOR GENERAL ELECTION

### ARTICLE 1. NOTICE OF ELECTIONS

#### Section

- 19:23-1. State committee to county committees; county committees to municipal clerks.
- 19:23-2. Repealed.

### ARTICLE 2. REGISTRY BOOK—MUNICIPALITIES NOT HAVING PERMANENT REGISTRATION [REPEALED]

- 19:23-3, 19:23-4. Repealed.

### ARTICLE 3. NOMINATION OF CANDIDATES

- 19:23-5. Party candidates for primary nominated by members of same party by petition.
- 19:23-6. Address of petitions.
- 19:23-7. Contents of petition; certificate; oath of allegiance.
- 19:23-8. Numbers of signers to petitions.
- 19:23-9. Repealed.
- 19:23-10. Single or several petitions; signing rules and regulations.
- 19:23-11. Verification of petitions.
- 19:23-12. Vacancy committee named in petition; filling vacancies; certificate; oath of allegiance.
- 19:23-13. Vacancies caused by death or declining the office; new petition; oath of allegiance.
- 19:23-14. Filing petitions; certifying names; transmittal to election law enforcement commission.
- 19:23-14.1. Repealed.
- 19:23-15. Acceptance by candidate to accompany petitions; oath of allegiance.
- 19:23-16. Acceptance by persons nominated by writing or pasting names on ballot; certificate; oath of allegiance.
- 19:23-16.1 to 19:23-16.3. Expired.
- 19:23-17. Designation on primary ticket of policy or faction.
- 19:23-18. Grouping of candidates.

## PRIMARY FOR GENERAL ELECTION

### Section

- 19:23-19. Defective petition; notice to candidates.
- 19:23-20. Amendment of defective petition; time for.
- 19:23-21. Certification by secretary of state of nominees to county clerk; transmittal to election law enforcement commission.
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## PRIMARY ELECTIONS

### Section

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- 19:23-58. Provisions of title applicable.

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## ARTICLE 1. NOTICE OF ELECTIONS

## Law Review and Journal Commentaries

Primary elections: The real party in interest (1974) 27 Rutgers L.Rev. 298.

## Library References

Elections Ⓔ126(2).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 117.

**19:23-1. State committee to county committees; county committees to municipal clerks**

The chairman of the State committee of a political party shall, on or before March 1 in the year when a Governor is to be elected, notify in writing the chairman of each county committee of such party of the number of male or female members or members with less than one full vote to be elected from the county at the ensuing primary election for the general election, and each such chairman shall, on or before April 1 of such year, send a copy of such notice to the county clerk.

The chairman of each county committee shall also, on or before April 1, in each year file with the clerks of the several municipalities the number of committeemen to be elected at the ensuing primary for the general election to the county committee.

Amended by L.1948, c. 2, p. 42, § 22; L.1965, c. 4, § 10; L.1966, c. 19, § 5; L.1967, c. 7, § 4; L.1967, c. 26, § 4, eff. April 21, 1967; L.1968, c. 292, § 4, eff. Sept. 6, 1968; L.1978, c. 15, § 3, eff. March 30, 1978.

## Historical and Statutory Notes

**Source:**

L.1930, c. 187, §266, p. 790.  
L.1935, c. 9, § 13, p. 28.  
L.1935, c. 299, § 7, p. 938.

Provisions inconsistent with certain other sections inoperative while such

laws are in effect, see Historical Note under § 19:2-1.

**Statement:** Introductory Statement to Senate, No. 956—L.1978, c. 15, see § 19:5-4.

## Library References

Elections Ⓔ126(2).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 117.

**Texts and Treatises**

25 Am Jur 2d, Elections § 159.

## Notes of Decisions

County committees 2  
Legislative power 1

## 1. Legislative power

Primary elections are proper objects of legislative control. *Cavanagh v. Morris County Democratic Committee*, 121 N.J.Super. 430, 297 A.2d 594 (Ch.1972).

It is for the Legislature to determine how the party affiliations and the resulting right to vote at a party primary are to be determined, and there is no constitutional objection to their determination, if it is not arbitrary, and leaves it to the voluntary will of the voter whether he will take part in the primary or not. *Heath v. Rotherham*, 79 N.J.L. 22, 77 A. 520 (1909).

The recognition by the Legislature of the existence of conditions that, in its judgment, require regulation under its police power, such as primary elections, is to be distinguished from the creation by the Legislature of conditions that previously had no existence. *Ely v. Ely*, 56 A. 1 (1903).

In considering the Primary Election Law of 1903, L. p. 603 et seq., repealed, the Supreme Court in *Hopper v. Stack*, 69 N.J.L. 562, 56 A. 1 (1903) said: "The Legislature must have recognized as a fact the existence of political parties of varying numerical strength, by which candidates for popular election were placed in nomination upon party tickets and platforms. It must likewise have determined that, in the selection of such nominees, each of these political parties invited the cooperation of voters who were in practical affiliation with it, and resented attempts at participation by or interference from those not so in sympathy. The Legislature must further have

decided that the purposes of these party proceedings were so far public purposes that those engaged in them ought to be protected in what they had undertaken, and that to this end the police power of the state should be exercised. These matters of fact being established, the element of legislative discretion entered to determine the measure of such regulation, and the mode of this exercise. In all of this there is no calling of anything into existence, no creation of political parties or of primary meetings, no prescription of the terms of membership—in fine, no initiation of any essential matter, but only the recognition of an existing state of facts, and a determination to throw over them the protection of police regulation. With the wisdom or efficiency of this latter determination the judicial branch of the government has nothing whatsoever to do."

The Supreme Court, in passing on an indictment for conspiracy to procure fraudulent votes, in *State v. Nugent*, 77 N.J.L. 157, 71 A. 481 (1909) said: "The primary law is concerned simply with providing a method for the selection of persons to be voted for at a public election. This was unknown to the common law, and rests entirely upon the statute by which it was created and defined. *Woodruff v. State*, 68 N.J.L. 89, 52 A. 294 (1902)

## 2. County committees

The Legislature had power to define a county committee of a political party, within the meaning of P.L.1909, p. 159, repealed, providing for the regulation of elections, and only such a county committee as the Legislature chooses to recognize can have any right to deal with the election machinery. *Heath v. Rotherham*, 79 N.J.L. 22, 77 A. 520 (1909).

## 19:23-2. Repealed by L.1988, c. 157, § 1, eff. Nov. 16, 1988

## Historical and Statutory Notes

The repealed section, derived from L.1930, c. 187, ¶267, p. 791, related to

posting notice of time and place of holding primary.

ARTICLE 2. REGISTRY BOOK—MUNICIPALITIES  
NOT HAVING PERMANENT REGISTRATION  
[REPEALED]

19:23-3, 19:23-4. Repealed by L.1947, c. 104, p. 529, § 9

Historical and Statutory Notes

Section 19:23-3, which derived from L.1930, c. 187, p. 791, § 268, related to form and contents of registry book.

Section 19:23-4, which derived from L.1930, c. 187, p. 792, § 269, related to new election districts and emergencies.

ARTICLE 3. NOMINATION OF CANDIDATES

Library References

Elections ⇨126(4).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 115, 130.

Comments

Candidate selections, see New Jersey Practice vol. 35, Pane, § 470 et seq.

19:23-5. Party candidates for primary nominated by members of same party by petition

Candidates to be voted for at the primary election for the general election shall be nominated exclusively by the members of the same political party by petition in the manner herein provided.

Historical and Statutory Notes

Source: L.1930, c. 187, ¶270, p. 792.

Cross References

Nominations to be by petition in municipalities, see § 40:45-8.

Library References

Texts and Treatises

25 Am Jur 2d, Elections § 156.

United States Supreme Court

Freedom of speech and association, Democratic Cent. Committee, U.S. Cal. ban on political party primary endorsements, see Eu v. San Francisco County 1989, 109 S.Ct. 1013, 489 U.S. 214, 103 L.Ed.2d 271.

## Notes of Decisions

Independent candidate 2  
 Petitions 3  
 Right to candidacy 1

office at general election by direct petition of nomination. *Sadloch v. Allan*, 25 N.J. 118, 135 A.2d 173 (1957).

## 1. Right to candidacy

Primary election laws do not confer right of qualified persons to become candidates; such laws can only regulate exercise of such right by enactment designed to assure free and open elections devoid of fraud, disorder and confusion. *Alston v. Mays*, 152 N.J.Super. 509, 378 A.2d 72 (L.1977).

## 2. Independent candidate

One who seeks nomination at primary election as party candidate for elective office may not at the same time declare as independent candidate for the same

## 3. Petitions

Where plaintiff at no time sought nomination for office of mayor by direct petition and unsuccessfully sought to receive Republican nomination under statutes dealing with political party primary elections but successfully attained Democratic nomination as result of write-in votes in Democratic primary, his name not appearing on Democratic ballot, requirements and restrictions concerning filing of petitions for ballot position in political party primary were not applicable. *Riecker v. Hartmann*, 130 N.J.Super. 266, 326 A.2d 101 (L.1974).

## 19:23-6. Address of petitions

Petitions nominating candidates to be voted for by the voters of a political party throughout the entire State or of any subdivisions thereof more than a single county or any congressional district shall be addressed to the Secretary of State. Petitions nominating candidates for election to the Senate or General Assembly shall be addressed to the Secretary of State. Petitions nominating candidates to be voted for by the voters of a political party throughout a county or any county election district or subdivision of a county comprising more than a single municipality, shall be addressed to the clerk of the county. All other petitions shall be addressed to the clerks of municipalities.

Amended by L.1967, c. 22, § 2, eff. March 23, 1967; L.1975, c. 43, § 1, eff. April 3, 1975.

## Historical and Statutory Notes

Source: L.1930, c. 187, §271, p. 792.

## 19:23-7. Contents of petition; certificate; oath of allegiance

Each such petition shall set forth that the signers thereof are qualified voters of the State, congressional district, county, or county election district, municipality, ward or election district, as the case may be, in which they reside and for which they desire to nominate candidates; that they are members of a political party (naming the same), and that they intend to affiliate with that political party at the ensuing election; that they indorse the person or persons named in

their petition as candidate or candidates for nomination for the office or offices therein named, and that they request that the name of the person or persons therein mentioned be printed upon the official primary ballots of their political party as the candidate or candidates for such nomination. The petition shall further state the residence and post-office address of each person so indorsed, and shall certify that the person or persons so indorsed is or are legally qualified under the laws of this State to be nominated, and is or are a member or members of the political party named in the petition.

Accompanying the petition, each person indorsed therein shall file a certificate, stating that he is qualified for the office mentioned in the petition, that he is a member of the political party named therein, that he consents to stand as a candidate for nomination at the ensuing primary election of such political party, and that, if nominated, he consents to accept the nomination, to which shall be annexed the oath of allegiance prescribed in R.S. 41:1-1, duly taken and subscribed by him before an officer authorized to take oaths in this State.

Each petition shall be arranged to contain double spacing between the signature lines of the petition, so that each signer thereof is afforded sufficient space to provide his or her printed name, address and signature.

Any form of a petition of nomination, other than petitions for federal office, which is provided to candidates by the Secretary of State, the county clerk, or the municipal clerk shall contain the following notice: "Notice: All candidates are required by law to comply with the provisions of the 'New Jersey Campaign Contributions and Expenditures Reporting Act.' For further information, please call (insert phone number of the Election Law Enforcement Commission)."

Amended by L.1948, c. 438, p. 1699, § 7; L.1949, c. 24, p. 76, § 7; L.1975, c. 43, § 2, eff. April 3, 1975; L.1983, c. 579, § 3, eff. Jan. 17, 1984; L.1984, c. 12, § 3, eff. March 6, 1984; L.1994, c. 77, § 9, eff. Jan. 1, 1995.

### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, § 272, p. 793.

### **Cross References**

Contents of nominating petition in municipalities, see § 40:45-8.

Form and content of nominating petition in municipality having commission form government, see § 40:45-8.

Oath by signer of petition, see § 40:45-8.

## Library References

Elections ⇨126(4).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 115, 130.

## United States Supreme Court

Rights of Communist Party, see Communist Party of Indiana v. Whitcomb, U.S.Ind.1974, 94 S.Ct. 656, 414 U.S. 441,

38 L.Ed.2d 635, rehearing denied 94 S.Ct. 1476, 415 U.S. 952, 39 L.Ed.2d 568.

## Notes of Decisions

Election concerned 7  
 Group by political belief 5  
 Nominees 3  
 Party membership 4  
 Qualified voter 6  
 Signatures 2  
 Validity 1

## 2. Signatures

Signatures of unregistered votes on nominating petitions for state office were invalid; voters must be registered to be considered "qualified" to sign party nominating petition. *Lesniak v. Budzash*, 133 N.J. 1, 626 A.2d 1073 (1993).

Use of initials by persons signing nominating petition with their correct last names did not invalidate their signatures, notwithstanding that such persons used their given names when they signed election registry. *Zohn v. Anderson*, 49 N.J.Super. 350, 139 A.2d 807 (L.1958).

Invalid signatures on nominating petition, such as signatures of unregistered voters and voters previously declared in another political party, did not operate to render nominating petition invalid where only 100 signatures were required and, after disqualification of 55 invalid signatures, 101 valid signatures remained. *Matter of Challenge by Fitzgibbons*, 93 N.J.A.R.2d (STE) 25 (1993).

Signatures on nominating petitions of persons not registered to vote, not registered in appropriate party, and not similar to names of any voters registered at given address operated to invalidate nominating petitions of two candidates when remaining valid signatures were below necessary minimum. *Barry v. Frichione*, 93 N.J.A.R.2d (STE) 21 (1993).

Individuals who were not otherwise registered, domiciled, or qualified to vote in district were not valid signatories on nominating petitions and, when their absence left petitions without minimum number of signatures, petitions were invalid and precluded candidate's name from being placed on ballot. *Anderson v. Wise*, 93 N.J.A.R.2d (STE) 15 (1993).

## 1. Validity

There is no reasonable relation between the requirement of this section that a signer of nominating petition must have voted at the last general election and his right to nominate a candidate for office in his party primary, and consequently there is no valid requirement that signers of nominating petition must have voted at the last general election. *Goetsch v. Philhower*, 60 N.J.Super. 582, 160 A.2d 60 (A.D.1960).

Provision of this section that signers of nominating petitions disclose therein how they voted at the last general election is unconstitutional, but can be deleted without destroying the intent and purpose of the section. *Zohn v. Anderson*, 49 N.J.Super. 350, 139 A.2d 807 (L.1958).

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

Signatures of undeclared voters could not be counted toward the minimum needed on a petition of nomination for primary election candidate. *Mayer v. Lyons*, 93 N.J.A.R.2d (STE) 1 (1993).

Candidate whose nominating petition was short by four signatures of individuals who were either not registered, not actual persons whose signatures purported them to be, or not declared members of recognized political party was disqualified, thus requiring that his name be stricken from ballot. *Zimmer v. Desmond*, 92 N.J.A.R.2d (STE) 5 (1992).

### 3. Nominees

Party membership required for purposes of nomination as a candidate for county committee of that party by way of petition of nomination is prima facie established by certification of nominee himself annexed to the petition that he is qualified for the office and that he is member of political party named therein, and by declaration of petition signers that nominee is member of the party. *Ivkovich v. Green*, 174 N.J.Super. 225, 416 A.2d 68 (A.D.1980).

One filing a petition to be placed on the ballot for nomination as a member of the county committee must, at the time of filing, be fully qualified for that office; it is not sufficient that the qualifications will be met or satisfied at some time in the future. *Nickerson v. Capella*, 150 N.J.Super. 110, 374 A.2d 1253 (A.D. 1977).

Under the statutes relating to nomination of candidates, it is not a qualification for candidacy in a primary election that the nominee should have voted at the last general election. *Cottingham v. Vogt*, 60 N.J.Super. 576, 160 A.2d 57 (A.D.1960).

### 4. Party membership

Unaffiliated voters may declare party membership by signing nomination petition; allowing unaffiliated voter to affiliate with political party by signing nomination petition provides appropriate and reasonable accommodation between pub-

lic's interest in selection of its candidates and associational interests of regular party members. *Lesniak v. Budzash*, 133 N.J. 1, 626 A.2d 1073 (1993).

Absent any contrary evidence, petitions of nomination filed by plaintiffs which contained certification of party membership by respective nominees and by signers annexed thereto sufficiently established party membership of each of the plaintiffs as members of the Democratic party; invalidation of such petitions of nomination by township clerk was therefore improper and would be set aside. *Ivkovich v. Green*, 174 N.J.Super. 225, 416 A.2d 68 (A.D.1980).

### 5. Group by political belief

Voters have an important interest in finding candidates of similar persuasion grouped together rather than being spread upon the ballot in random fashion; voters are disadvantaged if philosophically affiliated candidates are scattered around the ballot. *Gillen v. Sheil*, 174 N.J.Super. 386, 416 A.2d 935 (L.1980).

### 6. Qualified voter

"Qualified voter," under statute requiring signers of primary nominating petition to be qualified voters, means "registered voter," or person who has exercised franchise rights by completing registration process. *Lesniak v. Budzash*, 265 N.J.Super. 165, 625 A.2d 1139 (A.D. 1993), certification granted, affirmed 133 N.J. 425, 627 A.2d 1133, affirmed as modified 133 N.J. 1, 626 A.2d 1073.

### 7. Election concerned

Nominating petitions of individual as candidate for party primary were invalid and disqualified individual as a candidate in primary where petitions were clear in designating individual as a candidate for nomination in general as opposed to primary election and signatories must have so understood. *Mollica v. Division of Elections*, 93 N.J.A.R.2d (STE) 18 (1993).

## 19:23-8. Numbers of signers to petitions

The petitions for candidates to be voted for by the voters of a political party throughout the entire State shall in the aggregate be signed by at least 1,000 such voters; in the case of candidates to be voted for by the voters of a political party throughout a congressional



district by at least 200 of such voters; in the case of candidates for the Senate and General Assembly at least 100 such voters; in the case of candidates to be voted for by the voters of a political party throughout a county or any county election district, by at least 100 of such voters; in the case of candidates to be voted for by the voters of a political party throughout a municipality having a population in excess of 14,000 as ascertained by the last Federal census by at least 50 of such voters; in the case of candidates to be voted for by the voters of a political party throughout all other municipalities or any ward of any municipality by at least 25 of such voters; in the case of a candidate to be voted for by the voters of a political party within a single election district by at least 10 of such voters.

Notwithstanding the above provisions, in the case of petitions for candidates to be voted for by the voters of a political party throughout any municipality, ward, or election district, the number of signers of any such petition may be fewer than the minimum number specified above but shall be at least 5% in number of the total vote cast by the voters of that political party at the last preceding primary election held for the election of that party's candidates for the General Assembly. In no case, however, shall there be fewer than one signer of any such petition.

Amended by L.1945, c. 285, p. 836, § 1; L.1948, c. 438, p. 1699, § 8; L.1967, c. 22, § 3, eff. March 23, 1967; L.1975, c. 43, § 3, eff. April 3, 1975; L.1981, c. 164, § 1, eff. Jan. 1, 1982.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶273, p. 794. "This act shall take effect January 1, Section 2 of L.1981, c. 164, approved next following its enactment." June 11, 1981, provides:

#### Cross References

Signing of nominating petition, see § 40:45-8.

Write-in votes or votes by irregular ballot in primary, number necessary to qualify for placement on general election ballot, see § 19:14-2.1.

#### Library References

Elections ⇄126(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 111 et seq.

## Notes of Decisions

Gubernatorial nominees 2  
Nomination by committee 1

## 2. Gubernatorial nominees

Candidate for gubernatorial election failed to submit required number of valid signatures on nominating petition. *Lesniak v. Budzash*, 93 N.J.A.R.2d (STE) 8 (1993), affirmed 265 N.J.Super. 165, 625 A.2d 1139, certification granted, affirmed 133 N.J. 425, 627 A.2d 1133, affirmed as modified 133 N.J. 1, 626 A.2d 1073.

## 1. Nomination by committee

Candidate for borough council in election in which two seats were open could be nominated by party committee after only one candidate received more than five percent of vote in primary election. *Fields v. Hoffman*, 105 N.J. 262, 520 A.2d 751 (1987).

**19:23-9. Repealed by L.1975, c. 43, § 6, eff. April 3, 1975****Historical and Statutory Notes**

The repealed section, derived from L.1930, c. 187, ¶ 274, p. 794, related to petitions nominating chosen freeholders.

**19:23-10. Single or several petitions; signing rules and regulations**

Not all of the names of petitioners need be signed to a single petition, but any number of petitions of the same purport may be filed; but in the aggregate the signatures thereto indorsing any one person shall be the number required by this title. The signers to petitions shall not therein indorse or recommend more persons as candidates for the position than are to be chosen at the ensuing primary election in the state or political subdivision in which the signers to the petition reside, nor shall such signers indorse more persons as candidates for nomination to office than are to be elected in the state or political subdivision.

No member of one political party shall sign his name to any petition purporting to indorse any person as a candidate for office of another political party.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶275, p. 794.

**Cross References**

Nature and sufficiency of petition in municipality having commission form government, see § 40:45-8.

**19:23-11. Verification of petitions**

Such petitions shall be verified by the oath or affirmation of one or more of the signers thereof, taken and subscribed before a person

qualified under the laws of New Jersey to administer an oath, to the effect that the petition is signed by each of the signers thereof in his proper handwriting; that the signers are to the best knowledge and belief of the affiant legal voters of the state or political subdivision thereof, as the case may be, as stated in the petition, belong to the political party named in the petition, and that the petition is prepared and filed in absolute good faith for the sole purpose of indorsing the person or persons therein named, in order to secure his or their nomination or selection as stated in such petition.

### Historical and Statutory Notes

Source: L.1930, c. 187, §276, p. 795.

### Cross References

Form and content of nominating petition in municipality having commission form government, see § 40:45-8.

### Library References

Municipal Corporations ⇔279.

WESTLAW Topic No. 268.

C.J.S. Municipal Corporations § 1066.

### Notes of Decisions

Person verifying 2  
Special elections 1

#### 2. Person verifying

After-the-fact registration of one verifier did not invalidate nominating petition where sufficient signatures were otherwise gathered and verified during a period of time in which candidate was not yet registered, and voters could not be prevented from having their wishes known. *Kenny v. Hughes*, 92 N.J.A.R.2d (STE) 5 (1992).

#### 1. Special elections

The verification provisions in this chapter do not apply to a petition for special election to adopt municipal-manager form of government for city. *Steger v. Schellenger*, 33 N.J. 293, 163 A.2d 377 (1960).

### 19:23-12. Vacancy committee named in petition; filling vacancies; certificate; oath of allegiance

The signers to petitions for "Choice for President," delegates and alternates to national conventions, for Governor, United States Senator, member of the House of Representatives, State Senator, member of the General Assembly and any county office may name three persons in their petition as a committee on vacancies.

This committee shall have power in case of death or resignation or otherwise of the person indorsed as a candidate in said petition to fill such vacancy by filing with the Secretary of State in the case of officers to be voted for by the voters of the entire State or a portion thereof involving more than one county thereof or any congressional

district, and with the county clerk in the case of officers to be voted for by the voters of the entire county or any county election district, a certificate of nomination to fill the vacancy.

Such certificate shall set forth the cause of the vacancy, the name of the person nominated and that he is a member of the same political party as the candidate for whom he is substituted, the office for which he is nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee is authorized to fill vacancies and such further information as is required to be given in any original petition of nomination.

The certificate so made shall be executed and sworn to by the members of such committee, and shall upon being filed at least 48 days before election have the same force and effect as the original petition of nomination for the primary election for the general election and there shall be annexed thereto the oath of allegiance prescribed in R.S. 41:1-1 duly taken and subscribed by the person so nominated before an officer authorized to take oaths in this State. The name of the candidate submitted shall be immediately certified to the proper municipal clerks.

Amended by L.1942, c. 50, p. 283, § 8; L.1949, c. 24, p. 77, § 8; L.1975, c. 43, § 4, eff. April 3, 1975; L.1985, c. 92, § 17, eff. March 26, 1985.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, §277, p. 795.

**Statement:** Committee statement to

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

#### Library References

Elections ☞ 126(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 111 et seq.

#### Texts and Treatises

25 Am Jur 2d, Elections §137 et seq.

#### Notes of Decisions

**Expiration of filing time** 3

**Filing certificate** 2

**Validity** 1

##### 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12,

13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's

authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

## 2. Filing certificate

Where some slots now sought to be filled were originally occupied by candidates who had withdrawn their candidacies and remainder of slots had never been filled, there were vacancies either by resignation or otherwise that had to be filled pursuant to this section and thus anticipated action by county clerk, who not only wished to remove candidates from one ballot slot but to transfer candidates to another column and slot on primary ballot, did not meet statutory requirements since proposed transfer had not been approved by any committee on vacancies and since 34-day period for filling vacancies had lapsed. *Tomasin v. Quinn*, 150 N.J. Super. 593, 376 A.2d 233 (L.1977).

Where this section prior to 1942 amendment required certificate of nomi-

nation to fill a vacancy to be filed 17 days prior to the election, amendment thereof requiring certificate to be filed 34 days prior to election required exclusion of candidates from ballot for General Assembly and certain county offices, where certificate of acceptance, nomination and affidavit correcting prior irregularities and filed on the 34th day prior to the primary election, as against the contention that § 19:13-13 permitting amendment of defective petitions up to 20 days before the election governed in view of § 19:23-58. *Berry v. Gates*, 129 N.J.L. 1, 28 A.2d 59 (1942).

## 3. Expiration of filing time

Where 34-day period for filling vacancies had lapsed, substitution of person's name on primary ballot in place of candidate who had withdrawn his candidacy for office of sheriff was barred. *Tomasin v. Quinn*, 150 N.J. Super. 593, 376 A.2d 233 (L.1977).

## 19:23-13. Vacancies caused by death or declining the office; new petition; oath of allegiance

Should any person indorsed in any petition as a candidate to be voted for at any primary election, except for the office of "Choice for President," delegates and alternates to national conventions, Governor, United States Senator, member of the House of Representatives, State Senator, members of the General Assembly, and any county office, die within three days after the last day for filing such petition, or in writing filed within three days after the last day for filing such petition with the county clerk or municipal clerk with whom such petition had been filed, decline to stand as a candidate, the vacancy or vacancies thus caused shall be filled by a majority of the persons signing the petition in and by which the person so dying or declining was indorsed, filing within three days after the occurrence of the vacancy with the municipal clerk, a new petition, setting forth the name of the person dying or declining the office for which he was indorsed, and the name of the person to be substituted, to which shall be annexed the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes duly taken and subscribed by the person so nominated before an officer authorized to take oaths in this State.

Such petition shall be verified by three of the signers, and shall have the same force and effect as the original petition.

Amended by L.1942, c. 50, p. 284, § 9; L.1949, c. 24, p. 78, § 9.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶278, p. 796.

## Cross References

Filing nominating petition in municipality having commission form government, see § 40:45-8.

## Library References

Elections ¶126(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 111 et seq.

## Notes of Decisions

Time for filing 2

Validity 1

authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

## 2. Time for filing

## 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's

Where candidate for city council election was removed by court order after deadline for amending nominating petitions had passed, three-day extension was granted for filing of petition to fill vacancy created by removal of former candidate's name from ballot; ballots for election were not yet printed and clerk still had time to prepare ballots and give notice to local newspapers. In re 1992 Mun. Elections for City of Perth Amboy, 257 N.J.Super. 368, 608 A.2d 462 (L.1992).

### 19:23-14. Filing petitions; certifying names; transmittal to election law enforcement commission

Petitions addressed to the Secretary of State, the county clerks, or the municipal clerks shall be filed with such officers, respectively, before 4:00 p.m. of the 54th day next preceding the day of the holding of the primary election for the general election.

Not later than the close of business of the 48th day preceding the primary election for the general election, the municipal clerk shall certify to the county clerk the full and correct names and addresses of all candidates for nomination for public and party office and the name of the political party of which such persons are candidates together with their slogan and designation. The county clerk shall transmit this information to the Election Law Enforcement Commission in the form and manner prescribed by the commission and shall

notify the commission immediately upon the withdrawal of a petition of nomination.

Amended by L.1940, c. 135, p. 293, § 1; L.1941, c. 166, p. 526, § 1; L.1942, c. 50, p. 284, § 9a; L.1948, c. 2, p. 42, § 23; L.1956, c. 53, p. 105, § 2; L.1983, c. 579, § 4, eff. Jan. 17, 1984; L.1985, c. 92, § 18, eff. March 26, 1985.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶279, p. 797.

**Statement:** Committee statement to

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

### Cross References

Filing nominating petition in municipality having commission form government, see § 40:45-8.

### Library References

Elections ☞ 126(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 111 et seq.

### United States Supreme Court

Time of filing nomination for candidacy prior to primary election, see *American Party of Texas v. White*, U.S.Tex.1974, 94

S.Ct. 1296, 415 U.S. 767, 39 L.Ed.2d 744, rehearing denied 94 S.Ct. 2414, 416 U.S. 1000, 40 L.Ed.2d 777.

### Notes of Decisions

#### Amendment of petition 2

#### Appointments 4

#### Computation of filing period 1

#### Unavoidable delay 3

#### 1. Computation of filing period

Time within which candidates must file is ordinarily computed by counting consecutive days backward from date of the election, and where number of days is specified usually first day is to be included and last day excluded. *Barron v. Green*, 13 N.J.Super. 483, 80 A.2d 586 (L.1951).

The petitioner was nominated at the regular primary election as a candidate for the office of councilman for one of the wards in the city of Elizabeth, and his application was to have reversed the determination of the county clerk in accepting the petition, in due form, of L. as a candidate for the same office; and the

ground upon which the application was based was that the petition was not filed thirty days prior to the date of the election to be held on November 5, next. It is admitted that the thirty days expired on the sixth day of October, 1912, which fell on Sunday, and that the petition complained of was not filed until Monday October 7. It was held that if the last day of the thirty prior to election falls on Sunday, such a petition may be filed on the next succeeding business day. In re *Manning*, 35 N.J.L.J. 369 (1912).

#### 2. Amendment of petition

After nominating petitions had been timely filed and township clerk was prevented from disposing of objections when petitioners went immediately before assignment judge of county to have him deal with objections, which he did as promptly as possible, objectors could not invoke statutory rule requiring filing of corrective amendments 34 days before

primary election, and corrective amendments filed within the 3-day period allowed by court were timely. In re Chirico, 87 N.J.Super. 587, 210 A.2d 415 (A.D. 1965).

A candidate for State Senate may not amend nominating petitions to replace signatures found not to be qualified based on voter confusion following 1991 redistricting. Matter of Challenge by Dorsey, 93 N.J.A.R.2d (STE) 4 (1993).

### 3. Unavoidable delay

Nomination petitions presented to Secretary of State about 4:20 P.M. by congressional candidates should have been accepted for filing even though statutory time limit for filing was 4:00 P.M., where

delay was caused by traffic jam resulting from traffic accident on approach to bridge. Application of Cucci, 92 N.J.Super. 223, 222 A.2d 662 (L.1966).

### 4. Appointments

Statutory procedure for appointment by county committee was exclusive method for selection of candidate for vacancy in county clerk's office which occurred after time limit for filing petition for primary nominations, and person who was so appointed as party's candidate was entitled to place on ballot in preference to person who received write-in vote at primary election. Rafferty v. Schatzman, 81 N.J.Super. 58, 194 A.2d 588 (L.1963), affirmed 81 N.J.Super. 64, 194 A.2d 591.

## 19:23-14.1. Repealed by L.1948, c. 2, p. 45, §§ 30, 31

### Historical and Statutory Notes

Section derived from L.1945, c. 7, p. 18, § 2, amended by L.1946, c. 10, p. 22,

§ 2, and related to petitions nominating candidates at primary elections.

## 19:23-15. Acceptance by candidate to accompany petitions; oath of allegiance

Accompanying the petition and attached thereto each person in-dorsed therein shall file a certificate, stating that he is qualified for the office mentioned in the petition; that he consents to stand as a candidate for nomination at the ensuing primary election, and that if nominated, he agrees to accept the nomination. Such acceptance shall certify that the candidate is a resident of and a legal voter in the jurisdiction of the office for which the nomination is to be made and there shall be annexed thereto the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes duly taken and subscribed by the person so nominated before an officer authorized to take oaths in this State.

No candidate who has accepted the nomination by a direct petition of nomination for the general election shall sign an acceptance to a petition of nomination for such office for the primary election. In addition, no candidate named in a petition for the office of member of the House of Representatives shall sign an acceptance if the candidate has signed an acceptance for the primary nomination or any other petition of nomination for the office of member of the House of Representatives in another congressional district in the same calendar year.

Amended by L.1949, c. 24, p. 78, § 10; L.1998, c. 147, § 6, eff. Jan. 1, 1999.



### Historical and Statutory Notes

Source: L.1930, c. 187, ¶280, p. 797.

#### Cross References

Acceptance of nomination in municipality, see § 40:45-8.

#### Library References

Elections ⇨126(4).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 115, 130.

#### Texts and Treatises

25 Am Jur 2d, Elections § 133.

#### Notes of Decisions

**Election between nominations** 5  
**Nomination by direct petition** 6  
**Qualifications in general** 2  
**Residency** 3  
**Validity** 1  
**Voter** 4

##### 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh*, 3 N.J. 578, 71 A.2d 352 (1950).

##### 2. Qualifications in general

Section 19:23-45 relating to balloting procedure and providing that one elected to office as member of political party is deemed a member of such party is inapplicable in determining party membership for purpose of qualification as candidate in primary election. *George v. Gillespie*, 40 N.J.Super. 139, 122 A.2d 367 (A.D.1956).

##### 3. Residency

This section refers to matters antedating election, and is inapplicable in proceeding to determine whether ward coun-

cilmen must remain residents of the wards in which they were elected throughout their term of office. *Krulich v. Evans*, 16 N.J. 200, 108 A.2d 177 (1954).

Under Mayor-Council Plan C of Faulkner Act, considered in light of general election laws, a candidate for ward councilman must be a resident of ward in which he seeks nomination. *Horwitz v. Reichenstein*, 15 N.J. 6, 103 A.2d 881 (1954).

A successful candidate to office of borough councilman was eligible to office, notwithstanding that he was not registered voter at time of election, where he was resident of borough as required by § 40:11-1 (repealed; see, now, §§ 40A:9-1.3, 40A:9-1.5, 40A:9-2) and was eligible to vote under Constitution. *In re Ray*, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

Candidate for election to the legislature must meet the qualifications for minimum age at the time he is sworn into office, for citizenship and residency by election day, and for entitlement to the right of suffrage on the day he files a certificate of acceptance with the Secretary of State, be that at the time of filing a petition or upon accepting a write-in nomination. *Atty.Gen.F.O. 1980, No. 5.*

##### 4. Voter

Fact that successful candidate for democratic nomination to General Assembly was not, at time he filed his nominating petition, registered voter in district, did

not render his signature on required certificate stating that he was legal voter in jurisdiction fraudulent and did not render him constitutionally ineligible for membership in General Assembly where, when candidate attested that he was legal voter, he was not attesting that he was registered voter of assembly district in question, and where candidate had constitutional right to vote even if, in fact, he did not have ability to exercise that right on date when petition was filed and certificate of acceptance signed. *Alston v. Mays*, 152 N.J.Super. 509, 378 A.2d 72 (L.1977).

Under the statutes relating to nomination of candidates, it is not a qualification for candidacy in a primary election that the nominee should have voted at the last general election. *Cottingham v. Vogt*, 60 N.J.Super. 576, 160 A.2d 57 (A.D.1960).

A "legal voter" means legal voter by virtue of Constitution and not by virtue of registration. In *re Ray*, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

#### 5. Election between nominations

Candidate, who won Republican primary for mayor and who also received a majority of Democratic write-in votes, did

not file a valid acceptance of Democratic write-in nomination with result that there was a vacancy in Democratic nomination which could be filled by borough members of Democratic county committee, where her document was designed to serve as an election by her under § 19:14-9 to have her name submitted to voters in general election as a Republican, which precluded her name from also being submitted to voters in Democratic column, although she had right to have phrase "Indorsed by Democratic Party" follow her name in Republican column. *Hand v. Larason*, 163 N.J.Super. 68, 394 A.2d 163 (L.1978).

#### 6. Nomination by direct petition

Candidate for office may proceed by direct petition of nomination as independent or may seek nomination by affiliation with political party in primary election; the two methods are mutually exclusive, and candidate who chooses to seek nomination in primary election is precluded from subsequent attempt at nomination by direct petition. *Riecker v. Hartmann*, 130 N.J.Super. 266, 326 A.2d 101 (L.1974).

### 19:23-16. Acceptance by persons nominated by writing or pasting names on ballot; certificate; oath of allegiance

Any person nominated at the primary by having his name written or pasted upon the primary ballot shall file a certificate stating that he is qualified for the office for which he has been nominated, that he is a resident of and a legal voter in the jurisdiction of the office for which the nomination is made and that he consents to stand as a candidate at the ensuing general election to which shall be annexed the oath of allegiance prescribed in section 41:1-1 of the Revised Statutes duly taken and subscribed by the person so nominated before an officer authorized to take oaths in this State. Such acceptance shall be filed within seven days after the holding of the primary with the county clerk in the case of county and municipal offices and with the Secretary of State for all other offices.

Amended by L.1949, c. 24, p. 79, § 11.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §281, p. 797.

#### Cross References

Acceptance of nomination, see § 40:45-8.

## Library References

Elections ⇨ 146.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 95.

## Notes of Decisions

In general 2  
 Appointment 8  
 Filing of certificate 5  
 Qualifications 4  
 Refusal to accept certificate 6  
 Related statutes 3  
 Validity 1  
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## 4. Qualifications

Candidate for election to the legislature must meet the qualifications for minimum age at the time he is sworn into office, for citizenship and residency by election day, and for entitlement to the right of suffrage on the day he files a certificate of acceptance with the Secretary of State, be that at the time of filing a petition or upon accepting a write-in nomination. *Atty.Gen.F.O.1980, No. 5.*

## 5. Filing of certificate

Candidate, who won Republican primary for mayor and who also received a majority of Democratic write-in votes, did not file a valid acceptance of Democratic write-in nomination with result that there was a vacancy in Democratic nomination which could be filled by borough members of Democratic county committee, where her document was designed to serve as an election by her under § 19:14-9 to have her name submitted to voters in general election as a Republican, which precluded her name from also being submitted to voters in Democratic column, although she had right to have phrase "Indorsed by Democratic Party" follow her name in Republican column. *Hand v. Larason, 163 N.J.Super. 68, 394 A.2d 163 (L.1978).*

Where candidate received 125 write-in votes in primary election for office of councilman and no other persons appeared on party ballot for that position, and candidate failed to file certificate of acceptance within seven days, but the party county committee filed a certificate of selection designating the candidate as the party nominee to fill vacancy for the office, the candidate was entitled to appear on the ballot as a party nominee. *Fiscella v. Nulton, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).*

## 6. Refusal to accept certificate

Where one certified to county clerk of elections by Democratic township executive committee as Democratic candidate for township committeeman filed no peti-

## 1. Validity

The 1949 statute amending §§ 19:3-7, 19:13-8, 15, 20, 21, 19:14-2, 19:23-7, 12, 13, 15, 16, which requires that candidate for election to public office or party position, file oath that candidate does not believe in use of force or unconstitutional means to overthrow the government, and which requires a disavowal of membership in organization believing in such overthrow, qualifies constitutional oath, and is invalid as beyond the legislature's authority. *Imbrie v. Marsh, 3 N.J. 578, 71 A.2d 352 (1950).*

## 2. In general

Interpretation of election law, and particularly statute requiring candidate's filing of acceptance and oath, must be construed in a liberal manner; "liberal" in the sense of construing it to allow greatest scope for public participation in electoral process, to allow candidates to be placed on ballot, and most importantly to allow voters a choice on Election Day. *Clemency v. Beech, 306 N.J.Super. 244, 703 A.2d 399 (L.1997).*

## 3. Related statutes

Section 19:3-7 relating to failure to file any statement or oath, and this section requiring one nominated by write-in vote to file certificate of acceptance, are in *pari materia* and are not in conflict with or repugnant to each other, since each has a separate and independent legislative objective. *Fiscella v. Nulton, 22 N.J.Super. 367, 92 A.2d 103 (A.D.1952).*

tion before primary election to place his name on primary ballots and received no write-in votes at such election, only person receiving any such votes thereat filed no acceptance of nomination within statutory period, and no one followed statutory procedure to become party candidate, there was no party nominee, and hence no vacancy among candidates nominated at primary, so that such clerk properly refused to accept certificate. *Cleveland v. Woolley*, 5 N.J.Super. 613, 68 A.2d 666 (L.1949).

#### 7. Validity of acceptance

Statute requiring filing within seven days of primary election of acceptance and oath of allegiance by candidate nominated in primary was directory rather than mandatory, and, thus, candidate's name would be placed on ballot for general election although county clerk did not receive requisite documents which municipal clerk had mailed, where candidate and county clerk were both blameless with regard to untimely filing, ballots had not been printed, and county clerk had ample time to prepare ballots and give notice to local newspapers. *Clemency v. Beech*, 306 N.J.Super. 244, 703 A.2d 399 (L.1997).

In proceeding in which Superior Court determined that candidate, who won Republican primary ballot for mayor and who also received a majority of Democratic write-in votes, had not filed a valid acceptance of Democratic write-in nomination with result that there was a vacancy in Democratic nomination which could be filled by borough members of

Democratic county committee, Superior Court refused to give instructions as to whether election law provided any machinery for resolution of deadlock, which county Democratic committee chairperson contended existed or would exist, since such issue was not currently ripe for determination. *Hand v. Larason*, 163 N.J.Super. 68, 394 A.2d 163 (L.1978).

Even if candidate, whose name appeared on Republican primary ballot as result of nominating petition containing her signed acceptance of Republican nomination in event she won primary, who at no time revoked her Republican acceptance or declined Republican nomination, who won Republican primary and who also received a majority of Democratic write-in votes, had power to accept Democratic write-in nomination, her document did not constitute such an acceptance, where her document contained her certification of only two of six statutorily required items. *Hand v. Larason*, 163 N.J.Super. 68, 394 A.2d 163 (L.1978).

#### 8. Appointment

Statutory procedure for appointment by county committee was exclusive method for selection of candidate for vacancy in county clerk's office which occurred after time limit for filing petition for primary nominations, and person who was so appointed as party's candidate was entitled to place on ballot in preference to person who received write-in vote at primary election. *Rafferty v. Schatzman*, 81 N.J.Super. 58, 194 A.2d 588 (L.1963), affirmed 81 N.J.Super. 64, 194 A.2d 591.

### 19:23-16.1 to 19:23-16.3. Expired

#### Historical and Statutory Notes

Sections 19:23-16.1 to 19:23-16.3, derived from L.1949, c. 25, p. 80, §§ 1 to 3, and related to the filing of an oath of

allegiance by candidates for public office at the general election of 1949.

### 19:23-17. Designation on primary ticket of policy or faction

Any person indorsed as a candidate for nomination for any public office or party position whose name is to be voted for on the primary ticket of any political party, may, by indorsement on the petition of nomination in which he is indorsed, request that there be printed opposite his name on the primary ticket a designation, in not more than six words, as named by him in such petition, for the purpose of

indicating either any official act or policy to which he is pledged or committed, or to distinguish him as belonging to a particular faction or wing of his political party; provided, however, that no such designation or slogan shall include or refer to the name of any person or any incorporated association of this State unless the written consent of such person or incorporated association of this State has been filed with the petition of nomination of such candidate or group of candidates.

Amended by L.1944, c. 231, p. 787, § 1.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶282, p. 798,  
amended by L.1936, c. 260, § 1, p. 802.

### Cross References

Designation and grouping of names of candidates, see § 40:45-10.  
Designation of policy or affiliations of candidates, see § 40:45-10.

### Library References

Elections ⇨126(5).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 118.

### Comments

Placement of candidates on ballot, see  
New Jersey Practice vol. 35, Pane,  
§ 474.

### Texts and Treatises

25 Am Jur 2d, Elections § 205.

### Notes of Decisions

Consent to use of name 1  
Contesting designation 2

#### 1. Consent to use of name

Written consent of candidate for governor to transfer of three candidates to his column on primary election ballot, and thus to use of his name in the designation, was ineffective where given subsequent to filing of petitions of nomination by three candidates involved. *Tomasin v. Quinn*, 150 N.J.Super. 593, 376 A.2d 233 (L.1977).

Consent of person to the use of his name in a slogan by a primary candidate,

filed after the filing of petition of nomination of candidate, is insufficient to authorize use of name. *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

The requirement of §§ 19:23-17, 19:23-25.1, that a designation or slogan to accompany the name of a candidate on a primary ticket shall not include or refer to name of any other person unless the written consent of such person has been filed with petition of nomination of candidate is unequivocal and unambiguous, and must be complied with, and where evidence disclosed that plaintiff and defendant were equally without right to use a third party's name on ballot in connec-

tion with their respective candidacies at primary election, town clerk would be required to delete the name from slogans of both candidates notwithstanding that plaintiff raised no issue as to his own use of third party's name. *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

## 2. Contesting designation

Where action by one primary candidate against a second primary candidate to

have deleted certain words from slogan of the latter was not timely when based on premise that slogan prejudiced plaintiff and was sustainable only as an action to compel printing of ballots in accordance with law relating to use of a third party's name is slogan, plaintiff was not entitled to have the words "Reg." and "Party" deleted from defendant's slogan "Reg. Republican Party". *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

## 19:23-18. Grouping of candidates

Several candidates for nomination to the same office may in such petitions request that their names be grouped together, and that the common designation to be named by them shall be printed opposite their names. If two candidates or groups shall select the same designation, the secretary of state, county clerk or municipal clerks, as the case may be, shall notify the candidate or group whose petition was last filed, and such candidate or group shall select a new designation.

### Historical and Statutory Notes

Source: L.1930, c. 187, §283, p. 798.

### Cross References

Designation and grouping of names of candidates, see § 40:45-10.  
Identifying statement on ballot where persons bear same name, see § 40:45-14.  
Order in which names of candidates appear on ballot, see § 40:45-12.

### Library References

#### Texts and Treatises

26 Am Jur 2d, Elections § 212.

### Notes of Decisions

#### Discretion of clerk. 1

##### 1. Discretion of clerk

The county clerk in his discretion could decide without drawing lots on the posi-

tions of parties or candidates on voting machine ballot at primary election for nomination for members of Legislature and for county offices. *Bado v. Gilfert*, 13 N.J.Super. 363, 80 A.2d 564 (A.D. 1951).

## 19:23-19. Defective petition; notice to candidates

In case a petition of nomination shall be defective excepting as to the number of signatures, the officer with whom such petition has been filed shall forthwith notify any candidate so indorsed whose

petition for nomination is defective, setting forth the nature of such defect and the date when the ballots will be printed.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶284, p. 798.

### Notes of Decisions

#### Amendment of petition 1 Notification of defect 2

#### 2. Notification of defect

#### 1. Amendment of petition

Right of petitioners to amend nomination petitions prior to primary election so as to cure any defects found present should not be defeated by delay necessitated because of petitioners' recourse to court rather than to township clerk for handling of objections. In re Chirico, 87 N.J.Super. 587, 210 A.2d 415 (A.D.1965).

Petitioners for nomination as candidates for General Assembly would be permitted to cure verifier's failure to sign petition as a nominating voter, considering that petitioners were not notified of reason for rejection of petition for almost three weeks; petitioners could effect cure either by having verifier sign petition or by submitting substitute verification by a signer, if there is one, who was able to take required oath. Matter of Cowan, 265 N.J.Super. 176, 625 A.2d 1145 (A.D. 1993).

## 19:23-20. Amendment of defective petition; time for

Such candidate shall be permitted to amend the petition either in form or in substance, but not to add signatures, so as to remedy the defect within three days.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶285, p. 799.

### Notes of Decisions

#### In general 1 Amendments within section 4 Time for amendment 2 Verification 3

tance and oath of allegiance documents which arose because candidate's signature was "faxed" were cured, where candidate filed his "original" signatures the day after he timely filed the "faxed" petition. Madden v. Hegadorn, 236 N.J.Super. 280, 565 A.2d 725 (L.1989), affirmed 239 N.J.Super. 268, 571 A.2d 296.

#### 1. In general

Election Act, particularly those provisions relating to primaries, disclose an evident legislative purpose to afford electorate maximum opportunity to vote on those whose names have been put forward by nomination, and opportunity of voters to express their choice at primary election should not be diminished by too narrow reading of statutes. In re Chirico, 87 N.J.Super. 587, 210 A.2d 415 (A.D.1965).

#### 2. Time for amendment

Any technical defects in municipal council candidate's nomination accep-

After nominating petitions had been timely filed and township clerk was prevented from disposing of objections when petitioners went immediately before assignment judge of county to have him deal with objections, which he did as promptly as possible, objectors could not invoke statutory rule requiring filing of corrective amendments 34 days before primary election, and corrective amendments filed within the 3-day period allowed by court were timely. In re Chiri-

co, 87 N.J.Super. 587, 210 A.2d 415 (A.D. 1965).

In re Chirico, 87 N.J.Super. 587, 210 A.2d 415 (A.D.1965).

**3. Verification**

Verification of nominating petition was an essential part of the petition and the faulty verification was amendable under this section. In re Chirico, 87 N.J.Super. 587, 210 A.2d 415 (A.D.1965).

Amendments to verifications on nominating petitions did not amount to supplemental acts on part of original affiants or supplemental affidavits by others and were properly allowed under this section.

**4. Amendments within section**

Inadvertent misdescription of district number in nominating petition was amendable so as to allow candidate's name to appear on ballot in that district; likewise, designation of party in petition was also amendable so as to identify candidate as a delegate for that party and provide voters with knowledge of whom they were voting. Katz v. Moscinski, 92 N.J.A.R.2d (STE) 1 (1992).

**19:23-21. Certification by secretary of state of nominees to county clerk; transmittal to election law enforcement commission**

The Secretary of State shall certify the names of the persons indorsed in the petitions filed in his office to the clerks of counties concerned thereby not later than the 48th day prior to the holding of the primary election, specifying in such certificate the political parties to which the persons so nominated in the petitions belong. In the case of candidates for offices other than federal office, the Secretary of State shall also transmit this information to the Election Law Enforcement Commission in the form and manner prescribed by the commission and shall notify the commission immediately upon the withdrawal of a petition of nomination.

Amended by L.1942, c. 50, p. 285, § 10; L.1983, c. 579, § 5, eff. Jan. 17, 1984; L.1985, c. 92, § 19, eff. March 26, 1985.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶286, p. 799.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Library References**

Elections ⇨126(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 111 et seq.

**Notes of Decisions**

**Objections to certificate 1**

**1. Objections to certificate**

Where there was no objection in writing filed, the clerk must treat a certificate

of nomination as valid. State ex rel. Hoos v. O'Donnell, 60 N.J.L. 35, 37 A. 72 (1897), supplemented 60 N.J.L. 35, 37 A. 447, affirmed 60 N.J.L. 482, 38 A. 449.



**19:23-22. Certification by county clerks of nominees to municipal clerks; transmittal to election law enforcement commission**

The county clerk shall certify all of the persons so certified to him by the Secretary of State and in addition the names of all persons indorsed in petitions filed in his office to the clerk of each municipality concerned thereby in his respective county not later than the close of business of the 47th day prior to the time fixed by law for the holding of the primary election, specifying in such certificate the political party to which the person or persons so nominated belong. The county clerk shall also transmit this information with respect to persons, other than candidates for federal office, indorsed in petitions filed in his office to the Election Law Enforcement Commission in the form and manner prescribed by the commission and shall notify the commission immediately upon the withdrawal of a petition of nomination filed in his office.

Amended by L.1942, c. 50, p. 285, § 11; L.1948, c. 2, p. 43, § 24; L.1983, c. 579, § 6, eff. Jan. 17, 1984; L.1985, c. 92, § 20, eff. March 26, 1985.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶287, p. 799. **Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.  
Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**ARTICLE 3A. CERTIFICATION OF NOMINATIONS  
AND FURNISHING OF BALLOTS IN CERTAIN  
SECOND-CLASS COUNTIES**

**19:23-22.1. Certification by municipal clerks of nominees to county clerks in certain counties**

In counties having a population of 700,000 or more inhabitants and in second class counties having a population of not less than 300,000 or more than 425,000 inhabitants and in counties having a population of not less than 150,000 or more than 300,000 inhabitants, each municipal clerk shall, on or before the sixth day following the last day for the filing of petitions for the primary election in each year, certify to the county clerk the full and correct names and addresses of all candidates for nomination for public and party office, and the name of the political party of which such persons are candidates, together with their slogan and designation, and the order in which their names were drawn in accordance with the provisions of Title 19 of the Revised Statutes.

L.1945, c. 68, p. 346, § 1. Amended by L.1948, c. 2, p. 43, § 25; L.1961, c. 62, p. 557, § 1; L.1965, c. 29, § 1; L.1981, c. 462, § 21.

**Historical and Statutory Notes**

Effective date of L.1981, c. 462, see  
Historical Note under § 2A:4-4.

**Title of Act:**

An Act concerning elections, and supplementing Title 19 of the Revised Statutes. L.1945, c. 68, p. 346.

**Library References**

Elections ⇨ 156.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 135.

**Notes of Decisions****Objections 1****1. Objections**

Any technical defects in candidates' nomination petitions for municipal council, due to purported incomplete oath-of-allegiance forms on petitions, were cured

where both candidates, within hours of receiving notice of defect, filed amended petitions with clerk, which contained "new" oath-of-allegiance forms, and were duly sworn and executed before person authorized to take oaths. *Madden v. Hegadorn*, 236 N.J.Super. 280, 565 A.2d 725 (L.1989), affirmed 239 N.J.Super. 268, 571 A.2d 296.

**19:23-22.2, 19:23-22.3. Repealed by L.1965, c. 29, § 4****Historical and Statutory Notes**

Section 19:23-22.2, added by L.1945, c. 68, § 2, amended by L.1945, c. 290, § 1; L.1961, c. 62, § 2, related to printing ballots in counties over 700,000 using voting machines. See, now, § 19:23-22.4.

Section 19:23-22.3, added by L.1945, c. 68, § 2, amended by L.1945, c. 290, § 2; L.1961, c. 62, § 3, related to the cost of printing ballots in counties over 700,000 using voting machines. See, now, § 19:23-22.5.

**19:23-22.4. Printing ballots in counties**

In all counties the county clerk shall cause to be printed a sufficient number of official primary ballots and official primary sample ballots of each political party, in proper form for the mailing of such sample ballots at the times and in the manner and number as required by the provisions of Title 19 of the Revised Statutes; and shall furnish such official primary sample ballots to the proper officer or officers on the earliest possible date preceding the primary election.

In the counties described by this section, for each election district within the county in which the primary language of 10% or more of the registered voters is Spanish, the county clerk shall similarly cause to be printed bilingually in English and Spanish a sufficient number of official primary sample ballots of each political party, and shall similarly furnish such official primary sample ballots to the proper officer or officers.

L.1965, c. 29, § 2. Amended by L.1974, c. 51, § 1, eff. June 25, 1974.

**Historical and Statutory Notes**

**Prior Laws:** R.S. 19:23-22.2 (L.1945, c. 68, p. 346, § 2, amended by L.1945, c. 290, p. 841, § 2; L.1961, c. 62, p. 558, § 3).

vised Statutes, amending and supplementing P.L.1974, c. 30, and making an appropriation therefor. L.1974, c. 51.

**Title of Act:**

An Act concerning elections, amending sections 19:31-2 and 19:31-11 of the Re-

**Library References**

Elections ☞126(5).

WESTLAW Topic No. 144.

C.J.S. Elections § 118.

**19:23-22.5. Cost of printing ballots in certain counties**

In counties having a population of 700,000 or more inhabitants and in second class counties having a population of not less than 300,000 or more than 425,000 inhabitants and in counties having a population of not less than 150,000 or more than 300,000 inhabitants, the cost of printing of the official primary election ballots and primary election sample ballots shall be paid by the county but the county shall be reimbursed by the municipalities, each municipality paying such amount as shall be apportioned to it by the county clerk based on the proportion of the number of such official primary election ballots and primary election sample ballots required for use in such municipality.

L.1965, c. 29, § 3. Amended by L.1981, c. 462, § 22.

**Historical and Statutory Notes**

**Prior Laws:** R.S. 19:23-22.3 (L.1945, c. 68, p. 346, § 2, amended by L.1945, c. 290, p. 841, § 2; L.1961, c. 62, p. 558, § 3).

Effective date of L.1981, c. 462, see Historical Note under § 2A:4-4.

**Library References**

Counties ☞134.

WESTLAW Topic No. 104.

C.J.S. Counties § 174.

**Notes of Decisions**

**Voting machines** 1

general provisions concerning responsibility for cost of printing ballots. Atty. Gen.F.O.1961, No. 1.

**1. Voting machines**

Adoption of voting machines in county is not intended by Legislature to alter

## ARTICLE 4. OFFICIAL BALLOTS

## Library References

Elections  $\S$  126(5).

WESTLAW Topic No. 144.

C.J.S. Elections  $\S$  118.

**19:23-23. Separate ballot for each party**

There shall be separate ballots for each political party. Such ballots shall be alike in form for all political parties.

## Historical and Statutory Notes

Source: L.1930, c. 187,  $\S$  288, p. 799.

**19:23-24. Drawing for positions on primary ballots; procedure; certification**

The position which the candidates and bracketed groups of names of candidates for the primary for the general election shall have upon the primary election ballots, in the case of candidates for nomination for members of the United States Senate, Governor, members of the House of Representatives, members of the State Senate, members of the General Assembly, choice for President, delegates and alternates-at-large to the national conventions of political parties, district delegates and alternates to conventions of political parties, candidates for party positions, and county offices or party positions which are to be voted for by the voters of the entire county or a portion thereof greater than a single municipality, including a congressional district which is wholly within a single municipality, shall be determined by the county clerks in their respective counties; and, excepting in counties where R.S. 19:49-2 applies, the position on the primary ballots in the case of candidates for nomination for office or party position wherein the candidates for office or party position to be filled are to be voted for by the voters of a municipality only, or a subdivision thereof (excepting in the case of members of the House of Representatives) shall be determined by the municipal clerk in such municipalities, in the following manner: The county clerk, or his deputy, or the municipal clerk or his deputy, as the case may be, shall at his office on the 47th day prior to the primary election at three o'clock in the afternoon draw from the box, as hereinafter described, each card separately without knowledge on his part as to which card he is drawing. Any legal voter of the county or municipality, as the case may be, shall have the privilege of witnessing such drawing. The person making the drawing shall make public announcement at the drawing of each name, the order in which same is

drawn, and the office for which the drawing is made. When there is to be but one person nominated for the office, the names of the several candidates who have filed petitions for such office shall be written upon cards (one name on a card) of the same size, substance and thickness. The cards shall be deposited in a box with an aperture in the cover of sufficient size to admit a man's hand. The box shall be well shaken and turned over to thoroughly mix the cards, and the cards shall then be withdrawn one at a time. The first name drawn shall have first place, the second name drawn, second place, and so on; the order of the withdrawal of the cards from the box determining the order of arrangement in which the names shall appear upon the primary election ballot. Where there is more than one person to be nominated to an office where petitions have designated that certain candidates shall be bracketed, the position of such bracketed names on the ballot (each bracket to be treated as a single name), together with individuals who have filed petitions for nomination for such office, shall be determined as above described. Where there is more than one person to be nominated for an office and there are more candidates who have filed petitions than there are persons to be nominated, the order of the printing of such names upon the primary election ballots shall be determined as above described.

The county clerk in certifying to the municipal clerk the offices to be filled and the names of candidates to be printed upon the primary election ballots, shall certify them in the order as drawn in accordance with the above described procedure, and the municipal clerk shall print the names upon the ballots as so certified and in addition shall print the names of such candidates as have filed petitions with him in the order as determined as a result of the drawing as above described. Candidates for the office of the county executive in counties that have adopted the county executive plan of the "Optional County Charter Law," P.L.1972, c. 154 (C. 40:41A-1 et seq.), shall precede the candidates for other county offices for which there are candidates on the primary election ballot.

Amended by L.1942, c. 50, p. 285, § 12; L.1985, c. 92, § 21, eff. March 26, 1985; L.1995, c. 191, § 3, eff. Aug. 2, 1995.

#### Historical and Statutory Notes

L.1995, c. 191, § 4, approved Aug. 2, 1995, provided:

"This act shall take effect immediately [Aug. 2, 1995] and shall first apply to the primary or general election occurring not less than 90 days after the effective date of this act."

**Source:** L.1930, c. 187, ¶289, p. 799.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

## Cross References

Order in which names of candidates appear on ballot, see § 40:45-12.

## Library References

Elections  $\Leftrightarrow$ 126(5).

WESTLAW Topic No. 144.

C.J.S. Elections § 118.

## Notes of Decisions

Candidates entitled to drawing 6  
 Discretion of clerk 5  
 Drawing for positions 4  
 Legislative purpose 3  
 Related statutes 2  
 Validity 1

## 1. Validity

Obvious differences in the physical makeup of the face of a voting machine and a paper ballot, afford a reasonable basis for the Legislature's decision to provide different procedures governing the listing of candidates' names on the face of a voting machine, as opposed to paper ballots; moreover, the fact that a paper ballot is much easier to read than the face of a voting machine is a factor which, alone, furnishes adequate support for the legislative determination that different provisions should govern. *Quaremba v. Allan*, 67 N.J. 1, 334 A.2d 321 (1975).

Fact that, under this section and § 19:49-2, different procedures are provided governing the positioning of the names of primary election candidates when voting machines are used than when paper ballots are used does not result in a denial, either to the voters or the candidates, of equal protection of the laws. *Quaremba v. Allan*, 67 N.J. 1, 334 A.2d 321 (1975).

## 2. Related statutes

By its terms, § 19:49-2 relating to right of primary candidates who choose the same designation or slogan to have their names placed on same line of voting machine is applicable to primary elections in counties which have voting machines rather than this section providing that the position of candidates for given offices be determined by drawing their names except that several candidates for office may request bracketing of their names

which then will be treated as one. *Quaremba v. Allan*, 128 N.J.Super. 570, 321 A.2d 266 (A.D.1974), certification granted 66 N.J. 312, 331 A.2d 12, affirmed as modified on other grounds 67 N.J. 1, 334 A.2d 321.

Where county was a county where voting machines were used, this section, providing that position on primary ballots in case of candidates for municipal office or party position shall be determined by a drawing to be conducted by the municipal clerk and that names of candidates shall be printed on ballots in the order as determined as a result of the drawing, except in counties where § 19:49-2 dealing with ballots in counties where voting machines are used applies, was not applicable. *Harrison v. Jones*, 44 N.J.Super. 456, 130 A.2d 887 (A.D.1957).

## 3. Legislative purpose

Sections 19:23-24 and 19:49-2 reveal no express legislative direction as to drawing for positions on ballots when independent unaffiliated candidates and candidates affiliated under a slogan are present in the field. *In re Hoffman*, 134 N.J.L. 155, 46 A.2d 446 (1946).

## 4. Drawing for positions

This section which allegedly required the use of cards rather than capsules in the drawing for positions on primary ballots was not applicable to county in which voting machines were used. *Garramone v. Caputo*, 149 N.J.Super. 582, 374 A.2d 485 (A.D.1977), certification denied 74 N.J. 285, 377 A.2d 690.

Where there are two or more groups of candidates whose joint petitions were filed with county clerk, there must be a drawing for position as between those groups, drawn as a unit, regardless of whether candidates for municipal or party office in municipalities or candidates

whose petitions were filed with Secretary of State affiliated with county candidates, but if there was such affiliation by state candidates, their names must be placed on same line as county candidates with which they affiliated. *Moskowitz v. Grogan*, 101 N.J.Super. 111, 243 A.2d 280 (A.D.1968).

#### 5. Discretion of clerk

The county clerk in his discretion could decide without drawing lots on the positions of parties or candidates on voting machine ballot at primary election for nomination for members of Legislature and for county offices. *Bado v. Gilfert*, 13 N.J.Super. 363, 80 A.2d 564 (A.D. 1951).

Where action of county clerk in drawing for positions upon primary ballot among independent unaffiliated candidates and candidates affiliated under a slogan was discretionary, Supreme Court would not direct exercise of such discretion upon the application of an independent unaffiliated candidate for Governor. *In re Hoffman*, 134 N.J.L. 155, 46 A.2d 446 (1946).

Where the legislature had not given specific directions to the county clerk as to drawing for positions upon primary ballots, when independent unaffiliated candidates and candidates affiliated under a slogan were present in the field, the decision rested in the discretion of the county clerk. *Hawkes v. Gates*, 129 N.J.L. 5, 28 A.2d 50 (1942).

#### 6. Candidates entitled to drawing

Where there are two or more groups of state candidates who have not affiliated with county candidates, they are entitled, as units, to a drawing for position on ballot as among themselves, but not as against those affiliated with county candidates, for state candidates who affiliate with county candidates may not be displaced from their position on same line with their affiliated county candidates. *Moskowitz v. Grogan*, 101 N.J.Super. 111, 243 A.2d 280 (A.D.1968).

Slate of delegates to national party convention was not entitled to drawing for position on ballot with other slates which were affiliated with county candidates. *Moskowitz v. Grogan*, 101 N.J.Super. 111, 243 A.2d 280 (A.D.1968).

### 19:23-25. Contents of ballots

The ballots shall be made up and printed in substantially the following form:

Each ballot shall have at the top a coupon at least two inches deep extending across the ballot above a perforated line. The coupon shall be numbered for each of the political parties, respectively, from one consecutively to the number of ballots delivered and received by the election officers of the respective polling places. Upon the coupon and above the perforated line shall be the words "To be torn off by the judge of election. Fold to this line." Below the perforated line shall be printed the words "Official Democratic Party Primary Ballot," or "Official Republican Party Primary Ballot," or, as the case may be, naming the proper political party, as provided in this Title; below which and extending across the ballot in one or more lines, as may be necessary, shall be printed the words name of municipality ward election district date of election John Doe, municipal clerk; the blank spaces shall be filled in with the name of the proper municipality, the ward and the district number and the date of election. The name of the municipal clerk shall be a facsimile of his signature. This heading shall be set apart from the body of the ballot by a heavy diagram rule. Below this rule shall be printed the following directions instructing the voter how to indicate his choice

for each office and position, and for how many persons to vote for each office and position: To vote for any person whose name is printed upon this ballot mark a cross x, plus + or check / with ink or pencil in the square at the left of the name of such person. To vote for any person whose name is not printed upon this ballot write or paste the name in the blank space under the proper title of office and mark a cross x, plus + or check / with ink or pencil in the square at the left of the name of such person. Below these instructions shall be printed a heavy diagram rule below which shall be printed the titles of offices and positions for which candidates are to be voted for at the primary election, together with such directions to the voter as may be necessary, as "Vote for one," "Vote for two," or a greater number, as the case may be. Underneath the proper title of office and position shall be printed the names of all those persons certified as candidates for the offices to the municipal clerk by the county clerk as hereinbefore provided, and the names of persons indorsed as such candidates in petitions on file in the office of the municipal clerk as they appear signed to the certificate of acceptance. The name of any person indorsed in a petition as provided who shall fail to certify his consent and agreement to be a candidate for nomination to the office specified therein shall not be printed upon the ballots to be used at the primary election. In the case of a vacancy among nominees the name of the person selected in the manner provided in this Title to fill same shall be printed upon the ballots in the place of the person vacating such nomination. The candidates shall be arranged in groups and the groups bracketed in all cases where the petitions indorsing such candidates request such grouping. The designation named by candidates in their petitions for nomination, as provided by this Title shall be printed to the right of the names of such candidates or groups of candidates in as large type as the space will allow. Immediately to the left and on the same line with the name of each candidate for office and position shall be printed a square approximately one-quarter of an inch in size, or by printing vertical single line rules connecting the single line rules between the names of the candidates and thus form a square in which the voter shall indicate his choice. A single light-faced rule shall be used to separate the different names in each group of candidates. A heavy diagram rule shall be used between each group of candidates for different offices. Where candidates are arranged in groups and the groups bracketed, the groups shall be separated from other groups and candidates by two single line rules approximately one-eighth of an inch apart.

Each primary ballot shall contain, at the end of the list of candidates for each different office, blank squares and spaces or lines equal to the number of persons to be elected to the office, for the



purpose of allowing any voter to write or paste the name of any person for whom he desires to vote for any office or party position. Amended by L.1947, c. 104, p. 526, § 8; L.1994, c. 77, § 10, eff. Jan. 1, 1995.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶290, p. 801.

### Library References

#### Forms

9 Am Jur Pl & Pr Forms, Rev, Elections, Form 91.

#### Texts and Treatises

26 Am Jur 2d, Elections § 205.

### Notes of Decisions

#### Groups of candidates 1

##### 1. Groups of candidates

Groups of candidates having same party faction label or designation and desiring to have such fact brought to attention

of voter in primary election with additional effectiveness produced by alignment of their names on the machine ballot should have right to do so provided that county clerk is notified in time to prepare and print the ballots. *Harrison v. Jones*, 44 N.J.Super. 456, 130 A.2d 887 (A.D.1957).

### 19:23-25.1. Designation or slogan on primary ballots

No designation or slogan shall be printed on any ballot to be used in the conduct of any primary election in connection with any candidate or group of candidates for office, which designation or slogan includes or refers to the name of any other person unless the written consent of such other person has been filed with the petition of nomination of such candidate or group of candidates.

L.1944, c. 8, p. 23, § 3.

### Historical and Statutory Notes

#### Title of Act:

An Act concerning elections, amending § 19:24-5, repealing §§ 19:25-1 and

19:25-2, and supplementing Title 19 of the Revised Statutes.

### Cross References

Designation and grouping of names of candidates, see § 40:45-10.

## Notes of Decisions

Consent to use of name 1  
 Contesting designation 2

## 1. Consent to use of name

Where action by one primary candidate for councilman requested the printing on ballots with their names, slogan identifying them with a particular candidate for Governor, but neither filed with his nominating petition a consent by gubernatorial candidate to the use of his name, such name could not be used on the ballots to designate faction of party to which councilman candidates belonged. *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

The requirement of §§ 19:23-17, 19:23-25.1, that a designation or slogan to accompany the name of a candidate on a primary ticket shall not include or refer to name of any other person unless the written consent of such person has been filed with petition of nomination of candidate is unequivocal and unambiguous, and must be complied with, and where evidence disclosed that plaintiff and de-

fendant were equally without right to use a third party's name on ballot in connection with their respective candidacies at primary election, town clerk would be required to delete the name from slogans of both candidates notwithstanding that plaintiff raised no issue as to his own use of third party's name. *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

## 2. Contesting designation

Where action by one primary candidate against a second primary candidate to have deleted certain words from slogan of the latter was not timely when based on premise that slogan prejudiced plaintiff and was sustainable only as an action to compel printing of ballots in accordance with law relating to use of a third party's name is slogan, plaintiff was not entitled to have the words "Reg." and "Party" deleted from defendant's slogan "Reg. Republican Party." *MacManus v. Allan*, 2 N.J.Super. 557, 65 A.2d 134 (L.1949).

## 19:23-26. Repealed by L.1947, c. 104, p. 529, § 9

## Historical and Statutory Notes

The repealed section, which derived from L.1930, c. 187, p. 803, § 291, provided for the form of the ballot.

## 19:23-26.1. Primary election for U.S. Senate and Governorship; placement of names of candidates on ballot

In the case of a primary election for the nomination of a candidate for the office of United States Senator and in the case of a primary election for the nomination of a candidate for the office of Governor, the names of all candidates for the office of United States Senator or Governor shall be printed on the official primary ballot in the first column or horizontal row designated for the party of those candidates.

In the event that the nomination of candidates for both offices shall occur at the same primary election, the names of all candidates for the office of United States Senator shall be printed in the first column or horizontal row designated for the party of those candidates, and the names of all candidates for the office of Governor shall be printed in the second column or horizontal row.

No candidate for nomination for any other office shall have his name printed in the same column or horizontal row as the candidates for nomination for the office of United States Senator or Governor.

L.1981, c. 71, § 1, eff. March 23, 1981.

#### Historical and Statutory Notes

**Title of Act:** An Act concerning the form of ballots for certain primary elections, and supplementing Title 19 of the Revised Statutes. L.1981, c. 71.

#### Library References

Elections  $\Leftrightarrow$  126(5).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 118.

#### Notes of Decisions

##### Validity 1

##### 1. Validity

Statute, requiring names of candidates running for office of United States Senator or Governor in primary election to be placed in first column of ballot and prohibiting them from being grouped or bracketed with other candidates endorsed

by political party, was unconstitutional as violative of free speech and association rights of incumbent senator, county political party committee, and committee chairman; statutory prohibition burdened free speech and association rights while serving no compelling state interest, as simplifying voting process was not compelling state interest. *Lautenberg v. Kelly*, 280 N.J.Super. 76, 654 A.2d 510 (L.1994).

#### 19:23-26.2. Application of laws on primary election for general election

The provisions of Title 19 of the Revised Statutes which apply particularly to a primary election for the general election shall apply to this act insofar as they are not inconsistent with its special provisions.

L.1981, c. 71, § 2, eff. March 23, 1981.

#### 19:23-27. Printing of ballots; number; cost paid by municipalities

Not later than twelve o'clock noon of the Saturday preceding a primary for the general election each municipal clerk shall have had printed and on hand in his office for the use of each of the political parties official primary ballots equal in number to one and one-tenth times the number of votes cast by such political party at the last preceding general election at which electors for president and vice president of the United States were voted for in such election district.

When an election district shall have been divided or the boundaries thereof changed, or a new district created, the municipal clerk shall ascertain as nearly as may be possible the number of voters in the new or rearranged or divided district, and provide therefor a sufficient number of official primary ballots in the above proportion.

The cost of printing the official primary ballots shall be paid by the respective municipalities.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, §300, p. 807.

#### **Cross References**

Printing and delivery of ballots, see § 40:45-15.

#### **Notes of Decisions**

##### **Cost 1**

be borne by the county, but county is to be reimbursed by the municipalities. F.O.1961, No. 1.

##### **1. Cost**

Cost of printing sample ballots and official ballots for primary elections is to be borne by the municipalities, except in Bergen County, where original cost is to

Adoption of voting machines in county is not intended by Legislature to alter general provisions concerning responsibility for cost of printing ballots. F.O. 1961, No. 1.

#### **19:23-28. Style of ballot; paper and type**

The ballots shall be printed on plain white paper uniform in size, quality and type and of such thickness that the printing thereon cannot be distinguished from the back of the paper, and without any mark, device or figure on the front or back except as in and by this title provided.

#### **Historical and Statutory Notes**

**Source:** L.1930, c. 187, §301, p. 808.

#### **19:23-29. Error in ballots; correction**

When it shall appear that any error or omission has occurred in the copy prepared by the municipal clerk for the printer or in the printing of the official ballots for any primary election by any municipal clerk, any voter resident in any election district affected by such error or omission may present to a judge of the Superior Court assigned to the county containing the election district, a verified statement setting forth the error or omission, and such judge, being satisfied thereof, shall thereupon summarily, by his order, require the municipal clerk to correct the error or omission, or show cause why it should not be corrected.

Amended by L.1953, c. 19, p. 338, § 25.

## Historical and Statutory Notes

Source: L.1930, c. 187, §302, p. 808.

## Library References

## Texts and Treatises

25 Am Jur 2d, Elections § 224.

## Notes of Decisions

## Jurisdiction of court 1

## 1. Jurisdiction of court

Under Election Law, § 53, L.1898, p. 264, repealed, authorizing any voter to present to a justice of the Supreme Court a verified petition setting forth errors or omissions in the ballots prepared for an election, and providing that the justice, on being satisfied thereof, shall summarily require the correction of the same, etc., when considered in connection with § 46, L.1898, p. 260, repealed, declaring that all certificates of nomination which are in apparent conformity with the act shall be valid unless objection shall be filed with the officer with whom the original certificate was filed, a justice of the Supreme Court has no authority to adjudge nomination for public office a nullity; the jurisdiction of the justice relating only to mistakes or inaccuracies in the printing of ballots. *Lee v. County Clerk of Monmouth*, 69 A. 246 (1907).

The jurisdiction of the justice of the Supreme Court to correct errors or omissions in the primary ballot did not attach until after the ballots had been printed and were subject to inspection and examination by the candidates and their agents, as provided in the fifty-third section of the general act of 1898, L. p. 264, repealed. Then the jurisdiction of the justice of the Supreme Court attached and was complete. He could then correct any error or omission in the ballot,

and require the municipal clerk to correct such error or omission, and could proceed in a summary way to this end, but he had no jurisdiction to entertain an application for a restraining order. In *re City Clerk of Jersey City*, 29 N.J.L.J. 341 (1906).

Under § 46 of the Election Act of 1898, L. p. 260, repealed, the facts which gave rise to the exercise of the power conferred by that section, by the justice of the Supreme Court, were as follows: First, that a certificate of nomination shall be filed with the county clerk in apparent conformity to the act. Second, this certificate must be deemed to be held valid by the county clerk, and not reviewable by the justice of the supreme court unless objection thereto shall be duly made in writing within two days after the filing thereof. Third, if such objection is made and filed then under the procedure provided by the section, the county clerk proceeds and determines upon the validity of the objection and files his determination in his own office at least five days before election, which determination shall be open for public inspection. These were jurisdictional elements which must exist in order that the justice of the supreme court could make an order in the matter upon summary hearing to protect or enforce the right of any candidate under any certificate of nomination. In *re Petition of Kraft*, 22 N.J.L.J. 373 (1900).

## ARTICLE 5. SAMPLE BALLOTS

## Library References

Elections ¶126(5).

WESTLAW Topic No. 144.

C.J.S. Elections § 118.

**19:23-30. Number of ballots and envelopes; printing; delivery; cost paid by municipalities**

a. In counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, the municipal clerk shall cause to be printed as herewith prescribed a sufficient number of official primary sample ballots of each political party in each election district and shall furnish a sufficient number of stamped envelopes to enable every district board to mail one copy of such ballot of each political party to each voter who is registered in the district for the primary election. The municipal clerk shall deliver to the county clerk in all counties and the county board in counties having a superintendent of elections one official primary sample ballot of each political party for each district in his municipality. The cost of printing the official primary sample ballots and the stamped envelopes therefor shall be paid by the respective municipalities.

b. In counties having a superintendent of elections, and in other counties where the county board of elections may have the equipment or facilities to prepare a properly stamped envelope addressed to each registered voter in the county for mailing, the municipal clerk shall cause to be printed as herewith prescribed a sufficient number of official primary sample ballots of each political party for each election district and shall furnish a sufficient number of stamped envelopes to enable the commissioner of registration of the county to mail one copy of such ballot of each political party to each voter who is registered in the district for the primary election. The municipal clerk shall also deliver to the county board ten official primary sample ballots of each political party for each district in his municipality. The cost of printing of the official primary sample ballots and stamped envelopes therefor shall be paid for by the respective municipalities. County boards of elections which elect to operate under the provisions of this paragraph shall notify their respective municipal clerks in sufficient time to enable them to make the necessary arrangements the first year.

Amended by L.1941, c. 275, p. 741, § 3; L.1946, c. 261, p. 916, § 3; L.1947, c. 168, p. 746, § 8.

**Historical and Statutory Notes**

Source: L.1930, c. 187, § 292, p. 805.

**Library References**

Elections ⇨ 126(5).

WESTLAW Topic No. 144.

C.J.S. Elections § 118.

## Notes of Decisions

Cost .1

be borne by the county, but county is to be reimbursed by the municipalities. Atty.Gen.F.O.1961, No. 1.

## 1. Cost

Cost of printing sample ballots and official ballots for primary elections is to be borne by the municipalities, except in Bergen County, where original cost is to

Adoption of voting machines in county is not intended by Legislature to alter general provisions concerning responsibility for cost of printing ballots. Atty. Gen.F.O.1961, No. 1.

**19:23-31. Sample ballot facsimile of official ballot**

The official primary sample ballot shall be, as nearly as possible, a facsimile of the official primary ballot to be voted at the primary election and shall be printed on paper different in color from the official primary ballot, so that the same may be readily distinguished from the official primary ballot. The official primary sample ballot shall have printed at the top in large type the words: "This official primary sample ballot is an exact copy of the official primary ballot to be used on primary election day. This ballot cannot be voted." The official primary sample ballot shall also have printed thereon, following the words which indicate the election district, the following words: "The polling place for this election district is

(Stating the location of said polling place)."

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶293, p. 805.

**19:23-32. Words on envelopes**

Each of such envelopes shall have printed on the face thereof, in large type, the words, "Official Primary Sample Ballot," and in smaller type, in the upper left-hand corner, the words, "If not delivered in two days return to the superintendent of elections" in counties having a superintendent of elections, to the "Commissioner of Registration" in other counties and in the lower left-hand corner shall be printed the words "Municipality" followed by a line "....." "Ward" followed by a line "....." and "District" followed by a line "....." arranged in three lines one under the other.

Amended by L.1947, c. 168, p. 747, § 9.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶294, p. 806.

**19:23-33. Sample ballots and envelopes furnished to district boards or commissioner of registration**

In counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, the municipal clerk in each municipality shall furnish to a member of each district board in his municipality, at his office, or in any other way that he sees fit, on or before Tuesday preceding the primary election in each year, sufficient sample ballots and sufficient stamped envelopes to enable the board to mail sample ballots to the voters as hereinbefore provided. Each of the boards shall give the municipal clerk a receipt for such sample ballots and envelopes signed by one of its members.

In counties having a superintendent of elections, and in other counties where the county board of elections shall elect to operate under the provisions of subsection b of section 19:23-30 of this Title, the municipal clerk in each municipality shall furnish to the commissioner of registration of his county not later than thirty days preceding the primary election of each year, sufficient stamped envelopes to enable the commissioner of registration to mail sample ballots to each voter who is registered in the county and shall, not later than noon of the twelfth day preceding the primary election furnish sufficient sample ballots to the commissioner of registration of his county for that purpose. The commissioner of registration shall give the municipal clerk a receipt for such sample ballots and envelopes. Amended by L.1941, c. 275, p. 742, § 4; L.1946, c. 261, p. 917, § 4; L.1947, c. 168, p. 747, § 10.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §295, p. 806,  
amended by L.1935, c. 259, § 1, p. 839.

**19:23-34. Mailing sample ballots**

Each of such district boards, in counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, and the commissioner of registration in all other counties, shall prepare and deposit in the post office, on or before twelve o'clock noon on Wednesday preceding the primary day, the stamped envelopes containing a copy of the sample primary ballot of each political party addressed to each voter whose name appears in the primary election registry book.

Amended by L.1941, c. 275, p. 743, § 5; L.1946, c. 261, p. 917, § 5; L.1947, c. 168, p. 748, § 11.



**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶296, p. 806.

**19:23-35. Posting sample ballots**

In counties not having a superintendent of elections, where the county board of elections does not have the equipment or facilities to address and mail sample ballot envelopes, such district board shall also post three sample ballots in the polling place in its district.

The county board of elections in all counties of the first class, and in other counties where the county board of elections shall elect to operate under the provisions of subsection b of section 19:23-30 of this Title, shall, not later than noon of the second Monday preceding the primary election, deliver or mail to the members of the district board three sample ballots for their respective election district. The board shall post the sample ballots in the polling place in its district.

Amended by L.1941, c. 275, p. 743, § 6; L.1946, c. 261, p. 918, § 6; L.1947, c. 168, p. 748, § 12; L.1952, c. 61, p. 383, § 2.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶297, p. 806.

**19:23-36. Return of unused sample ballots and envelopes**

In counties not having a superintendent of elections where the county board of elections does not have the equipment or facilities to mail sample ballot envelopes, the district boards shall return to the municipal clerk the unused sample ballots and stamped envelopes, with a sworn statement in writing, signed by a majority of the members of the board, to the effect that the remainder of the sample ballots in envelopes were actually mailed or posted as provided in this Title, and the members of the board failing to file such statement shall receive no compensation for the service of mailing.

In counties having a superintendent of elections, and in other counties where the county board of elections shall elect to operate under the provisions of subsection b of section 19:23-30 of this Title, the commissioner of registration shall return to the municipal clerk the unused sample ballots and stamped envelopes with a sworn statement to the effect that the remainder of the sample ballots and envelopes were actually mailed or posted as herein provided.

Amended by L.1941, c. 275, p. 743, § 7; L.1946, c. 261, p. 918, § 7; L.1947, c. 168, p. 749, § 13.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶298, p. 807.

**19:23-37. Public display of returned envelopes**

All the envelopes which shall have been mailed but not delivered to the addresses and shall have been returned to the superintendent, commissioner or county board, shall be retained by the superintendent, commissioner or county board, as the case may be, for thirty days, open to public inspection.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §299, p. 807.

**ARTICLE 6. DELIVERY OF BALLOTS, BALLOT  
BOXES AND DOCUMENTS**

**Library References**

Elections ⇨126(5), (6).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 114, 118.

**19:23-38. Municipal clerk to members of district boards; receipt**

The municipal clerk shall on the day preceding the primary election cause to be delivered, at his office, to a member or members of the district board of each election district within his municipality, the ballots and the ballot boxes provided for each election district, and any registers, poll books and other documents that he may have received from the county clerk, the county board or the commissioner, and take a receipt from such member or members therefor, which last mentioned receipt the clerk of the municipality shall file and preserve for one year.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §303, p. 808.

**Cross References**

Delivery of ballots, see § 40:45-15.

**19:23-39. Members of district boards to board; receipts**

Such member or members shall on the morning of the primary election, before proclamation of the opening of the polls, deliver the ballot boxes and the ballots by them received to the election boards of their respective election districts, with the seals thereof unbroken, and shall take receipts therefor from the district board, which receipts such member or members shall preserve for one year.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §304, p. 808.

**ARTICLE 7. CONDUCT OF PRIMARY IN GENERAL****Library References**

Elections ⇨126(6).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 114, 118.

**19:23-40. Time and place of holding**

The primary election for the general election shall be held for all political parties upon the Tuesday next after the first Monday in June between the hours of 7:00 A.M. and 8:00 P.M., Standard Time. It shall be held for all political parties in the same places as hereinbefore provided for the ensuing general election.

Amended by L.1948, c. 2, p. 43, § 26; L.1965, c. 4, § 11; L.1966, c. 19, § 6; L.1967, c. 7, § 5; L.1967, c. 26, § 5, eff. April 21, 1967; L.1968, c. 292, § 5, eff. Sept. 6, 1968.

**Historical and Statutory Notes****Source:**

L.1930, c. 187, §305, p. 809.

L.1935, c. 9, § 14, p. 29.

L.1935, c. 299, § 8, p. 939.

Amendment to this section by L.1946, c. 11, p. 32, § 14, was repealed by L.1948, c. 2, p. 46, § 32.

**Library References**

Elections ⇨126(6).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 114, 118.

**Notes of Decisions****Date 1**

cation of Lamb, 67 N.J.Super. 39, 169 A.2d 822 (A.D.1961), affirmed 34 N.J. 448, 170 A.2d 34.

**1. Date**

Court took judicial notice of date of primary election fixed by statute. Appli-

**19:23-41. Officers in charge**

All of the members of the district board shall conduct the primary election for all political parties holding primary elections under this title.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶306, p. 809.

**Library References****Texts and Treatises**

25 Am Jur 2d, Elections § 39.

**19:23-42. Method of conducting primary election**

The primary election for the general election shall be conducted by the district boards substantially in the same manner as the general election, except as herein otherwise provided.

Each district board may allow one member thereof at a time to be absent from the polling place or room for a period not exceeding one hour between the hours of one o'clock and five o'clock in the afternoon or for such shorter time as it shall see fit; but at no time from the opening of the polls to the completion of the canvass shall there be less than a majority of the board present in the polling room or place.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶307, p. 809.

**ARTICLE 8. REGISTRY AND POLL BOOKS [REPEALED]****19:23-43, 19:23-44. Repealed by L.1947, c. 104, p. 529, § 9****Historical and Statutory Notes**

Section 19:23-43, which derived from L.1930, c. 187, p. 809, § 308, provided for the use of primary election registry book.

by L.1931, c. 374, p. 954, § 13, provided for the keeping of party primary poll books.

Section 19:23-44, which derived from L.1930, c. 187, p. 810, § 309, amended

**ARTICLE 9. BALLOTING PROCEDURE****Library References**

Elections ¶126(6).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 114, 118.

**19:23-45. Balloting regulations; political party affiliation declaration forms**

No voter shall be allowed to vote at the primary election unless his name appears in the signature copy register.

A voter who votes in a primary election of a political party or who signs and files with the municipal clerk or the county commissioner of registration a declaration that he desires to vote in the primary election of a political party shall be deemed to be a member of that party until he signs and files a declaration that he desires to vote in the primary election of another political party at which time he shall be deemed to be a member of such other political party. The Secretary of State shall cause to be prepared political party affiliation declaration forms and shall provide such forms to the commissioners of registration of the several counties and to the clerks of the municipalities within such counties.

No voter, except a newly registered voter at the first primary at which he is eligible to vote, or a voter who has not previously voted in a primary election, may vote in a primary election of a political party unless he was deemed to be a member of that party on the fiftieth day next preceding such primary election.

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

Any person voting in the primary ballot box of any political party in any primary election in contravention of the election law shall be guilty of a misdemeanor, and any person who aids or assists any such person in such violation by means of public proclamation or order, or by means of any public or private direction or suggestions, or by means of any help or assistance or cooperation, shall likewise be guilty of a misdemeanor.

Amended by L.1939, c. 354, § 2; L.1952, c. 158, p. 526, § 1; L.1975, c. 260, § 1, eff. Dec. 12, 1975; L.1976, c. 16, § 1, eff. April 8, 1976; L.1977, c. 97, § 1, eff. May 20, 1977.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶310, p. 810,  
amended by L.1931, c. 374, § 14, p. 955.

**Cross References**

Persons entitled to register for permanent registration, see § 19:31-5.

**Administrative Code References**

Voter declaration of political party, see N.J.A.C. 15:10-2.1 et seq.

## Library References

Elections  $\Leftrightarrow$  126(6).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 114, 118.

## Texts and Treatises

25 Am Jur 2d, Elections §§158, 159.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## United States Supreme Court

Freedom of association, validity of closed primaries when party rule allows participation of unaffiliated voters, see *Tashjian v. Republican Party of Connecticut*, U.S.Conn.1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

Lapse of time to switch registration from one political party to another in

primary election, see *Kusper v. Pontikes*, U.S.Ill.1973, 94 S.Ct. 303, 414 U.S. 51, 38 L.Ed.2d 260.

Qualifications for voting, party rule allowing nonaffiliated voters to participate in primaries, see *Tashjian v. Republican Party of Connecticut*, U.S.Conn.1986, 107 S.Ct. 544, 479 U.S. 208, 93 L.Ed.2d 514.

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doing so, it does not unduly interfere with the freedom and equality of elections or constitutional right of suffrage. *Wene v. Meyner*, 13 N.J. 185, 98 A.2d 573 (1953).

This section relating to a declaration designating political party in whose primary election voter desires to vote, is constitutional. Application of *Wene*, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

The right to vote a secret ballot is neither a natural right nor a constitutional right; hence a legislative provision, L.1903, p. 603, § 2, repealed, concerning primary elections, that, if challenged, a voter shall make affidavit that, at the last general election at which he voted, he voted for a majority of the candidates of the party with which he is proposing to act, violates no constitutional right of such voter. *Hopper v. Stack*, 69 N.J.L. 562, 56 A. 1 (1903).

## 1. Validity—In general

The political function of a political party and its members involves rights and interests subject to legislative regulation for the protection of those members, such as regulation of primary elections, and the Legislature may invoke measures reasonably appropriate to secure the integrity of the nominating process in the service of the community welfare, and, in

## 2. — Equal protection, validity

Omission of newly registered voters from requirement of this section of primary elections law that voters not affiliated with political party by virtue of previous declaration or previous primary participation must file declaration for party on or before 50th day preceding

primary election was not a violation of equal protection, in view of facts that residency qualifications for New Jersey voters was 30 days in both state and resident county and that residents who met 30-day durational residency requirement would otherwise have been disenfranchised if they did not meet residential requirement on or before 50th day prior to primary election. *Friedland v. State*, 149 N.J.Super. 483, 374 A.2d 60 (L.1977).

### 3. — Due process, validity

So much of this section and § 19:23-46 requiring two successive primaries to elapse before a voter may change his party affiliation are unconstitutional as being patently overbroad in scope. *Nagler v. Stiles*, D.C.N.J.1972, 343 F.Supp. 415.

### 4. — Declaration of party affiliation, validity

This section of primary elections law was not constitutionally defective in including "independents" or unaffiliated voters in political party declaration requirements, as "independents" are not interested and affected by primary elections in the crucial distinguishing aspect that party members are. *Friedland v. State*, 149 N.J.Super. 483, 374 A.2d 60 (L.1977).

### 5. Legislative purpose

Since purpose to be served by primary election is public in its nature, proceedings attending selection of candidates are subject to regulation in exercise of the police power, and it is the legislative province to limit use of selective process of primary election to those who have practical affiliation with the particular party and to repel interference from outsiders who are not bound by the common tie and who do not share the common aim. *Wene v. Meyner*, 13 N.J. 185, 98 A.2d 573 (1953).

### 6. Strict construction

This section relating to a declaration designating political party in whose primary election voter desires to vote, should not be strictly construed against voter. Application of *Wene*, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

### 7. Crossover voting

Signatures of registered Republicans on Democratic primary nomination petition for office of governor were invalid; crossing over of voter from one party affiliation to another could be accomplished only by timely filing of some form of declaration with municipal clerk or county commissioner, and not by act of signing nominating petition. *Lesniak v. Budzash*, 265 N.J.Super. 165, 625 A.2d 1139 (A.D.1993), certification granted, affirmed 133 N.J. 425, 627 A.2d 1133, affirmed as modified 133 N.J. 1, 626 A.2d 1073.

In view of fact that state has a legitimate interest in preventing "raiding" or crossover voting in a primary election, this section of primary elections law requiring that a voter who is not affiliated with a political party by virtue of a previous declaration or previous primary participation and who is not excused as a newly registered voter must file declaration for party on or before 50th day preceding primary election is not unconstitutional. *Friedland v. State*, 149 N.J.Super. 483, 374 A.2d 60 (L.1977).

### 8. Right to participate

In New Jersey, the right to participate in a political party's primary election's is a statutory and not a constitutional right. *Smith v. Penta*, 81 N.J. 65, 405 A.2d 350 (1979), appeal dismissed 100 S.Ct. 515, 444 U.S. 986, 62 L.Ed.2d 416.

Right to take part in a primary election depends upon party membership. *Wene v. Meyner*, 13 N.J. 185, 98 A.2d 573 (1953).

### 9. Declaration of party affiliation—In general

Significant state interests in supporting the associational rights of regular party members and maintaining the integrity of the electoral process by legislation designed to prevent "raiding" were sufficient to warrant the legislature in subjecting an individual's right to vote in primary elections to certain restrictions, including the 50-day durational affiliation requirement. *Smith v. Penta*, 81 N.J. 65, 405 A.2d 350 (1979), appeal dismissed 100 S.Ct. 515, 444 U.S. 986, 62 L.Ed.2d 416.

The provision of this section concerning voter's declaration of political party does not apply to all voters not voting in

two consecutive primary elections, but only to voters not voting in two primary elections after casting a primary vote. Application of Wene, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

#### 10. — Time, declaration of party affiliation

Where prospective voter did not demonstrate that such an event actually occurred, alleged imperfection in statutory primary election procedure arising from fact that prospective voter was required to declare her party affiliation at least 50 days prior to primary election at a time when she might not have known who all the candidates were to be because someone might qualify as a nominee during the ensuing ten-day period was de minimis and insufficient to overcome the self-inflicted character of the alleged disenfranchisement. *Smith v. Penta*, 81 N.J. 65, 405 A.2d 350 (1979), appeal dismissed 100 S.Ct. 515, 444 U.S. 986, 62 L.Ed.2d 416.

#### 11. Party member

Party membership by voter is established by act of voting in party primary or by mere acts of signing and filing written declaration of party affiliation; party membership is basically present state or mind evidenced by one or another of acts or declarations designated by this section prescribing tests and indicia for determining party membership for purpose of voting in a party primary. *Ivkovich v. Green*, 174 N.J.Super. 225, 416 A.2d 68 (A.D.1980).

This section relating to balloting procedure and providing that one elected to office as member of political party is deemed a member of such party is inapplicable in determining party membership for purpose of qualification as candidate in primary election. *George v. Gillespie*, 40 N.J.Super. 139, 122 A.2d 367 (A.D.1956).

Voters have no right to vote in primary election of any particular political party unless they are members of that party. *Stevenson v. Gilfert*, 13 N.J. 496, 100 A.2d 490 (1953).

Members of Democratic party became ineligible to vote in Democratic party's primary election by signing nominating petitions of candidate of Republican party, thus declaring themselves members of

that party and espousing cause of Republican party's candidates. In re *Hertz*, 21 N.J. Misc. 327, 34 A.2d 84 (1943).

Provision in this section that voter would be deemed a member of party in whose primary he votes for two "full years" thereafter did not preclude prior Democratic primary voters from voting primary ticket of Republican Party after lapse of two calendar years after primary in which they voted Democratic ticket, but before two primary elections had passed, word "full" meaning complete and word "year" meaning calendar year. In re *Stoebing*, 16 N.J. Misc. 34, 196 A. 423 (1938).

Candidate's eligibility as party candidate in party primary depends upon whether he voted for majority of such party's candidates at last election for members of General Assembly and intent to affiliate with such party at next ensuing election, and not upon his eligibility to vote in such primary as member of such party. In re *Dvorken*, 12 N.J. Misc. 438, 172 A. 337 (1934).

One who voted for majority of party's candidates at last election for members of General Assembly and intended to affiliate with such party at next ensuing election held eligible as candidate for borough councilman in such party's primary, though he had voted in primary of another party within two years previously. In re *Dvorken*, 12 N.J. Misc. 438, 172 A. 337 (1934).

#### 12. Registration

Nominating petition for candidate in a primary election filed on or before 50 days prior to primary election does not serve as a substitute for party registration requirements of this section of primary elections law with respect to those persons whose signatures appear on such nominating petition. *Friedland v. State*, 149 N.J.Super. 483, 374 A.2d 60 (L.1977).

#### 13. Violations

This section relating to a declaration, does not have such drastic sweep as to nullify every vote cast in disregard of the requirements thereof. *Wene v. Meyner*, 13 N.J. 185, 98 A.2d 573 (1953).

This section does not deprive a voter who has by unimpeachable record, the undoubted right to take part in primary of particular party, of right to have his



## 19:23-45

### Note 13

vote considered because of failure of election board to demand a formal written declaration as provided in this section. *Wene v. Meyner*, 13 N.J. 185, 98 A.2d 573 (1953).

Provision of this section relating to a declaration designating party in whose primary election voter desires to vote, is a merely directory procedural provision, even if deemed to require separate declaration in addition to voter's announcement of his party choice and signature of register on which election officials note voters' party affiliations at time of voting and such officials' failure to require voter to sign such a declaration cannot disenfranchise him, in absence of fraud,

## PRIMARY ELECTIONS

corruption, non-registration, or other illegality affecting result of election. Application of *Wene*, 26 N.J. Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

Under § 19:3-9 one nominated as political party's candidate for governor in primary election should not forfeit nomination because of election officials' failure to require voters not voting in two annual primary elections to sign and file declarations under this section, or political parties in whose primary elections voters desired to vote. Application of *Wene*, 26 N.J. Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

### 19:23-45.1. Notice of requirements to vote in primary election; publication

a. The county commissioner of registration in each of the several counties, shall cause a notice to be published in each municipality of their respective counties in a newspaper or newspapers circulating therein. The notice to be so published shall be published once during each of the 2 calendar weeks next preceding the week in which the fiftieth day next preceding the primary election of a political party occurs.

b. The notice required to be published by the preceding paragraph shall inform the reader thereof that no voter, except a newly registered voter at the first primary at which he is eligible to vote, or a voter who has not previously voted in a primary election may vote in a primary election of a political party unless he was deemed to be a member of that party on the fiftieth day next preceding such primary election. It shall further inform the reader thereof that a voter who votes in the primary election of a political party or who signs and files with the municipal clerk or the county commissioner of registration a declaration that he desires to vote in the primary election of a political party shall be deemed to be a member of that party until he signs and files a declaration that he desires to vote in the primary election of another political party at which time he shall be deemed to be a member of such other political party. The notice shall also state the time and location where a person may obtain political party affiliation declaration forms.

L.1976, c. 16, § 2, eff. April 8, 1976. Amended by L.1977, c. 97, § 2, eff. May 20, 1977.

## Historical and Statutory Notes

## Title of Act:

An Act concerning elections, amending R.S. 19:23-45 and supplementing Title 19 of the Revised Statutes. L.1976, c. 16.

## Library References

Elections ⇨103, 126(4).  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 43, 115, 130.

**19:23-45.2. Cost of publication; payment by counties**

The cost of the publishing of the notices required to be published by this act by the county commissioners of registration shall be paid by the respective counties.

L.1976, c. 16, § 3, eff. April 8, 1976.

## Library References

Counties ⇨134.  
WESTLAW Topic No. 104.  
C.J.S. Counties § 174.

**19:23-45.3. Rules and regulations**

The Secretary of State shall promulgate such rules and regulations as he deems necessary to implement this act, including the procedures to be followed in the filing, reporting and authentication of declarations of political party affiliation pursuant to R.S. 19:23-45. L.1976, c. 16, § 4, eff. April 8, 1976.

## Library References

States ⇨73.  
WESTLAW Topic No. 360.  
C.J.S. States §§ 130 to 136, 140.

**19:23-46. Determination of right to vote**

Each voter offering to vote shall announce his name and the party primary in which he wishes to vote. The district board shall thereupon ascertain by reference to the signature copy register or the primary election registry book required by this title, and, in municipalities not having permanent registration, if necessary by reference to the primary party poll books of the preceding primary election, that such voter is registered as required by this title and also that he is not ineligible or otherwise disqualified by the provisions of section 19:23-45 of this title; in which event he shall be allowed to vote.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶311, p. 812, amended by L.1931, c. 374, § 15, p. 957.

### Notes of Decisions

#### Validity 1

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##### 1. Validity

So much of this section and § 19:23-45 requiring two successive primaries to

elapse before a voter may change his party affiliation are unconstitutional as being patently overbroad in scope. *Nagler v. Stiles*, D.C.N.J.1972, 343 F.Supp. 415.

### 19:23-47. Preparation and casting of ballots

Such voter shall thereupon prepare and cast his ballot in substantially the same manner as is herein provided for the preparation and casting of ballots at the general election and subject to the same regulations. The blank space or spaces under each title of office or party position shall be used for the writing in or pasting of names in the same manner as is provided for voting in the personal choice column of the general election ballot.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶312, p. 812.

### Cross References

Preparation and delivery of ballots, see § 40:45-15.

### Notes of Decisions

#### Write-ins 1

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##### 1. Write-ins

Under L.1898, p. 268, § 59, repealed, concerning general elections, providing that a voter may erase from his ballot any name, or write thereon the name of any person for whom he desired to vote, and L.1903, p. 603, repealed, concerning primary elections, making § 59 applicable to primary elections, a member of one party could vote for a member of another party as the nominee of such voter's party, and there was nothing in the general object of the 1903 act denying such right. *Freeman v. Board of Registry & Election of Metuchen*, 76 N.J.L. 83, 67 A. 713 (1907).

Where L.1903, p. 603, repealed, concerning primary elections, made §§ 58 and 59 of the General Election Act of 1898, L.1898, pp. 267, 268, repealed, applicable to primary elections; and § 58 declared void ballots which contain a mark other than was permitted by that act; and § 59 provided that a voter may erase from his ballot any name or write thereon the name of any person for whom he desires to vote; a board of registry and election at a primary election was without right to reject, as marked ballots, over 60 ballots on which a candidate's name was written in the same handwriting, and that it was not essential that the voter himself must have written the name of the candidate. *Freeman v. Board of Registry & Election of Metuchen*, 76 N.J.L. 83, 67 A. 713 (1907).

**19:23-48. Challenges; procedure**

If a voter who desires to vote in the same political party box in which he voted at the next preceding primary election is challenged, he shall take an oath or affirmation, to be administered by a member of the district board in the following form: "You do solemnly swear (or affirm) that you are a member of the \_\_\_\_\_ political party (specifying the political party in which ballot box the affiant voted at the next preceding primary election); that at the last election for members of the general assembly at which you voted you voted for a majority of the candidates of said party nominated for national, state and county offices, and that you intend to support the candidates of said party at the ensuing election, and that you are not ineligible or otherwise disqualified by law to vote in this party primary of the said \_\_\_\_\_ political party." If the person so challenged shall refuse to take the oath or affirmation so tendered to him, he shall be deemed not qualified or entitled to vote at such primary election.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §313, p. 812.

**ARTICLE 10. CANVASS OF VOTES;  
CERTIFICATION OF RESULTS**

**Library References**

Elections ⇐126(7).

WESTLAW Topic No. 144.

C.J.S. Elections § 119.

**19:23-49. Counting of votes**

At the close of the primary election for the general election each district board shall immediately proceed to count the votes cast at the election and ascertain the results thereof for the candidates of each political party holding such elections, proceeding in the manner indicated by the statement hereinafter provided for, and as nearly as may be in the manner herein required for the counting by the district board of votes cast at the general election.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §314, p. 813.

**Cross References**

Write-in votes or votes by irregular ballot in primary, number necessary to qualify for placement of candidate on general election ballot, see § 19:14-2.1.

19:23-50. Statements of result; contents

The district boards shall at the conclusion of the canvass make up and sign three statements of the result of such election. The statements shall in words at length show the total number of names of persons entitled to vote, the whole number of ballots cast for each political party as indicated by the party names at the head of the respective party tickets, the whole number of ballots rejected for each political party, and the number of votes received by each person as a candidate for nomination for office or position.

Amended by L.1945, c. 76, p. 408, § 4.

Historical and Statutory Notes

Source: L.1930, c. 187, §15, p. 813.

Library References

- Elections §126(7).
WESTLAW Topic No. 144.
C.J.S. Elections § 119.

Texts and Treatises

25 Am Jur 2d, Elections § 141.

Notes of Decisions

Mandamus 1

1. Mandamus

Where on mandamus to compel a board of registry and election to make up

and sign the statement of the result of a primary election required by L.1903, p. 617, § 15, repealed, it was necessary to open the ballot boxes to comply therewith, that course might be taken. Freeman v. Board of Registry & Election of Metuchen, 76 N.J.L. 83, 67 A. 713 (1907).

19:23-51. Form of statement

Such statement shall be substantially in the following form:

Statement of the result of a primary election held in the . . . . . ward . . . . . election district of the . . . . . of . . . . . (municipality) in the county of . . . . . and state of New Jersey, on the . . . . . day of . . . . . 19. . . . .

Total number of names of persons entitled to vote at the primary election was . . . . . :

The total number of . . . . . ballots cast was . . . . .

The total number of . . . . . ballots rejected was . . . . .

(Fill in the name of the political party in each instance and the number of ballots cast or rejected in words at length and in figures.)

For candidates of the ..... party for the ..... office or ..... position received ..... votes. (Fill in the name of each candidate and number of votes received by such candidate in words at length and in figures.)

Historical and Statutory Notes

Source: L.1930, c. 187, §316, p. 814.

19:23-52. Certification of statement

To such statement shall be added a certificate in the following form:

We certify the foregoing to be a true and correct statement of the result of the primary election held in such district at the time above stated and that it correctly exhibits the total number of names of persons entitled to vote, the entire number of votes cast for each political party at such election, the total number of ballots rejected belonging to each party respectively; also the number of votes received by any person who is a candidate of any party for any office or position named on any ballot or ballots cast at such election.

In witness whereof, we have hereunto set our hands this ..... day of ..... one thousand nine hundred and .....

..... ) District Board
..... ) of Registry
..... ) and Election.
..... )

Historical and Statutory Notes

Source: L.1930, c. 187, §317, p. 814.

Notes of Decisions

Fraudulent election 1

1. Fraudulent election

In primary election contest proceedings brought by candidates for members of Republican State Committee, evidence that three election officers in certain district wrote in name of a candidate on

blank provided for voter to write in a name, and fourth officer signed certification of statement of election and failed to obtain affidavit of voters asking for assistance, was sufficient to show election officers conducted election in fraudulent and corrupt manner and had effect of challenging result of election. In re Stoebling, 16 N.J. Misc. 34, 196 A. 423 (1938).

19:23-53. Statements transmitted to clerks and superintendent of elections; access to office of municipal clerk

The district board shall immediately deliver or transmit this statement to the clerks of the county and municipality within which such primary election was held. In counties having a superintendent of

elections one of such statements shall forthwith be filed with the superintendent of elections of the county. The superintendent may arrange to accept such certificates in each municipality within the county at the office of the clerk of such municipality or some other convenient place. Any municipal clerk who shall refuse to permit such superintendent or his deputies or assistants access to his office for the purpose of collecting such certificates or any municipal clerk or other person who shall interfere or obstruct the superintendent, his deputies or assistants in the collection of such certificates, or any member of a district board who shall willfully fail or refuse to deliver such statement to the superintendent, his deputies or assistants as the case may be, shall be guilty of a misdemeanor.

Amended by L.1945, c. 76, p. 400, § 5; L.1947, c. 108, p. 749, § 14.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §318, p. 815.

#### **19:23-54. Canvass of votes by municipal clerks; certificates of election to county committeemen**

The municipal clerk shall forthwith canvass the statements of the district board as far as they relate to the election of members of the county committee of any political party, and shall issue a certificate of election to each person shown by the returns filed in the office of such municipal clerk to have been so elected.

No person whose name was printed on a primary ballot as a candidate for the county committee shall receive a certificate of election as a member of any other county committee.

When a person whose name was not printed on a primary ballot as a candidate for member of the county committee has been elected as a member of the county committee of more than one political party, he shall file with the municipal clerk within three days a statement certifying to which political party he belongs, and a certificate of election shall be issued to such person as a member of the county committee of the political party so certified.

Any person elected as a member of the county committee of any political party whose name was not printed upon the primary ballot and to whom a certificate of election has been issued, shall before the organization of the county committee file with the secretary thereof a written statement certifying that he is a member of such political party.

The municipal clerk shall within eight days after the primary election certify to the county clerk and also to the county board two copies of the names and post-office addresses of the persons elected

as members of the county committee of the several political parties, together with the ward, district or unit which they respectively represent.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶319, p. 815.

### Notes of Decisions

#### Write-in candidates 1

##### 1. Write-in candidates

Where in unusual event that person not nominated by petition for county committee has been elected member of the county committee of both major parties or more, he may qualify for county committee of either party merely by filing with municipal clerk within three days a statement certifying to which political party he belongs, whereupon certificate of election shall be issued to such person. *Ivkovich v. Green*, 174 N.J.Super. 225, 416 A.2d 68 (A.D.1980).

Although plaintiffs, who on June 8, 1971 were elected by write-in votes to position of political party's county committeewoman and committeeman of their respective districts, had not tendered a written acceptance by Saturday, June 12, it was improper for municipal committee to deny plaintiffs the offices to which they were elected, where certificate of election was issued to plaintiffs on Tuesday, June 15, and plaintiffs promptly filed their certification of membership in political party with the secretary of the county committee. *Filippone v. O'Connor*, 116 N.J.Super. 399, 282 A.2d 443 (L.1971).

### 19:23-55. Canvass of votes by county clerks; statement

The county clerks shall within 10 days canvass such statements relating to all officers and positions to be voted for by the voters of the entire State, county, county election district, congressional district, municipality or ward, and determine what persons have by the highest number of votes been so elected or nominated by the political parties.

In the case of United States Senator, Governor and member of the House of Representatives the county clerk shall immediately transmit to the Secretary of State a statement showing the total number of votes cast for such officers in the county. The Secretary of State shall furnish the necessary form.

In the case of members of the county committee the county clerk within 9 days after the primary shall mail to the chairman of the State committee and to the chairman of the county committee of the respective parties a list of the names of those elected to the county committee, giving the municipalities, ward and district each represents, together with their post-office addresses.

Amended by L.1975, c. 43, § 5, eff. April 3, 1975.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶320, p. 816.



## Library References

## Texts and Treatises

26 Am Jur 2d, Elections §§298-300,  
304.

**19:23-56. Certificates of election of members of state committee**

The county clerk shall issue a certificate to the male or males receiving the highest number of votes among the male candidates for the number of positions to be filled by male members of the State committee and to the female or females receiving the highest number of votes among the female candidates for the number of positions to be filled by female members of the State committee of any political party at the primary as shown by the returns in the county clerk's office. A divided position shall be filled by the one male and the one female candidate receiving the highest number of votes among the male and female candidates for such position. The county clerk shall issue a certificate of election to said male and said female candidates.

Amended by L.1978, c. 15, § 4, eff. March 30, 1978.

## Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶321, p. 816.

**Statement:** Introductory Statement to Senate, No. 956—L.1978, c. 15, see § 19:5-4.

## Library References

Elections ⇐121(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 83 et seq.

**19:23-57. Canvass of votes by secretary of state; certificates of election issued**

The secretary of state shall forthwith canvass such statements of the county clerks and determine by the highest number of votes what persons have been so nominated by the voters of the political parties of the state or portion thereof involving more than a single county or congressional district, and shall issue a certificate of election to each person shown by such canvass and statement to have been nominated.

## Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶322, p. 816.

ARTICLE 11. OTHER PROVISIONS APPLICABLE  
TO PRIMARY FOR GENERAL ELECTION

**19:23-58. Provisions of title applicable**

Any provisions of this title which pertain particularly to any election or to the general election shall apply to the primary election for the general election in so far as they are not inconsistent with the special provisions of this title pertaining to the primary election for the general election.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §326, p. 818.

**Notes of Decisions**

**Related statutes 1**

**1. Related statutes**

Where § 19:23-12 prior to 1942 amendment required certificate of nomination to fill a vacancy to be filed 17 days prior to the election, amendment thereof requiring certificate to be filed 34 days prior to election required exclusion of

candidates from ballot for General Assembly and certain county offices, where certificate of acceptance, nomination and affidavit correcting prior irregularities was filed on the 34th day prior to the primary election, as against the contention that § 19:13-13 permitting amendment of defective petitions up to 20 days before the election governed in view of this section. *Berry v. Gates*, 129 N.J.L. 1, 28 A.2d 59 (1942).

## CHAPTER 24

### PRIMARY FOR DELEGATES AND ALTERNATES TO NATIONAL CONVENTIONS

#### ARTICLE 1. NOTICE OF ELECTION

##### Section

- 19:24-1. State committee to Secretary of State.  
19:24-2. Secretary of state to county clerks and county boards; party rules to govern selection of delegates and alternates.

#### ARTICLE 2. PROCEDURE

- 19:24-3. Nomination by petition.  
19:24-4. Delegates and alternates at large to be chosen from congressional district.  
19:24-5. Delegates grouped; choice for president included in petition.  
19:24-6. Delegates and alternates at large; election; ballots.

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#### ARTICLE 1. NOTICE OF ELECTION

##### Library References

Elections ☞ 131.

WESTLAW Topic No. 144.

C.J.S. Elections § 98.

##### 19:24-1. State committee to Secretary of State

In every year in which primary elections are to be held as herein provided for the election of delegates and alternates to the national conventions of political parties, including any national mid-term

convention or conference of a political party, which primary elections are to be held on the first Tuesday in June as hereinbefore provided, the chairman of the State committee of each political party shall notify the Secretary of State, on or before March 1 of that year, of the number of delegates-at-large and the number of alternates-at-large to be elected to the next national convention of such party by the voters of the party throughout the State, and also of the number of delegates and alternates to be chosen to such convention in the respective congressional districts or other territorial subdivisions of the State as mentioned in such notification.

If the State chairmen, or either of them, shall fail to file notice, the Secretary of State shall ascertain such facts from the call for its national convention issued by the National or State committee. Amended by L.1948, c. 2, p. 44, § 27; L.1965, c. 4, § 12; L.1978, c. 15, § 5, eff. March 30, 1978.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, §327, p. 819, amended by L.1935, c. 9, § 15, p. 29. **Statement:** Introductory Statement to Senate, No. 956—L.1978, c. 15, see § 19:5-4.  
Amendment to this section by L.1946, c. 11, p. 32, § 15, was repealed by L.1948, c. 2, p. 46, § 32.

#### Library References

Elections ☞131.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 98.

### **19:24-2. Secretary of state to county clerks and county boards; party rules to govern selection of delegates and alternates**

The Secretary of State shall, on or before March 20 of that year, certify to the county clerk and county board of each county the number of delegates and alternates-at-large to be chosen by each such party and the number of delegates and alternates to be chosen in each congressional district or other territorial subdivision of the State, composed in whole or in part of the county of such county clerk.

Any provisions of this Title which pertain particularly to any election or to the general election or to the primary election for the general election shall apply to the primary election for delegates and alternates to national conventions in so far as they are not inconsistent with the special provisions of this Title pertaining to the primary election for delegates and alternates to national conventions.

Notwithstanding any provision of this Title, national and State party rules shall govern the selection of delegates and alternates to national party conventions, provided the State chairman of the political party notifies the Secretary of State prior to March 1 of the year in which delegates and alternates are elected of the applicable party rules governing the delegate selection process. The Secretary of State shall notify the county clerks prior to April 1 of the year in which delegates and alternates are elected of the applicable party rules, if any, which apply to matters within their jurisdiction. Pursuant to this section, the Secretary of State shall issue to the county clerks uniform regulations governing the delegate selection process. Amended by L.1948, c. 2, p. 44, § 28; L.1965, c. 4, § 13; L.1976, c. 9, § 1, eff. Feb. 29, 1976.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §328, p. 819.

### ARTICLE 2. PROCEDURE

#### Library References

Elections ⇨131.

WESTLAW Topic No. 144.

C.J.S. Elections § 98.

#### 19:24-3. Nomination by petition

Candidates for election as delegates or alternates to the national conventions of political parties shall be nominated by petition in the manner herein provided for the nomination of candidates to be voted for at the primary election for the general election except as herein otherwise provided.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §329, p. 820.

#### 19:24-4. Delegates and alternates at large to be chosen from congressional district

Not less than 100 members of each such political party may file with the Secretary of State at least 54 days prior to the primary election for the general election in any year of a national convention a petition requesting that the name of a person therein indorsed shall be printed on the primary ticket of such political party as candidate for the position of delegate-at-large or alternate-at-large, to be chosen by the party voters throughout the State to the national convention of

that party, or as a delegate or alternate to be chosen to that convention by the voters of any congressional district.

The signers to the petition for any delegate-at-large or alternate-at-large shall be legal voters resident in the State; and the signers for any delegate or alternate from any Congressional district shall be voters of such district.

The Secretary of State shall not later than the 48th day preceding the primary election for the general election certify to each county clerk and county board such nominations for delegates and alternates-at-large and the nominations for delegate or alternate for any Congressional district.

Amended by L.1948, c. 2, p. 45, § 29; L.1974, c. 9, § 2, eff. March 15, 1974; L.1985, c. 92, § 22, eff. March 26, 1985.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, §330, p. 820. **Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.  
 Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

#### 19:24-5. Delegates grouped; choice for president included in petition

Candidates for the position of delegates or alternates may be grouped together, if they so request in their petitions, and in any year of a presidential election may also have the name of the candidate for President whom they favor placed opposite their individual names or opposite such groups, if they so request in their petitions and if the written consent of such candidate for President is endorsed upon their petitions, under the caption "Choice for President."

Amended by L.1944, c. 8, p. 23, § 1; L.1974, c. 9, § 3, eff. March 15, 1974.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, §331, p. 820.

#### Library References

##### Texts and Treatises

26 Am Jur 2d, Elections §§207, 210.

#### 19:24-6. Delegates and alternates at large; election; ballots

For the purposes of electing delegates-at-large and alternates-at-large and district delegates and alternates to national conventions of the political parties in counties in which paper ballots are used, the county clerk, in prescribing the form of sample ballots and in

arranging the names of candidates on the official ballots, shall so arrange the ballot that each voter may vote for each candidate for delegate-at-large and alternate-at-large and each district delegate and alternate individually, or in the alternative, may vote by a single marking indicating a vote for all such candidates who have requested to be grouped together in accordance with the provisions of Revised Statutes 19:24-5, in which case such vote shall constitute and shall be tallied as a separate vote for each of the candidates listed in the group.

L.1968, c. 28, § 1, eff. May 6, 1968.

#### Historical and Statutory Notes

**Title of Act:**

An Act relating to the election of certain delegates-at-large and alternates-at-large and district delegates and alternates to national conventions of the political parties. L.1968, c. 28.

## CHAPTER 25

### PETITION INDORSING CANDIDATE FOR PRESIDENT

#### Section

19:25-1, 19:25-2. Repealed.

19:25-3. Number of signers; form, preparation and filing of petition; consent of candidate unnecessary.

19:25-4. Certification of names indorsed; candidate may decline.

#### Library References

Elections ⇨ 141 et seq.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 91, 106 et seq.

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**19:25-1, 19:25-2. Repealed by L.1944, c. 8, p. 23, § 2**

#### Historical and Statutory Notes

Section 19:25-1, derived from L.1930, c. 187, p. 821, § 332, related to the number of signers, form, preparation and filing of petitions. For provisions relating to similar subject matter, see § 19:25-3.

Section 19:25-2, which derived from L.1930, c. 187, p. 821, § 333, related to

certification of names by secretary of state to county clerks and declinations. For provisions relating to similar subject matter, see § 19:25-4.

**19:25-3. Number of signers; form, preparation and filing of petition; consent of candidate unnecessary**

Not less than one thousand voters of any political party may file a petition with the Secretary of State on or before the 54th day before a



primary election in any year in which a President of the United States is to be chosen, requesting that the name of the person indorsed therein as a candidate of such party for the office of President of the United States shall be printed upon the official primary ballot of that party for the then ensuing election for delegates and alternates to the national convention of such party.

The petition shall be prepared and filed in the form and manner herein required for the indorsement of candidates to be voted for at the primary election for the general election, except that the candidate shall not be permitted to have a designation or slogan following his name, and that it shall not be necessary to have the consent of such candidate for President indorsed on the petition.

L.1952, c. 2, p. 12, § 1. Amended by L.1985, c. 92, § 23, eff. March 26, 1985.

#### Historical and Statutory Notes

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

#### Title of Act:

An Act concerning elections, and supplementing chapter twenty-five of Title 19 of the Revised Statutes. L.1952, c. 2, p. 12.

#### Library References

Elections ⇨144.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 108, 135.

#### 19:25-4. Certification of names indorsed; candidate may decline

The Secretary of State shall certify the names so indorsed to the county clerk of each county not later than the 48th day before such primary election, but if any person so indorsed shall on or before such date decline in writing, filed in the office of the Secretary of State, to have his name printed upon the primary election ballot as a candidate for President, the Secretary of State shall not so certify such name.

L.1952, c. 2, p. 13, § 2. Amended by L.1985, c. 92, § 24, eff. March 26, 1985.

#### Historical and Statutory Notes

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

## CHAPTER 26

### ANY PRIMARY

#### Section

- 19:26-1. Return of election documents and equipment.  
19:26-2. Primary books; public inspection; removal of names from.  
19:26-3. Repealed.

#### Library References

- Elections ⇄ 126(7).  
WESTLAW Topic No. 144.  
C.J.S. Elections § 119.

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#### 19:26-1. Return of election documents and equipment

At the close of all primary elections held according to the provisions of this title, and after counting the ballots cast at such primary and making the statements thereof as herein provided, each district board shall place all ballots voted at the election and all spoiled and unused ballots inside the ballot boxes used at such election, and after locking and sealing the same, shall forthwith deliver the ballot boxes to the municipal clerk and the keys thereof to the county clerk. The district board in municipalities not having permanent registration shall deliver to the county clerk the party primary poll books of the previous year, together with the primary election registry books and the primary party poll books made up at the current primary election. In all municipalities having permanent registration, the signature copy register binders and the current primary party poll books shall be returned by the district boards to the commissioner, not later

than noon of the day following the primary election for the general election.

The commissioner shall return the primary party poll books to the municipal clerks in municipalities having permanent registration not later than one month preceding the next primary election.

In all municipalities not having permanent registration the register of voters shall be returned by the district boards to the county clerk not later than the day following the primary election for the general election.

The county clerks, in counties other than counties of the first class, shall, during the ten days next preceding the third registry day deliver, at their offices or in any other way they may see fit, the register of voters to the respective district boards.

The county clerks in counties of the first class shall deliver the register of voters to the municipal clerks, who shall deliver such register to the district boards at the same time and with the official general election sample ballots.

#### Historical and Statutory Notes

**Source:**

L.1930, c. 187, ¶323, p. 817.

L.1931, c. 374, § 16, p. 957.

L.1933, c. 259, § 1, p. 697.

#### 19:26-2. Primary books; public inspection; removal of names from

The party primary poll books shall be subject to public inspection, and any voter whose name appears therein may apply to a judge of the Superior Court in the county, at any time prior to the next primary election to have the person's name stricken from such book, and the court shall have power to hear the application in a summary way at such time and upon such notice to that person as it may prescribe, and if satisfied that the applying voter's name has been improperly placed on such primary book, the court may make an order directing the commissioner, the county clerk or the municipal clerk, as the case may be, to erase the name from the primary book, and the commissioner or clerk, as the case may be, shall thereupon erase the same.

Amended by L.1953, c. 19, p. 339, § 26; L.1991, c. 91, § 246, eff. April 9, 1991.

#### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶324, p. 818,  
amended by L.1931, c. 374, § 17, p. 958.

**Library References**

Elections ⇨126(1).

WESTLAW Topic No. 144.

C.J.S. Elections § 111 et seq.

**19:26-3. Repealed by L.1947, c. 104, p. 529, § 9**

**Historical and Statutory Notes**

Section, which derived from L.1930, c. 187, p. 818, § 325, amended by L.1931, c. 374, p. 959, § 18, provided for the custody of party primary poll books.

**SUBTITLE 4**  
**SPECIAL ELECTIONS AND**  
**FILLING VACANCIES**

- Chapter**  
**27. General Provisions.**  
**27A. Recall Elections.**

**CHAPTER 27**  
**GENERAL PROVISIONS**

**ARTICLE 1. PROCEDURE**

**Section**

- 19:27-1. Nominations, elections and ascertainment and certification of results as provided for primary and general elections.  
19:27-2. New register not required in unchanged election districts.  
19:27-3. Nomination of candidates by petition.

**ARTICLE 2. FILLING VACANCIES**

- 19:27-4. Congress; writ of election.  
19:27-5. Nature of writs of election; signatures.  
19:27-6. Vacancies in Senate and House of Representatives; writ; designation of election day; special election and primary.  
19:27-6.1. Repealed.  
19:27-7. Writs delivered to secretary of state.  
19:27-8. Copies of writs delivered to county clerks and county boards.  
19:27-9. Newspaper publication of writs.  
19:27-10. Repealed.  
19:27-10.1. Vacancy in house of representatives between dates preceding primary and general elections.  
19:27-11. Filling vacancies in county and municipal offices.  
19:27-11.1. Filling vacancies in legislature.  
19:27-11.2. Interim successor to fill vacancy pending election and qualification of permanent successor; selection by political party; certificate and certified statement of selection.  
19:27-11.3. Nomination of candidate for vacant office by political party; written evidence of acceptance.  
19:27-11.4. Vacancy with respect to member of legislature not elected from political parties with highest votes; continuation of vacancy.  
19:27-12. Notice of other special elections.

**ARTICLE 3. REGISTRATION**

- 19:27-13. Make-up of registers of voters.  
19:27-14. Delivery of registers; disposition after election.

**Library References**

Elections ☞32.

WESTLAW Topic No. 144.

C.J.S. Elections § 66.

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**ARTICLE 1. PROCEDURE****19:27-1. Nominations, elections and ascertainment and certification of results as provided for primary and general elections**

Except as herein otherwise provided candidates for public office to be voted for at any special election shall be nominated and the special election shall be conducted and the results thereof ascertained and certified in the same manner and under the same conditions, restrictions and penalties as herein provided for primary and general elections.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §334, p. 821.

**Library References****Texts and Treatises**

25 Am Jur 2d, Elections § 3.

## Notes of Decisions

Absentee voters 3

Ballots 1

Notice 2

## 1. Ballots

A blanket ballot need not be used at a special election for the adoption of a bond issue pursuant to Borough Act, L.1910, p. 205, § 1, and the General Election Act, L.1898, p. 280, § 85, repealed; it being permissible to use separate ballots thereat. *Schuck v. Borough of Stone Harbor*, 87 N.J.L. 484, 95 A. 133 (1915).

## 2. Notice

A local option election under L.1918, p. 14, repealed, held on the day a general election was held, to determine whether sale of intoxicating liquors as a beverage should be prohibited in a township, at which election the proposition carried by a majority of 44 votes, is void, where

there were 75 legal voters of the township in the military service of the United States who did not vote, and who received no affirmative notice of the election as provided by L.1918, p. 437, § 1 et seq., repealed. *Perrine v. Hanover Tp.*, *Morris County*, 94 N.J.L. 559, 109 A. 353 (1920).

## 3. Absentee voters

A special election on the question of prohibition, under L.1918, p. 14, § 1 et seq., repealed, Act Jan. 29, 1918, L.1918, p. 14, will be set aside, where L.1918, p. 437, § 1 et seq., repealed, passed in conformity to the constitutional mandate allowing electors engaged in the military service outside of the election district to vote, was not complied with, and the number of such disfranchised electors was sufficient to have changed the result; the right to vote being an inherent one. *In re Holman*, 104 A. 212 (1918).

## 19:27-2. New register not required in unchanged election districts

In all cases where the boundaries of an election district shall have remained unchanged between one election and the time for preparing registers of voters for a next ensuing special election, it shall not be necessary for the district board of such district to make a new register of voters, but only to correct and revise the register of voters used at the general election next preceding the special election.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶335, p. 822.

## Library References

## Texts and Treatises

25 Am Jur 2d, Elections §§109, 110.

## 19:27-3. Nomination of candidates by petition

Candidates to be voted for at a special election shall be nominated exclusively by the members of the same political party by petition in the manner herein provided.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶336, p. 822.

**Library References****Forms**

9 Am Jur Pl & Pr Forms, Rev, Elections, Form 41.

**Texts and Treatises**

25 Am Jur 2d, Elections §§168 to 173.

**ARTICLE 2. FILLING VACANCIES****Library References**

Elections Ⓒ32.

WESTLAW Topic No. 144.

C.J.S. Elections § 66.

**19:27-4. Congress; writ of election**

When any vacancy happens in the representation of this State in the United States Senate or in the House of Representatives, the Governor shall issue a writ of election to fill the same unless the term of service of the person whose office shall become vacant will expire within six months next after the happening of the vacancy and except as hereinafter provided.

Amended by L.1948, c. 438, p. 1700, § 9; L.1981, c. 429, § 2, eff. Jan. 9, 1982; L.1988, c. 126, § 2, eff. Sept. 16, 1988, operative Nov. 8, 1988.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, ¶337, p. 822.

**Library References**

United States Ⓒ7.

WESTLAW Topic No. 393.

C.J.S. United States §§ 9, 10.

**Texts and Treatises**

26 Am Jur 2d, Elections § 196.

**19:27-5. Nature of writs of election; signatures**

Every writ of election issued under the provisions of this title shall be of the nature of a proclamation, and shall be signed by the Governor.

Amended by L.1988, c. 126, § 3, eff. Sept. 16, 1988, operative Nov. 8, 1988.



### Historical and Statutory Notes

Source: L.1930, c. 187, ¶338, p. 823.

#### 19:27-6. Vacancies in Senate and House of Representatives; writ; designation of election day; special election and primary

In the case of a vacancy in the representation of this State in the United States Senate or House of Representatives, the writ may designate the next general election day for the election, but if a special day is designated, it shall specify the cause and purpose of such election, the name of the officer in whose office the vacancy has occurred, the day on which a special primary election shall be held, which shall be not less than 65 days nor more than 71 days following the date of such proclamation, and the day on which the special election shall be held, which shall be not less than 46 nor more than 52 days following the day of the special primary election. The writ shall also specify the day or days when the district boards shall meet for the purpose of making, revising or correcting the registers of voters to be used at such special election.

If the vacancy happens in the representation of this State in the United States Senate the election shall take place at the general election next succeeding the happening thereof, unless the vacancy shall happen within 64 days next preceding the primary election prior to the general election, in which case it shall be filled by election at the second succeeding election, unless the Governor shall deem it advisable to call a special election therefor, which he is authorized hereby to do.

If the vacancy happens in the representation of this State in the House of Representatives in any year, not later than the 65th day prior to the day for holding the next primary election for the general election, the Governor shall issue a writ of election to fill such vacancy, designating in said writ the next general election day as the day on which the election shall be held to fill such vacancy. The nomination of candidates to fill such vacancy shall be made in the same manner as the nomination of other candidates at the said primary election for the general election.

Amended by L.1957, c. 2, p. 11, § 1; L.1981, c. 429, § 3, eff. Jan. 9, 1982; L.1985, c. 92, § 25, eff. March 26, 1985.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶339, p. 823.	Statement: Committee statement to
Effective date and application of	Senate, No. 2244—L.1985, c. 92, see
L.1985, c. 92, see Historical Note under	§ 18A:9-10.
§ 18A:9-10.	

**Library References**

United States ☞7.

WESTLAW Topic No. 393.

C.J.S. United States §§ 9, 10.

**19:27-6.1. Repealed by L.1988, c. 126, § 11, eff. Sept. 16, 1988, operative Nov. 8, 1988****Historical and Statutory Notes**

The repealed section, added by L.1981, c. 429, § 4, amended by L.1983, c. 156, § 1; L.1985, c. 92, § 26, set forth the contents of a writ of election if a vacancy

occurred in the legislature, and set the rules for the determination of the special election day. See, now, § 19:27-11.1.

**19:27-7. Writs delivered to secretary of state**

Every such writ shall, by the officer issuing the same, be delivered forthwith to the secretary of state, who shall forthwith affix the seal of the state and file the same in his office.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §340, p. 824.

**19:27-8. Copies of writs delivered to county clerks and county boards**

In case such vacancy happens in the representation of this State in the United States Senate, the Secretary of State shall cause as many copies of such writ to be made as there are counties in the State, and in case such vacancy happens in the representation of this State in the House of Representatives, he shall cause as many copies of such writ to be made as there shall be counties in the vacant congressional district, certify each of the same to be true under his hand and cause them to be delivered to the county clerk and county board of each of such counties.

Amended by L.1988, c. 126, § 4, eff. Sept. 16, 1988, operative Nov. 8, 1988.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §341, p. 824.

**19:27-9. Newspaper publication of writs**

The county board of each of such counties shall forthwith after the receipt of a copy of such writ cause the same to be published at least once a week until the time of such primary, general or special election in at least two newspapers printed and published in the county, if so many there be.

The publication of the writs shall be at the expense of the State if the election shall be held to fill a vacancy in the representation of the State in the United States Senate or in the House of Representatives.

Amended by L.1981, c. 429, § 5, eff. Jan. 9, 1982; L.1988, c. 126, § 5, eff. Sept. 16, 1988, operative Nov. 8, 1988.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶342, p. 824.

### 19:27-10. Repealed by L.1957, c. 2, p. 12, § 2

#### Historical and Statutory Notes

Section, which derived from L.1931, c. 406, p. 1475, § 1, related to vacancy in house of representatives.

### 19:27-10.1. Vacancy in house of representatives between dates preceding primary and general elections

When a vacancy, howsoever caused, happens in the representation of this State in the House of Representatives in any year later than the 64th day prior to the day for holding the primary election for the general election but before the 52nd day preceding the day of the general election, and the unexpired term to be filled exceeds one year, the Governor, in issuing a writ of election to fill such vacancy, may designate in said writ the next general election day as the day on which the election shall be held to fill such vacancy and that no primary election shall be held for nomination of candidates to fill such vacancy.

In such case, each political party shall select its candidate to fill such vacancy in the same manner prescribed in R.S. 19:13-20 for selecting candidates to fill vacancies arising among candidates nominated at primary elections, except that the time for making such selection and filing the statement thereof shall be within 10 days following the issuance of the writ of election.

In such case, petitions of nomination of other candidates shall be filed in the office of the Secretary of State within 10 days of the date of such proclamation.

The Secretary of State on the eleventh day following the date of such proclamation shall certify to the clerk and county board of each county affected by the vacancy a statement of all candidates selected and nominated for the office so vacated.

The election to fill such vacancy shall in all other respects be conducted as though it were being conducted to fill the office upon the expiration of the term of the incumbent.

L.1945, c. 206, p. 703, § 1. Amended by L.1972, c. 181, § 2, eff. Dec. 12, 1972; L.1985, c. 92, § 27, eff. March 26, 1985.

**Historical and Statutory Notes**

Section derived from L.1931, c. 406, p. 1475, § 1.

Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

**Title of Act:**

An Act concerning elections, and supplementing chapter twenty-seven of Title 19 of the Revised Statutes. L.1945, c. 206, p. 703.

**Library References**

- United States ⇨7.
- WESTLAW Topic No. 393.
- C.J.S. United States §§ 9, 10.

**Notes of Decisions**

**Legislative intent 1**

**1. Legislative intent**

Statutes concerning the State committees of political parties manifest no inten-

tion to create a pervasive regulation of intraparty operations and procedures. *Rogers v. State Committee of Republican Party*, 96 N.J.Super. 265, 232 A.2d 852 (L.1967).

**19:27-11. Filling vacancies in county and municipal offices**

In the event of any vacancy in any county or municipal office, except for the office of a member of the board of chosen freeholders, which vacancy shall occur after the 11th day preceding the last day for filing petitions for nominations for the primary election and on or before the 51st day preceding the general election, each political party may select a candidate for the office in question in the manner prescribed in R.S.19:13-20 for selecting candidates to fill vacancies among candidates nominated at primary elections. A statement of such selection shall be filed with the county clerk not later than the close of business of the 48th day preceding the date of the general election.

Besides the selection of candidates by each political party as before provided, candidates may also be nominated by petition in a similar manner as herein provided for direct nomination by petition for the general election but the petition shall be filed with the county clerk at least 48 days prior to such general election.

When the vacancy occurs in a county office the county clerk shall forthwith give notice thereof to the chairman of the county committee of each political party and in counties of the first class to the county board, and in case the vacancy occurs in a municipal office the municipal clerk shall forthwith give notice thereof to the county clerk, the chairman of the county committee of each political party and in counties of the first class the county board.

The county clerk shall print on the ballots for the territory affected, in the personal choice column, the title of office and leave a proper space under such title of office; and print the title of office and the names of such persons as have been duly nominated, in their proper columns.

Amended by L.1951, c. 119, p. 529, § 1; L.1972, c. 181, § 3, eff. Dec. 12, 1972; L.1981, c. 429, § 6, eff. Jan. 9, 1982; L.1985, c. 92, § 28, eff. March 26, 1985; L.1988, c. 126, § 6, eff. Sept. 16, 1988, operative Nov. 8, 1988; L.1990, c. 33, § 1, eff. June 4, 1990.

### Historical and Statutory Notes

**Source:** L.1930, c. 187, ¶343, p. 825, amended by L.1934, c. 152, § 1, p. 390.  
Effective date and application of L.1985, c. 92, see Historical Note under § 18A:9-10.

**Statement:** Committee statement to Senate, No. 2244—L.1985, c. 92, see § 18A:9-10.

Provisions relating to filling vacancies in the legislature are now contained in § 19:27-11.1.

### Cross References

Election to fill vacancies, see § 40A:16-7 et seq.

### Library References

Officers and Public Employees ⇄57.  
States ⇄28(1).  
WESTLAW Topic Nos. 283, 360.

C.J.S. Officers and Public Employees § 78.  
C.J.S. States §§ 42, 43.

### Notes of Decisions

**Election 4**  
**Notice, selection of candidates 3**  
**Offices resulting from census 5**  
**Selection of candidates 2, 3**  
    **In general 2**  
    **Notice 3**  
**Validity 1**

dates for filing of nomination petitions in event of vacancies in office; however, judicial insertion of constitutionally required provision setting uniform filing period of seven days was permissible since it did not do violence to legislative purpose. *Marotta v. Burgio*, 185 N.J.Super. 172, 447 A.2d 937 (L.1982).

#### 2. Selection of candidates—In general

Where this section authorizing county committee to select candidate to fill vacancy in office of assemblyman did not set forth procedure whereby will of com-

#### 1. Validity

This section is constitutionally deficient in providing different time periods for independent candidates and party candi-

mittee should be ascertained and statute had not been judicially interpreted, court would not vitiate action taken by county chairman who, in good faith, determined upon procedure which elicited expression of county committee. *Campi v. Aikins*, 43 N.J. 319, 204 A.2d 345 (1964).

Statutory procedure for appointment by county committee was exclusive method for selection of candidate for vacancy in county clerk's office which occurred after time limit for filing petition for primary nominations, and person who was so appointed as party's candidate was entitled to place on ballot in preference to person who received write-in vote at primary election. *Rafferty v. Schatzman*, 81 N.J. Super. 58, 194 A.2d 588 (L.1963), affirmed 81 N.J. Super. 64, 194 A.2d 591.

Provisions of § 19:14-12 directing the drawing of names for position on ballots on day following last day for filing petition for general election, as respects independent candidate for Governor, requires drawing for positions on ballots to be held on day following day on which such petitions are required to be filed, as against contention that, under provision of this section relating to special elections and filling vacancies, a petition nominating a candidate might be filed up to 22 days prior to the general election and that the drawing should be held on day following filing of the petition. In *re Murray*, 119 N.J.L. 98, 194 A. 443 (1937).

### **3. — Notice, selection of candidates**

This section authorizing county committee to select candidate to fill vacancy in office of assemblyman should be construed to require that notice (written unless circumstances permit only oral) be given to each member of county committee of time and place of meeting and that selection be made by those who appear. *Campi v. Aikins*, 43 N.J. 319, 204 A.2d 345 (1964).

### **4. Election**

This section makes unnecessary special primary election in connection with vacancies and makes available machinery of general election for such purpose. *Op. Atty. Gen.*, Aug. 3, 1950, No. 53.

### **5. Offices resulting from census**

Where new offices on township committees in townships exceeding a population of 4,500 (except townships located in 6th class counties) were created as a result of the 1960 census, which was promulgated at a date too late for the nominations at regular primary election of candidates for newly established offices, a "vacancy" existed in these offices, and these vacancies should be filled according to the procedure set out in this section which makes unnecessary a special primary election in connection with certain vacancies and yet makes available the machinery of the general election for the filling of such vacancies. *F.O.*1961, No. 13.

## **19:27-11.1. Filling vacancies in legislature**

When any vacancy happens in the Legislature otherwise than by expiration of term, it shall be filled by election for the unexpired term only at the next general election occurring not less than 51 days after the occurrence of the vacancy, except that no such vacancy shall be filled at the general election which immediately precedes the expiration of the term in which the vacancy occurs. In the event a vacancy eligible to be filled by election hereunder occurs on or before the sixth day preceding the last day for filing petitions for nomination for the primary election, such petitions may be prepared and filed for nomination in that primary election in the manner provided by article 3 of chapter 23 of this Title. In the event the vacancy occurs after that sixth day preceding the last day for filing petitions for nomination for the primary election, a political party may select a candidate for the office in question in the manner prescribed in subsections a. and b. of R.S. 19:13-20 for selecting candidates to fill

vacancies among candidates nominated at primary elections. A statement of such selection under R.S. 19:13-20 shall be filed with the Secretary of State not later than the 48th day preceding the date of the general election.

Besides the selection of candidates by each political party, candidates may also be nominated by petition in a manner similar to direct nomination by petition for the general election; but if the candidate of any party to fill the vacancy will be chosen at a primary election, such petition shall be filed with the Secretary of State at least 55 days prior to the primary election; and if no candidate of any party will be chosen at a primary election, such petition shall be filed with the Secretary of State not later than 12 o'clock noon of the day on which the first selection meeting by any party is held under this section to select a nominee to fill the vacancy.

When the vacancy occurs in the Senate or General Assembly, the county clerk of each county which is comprised in whole or part in the Senate or General Assembly district shall forthwith give notice thereof to the chairman of the county committee of each political party and in counties of the first class to the county board.

The county clerk shall print on the ballots for the territory affected, in the personal choice column, the title of office and leave a proper space under such title of office; and print the title of office and the names of such persons as have been duly nominated, in their proper columns.

L.1988, c. 126, § 7, eff. Sept. 16, 1988, operative Nov. 8, 1988. Amended by L.1990, c. 56, § 2, eff. July 6, 1990.

**Historical and Statutory Notes**

<p><b>Statement:</b> Committee statement to Senate, No. 272—L.1990, c. 56, see § 19:13-20.1.</p> <p><b>Title of Act:</b> An Act concerning the filling of vacancies in the Legislature, amending R.S.</p>	<p>19:13-20, R.S. 19:27-4, R.S. 19:27-5, R.S. 19:27-8, R.S. 19:27-9 and R.S. 19:27-11, supplementing chapter 3 of Title 19 of the Revised Statutes and repealing R.S. 19:3-28 and section 4 of P.L. 1981, c. 429. L.1988, c. 126.</p>
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**Notes of Decisions**

**Retroactive effect 1**

**1. Retroactive effect**

Absent some public interest that is sufficiently strong to permit conclusion that

Legislature intended strict enforcement, statutes providing requirements for candidate's name to appear on the ballot will not be construed so as to deprive voters of opportunity to make a choice. *Catania v. Haberle*, 123 N.J. 438, 588 A.2d 374 (1990).

**19:27-11.2. Interim successor to fill vacancy pending election and qualification of permanent successor; selection by political party; certificate and certified statement of selection**

In the case of a vacancy occurring with respect to a member of the Senate or General Assembly who was elected as the candidate of a political party which at the last preceding general election held for all members of the General Assembly received the largest number of votes or the next largest number of votes in the State for members of the General Assembly, for the interim period pending the election and qualification of a permanent successor to fill the vacancy, or for the interim period constituting the remainder of the term in the case of a vacancy occurring which cannot be filled pursuant to section 7 of this amendatory and supplementary act <sup>1</sup> at a general election, the vacancy shall be filled within 35 days by a member of the political party of which the person who vacated the office was the candidate at the time of his election thereto. The interim successor shall be selected by the appropriate political party's county committee or committees in the same manner prescribed in subsections a. and b. of R.S. 19:13-20 for selecting candidates to fill vacancies among candidates nominated at primary elections, and a statement of the selection of that successor shall be certified to and filed with the Secretary of State in the same manner prescribed by subsection d. of that section for certifying statements concerning the selection of such candidates.

The Secretary of State shall thereupon issue to the interim successor a certificate of selection based upon that filed statement of selection, and shall sign his name and affix the seal of the State thereto, and shall without delay deliver that statement to the person so selected. The Secretary of State shall also prepare a certified statement of selection, similar in form to the certificate but addressed to the presiding officer of the house of the Legislature in which the vacancy occurred, and shall sign the statement, affix the seal of the State thereto, and promptly deliver the same to the President of the Senate or Speaker of the General Assembly as appropriate.

L.1988, c. 126, § 8, eff. Sept. 16, 1988, operative Nov. 8, 1988.

<sup>1</sup> N.J.S.A. § 19:27-11.1.

**19:27-11.3. Nomination of candidate for vacant office by political party; written evidence of acceptance**

Members of the political party's county committee or committees who are empowered to select a candidate for the vacated office shall only nominate a candidate from the floor during the selection meet-



ing called under R.S. 19:13-20 by the chairman or chairmen of the committee or committees and shall present written evidence of the nominee's acceptance of the nomination.

L.1988, c. 126, § 9, eff. Sept. 16, 1988, operative Nov. 8, 1988.

#### **19:27-11.4. Vacancy with respect to member of legislature not elected from political parties with highest votes; continuation of vacancy**

In the case of a vacancy occurring with respect to a member of the Senate or General Assembly who was not elected as the candidate of such a political party, the office shall remain vacant pending expiration of the term.

L.1988, c. 126, § 10, eff. Sept. 16, 1988, operative Nov. 8, 1988.

#### **19:27-12. Notice of other special elections**

Notice of special elections other than those to fill vacancies in the United States senate, United States house of representatives, state senate or general assembly shall be given in accordance with the provisions of any statute, ordinance or resolution relative thereto. If such statute, ordinance or resolution fails to provide for the giving of notice by officials to officials or by officials to the public, such notice shall be given in the manner herein provided for giving notice of the general election so far as may be.

#### **Historical and Statutory Notes**

Source: L.1930, c. 187, ¶344, p. 826.

#### **Library References**

##### **Texts and Treatises**

26 Am Jur 2d, Elections § 195.

#### **Notes of Decisions**

##### **Municipal government 2 Notice 1**

###### **1. Notice**

In elections of a special character, where time and place were not fixed by law, notice of the election must be given. *Morgan v. City of Gloucester City*, 44 N.J.L. 137 (1882).

Notices in elections of a special character where time and place were not fixed by law, which do not state the place or

places where polls would be opened, were insufficient, and the election thereby rendered invalid. *Morgan v. City of Gloucester City*, 44 N.J.L. 137 (1882).

###### **2. Municipal government**

The General Election Law, especially this section, and the directions in the Optional Municipal Charter Law give sufficient guidance to city clerk as to how to proceed with special election on question of adopting optional plan of government. *Chasis v. Tumulty*, 8 N.J. 147, 84 A.2d 445 (1951).

## ARTICLE 3. REGISTRATION

## Library References

Elections ⇨96, 110.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 36, 47.

**19:27-13. Make-up of registers of voters**

The registers of voters for such special elections shall be made up as herein provided with such modifications, if any, as to the time of meeting of the district boards as the county boards deem necessary.

## Historical and Statutory Notes

Source: L.1930, c. 187, §345, p. 826.

## Library References

## Texts and Treatises

25 Am Jur 2d, Elections §§95-115.

**19:27-14. Delivery of registers; disposition after election**

In each municipality in counties not having a superintendent of elections, the commissioner shall deliver to the clerk of the municipality in which the special election is to be held, at least thirty days prior thereto, the signature copy registers. The municipal clerk shall deliver such signature copy registers and also the registers of voters to the several district boards in time to be used at the special election.

In counties having a superintendent of elections the commissioner shall deliver the signature copy registers at his office or in any other way he may see fit, and the municipal clerks shall deliver the registers of voters to the several district boards, in time to be used at the special election.

At the close of the special election the district boards shall return such registers as provided in the case of a general election.

Amended by L.1947, c. 168, p. 750, § 15.

## Historical and Statutory Notes

Source: L.1930, c. 187, §346, p. 826.

## Library References

Elections ⇨111.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 50.

**Texts and Treatises**

25 Am Jur 2d, Elections § 109.

## CHAPTER 27A

### RECALL ELECTIONS

#### Section

- 19:27A-1. Short title.  
19:27A-2. Recall of United States Senator or Representative authorized.  
19:27A-3. Definitions.  
19:27A-4. Time of election; statement of reasons or grounds; commencement of proceedings.  
19:27A-5. Petition; number of signatures; filing; number of officials cited.  
19:27A-6. Notice of intention.  
19:27A-7. Duties of recall election official; answer of official cited.  
19:27A-8. Petition; form of and signatures on.  
19:27A-9. Responsibilities of circulators.  
19:27A-10. Deadlines; resignation of official.  
19:27A-11. Filing of entire petition; determining number of signatures.  
19:27A-12. Challenges to determination of number of signatures.  
19:27A-13. Certificate of sufficiency; calling of election.  
19:27A-14. Conduct of election.  
19:27A-15. Filling of vacancies; recall ballot.  
19:27A-16. Election results; further petitions.  
19:27A-17. Campaign committees and contributions.  
19:27A-18. Repealer.

#### Library References

#### Comments

Uniform recall election law, see New Jersey Practice vol. 35, Pane, § 489A.

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**19:27A-1. Short title**

This act shall be known and may be cited as the "Uniform Recall Election Law."

L.1995, c. 105, § 1, eff. May 17, 1995.

**Senate State Government Committee Statement  
Assembly, Nos. 25 and 1207—L.1995, c. 105**

The Senate State Government Committee reports favorably and with committee amendments the Assembly Committee Substitute for Assembly, Nos. 25 and 1207.

This bill would implement the amendment to the State Constitution, approved by the voters on November 2, 1993, which provides that the people of this State shall have the power to recall a United States Senator or Representative elected from this State or any State or local elected official, who has served one year of a term. The procedures which trigger a recall election may be commenced not earlier than the 50th day preceding the completion of the first year of a term (one year of service in the case of a person appointed to fill a vacancy) by the official sought to be recalled. However, the recall election itself would not be held until after the official has completed one year of a term or of service, as appropriate.

The recall process would be commenced by the filing of a notice of intention by the sponsors of the recall effort with the official authorized by law to receive nominating petitions for the office of the official sought to be recalled. The petition would designate between five and 15 sponsors as a recall election committee to represent the sponsors and signers of the recall petition in matters relating to the recall effort. At the option of the recall committee, the notice of intention may contain a statement, not in excess of 200 words, of the reasons for the recall. The sponsors shall determine whether the recall election will be held at the next general election or regular election, as appropriate, or at a special election and a statement to this effect shall be included in the notice of intention. The notice of intention would be served on the official sought to be recalled and printed in at least one newspaper. The official sought to be recalled would have the opportunity to file an answer, not in excess of 200 words, to the proposed recall.

A recall committee would be responsible for preparing and circulating a petition. Each page of the petition must include a copy of the notice of intention and the incumbent's answer thereto. A petition would have to be signed by at least 25% of the registered voters of the jurisdiction from which the incumbent had been elected in order for a recall election to be called. The bill contains requirements applicable to signers and circulators which are intended to ensure the validity of signatures and, in the event that paid circulators are used to solicit signatures to the petition, disclosure of that fact. A procedure is established for verifying signatures.

In the case of an office which is ordinarily filled at the general election, a recall election shall be held at the next general election occurring at least 55 days following the fifth business day after

service of the certification, unless it was indicated in the notice of intention that the recall election shall be held at a special election in which case the recall election official shall order and fix a date for holding the recall election at a special election. In the case of an office which is ordinarily filled at an election other than the general election, a recall election shall be held at the next general election or the next regular election for that office occurring at least 55 days following the fifth business day after service of the certification, unless it was indicated in the notice of intention that the recall election shall be held at a special election in which case the recall election official shall order and fix a date for holding the recall election at a special election. Whenever a recall election is to be held at a special election, it shall be scheduled for the next Tuesday occurring during the period beginning with the 55th day and ending on the 61st day following the fifth business day after service of the certification of the petition or, if that Tuesday falls during the 18-day period before or after a day on which any election, including a primary election, is to be held or shall have been held within all or any part of the jurisdiction, then the first Tuesday thereafter which does not fall within such 18-day period. A vacancy in the office of Governor or member of the Legislature resulting from a recall election would be filled in the same manner provided in the State Constitution for vacancies in those offices resulting from other causes. Other offices vacated as the result of a recall election would be filled through the election of a successor at the recall election. The provisions of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.) would apply to a recall election, except that the contribution limits established by federal law would apply when a federal elected official is sought to be recalled. Public funding would not be provided in the context of a gubernatorial recall effort.

The bill also provides that neither a recall committee nor a recall defense committee shall solicit or accept contributions in connection with a recall effort until after a copy of an approved notice of intention is served on the official sought to be recalled.

The bill repeals and replaces existing laws which authorize some counties and municipalities to conduct recall elections.

#### **COMMITTEE AMENDMENTS**

The committee amended the committee substitute to:

- 1) provide that a recall election shall be held at a general election or at a special election if a special election was requested in the notice of intention; in the case of an office which is ordinarily filled at an election other than the general election, a recall election may also be held at the next regular election for that office; a recall election shall not coincide with a primary election;
- 2) prohibit a recall committee or a recall defense committee from soliciting or accepting contributions in connection with a recall effort until after an approved notice of intention is served on the official sought to be recalled;
- 3) vest responsibility for promulgating rules and regulations concerning the solicitation of signatures by paid advertisement, paid

mailing or by paid circulators in the Election Law Enforcement Commission instead of in the Attorney General; and

4) eliminate provisions requiring a candidate for federal office to complete a statement waiving or refusing to waive the candidate's right under federal law to be free from recall.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on or before this act's effective date. Any

such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Title of Act:**

An Act concerning the recall of elected officials and supplementing Title 19 of the Revised Statutes. L.1995, c. 105.

**Library References**

Officers and Public Employees ⇄70.5.  
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees  
§§ 179 to 185.

**19:27A-2. Recall of United States Senator or Representative authorized**

Pursuant to Article I, paragraph 2b. of the New Jersey Constitution, the people of this State shall have the power to recall, after at least one year of service in the person's current term of office, any United States Senator or Representative elected from this State or any State or local elected official in the manner provided herein. L.1995, c. 105, § 2, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**19:27A-3. Definitions**

As used in this act:

"circulator" means an individual, whether paid or unpaid, who solicits signatures for a recall petition;

"elected official" means any person holding the office of United States Senator or member of the United States House of Representa-

tives elected from this State, or any person holding a State or local government office which, under the State Constitution or by law, is filled by the registered voters of a jurisdiction at an election, including a person appointed, selected or otherwise designated to fill a vacancy in such office, but does not mean an official of a political party;

“jurisdiction” means the electoral jurisdiction, including but not limited to the State, or any county or municipality thereof, within which the voters reside who are qualified to vote for an elected official who is sought to be recalled;

“notice of intention” means the notice filed with the recall election official by a recall committee for the purpose of initiating a recall effort;

“recall committee” means a committee formed by persons sponsoring the recall of an elected official which represents the sponsors and signers of a recall petition in matters relating to the recall effort;

“recall election” means an election held for the purpose of allowing the voters of a jurisdiction to decide whether an elected official shall be recalled from office;

“recall election official” means the official authorized by law to receive nominating petitions for an elective office, except that with respect to the recall of the county clerk, it means the Secretary of State;

“recall petition” means a petition prepared and circulated by a recall committee as provided by this act for the purpose of gathering a sufficient number of valid signatures of registered voters to cause a recall election to be called; and

“sponsors” means the proponents of a recall effort who establish a recall committee.

L.1995, c. 105, § 3, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.



**19:27A-4. Time of election; statement of reasons or grounds; commencement of proceedings**

a. An elected official shall be recalled from office upon the affirmative vote of a majority of those voting on the question of recall at a recall election which shall have been held after the officeholder shall have served one year of the term of office from which the person is sought to be recalled. A person serving to fill a vacancy in the term of an elective office shall be subject to recall at such an election after one year of such service. No election to recall an elected official shall be held after the date occurring six months prior to the general election or regular election for that office, as appropriate, in the final year of the official's term.

No statement of reasons or grounds for the holding of a recall election or for the recall at such an election of an elected official shall be required in connection with the preparation or circulation of a recall petition, with the transmittal of any notice required under the provisions of this act,<sup>1</sup> with the submission to the voters of the question of the recall of an elected official, or with any other action or procedure relating to such a recall, and to the extent that any such statement of reasons or grounds is offered by the sponsors of a recall petition or by any other person, the sufficiency of that statement shall be a political rather than a judicial question.

b. The procedures established in this act to initiate the calling of a recall election may be commenced not earlier than the 50th day preceding the completion of the first year of the term of office by the official sought to be recalled. In the case of an official serving to fill a vacancy in the term of an elective office, the procedures established in this act to initiate the calling of a recall election may be commenced not earlier than the 50th day preceding the completion of the first year of such service. However, the recall election itself shall not be held until after the official has completed one year of such term or service, as appropriate.

L.1995, c. 105, § 4, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:27A-1 et seq.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

Notes of Decisions

In general 1  
Time of election 2

A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

2. Time of election

1. In general

Statutory requirements for recall election are clear, specific, and unambiguous, and are not subject to interpretation or relaxation by court. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701

Recall election of school board member could not be placed on ballot of general election scheduled for less than six months before end of school board member's term. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 421, 701 A.2d 439 (A.D.1997).

19:27A-5. Petition; number of signatures; filing; number of officials cited

A recall petition demanding that an election be held for the purpose of deciding whether an elected official shall be recalled from office shall be signed by a number of registered voters of the jurisdiction of the official sought to be recalled equal to at least 25% of the persons registered to vote in that jurisdiction on the date of the general election preceding the date on which the sponsors of the petition file a notice of intention pursuant to section 6 of this act.<sup>1</sup> A recall petition shall be filed with the appropriate recall election official. No recall petition shall demand the holding of an election to recall more than one elected official.

L.1995, c. 105, § 5, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:27A-6.

Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

Notes of Decisions

Filing 1

1. Filing

Filing of recall petition with borough clerk did not void electoral process leading to recall of school board member,

where tenured secretary of school board had been suspended from office for misconduct. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

**Note 1**

Borough clerk is not ordinarily the appropriate official with whom to file recall election petition against school board member. *Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande*, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

Technical, but good faith, mistakes about filing recall petitions should not be permitted to deprive citizens of their franchise or render election void for technical reasons. *Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casag-*

*rnde*, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

School board member could not avail herself of technical error that occurred when recall petitions were filed with borough clerk to invalidate recall election where member did not challenge borough clerk's status as recall election official until more than two months after petitions were filed. *Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande*, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

**19:27A-6. Notice of intention**

Prior to collecting any signatures, the sponsors of a recall petition shall file a notice of intention with the appropriate recall election official. The notice of intention shall contain the following information:

- a. the name and office of the elected official sought to be recalled;
- b. the name and business or residence address of at least three sponsors of the recall petition who shall constitute a recall committee which shall represent the sponsors and signers of the recall petition in matters relating to the recall effort, provided that no recall committee shall sponsor the recall of more than one officeholder and, if a recall effort fails at the ballot, the sponsoring recall committee and the members thereof shall not again sponsor, nor shall the recall committee again finance, an effort to recall the targeted officeholder during the same term of office in which the failed recall effort was attempted;
- c. the name of the recall committee, which shall be expressed in the following form: "COMMITTEE TO RECALL [name of the official sought to be recalled] FROM THE OFFICE OF [name of the office]";
- d. a statement certified by each member of the recall committee that the member is registered to vote in the jurisdiction of the official sought to be recalled and that the member supports the recall of the named official and accepts the responsibilities associated with serving on the recall committee;
- e. at the option of the recall committee, a statement, not in excess of 200 words, of the reasons for the recall; and
- f. a statement as to whether the recall election shall be held at the next general election or regular election, as appropriate, or at a special election, as provided in section 13 of this act.<sup>1</sup>

L.1995, c. 105, § 6, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:27A-13.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**Notes of Decisions**

**Special election 1**

**1. Special election**

Petition for recall election against school board member could not be converted to request for special election

where petition filed made no reference to added cost of special election. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

**19:27A-7. Duties of recall election official; answer of official cited**

a. Upon receiving a notice of intention, the recall election official shall review it for compliance with the provisions of section 6 of this act.<sup>1</sup> If the notice of intention is found to be in compliance, the recall election official shall imprint on the face of that notice a statement of the official's approval thereof, which statement shall identify the public office held by the official and include the signature of the official and the date on which the approval was given, and shall, within three business days of receiving the notice, return a certified copy of the approved notice to the recall committee. If the recall committee has requested that the recall election be held at a special election, the recall election official shall also prepare, within that same three-day period, an estimate of the cost of conducting the recall election which shall be added to the notice of intention and printed on the first page of each section of the petition as required by section 8 of this act.<sup>2</sup> The official shall retain, and shall hold available for public inspection and copying, the original notice so approved for a period of not less than five years from the date of such approval. If the notice of intention is found not to be in compliance, the recall election official shall, within that period of three business days, return the notice, together with a written statement indicating the reasons for that finding, to the recall committee, which shall have the opportunity to file a corrected notice of intention.

b. Within five business days of approving a notice of intention, the recall election official shall serve a copy of the approved notice of intention on the official sought to be recalled by personal delivery or certified mail, and within two weeks of approving the notice of intention shall cause a copy thereof to be printed in a newspaper published in the jurisdiction or, if none exists, in a newspaper generally circulated within the jurisdiction, and affix to the approved notice of intention previously filed an affidavit of the time and manner of service and proof of publication. The copy of the notice of intention which is published shall be abbreviated to include information on only three members of the recall committee who shall be designated for that purpose by the committee. The recall election official shall retain on file the affidavit and proof for so long as the approved notice of intention is retained.

c. Within five business days of being served with a notice of intention, the official sought to be recalled may file an answer to the proposed recall, not to exceed 200 words, with the recall election official if the notice of intention contained a statement of the reasons for the recall. An answer shall be used solely to provide information to the voters and shall be printed on the first page of each section of the petition in the manner provided by section 8 of this act. If the notice of intention did not contain a statement of the reasons for the recall or the official sought to be recalled chooses not to file an answer, that official shall instead provide the recall election official with a written acknowledgment of receipt of a copy of the notice of intention. Within two business days of the filing of such an answer or acknowledgment, the recall election official shall by personal delivery or certified mail serve a copy of that answer or acknowledgment on the recall committee. If no such answer or acknowledgment is filed within the period of time allowed therefor, the recall election official, within two business days of the expiration of that time period, shall by personal delivery or certified mail transmit to the recall committee a signed statement in writing that no such answer or acknowledgment was timely filed with the recall election official.

L.1995, c. 105, § 7, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:27A-6.

<sup>2</sup> N.J.S.A. § 19:27A-8.

#### Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides:

'This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions

of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**Notes of Decisions**

**In general 1**

**1. In general**

Willingness of proponents to bear cost of election following invalidation of recall petition against school board member did

not excuse failure to comply with statutory requirements. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

**19:27A-8. Petition; form of and signatures on**

a. No signature appearing on any document other than a recall petition prepared in accordance with the provisions of this section shall be counted among the signatures required under section 5 of this act<sup>1</sup> to determine whether a recall election shall be held.

b. A recall petition shall be prepared by the recall committee in accordance with a format, consistent with the provisions of this act, which shall have been approved for such purpose by the Secretary of State. A petition may consist of any number of separate sections which shall be identical except with respect to information required to be entered thereon by the signers and circulators and as otherwise provided herein. The size of the paper used in a recall petition and the number of pages included in each section thereof shall be determined by the recall committee. The back and the front of a piece of paper shall each constitute a page and signatures may be affixed to each such page.

c. Each page of each section of a recall petition shall be sequentially numbered and shall include, printed in bold letters in at least 10-point type, the heading "PETITION FOR THE RECALL OF [name of the official sought to be recalled] FROM THE OFFICE OF [name of the office]" and, where appropriate, the information required by subsection e. of this section. The first page of each section also shall bear, in type of uniform size but not less than 8-point type, (1) the information contained in the notice of intention, including any cost estimate prepared and the statement of the reasons for the recall, if one was provided, or a declaration that no such statement of reasons was provided, except that information on only three members of the recall committee need be listed; and (2) a copy of the answer provided by the official sought to be recalled, if one was provided, or a declaration that no such answer was provided, except that no such

answer or declaration shall be included if a statement of the reasons for the recall was not provided.

d. Each page of a recall petition shall be arranged so that each signer of the petition shall personally affix the signer's signature; printed name and residence address, including street and number, or a designation of residence which is adequate to readily determine location; the municipality of residence; and the date on which the signer signed the petition. A space at least one inch wide shall be left blank after each name for use in verifying signatures when appropriate, as provided by this act. A box shall be provided after each name for the signer to indicate that the signer has had the opportunity to review the information on the first page of that section of the petition.

e. (1) Whenever the official sought to be recalled is the Governor or a United States Senator, separate sections of the petition shall be prepared for use by signers registered to vote in each county. Each page of a section shall bear in not less than 10-point type the name of the county in which that section is to be used and the statement, "Only eligible persons residing in (name of county) County shall sign this page." A signer shall not affix the signer's signature to any page of any section unless it bears the name of the county in which the signer is registered to vote.

(2) Whenever the official sought to be recalled is a member of the Legislature or a member of the United States House of Representatives and the official's jurisdiction includes parts of more than one county, separate sections of the petition shall be prepared for use by signers registered to vote in each county included within the member's jurisdiction. Each page of a section shall bear in not less than 10-point type the name of the county in which that section is to be used and the statement, "Only eligible persons residing in (name of county) County shall sign this page." A signer shall not affix the signer's signature to any page of any section unless it bears the name of the county in which the signer is registered to vote.

(3) The signature of any person to a page of a recall petition bearing the name of a county in which the person is not registered to vote shall be invalid, but the invalidity of such a signature shall not invalidate or otherwise impair the section wherein or page whereon that signature appears, nor shall it invalidate or otherwise impair any other signature to that or any other section of the petition.

f. Prior to use, the sections of a recall petition shall be reviewed by the recall election official for compliance with the provisions of this act. The recall election official shall complete the review of the petition within three business days of receipt. No section of a recall petition shall be used to solicit signatures unless it has been so

approved and a statement of such approval, signed by the recall election official, has been printed on the first page of that section.

g. No obstruction shall be placed over any portion of a page of a petition section at the time that page is presented to a voter to be signed.

h. Every member of a recall committee circulating a recall petition and every circulator of that petition shall sign the petition. If any member of the committee shall fail to sign the petition, the petition shall be deemed void. In the event that the signature to the petition of a member of the recall committee shall be deemed invalid, then notwithstanding the provisions of subsection e. of this section, the petition shall be deemed void.

i. If a solicitation for signatures to a recall petition is presented to prospective petition signers by a paid print advertisement or paid mailing, or if a recall petition is presented to such a prospective signer by a paid circulator, the solicitation or petition, respectively, shall disclose prominently in a statement printed in at least 10-point type (1) the identity of the person paying for the printed or personal solicitation, and (2) that the circulator is paid. The Election Law Enforcement Commission shall promulgate such rules and regulations as are necessary to implement the provisions and effectuate the purposes of this subsection.

j. No person who is ineligible to sign a recall petition shall, with knowledge of that ineligibility, sign such a petition. No person shall offer to pay or pay another to sign or to refrain from signing a recall petition or to vote or to refrain from voting in a recall election. A person who violates any of the foregoing provisions of this subsection is guilty of a crime of the fourth degree.

L.1995, c. 105, § 8, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:27A-5.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**19:27A-9. Responsibilities of circulators**

a. No person shall act as the circulator of a petition who is not a registered voter in the jurisdiction from which the official sought to be recalled was elected.



b. Each completed page of any section of a recall petition which is filed with the recall election official shall include at the bottom of that page an affidavit signed by the circulator of that section which sets forth the following:

- (1) the printed name of the circulator;
- (2) the address of the circulator;
- (3) a statement that the circulator assumed responsibility for circulating that section, that the circulator witnessed the signing of that page by each person whose signature appears thereon, that, to the best information and belief of the circulator, the signers are legal residents of the State and of the county in which the section was circulated, and that the section was circulated in absolute good faith for the purpose of causing the recall of the elected official named in the petition;
- (4) the dates between which all signatures to that page were collected; and
- (5) a statement, signed by the circulator, as to the truth and correctness of the aforesaid information.

L.1995, c. 105, § 9, eff. May 17, 1995.

#### Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

#### 19:27A-10. Deadlines; resignation of official

a. A recall committee shall collect the required number of signatures and file a completed petition with the recall election official within the following time periods calculated from the date that the recall petition receives final approval for circulation from the recall election official:

- (1) 320 days, when the Governor or a United States Senator is sought to be recalled; and
- (2) 160 days, when any other elected official is sought to be recalled.

b. If a completed petition is not filed within the applicable time period, the petition shall be void. No part of a void petition shall be used in connection with any other recall effort.

c. If the official sought to be recalled resigns from office, the collection of signatures shall cease and the petition shall be void. L.1995, c. 105, § 10, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**19:27A-11. Filing of entire petition; determining number of signatures**

All sections of a completed recall petition shall be filed with the recall election official at the same time. When a petition is presented for filing, the recall election official, within 10 business days, shall determine the total number of signatures affixed thereto and whether the completed petition complies with the other provisions of this act. A petition which contains an insufficient number of signatures or otherwise fails to comply with the provisions of this act shall be void. L.1995, c. 105, § 11, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**19:27A-12. Challenges to determination of number of signatures**

The determination of the recall election official as to whether a recall petition is signed by a sufficient number of registered voters and otherwise complies with the provisions of this act may, within 10 business days of issuance, be challenged by the official sought to be recalled or by the recall committee by filing a written objection thereto with the recall election official. Upon the request of either of those parties, the recall election official shall provide the party with a duly certified copy of the recall petition and shall allow examination

of the original recall petition during regular business hours. The recall election official shall pass upon the validity of an objection in an expedited manner. The decision of the recall election official may be contested, within 10 business days, by filing an action in the Superior Court, which shall hear the matter on an expedited basis and issue an order or determination as soon as possible after filing of the action. Whenever the decision of a recall election official with respect to a recall petition requiring more than 1,000 names is challenged by the official sought to be recalled or by a recall committee, the parties shall be permitted to introduce evidence that, under a random sample method which employs the theory, assumptions and methods of standard statistical analysis, the petition contains either a sufficient or an insufficient number of signatures. The introduction of such evidence shall create a rebuttable presumption that a petition is valid or invalid, as the case may be.

L.1995, c. 105, § 12, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**Notes of Decisions**

**In general 1**

**1. In general**

Notice of intent and recall petition against school board member were not timely where any objections to recall could not be resolved more than six

months before next scheduled general election; six-month time limit was mandatory. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

**19:27A-13. Certificate of sufficiency; calling of election**

a. (1) If the recall election official determines that a petition contains the required number of signatures and otherwise complies with the provisions of this act and if the official sought to be recalled makes no timely challenge to that determination, or if the official makes such a challenge but the original determination is confirmed by the recall election official or the court, the recall election official shall forthwith issue a certificate as to the sufficiency of the petition to the recall committee. A copy of the certificate shall be served by

the recall election official on the elected official sought to be recalled by personal service or certified mail. If, within five business days of service of the certification, the official has not resigned from office, the recall election official shall order and fix the holding of a recall election on the date indicated in the certificate.

(2) In the case of an office which is ordinarily filled at the general election, a recall election shall be held at the next general election occurring at least 55 days following the fifth business day after service of the certification, unless it was indicated in the notice of intention that the recall election shall be held at a special election in which case the recall election official shall order and fix the date for holding the recall election to be the next Tuesday occurring during the period beginning with the 55th day and ending on the 61st day following the fifth business day after service of the certification of the petition or, if that Tuesday falls on, or during the 28-day period before or after, a day on which any general, primary, nonpartisan municipal, school district or other recall election is to be held or shall have been held within all or any part of the jurisdiction, then the first Tuesday thereafter which does not fall within such period. In the case of an office which is ordinarily filled at an election other than the general election, a recall election shall be held at the next general election or the next regular election for that office occurring at least 55 days following the fifth business day after service of the certification, unless it was indicated in the notice of intention that the recall election shall be held at a special election in which case the recall election official shall order and fix the date for holding the recall election to be the next Tuesday occurring during the period beginning with the 55th day and ending on the 61st day following the fifth business day after service of the certification of the petition or, if that Tuesday falls on, or during the 28-day period before or after, a day on which any general, primary, nonpartisan municipal, school district or other recall election is to be held or shall have been held within all or any part of the jurisdiction, then the first Tuesday thereafter which does not fall within such period. A recall election to be held at a special election shall not be scheduled on the same day as a primary election. The date for a recall election shall not be fixed, and no recall election shall be held, after the date occurring six months prior to the general election or regular election for the office, as appropriate, in the final year of an official's term.

(3) A vacancy in an elective office resulting from the resignation of an elective official sought to be recalled prior to the expiration of the five-day period shall be filled in the manner provided by law for filling vacancies in that office.

b. The certificate issued by the recall election official shall contain:

- (1) the name and office of the official sought to be recalled;
- (2) the number of signatures required by law to cause a recall election to be held for that office;
- (3) a statement to the effect that a valid recall petition, determined to contain the required number of signatures, has been filed with the recall election official and that a recall election will be held; and
- (4) the date and time when the election will be held if the official does not resign.

c. The recall election official shall transmit a copy of the certificate to the officer or public body designated by law to be responsible for publishing notice of any other election to be held in the jurisdiction on the same day as the recall election, and that officer or body shall cause notice of the recall election, including all of the information contained in the certificate as prescribed by subsection b. of this section, to be printed in a newspaper published in the jurisdiction of the official sought to be recalled or, if none exists, in a newspaper generally circulated in the jurisdiction. The notice of the recall election shall appear on the same schedule applicable to the notice of such other election. In the event that the recall election is to be held as a special election, the recall election official shall transmit a copy of the certificate to the county board or boards of elections, and the county board or boards shall cause notice of the recall election to be printed, in the manner hereinbefore prescribed, once during the 30 days next preceding the day fixed for the closing of the registration books for the recall election and once during the calendar week next preceding the week in which the recall election is held.

L.1995, c. 105, § 13, eff. May 17, 1995.

#### Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

Notes of Decisions

In general 1

rande, 304 N.J.Super. 421, 701 A.2d 439 (A.D.1997).

Willingness of proponents to bear cost of election following invalidation of recall petition against school board member did not excuse failure to comply with statutory requirements. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casagrande, 304 N.J.Super. 496, 701 A.2d 478 (L.1997), affirmed 304 N.J.Super. 421, 701 A.2d 439.

1. In general

Recall election of school board member could not be placed on ballot of general election scheduled for less than six months before end of school board member's term. Committee to Recall Theresa Casagrande from Office of Spring Lake Heights School Bd. Member v. Casag-

19:27A-14. Conduct of election

A recall election shall be conducted in accordance with the provisions of Title 19 of the Revised Statutes which apply to all elections, except that in the case of an election to recall a member of the governing body of a municipality operating under the provisions of the "Uniform Nonpartisan Elections Law," P.L.1981, c. 379 (C.40:45-5 et al.), or a member of the school board in a Type II school district, or any other elected official elected under the provisions of another title, the election shall be conducted in accordance with the appropriate provisions of that other title to the extent not inconsistent with the provisions of this act.

Notwithstanding the provisions of any other law to the contrary, for any election at which the question of the recall of an elected official is submitted to the voters, the county clerk or other appropriate officer shall cause samples of the entire ballot to be voted upon at that election to be printed and distributed to the voters of the jurisdiction wherein the recall election is to be held in the same manner as prescribed for the printing and distribution of sample ballots at the general election as provided by article 2 of chapter 14 of Title 19 of the Revised Statutes,<sup>1</sup> except that in the case of an election other than the general election, any period of time calculated under the provisions of that article from the date of the general election shall be calculated instead from the date on which such other election is to be held.

L.1995, c. 105, § 14, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:14-21 et seq.

Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions

of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

### 19:27A-15. Filling of vacancies; recall ballot

a. Whenever the elected official sought to be recalled is the Governor or a member of the Legislature, the question of whether or not the Governor or member of the Legislature shall be recalled shall appear on the ballot but no candidates to succeed the Governor or member of the Legislature in the event the recall is successful shall be listed thereon. A vacancy in the office of Governor resulting from a recall election shall be filled pursuant to Article V, Section I of the State Constitution in the same manner as any other vacancy occurring in that office. A vacancy in the office of member of the Legislature resulting from a recall election shall be filled pursuant to Article IV, Section IV, paragraph 1 of the State Constitution in the same manner as any other vacancy occurring in that office, except that no member who is recalled shall be eligible to be selected to fill the vacancy created as a result of the recall.

b. Whenever the elected official sought to be recalled is other than the Governor or a member of the Legislature, candidates to succeed the elected official in the event the recall is successful may be nominated within nine days after the fifth business day following service of the certification of the petition by each political party in the manner prescribed in R.S. 19:13-20 for selecting candidates to fill vacancies among candidates nominated at primary elections. Candidates may also be nominated within that time period by petition in a manner similar to that used for direct nomination by petition for a general election. In the case of offices in nonpartisan units of government, nomination shall be by petition. An elected official who is the subject of a recall election shall be eligible to be elected as that official's own successor in the event that the election results in the official's recall.

c. The ballot used at a recall election shall pose the following question to the voters: "Shall (insert name of elected official sought to be recalled) be recalled from the office of (insert title of office)?" To the right of the question, the words "Yes" and "No" shall appear and each voter shall indicate the voter's choice of one. A recall election sample ballot, but not the actual ballot, shall contain the statement of the reasons for the recall prepared by the recall committee and the answer thereto, if any, which appeared on the petition.

d. Whenever a successor is to be chosen at a recall election in the event the recall is successful, the ballot shall indicate: "Nominees for

successor to [insert name and title of the elected official sought to be recalled] in the event he (or she) is recalled.” The names of all persons nominated as successors shall appear immediately thereafter in such manner as will allow each voter to vote for one.

L.1995, c. 105, § 15, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

**19:27A-16. Election results; further petitions**

a. If a majority of votes cast on the question of the recall of an elected official are in the affirmative, the term of office of the elected official shall terminate upon the certification of the election results. Where nominees to succeed the recalled official are voted on at the same election, the successor receiving the greatest number of votes shall succeed to the office of the recalled official upon certification of the election results and shall serve for the remainder of the unexpired term.

b. If a majority of votes cast on the question of recall of an elected official are in the negative, the official shall continue in office as if no recall election had been held and the vote for the successor of such officer shall be void.

c. An elected official sought to be recalled who is not recalled as the result of a recall election shall not again be subject to recall until after having served one year of a term calculated from the date of the recall election.

L.1995, c. 105, § 16, eff. May 17, 1995.

**Historical and Statutory Notes**

L.1995, c. 105, § 19, approved May 17, 1995, provides:

“This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act’s effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding.”

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.



**19:27A-17. Campaign committees and contributions**

a. Except as otherwise provided in this section, a recall committee shall be treated as a candidate committee for the purposes of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.), except that all contributions received by a recall committee shall be used only for (1) the payment of campaign expenses incurred in the course of and directly related to the committee's effort to promote the recall or the passage of the question of recall at the recall election, (2) the payment of overhead and administrative expenses related to the operation of the committee, or (3) the pro-rata repayment of contributors.

b. Except as provided in subsection c. of this section:

(1) an elected official sought to be recalled who receives contributions and makes expenditures for the purpose of opposing a recall effort shall establish a "recall defense committee," which shall be separate from, but subject to the same organizational and filing requirements and limitations on the receipt of contributions applicable to, any candidate committee under "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.), except that a recall defense committee shall be permitted to receive without limit contributions from the candidate committee or joint candidates committee of the elected official sought to be recalled. A recall defense committee, for all purposes relating to campaign finance, shall be in addition to any candidate committee or joint candidates committee which an official sought to be recalled may by law establish. If an elected official sought to be recalled transfers funds from the official's candidate committee or joint candidates committee to the official's recall defense committee, a new election cycle shall be deemed to begin with respect to the candidate committee or joint candidates committee after the recall election is held or the recall effort fails and such official shall be permitted to solicit and receive contributions thereto, including contributions from prior contributors, up to the limits imposed by P.L.1973, c. 83 (C. 19:44A-1 et seq.). A recall defense committee may be formed at any time after an official sought to be recalled is served with either form of notice provided for by subsection e. of this section. All contributions received by a recall defense committee shall be used only for (a) the payment of campaign expenses incurred in the course of and directly related to the committee's effort to oppose the recall effort or the passage of the question of recall at the recall election, (b) the payment of the overhead and administrative

expenses related to the operation of the committee, or (c) the pro-rata repayment of contributors; and

(2) any nominee to succeed that elected official shall be treated as a candidate for the purposes of "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.).

c. The limits on contributions established by 2 U.S.C. § 441a shall apply to a federal elected official sought to be recalled, a candidate to succeed such an official and a recall committee seeking to recall a federal elected official.

d. A Governor who is sought to be recalled shall not be entitled to public support pursuant to P.L.1974, c. 26 (C. 19:44A-27 et seq.) for the purpose of opposing the recall effort.

e. Neither a recall committee nor a recall defense committee shall solicit or accept contributions in connection with a recall effort until after either: (1) the recall committee serves written notice of the recall effort on the official sought to be recalled by personal service or certified mail, with a copy thereof filed with the recall election official; or (2) a copy of an approved notice of intention is served on the official sought to be recalled as provided in subsection b. of section 7 of this act.<sup>1</sup> If a recall committee notifies an official sought to be recalled of its intention to initiate a recall effort by the method described in paragraph (1) of this subsection, it must file a notice of intention within 30 days of the date the notice is served on the official or cease the solicitation, acceptance and expenditure of funds.

f. Contributions to a recall committee by a candidate committee or joint candidates committee of a candidate who was defeated by the official sought to be recalled at the last election for that office shall be subject to the limits on contributions established by "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c. 83 (C. 19:44A-1 et seq.).

g. A recall committee shall submit, at the time of its initial filing with the Election Law Enforcement Commission, in addition to its depository account registration information, a registration statement which includes:

(1) the complete name or identifying title of the committee and the general category of entity or entities, including but not limited to business organizations, labor organizations, professional or trade associations, candidates for or holders of public offices, political parties, ideological groups or civic associations, the interests of which are shared by the leadership, members, or financial supporters of the committee;

(2) the mailing address of the committee and the name and resident address of a resident of this State who shall have been designated by the committee as its agent to accept service of process; and

(3) a descriptive statement prepared by the organizers or officers of the committee that identifies:

(a) the names and mailing addresses of the persons having control over the affairs of the committee, including but not limited to persons in whose name or at whose direction or suggestion the committee solicits funds;

(b) the name and mailing address of any person not included among the persons identified under subparagraph (a) of this paragraph who, directly or through an agent, participated in the initial organization of the committee;

(c) in the case of any person identified under subparagraph (a) or subparagraph (b) who is an individual, the occupation of that individual, the individual's home address, and the name and mailing address of the individual's employer, or, in the case of any such person which is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

(d) any other information which the Election Law Enforcement Commission may, under such regulations as it shall adopt pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), require as being material to the fullest possible disclosure of the economic, political and other particular interests and objectives which the committee has been organized to or does advance. The commission shall be informed, in writing, of any change in the information required by this paragraph within three days of the occurrence of the change.

h. In accordance with the Election Law Enforcement Commission's regular reporting schedule, the commission may, by regulation, require a recall committee or a recall defense committee to file during any calendar year one or more additional cumulative reports of such contributions received and expenditures made to ensure that no more than three months shall elapse between the last day of a period covered by one such report and the last day of the period covered by the next such report.

L.1995, c. 105, § 17, eff. May 17, 1995.

<sup>1</sup> N.J.S.A. § 19:27A-7.

#### Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides: "This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately

[May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on or before this act's effective date. Any such recall efforts shall be completed un-

der the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

### 19:27A-18. Repealer

On the effective date of this act, sections 88 through 98 of P.L. 1972, c. 154 (C. 40:41A-88 et seq.); sections 17-19 through 17-29 of P.L.1950, c. 210 (C. 40:69A-168 et seq.); R.S. 40:75-25 through R.S. 40:75-44; R.S. 40:81-6; and R.S. 40:84-12 through R.S. 40:84-19 shall become inoperative and shall have no force or effect unless a court of competent jurisdiction issues a final order invalidating the provisions of Article I, paragraph 2b. of the New Jersey Constitution, providing for the recall of elected officials, and the provisions of this act which permit the recall of county or municipal officials, in which case the aforesaid laws shall again become operative and shall have full force and effect as of the date of the court's ruling.

L.1995, c. 105, § 18, eff. May 17, 1995.

#### Historical and Statutory Notes

L.1995, c. 105, § 19, approved May 17, 1995, provides:

"This act [adding §§ 19:27A-1 to 19:27A-18] shall take effect immediately [May 17, 1995], except that the provisions of this act rendering existing recall statutes inoperative and of no force and effect shall not apply to any recall effort undertaken pursuant to said statutes if said effort shall have been commenced on

or before this act's effective date. Any such recall efforts shall be completed under the provisions of statutory law under which they were commenced, the provisions of this act to the contrary notwithstanding."

**Statement:** Committee statement to Assembly, Nos. 25, 1207—L.1995, c. 105, see § 19:27A-1.

## SUBTITLE 5

# RECOUNTS AND CONTESTS— ANY ELECTION

### Chapter

28. Recount of Votes.

29. Contest of Nominations or Elections—Any Election.

## CHAPTER 28

### RECOUNT OF VOTES

### Section

- 19:28-1. Application to judge of Superior Court for recount; persons entitled to apply.
- 19:28-2. Expenses of recount; liability for; deposit by applicants.
- 19:28-3. Recount; order and proceedings.
- 19:28-4. Revocation of election certificate; new certificate.
- 19:28-5. Order filed with Secretary of State.
- 19:28-6. Copies of certificates delivered to successful candidates.
- 19:28-7. Copy of certificate delivered to secretary of state in certain cases.
- 19:28-8. Correction of errors in referendum recount.

### Library References

Elections ⇨260.

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C.J.S. Elections § 237.

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**19:28-1. Application to judge of Superior Court for recount; persons entitled to apply**

When any candidate at any election shall have reason to believe that an error has been made by any district board or any board of canvassers in counting the vote or declaring the vote of any election, he may, on or before the second Saturday following such election, or declaration of any board of canvassers, apply to a judge of the Superior Court assigned to the county wherein such district or districts are located, for a recount of the votes cast at the election in any district or districts.

When ten voters at any election shall have reason to believe that an error has been so made in counting or declaring the vote upon any public question at any election, such voters may, within a like time, make like application for a like recount of the votes cast at the election on such public question.

Amended by L.1953, c. 19, p. 339, § 27; L.1991, c. 91, § 247, eff. April 9, 1991.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶347, p. 827, amended by L.1936, c. 203, § 2, p. 501.

**Library References**

**Comments**

Contest of election results, see 35 New Jersey Practice, Pane, § 477.

**Texts and Treatises**

26 Am Jur 2d, Elections §§ 355, 356, 363.

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Justice of Supreme Court for errors of election officers in view of General Election Law, § 159, L.1898, p. 310, repealed. *Monahan v. Matthews*, 91 N.J.L. 123, 103 A. 40 (1918).

Even if it appeared, by reason of the statutory machinery provided to carry into effective operation the provisions of the act relating to elections, P.L.1898, p. 310, § 159, as amended by P.L.1909, p. 14, both repealed, relative to recounts, that such machinery is inapt to an election of a candidate for Congress, the fact would not afford sufficient legal justification to ignore the prime object of the section, that "whenever any candidate at

**1. Persons entitled to apply**

A defeated candidate for commissioner in a city having adopted commission form of government under § 40:75-1 et seq., was properly granted recount by

## Note 1

any election shall have reason to believe that an error has been made by the board of elections or canvassers in counting the vote or declaring" it, such candidate is entitled to a recount. *Carson v. Kalisch*, 89 N.J.L. 458, 99 A. 199 (1916), affirmed 101 A. 295, affirmed 90 N.J.L. 295, 101 A. 289.

## 2. Grounds for application

Upon an application for a recount pursuant to this chapter, a candidate is entitled to question an error "in counting the vote, or declaring the vote of any election," and not to question the procedures employed by the county board in reviewing the certificates, or to question the qualifications of individual absentee voters. In re General Election in Bethlehem Tp., Hunterdon County, 74 N.J.Super. 448, 181 A.2d 523 (A.D.1962).

Where a petition for a recount of election returns was based on mere conjecture, and made after a partial recount had resulted in the incumbent's favor, a recount could not be allowed; the petitioner not having "reason to believe" an error had changed the result of such election, as required by L.1898, p. 310, § 159, as amended by L.1909, p. 41, both repealed. In re Van Noort, 85 A. 813 (1912).

## 3. Form of application

Application to Justice of Supreme Court for recount under Election Law, § 159, L.1898, p. 310, repealed, was properly made in form of written petition. *Seglie v. Ackerman*, 90 N.J.L. 118, 100 A. 850 (1917), affirmed 91 N.J.L. 332, 102 A. 1054.

An application for a recount of ballots, under Rev.1877, p. 355, § 100, repealed, not offered as part of a party's proofs, must conform to the statutory requirements governing such applications; and a mere oral request was not sufficient. *McCoy v. Boyle*, 51 N.J.L. 53, 16 A. 15 (1888).

## 4. Time of application

In election contest, defendant could not avoid requirement of this section that application for recount be made on or before second Saturday following election by attempting in counterclaim to secure a recount under § 19:29-1 et seq., relating to contest of nomination or election.

*Goddard v. Kelly*, 27 N.J.Super. 517, 99 A.2d 667 (A.D.1953).

Application for recount under Election Law, § 159, L.1898, p. 310, repealed, before county board of canvassers had officially declared result, was proper, especially in view of § 103, L.1898, p. 290, repealed. *Seglie v. Ackerman*, 90 N.J.L. 118, 100 A. 850 (1917), affirmed 91 N.J.L. 332, 102 A. 1054.

Where the court, under authority of Election Act, P.L.1898, p. 310, § 159, as amended by P.L.1909, p. 41, both repealed, authorizing a recount on application made within 10 days after election, granted an application for a recount of the vote of a part of the county, on condition that if the partial recount should change the result an entire recount of the county would be ordered, the applicant having declined to have the vote of the entire county recounted, the court had no power to grant a recount of the entire county on a second application more than 10 days after the election, regardless of whether the second application be considered a new or an amended petition. In re Van Noort, 85 A. 813 (1912).

A recount of the ballots cast on the question of a constitutional amendment was not allowed when the application therefor was delayed till the ballots were removed from the ballot boxes, and placed in the custody of various officials throughout the state. *State ex rel. Bott v. Board of Registry and Election in Sixth Precinct of First Ward of Jersey City*, 61 N.J.L. 160, 38 A. 848 (1897).

## 5. Notice of application

In proceedings for recount of congressional election under L.1898, p. 310, § 159, as amended by L.1909, p. 41, both repealed, notice of contents of petition need not be given adverse candidate. *Carson v. Kalisch*, 89 N.J.L. 458, 99 A. 199 (1916), affirmed 101 A. 295, affirmed 90 N.J.L. 295, 101 A. 289.

## 6. Verification

In proceedings for recount of an election under the act concerning elections, P.L.1898, p. 310, § 159, as amended by P.L.1909, p. 41, both repealed, the petition was properly verified, though petitioner's affidavit as to the facts set out in it relating to acts not his own was made on belief only; the section did not provide the manner in which an application

for recount should be presented, nor require a verification of the facts on which it was made. *Carson v. Kalisch*, 89 N.J.L. 458, 99 A. 199, affirmed 90 N.J.L. 295, 101 A. 289, affirmed 101 A. 295.

#### 7. Defenses

Though the answer or statement of defense to an application for a recount (as the statute stood in 1886) need not be under oath, if it set up new matter constituting a distinct charge to be investigated, it must conform to all the requirements of statute in relation to the petition. *Burrough v. Branning*, 9 N.J.L.J. 110 (1886).

#### 8. Sufficiency of application

Petition for recount of votes under Election Law, § 159, L.1898, p. 310, repealed, was sufficient, though it did not state facts on which petitioner based relief that errors had been made. *Seglie v. Ackerman*, 90 N.J.L. 118, 100 A. 850

(1917), affirmed 91 N.J.L. 332, 102 A. 1054.

An affidavit, in support of an election contest, alleging that the affiants were present at the counting, tallying and announcing of the votes, and that the facts, matters and things contained in the petition are true to the best of their knowledge, information and belief, was insufficient. *Hance v. Spangenberg*, 18 N.J.L.J. 184 (1895).

#### 9. Alternative remedies

The fact that contestant of election to office of city commissioner asked for statutory recount did not estop him from maintaining statutory contest for fraud for receipt of illegal votes, but he could avail himself of both remedies. *Richardson v. Radics*, 21 N.J. Misc. 466, 35 A.2d 425, (1943), reversed on other grounds 131 N.J.L. 406, 37 A.2d 293.

### 19:28-2. Expenses of recount; liability for; deposit by applicants

Any applicant or group of applicants, as the case may be, for such recount, upon applying therefor, shall deposit with the county clerk or such other public officer or officers as such judge shall direct, such sum of money proportioned to the number of votes to be counted but not exceeding twenty-five dollars (\$25.00) for any one district recount of which is asked, as the judge shall order as security for the payment of the costs and expenses of the recount in case the original count be confirmed. Such judge shall fix and determine the amount of compensation to be paid for making the recount, and the costs and expenses thereof. If it appears that an error or errors have occurred as a result of which the election is changed or the difference in the vote between any candidate and any other candidate for the same office or between the negative and affirmative of any such public question is altered in any district by more than ten votes or ten per centum (10%) of the total vote cast in the district, whichever is the greater, the costs and expenses of the recount of such district shall be paid by the State, county or municipality in and for which the election was held, upon the warrant of such judge, as other election expenses are paid. If no error shall appear sufficient to produce such change, the costs and expenses of the recount shall be paid out of the deposit made as security by the party or parties making the application.

Amended by L.1953, c. 19, p. 340, § 28.



### Historical and Statutory Notes

Source: L.1930, c. 187, ¶348, p. 827,  
amended by L.1936, c. 203, § 3, p. 501.

#### Notes of Decisions

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#### 1. Time of deposit

This section does not require deposit to be made before or simultaneously with application for recount nor that it be made on or before the last day for applying for a recount. *Ciechanowski v. Burkett*, 125 N.J.L. 524, 16 A.2d 825 (1940).

#### 2. Amount of deposit

Statute providing for fixed statutory charge of \$2 per district for rechecks of election ballots [N.J.S.A. 19:52-6] and statute on fees for recounts [N.J.S.A. 19:28-2] can be accommodated by making separate charges for recounts and rechecks to further legislature's objective of protecting sanctity of a ballot, a basic objective of election laws. *Reinhart v. Miller*, 208 N.J.Super. 314, 505 A.2d 247 (L.1985).

Charges of \$5 and \$10 were sufficient for recount of ballots involving two dis-

tricts with total of 11 absentee and emergency ballots and 14 election districts with a total of 38 absentee and emergency ballots respectively. *Reinhart v. Miller*, 208 N.J.Super. 314, 505 A.2d 247 (L.1985).

The judge to whom the application for a recount of votes cast at an election is made must give the matter consideration and fix within limits of this section amount of deposit required as security for payment of costs and expenses of recount in case original count is confirmed, and where deposit is required to be made before recount begins and within a reasonable time after making of order fixing amount of deposit, order for recount is not void. *Ciechanowski v. Burkett*, 125 N.J.L. 524, 16 A.2d 825 (1940).

#### 3. Expenses of recount

Supreme Court Justice could allow compensation to members of county board of elections for making recount of ballots as ordered. *Hartung v. McGovern*, 7 N.J. Misc. 1070, 147 A. 785 (1929).

### 19:28-3. Recount; order and proceedings

Such judge shall be authorized to order upon such terms as he deems proper a recount of the votes as he may determine, to be publicly made under his direction by the county board. Such board shall have power to subpoena witnesses to testify and produce documents and paraphernalia as it may determine, after three days' notice of the time and place of the recount has been given by such applicant or group of applicants to such interested party or parties as the judge may direct. The members of the district board shall be subpoenaed to be present at the recount to witness the opening of the ballot box or boxes used in their election district and to give such testimony as the county board deems necessary. The judge shall have power to decide all disputed questions which the county board shall fail to decide by a majority vote.

Amended by L.1953, c. 19, p. 340, § 29.

Historical and Statutory Notes

Source: L.1930, c. 187, 1349, p. 828.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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2. Recount—In general

Under L.1898, p. 310, § 159, as amended by L.1909, p. 41, both repealed, recount of ballots need not be in presence of Justice ordering recount. *Seglie v. Ackerman*, 90 N.J.L. 118, 100 A. 850 (1917), affirmed 91 N.J.L. 332, 102 A. 1054.

3. — Number of ballots, recount

In a recount of ballots under § 13 of the Act of March 25, 1895, L.1895, p. 667, repealed, the board of election should have counted as many ballots as there were names of apparent voters on the poll book, even though the certificate of the whole number of votes received had not been made by the election officers, as required by Rev.1877, p. 343, § 42, repealed. *State v. Felton*, 61 N.J.L. 121, 38 A. 821 (1897).

4. — Disputed ballots, recount

Where County Court judge was sitting as a legislative agent under a chapter 28 proceeding, to determine whether count of votes was correct, he could decide that any ballot was defective, but could not consider anything in relation to the certificate that had been attached to the inner envelope of an absentee ballot, since once the certificates had been detached from the inner envelopes, and the votes counted, exclusive jurisdiction of any dispute relating to qualifications of the absentee voter or any certificate was vested in the Superior Court. In re General Election in Bethlehem Tp., Hunterdon County, 74 N.J.Super. 448, 181 A.2d 523 (A.D.1962).

Court, in following principle that effect must be given to intent of voter where such intent can be determined with reasonable certainty, must give as much weight to voter's intent not to vote, or to cancel his vote, as the court does with respect to his intent to cast a vote. *Petition of Wade*, 39 N.J.Super. 520, 121 A.2d 552 (A.D.1956).

Where county board of elections in passing upon validity of primary election

1. Capacity of judge

Jurisdiction conferred upon the judges of the Law Division of the Superior Court by § 19:28-1 et seq., is conferred upon them as individual judges thereof and is not conferred upon the court as such, and the individual judge who acts in exercising such jurisdiction acts solely in the capacity of the legislative agent exercising a delegated authority. *Petition for Recheck of Voting Machines and Irregular Ballots in Third Ward of Jersey City*, 19 N.J.Super. 187, 88 A.2d 227 (A.D. 1952).

That pending recount of votes under Election Law, § 159, L.1898, p. 310, repealed, term of office of Justice ordering it expired and he was not reappointed for several days, did not nullify or affect the proceedings. *Seglie v. Ackerman*, 90 N.J.L. 118, 100 A. 850 (1917), affirmed 91 N.J.L. 332, 102 A. 1054.

L.1880, p. 229, repealed, concerning recounts, did not purport to confer upon the supreme court any judicial power to determine who is elected or to take testimony. The duties of the justice who made the recount were purely ministerial. *Kearns v. Edwards*, 17 N.J.L.J. 51 (1894).

## Note 4

ballots was equally divided and the board failed to decide by a majority vote the validity of the ballots, the disputed ballots were properly submitted to the court for decision. *Petition for Recheck of Voting Machines and Irregular Ballots in Third Ward of Jersey City*, 19 N.J.Super. 187, 88 A.2d 227 (A.D.1952).

At an election for village trustee, four of the ballots which were counted for Ira A. Kip, Jr., read respectively, "Ira A. Kipp," "I. Kip, Jr.," "Ira A. Kip," and "Kipp," were illegally counted for Ira A. Kip, Jr.; also that the circuit court, upon a recount of the ballots, was right in refusing to admit proof that no other person by the name of Kip was a candidate at the election or resided within the voting district. *Kip v. Weeks*, 64 N.J.L. 61, 44 A. 856 (1899).

The question which arose upon disputed ballots, upon a recount under L.1898, p. 312, § 163, repealed, was not as it might have been under the old law upon quo warranto, for whom were the votes intended, but for whom, under the new law, were they actually voted. *Kip v. Weeks*, 64 N.J.L. 61, 44 A. 856 (1899).

L.1880, p. 229, repealed, providing that, when any candidate for member of the senate or assembly shall have reason to believe that an error has been made by any board of election or canvassers in counting the ballots, a justice of the Supreme Court may order a recount, and revoke the certificate of election already issued, and issue another to the person found to have received a majority of votes, merely authorizes the ministerial act of a recount, but does not confer authority to determine judicially the legality of any ballot cast. *Kearns v. Edwards*, 28 A. 723 (1894).

#### 5. — Voter qualifications, recount

The County Court cannot go into the question of qualifications of an absentee voter in the process of conducting a recount under § 19:28-1 et seq. In re *General Election in Bethlehem Tp., Hunterdon County*, 74 N.J.Super. 448, 181 A.2d 523 (A.D.1962).

#### 6. — Partial recount

In case of a partial recount under L.1895, p. 667, § 13, repealed, the justice ordering it should have, at the conclusion thereof, made a certificate showing the whole number of votes for each person

for the office in dispute, as exhibited by the original certificate of the canvassers corrected by the recount, so that his certificate might have taken the place of the original certificate as prima facie title to the office in dispute. *State v. Felton*, 61 N.J.L. 121, 38 A. 821 (1897).

#### 7. Result of recount

Good practice requires recount order to provide for the act which constitutes announcement or determination of the result, since N.J.S.A. 19:28-3 provides that recount is to be undertaken under judge's direction, and N.J.S.A. 19:29-3 requires petition to be filed within ten days after result of any recount had been determined or announced, but does not define the words determined or announced. In re *Evans*, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

Outcome of balloting for three members of school board for full terms of three years each at annual school election was not affected by recount of absentee votes that resulted in only a slight change in tally for one candidate. In *Matter of Annual School Election Held in School Dist. of Township of Teaneck, Bergen County*, 95 N.J.A.R.2d (EDU) 248 (1995).

Outcome of balloting for three members of school board for full terms of three years each at annual school election was not affected by recount of absentee votes that resulted in only a slight change in tallies for two candidates. In *Matter of Annual School Election Held in School Dist. of Township of Mount Laurel, Burlington County*, 95 N.J.A.R.2d (EDU) 243 (1995).

#### 8. Public question elections

The court will not order a recount of the votes on a constitutional amendment, unless in a very clear case. *State ex rel. Bott v. Board of Registry and Election in Sixth Precinct of First Ward of Jersey City*, 61 N.J.L. 160, 38 A. 848 (1897).

#### 9. Venue

On a petition for a recount of an election for fraud in one district, the court (as the statute stood in 1886) could try the question of fraud in another district. *Burrough v. Branning*, 9 N.J.L.J. 110 (1886).

**10. Review**

When review of action of a judge sitting as a designated legislative agent is permitted by proceedings in lieu of prerogative writ, it must be had in the Law Division of the Superior Court and cannot be had in the Appellate Division on an appeal taken as a proceeding in lieu of prerogative writ. *Petition for Recheck of Voting Machines and Irregular Ballots in Third Ward of Jersey City*, 19 N.J.Super. 187, 88 A.2d 227 (A.D.1952).

An order of a justice of the Supreme Court, made in a recount under L.1898, pp. 310, 311, §§ 159, 160, repealed, could not be reviewed upon certiorari, unless in the proceedings the justice had exceeded his jurisdiction. *Kehoe v. Stagmeier*, 70 N.J.L. 175, 56 A. 252 (1903), affirmed 71 N.J.L. 342, 59 A. 1117.

The Supreme Court had no power to review the action of a justice who made a recount of votes in an election contest, under L.1880, p. 229, repealed. *Ruh v. Frambach*, 47 N.J.L. 85 (1885).

**19:28-4. Revocation of election certificate; new certificate**

If it appears upon such recount that an error has been made sufficient to change the result of such election, such judge in case of candidates shall issue an order to revoke the certificate of election already issued to any person and shall issue an order directing the chairman and clerk of the county board of canvassers to issue in its place another certificate in favor of the person who shall be found to have received a plurality of the votes cast at the election, which certificate shall supersede all others and entitle the holder thereof to the same rights and privileges as if such certificate had been originally issued by the canvassing board. In the event the person to whom the certificate of election has already issued shall so request, such judge shall order the recount to proceed in all districts in which such person was a candidate for election and shall withhold the issuance of any such new certificate until it shall finally be determined who has received a plurality of the votes cast at such election. If during the further recount requested by the person to whom the certificate of election has already issued, such person gains sufficient votes to give him more votes than the contestant, the judge conducting the recount may then order that the recount shall not proceed unless the contestant shall deposit such further sum of money as the judge shall require not exceeding twenty-five dollars (\$25.00) per district.

In case of a tie vote as a result of a recount the judge conducting the recount shall issue an order revoking the certificate originally issued by the board of canvassers.

Amended by L.1953, c. 19, p. 341, § 30.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §350, p. 828,  
amended by L.1936, c. 203, § 4, p. 502.

**Cross References**

Certificate on recount as evidence of right to office, see § 2A:66-14.

## Library References

Elections ⇨267.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 240.

## Notes of Decisions

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## 1. Ballots

Election Law, L.1898; p. 310, § 159, as amended by L.1909, p. 41, both repealed, provided that, if it shall appear upon a recount of the votes that an error was made sufficient to change the result of the election, the justice of the Supreme Court ordering the recount shall revoke the certificate of election already issued and issue another certificate in favor of the person found to have received a majority of the votes cast at the election. It was not the legislative intent that the justice should issue a new certificate of election unless the recount of the votes cast at the election had been made as ordered by him, and, where the condition of the ballots when the box was opened conveyed

the inference that they were not the identical ballots cast at the election, such question was for determination of the justice, and his decision that such ballots recounted were not the ballots cast at the election, and hence that a recount of the ballots cast had not been had, and that a new certificate of election should not be issued, was an official act not subject to review by mandamus to compel him to issue the new certificate. *Mathis v. Voorhees*, 81 N.J.L. 26, 78 A. 1059 (1911).

## 2. Review

Act of a judge under L.1909, p. 41, amending § 159, L.1898, p. 310, both repealed, refusing to issue a new certificate of election upon a recount of votes, held not reviewable by mandamus. *Mathis v. Voorhees*, 81 N.J.L. 26, 78 A. 1059 (1911).

## 19:28-5. Order filed with Secretary of State

When any such certificate shall be issued or revoked by order of the judge of the Superior Court, his order shall be filed with the Secretary of State or with the clerk of the county or municipality, as the case may be, in and for which such election was held.

Amended by L.1953, c. 19, p. 342, § 31; L.1991, c. 91, § 248, eff. April 9, 1991.

## Historical and Statutory Notes

Source: L.1930, c. 187, §351, p. 829.

## 19:28-6. Copies of certificates delivered to successful candidates

The secretary of state, county or municipal clerk shall make and certify, under his hand and official seal, a copy thereof, and shall without delay deliver such copy to the person so declared elected.

## Historical and Statutory Notes

Source: L.1930, c. 187, §352, p. 829.

**Library References**

**Texts and Treatises**

26 Am Jur 2d, Elections § 304.

**19:28-7. Copy of certificate delivered to secretary of state in certain cases**

In case of an election for senator, members of the assembly or any county officers, the county clerk shall within five days thereafter transmit to the secretary of state at Trenton another copy of such certificate, signed by him and attested by his official seal.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶353, p. 829.

**19:28-8. Correction of errors in referendum recount**

In case of public questions such judge shall make an order that the result of such election be corrected.

Amended by L.1953, c. 19, p. 342, § 32.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶354, p. 829.

**Library References**

**Texts and Treatises**

26 Am Jur 2d, Elections §§3, 356.

## CHAPTER 29

### CONTEST OF NOMINATIONS OR ELECTIONS— ANY ELECTION

#### Section

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19:29-3. Filing petition; time for.  
19:29-4. Time for trial; notice.  
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19:29-12. Repealed.  
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19:29-14. Costs; liability for.

#### Law Review and Journal Commentaries

The new math for nominating petition cases. Francis X. Hayes (1971) No. 57 N.J.St.B.J. 15.

#### Library References

Elections  $\S$  149 et seq., 260 et seq.  
WESTLAW Topic No. 144.

C.J.S. Elections  $\S\S$  120 et seq., 237 et seq.

#### Comments

Contest of election results, see 35 New Jersey Practice, Pane,  $\S$  477.

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### 19:29-1. Grounds stated

The nomination or election of any person to any public office or party position, or the approval or disapproval of any public proposition, may be contested by the voters of this State or of any of its political subdivisions affected thereby upon 1 or more of the following grounds:

a. Malconduct, fraud or corruption on the part of the members of any district board, or of any members of the board of county canvassers, sufficient to challenge the result;

b. When the incumbent was not eligible to the office at the time of the election;

c. When the incumbent had been duly convicted before such election of any crime which would render him incompetent to exercise the right of suffrage, and the incumbent had not been pardoned at the time of the election;

d. When the incumbent had given or offered to any elector or any member of any district board, clerk or canvasser, any bribe or reward, in money, property or thing of value for the purpose of procuring his election;

e. When illegal votes have been received, or legal votes rejected at the polls sufficient to change the result;

f. For any error by any board of canvassers in counting the votes or declaring the result of the election, if such error would change the result;

g. For any other cause which shows that another was the person legally elected;

h. The paying, promise to pay or expenditure of any money or other thing of value or incurring of any liability in excess of the amount permitted by this title for any purpose or in any manner not authorized by this title;

i. When a petition for nomination is not filed in good faith or the affidavit annexed thereto is false or defective.

The term "incumbent" means the person whom the canvassers declare elected or the person who is declared elected as a result of a recount; but in the case of a tie vote as a result of the canvass or recount, either party may contest the election, in which case the term



"incumbent" means the person having an equal number of votes with the contestant.

Amended by L.1956, c. 128, p. 532, § 1.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶355, p. 829.

### Cross References

Legislature, each house as judge of elections, returns and qualifications of its members, see N.J.S.A. Const. Art. 4, § 4, par. 2.

### American Law Reports

Actionability, under 42 USCA sec. 1983, of claim arising out of maladministration of election, 66 ALR Fed 750.

Elections: effect of conviction under federal law, or law of another state

or country, on right to vote or hold public office, 39 ALR3d 303.

Admissibility of parol evidence of election officials to impeach election returns, 46 ALR2d 1385.

### Library References

Elections ⇨154(2), 271.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 120, 148, 249, 250.

### Texts and Treatises

26 Am Jur 2d, Elections § 321.

### WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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**1. Validity**

It was not necessary that eligibility requirements for public office be included in title providing statutory source for election challenge of successful candidate but, rather, eligibility requirements could properly be provided for in other titles. *Jones v. Mitchell*, 194 N.J.Super. 387, 476 A.2d 1276 (L.1983), affirmed 194 N.J.Super. 337, 476 A.2d 1249.

Statute, such as this chapter, will not be held unconstitutional, unless violation of fundamental law is clear and palpable. *In re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

**2. Legislative intent**

As public election mechanism is entirely statutory creation lacking any common-law antecedents, judiciary must always seek to vindicate perceived intent of legislature in event of violation of election laws. *Petition of Byron*, 165 N.J.Super. 468, 398 A.2d 599 (L.1978), affirmed 170 N.J.Super. 410, 406 A.2d 982, certification denied 82 N.J. 280, 412 A.2d 786.

**3. Liberal construction**

The rule that statutes authorizing election contests should be liberally construed is limited to cases where causes of contest recognized by statute are presented in specific form in petition duly verified. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

This chapter authorizing circuit courts to hear election contests should be liberally construed in order that thorough investigation may be had in voting districts where statutory causes of contest are presented in specific form in verified petition. *In re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

**4. Authority for contest**

Superior Court is vested with certain inherent powers beyond those conferred upon it by statute providing for review of elections and can set aside any action taken which is illegal or inequitable in order to carry out the will and mandate of the people. *In re General Election of November 5, 1991 for Office of Tp. Com-*

*mittee of Tp. of Maplewood, Essex County*, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

Proceedings taken under this chapter regulating elections and containing plan for conducting election contests are purely statutory, and the court's jurisdiction is derived from the statute. *Clee v. Moore*, 119 N.J.L. 215, 195 A. 530 (1937).

**5. Compliance with statute**

Proceedings to contest an election are strictly statutory, and hence this section et seq. must be rigidly followed. *Burkett v. Francesconi*, 127 N.J.L. 541, 23 A.2d 780 (1942).

This chapter authorizing election contest must be strictly followed in respect to how contest is to be made out. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

**6. Persons who may contest**

A defeated candidate for council had standing to bring action to change result of election on claim that 51 ballots voided in mayoralty contest were void also in council contest, but neither the successful candidate for mayor nor his wife had standing. *In Matter of Tyler*, 167 N.J.Super. 115, 400 A.2d 541 (L.1979).

Where plaintiff and defendant were candidates for the Republican nomination for office of member of township committee, and after primary election plaintiff was declared nominated with plurality of three votes, and defendant applied for a recount, and on recount the county board of elections held that there was a tie, plaintiff was entitled to institute proceeding before Superior Court to contest the election. *Goddard v. County Bd. of Elections of Monmouth County*, 27 N.J.Super. 30, 98 A.2d 688 (A.D.1953).

**7. Members of legislature**

The General Assembly has power to "finally judicially determine" the election of its members, and the power under this section and § 19:29-2 of circuit court in such matters was merely "ministerial" in nature and subject to the final determination of the General Assembly and the decision of the circuit court was not conclusive. *In re Hess*, 20 N.J. Misc. 12, 65 N.J. L.J. 1, 23 A.2d 298 (1941), affirmed 128 N.J.L. 387, 26 A.2d 277.

Legislature, under this chapter, cannot constitutionally empower judiciary finally

to determine judicially qualifications and elections of members of Legislature. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

Respecting election of members of state Legislature, object of recount and of election contest is initially to ascertain legal votes cast, and initially to determine candidates receiving majority thereof. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

Legislature has no power to confer authority upon courts to judicially determine elections to Senate and General Assembly. Van Winkle v. Caffrey, 12 N.J. Misc. 834, 175 A. 362 (1934).

Prohibition would not lie to prohibit circuit court from proceeding under this chapter with petition contesting election of state senator, since duties of circuit court in carrying out provisions of statute relating to contest of elections were ministerial, and were employed as electoral adjunct, and Senate remained final judge as to qualifications of its members. Van Winkle v. Caffrey, 12 N.J. Misc. 834, 175 A. 362 (1934).

#### 8. Nomination of candidates

The primary election law being designed to insure that free and fair choice of candidate by party's members shall prevail, voters' honest expression, as evidenced by total vote cast, should not be reversed by courts, but should be sustained thereby, if possible. Application of Wene, 26 N.J. Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

The remedy of contesting nomination under §§ 19:29-1 to 19:29-24 is applicable only to candidates who must be nominated at a primary election, and was not available to contest nomination by filing of petition. In re Hines, 23 N.J. Misc. 147, 42 A.2d 203 (1945).

#### 9. Malconduct, fraud or corruption—In general

County clerk's failure to remove two residents' voting record sheets from the registration books and his improper coding of four absentee ballots did not constitute "malconduct" by clerk sufficient to void municipal council election; overruling *Magura v. Smith*, 131 N.J. Super. 395, 330 A.2d 52. Matter of Mallon, 232 N.J. Super. 249, 556 A.2d 1271 (A.D.

1989), certification denied 117 N.J. 166, 564 A.2d 883.

Where result of improper conduct of members of an election board or of other irregularities can be ascertained and its effect excised, and true will of electorate determined, that should be done. Application of Bonsanto, 171 N.J. Super. 356, 409 A.2d 290 (A.D.1979).

In election contest predicated upon the reception and counting of fraudulent votes in one election district, the factor for court to determine is extent to which fraud was perpetrated in such district, and method used in perpetration is of no consequence. In re Donahay's Contested Election, 21 N.J. Misc. 360, 34 A.2d 299 (1943).

#### 10. — Intent, malconduct, fraud or corruption

An unintentional violation of a law which cannot physically be complied with is not evidence of fraud or corruption. In re Stoebling, 16 N.J. Misc. 34, 196 A. 423 (1938).

#### 11. — Pre-election conduct, malconduct, fraud or corruption

Even if true, mere assertion that certain disabled students were improperly coached by school counselors was insufficient to constitute a challenge to local election. Application of Bonsanto, 171 N.J. Super. 356, 409 A.2d 290 (A.D.1979).

Allegations that election officers permitted polling places to be crowded and cluttered up by persons who had no authority to be present, and permitted persons to be within 100 feet of polling places, and permitted display of campaign literature for incumbent, and permitted persons to electioneer for votes for incumbent within polling places, were insufficient to state cause within this section. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

The failure of election district boards to require affidavits of voters needing assistance in marking their ballots does not invalidate their ballots and is not a cause for contest, but is a procedural neglect punishable by removal, fine, or imprisonment, according to the circumstances. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

New school budget election could not be ordered even though tax impact pro-

jection provided to taxpayers prior to election was based on inaccurate net valuation figure with result that electorate was informed that their taxes would decrease \$35 per \$100,000 assessed valuation when in fact there was increase of \$47 per \$100,000 of such valuation, and such error was not discovered until after the election. Matter of Annual School Budget Election Held in Morris School Dist., Morris County, 92 N.J.A.R.2d (EDU) 516 (1992).

#### 12. — Election day conduct, misconduct, fraud or corruption

Where voters in district were unable to cast ballots between 7 a.m. and 9:30 a.m. due to malfunction in only voting machine at polling place, there had been "malconduct" within this section which provides that election may be contested for malconduct on part of members of any district board, or of any members of board of county canvassers, sufficient to change the result. *Magura v. Smith*, 131 N.J.Super. 395, 330 A.2d 52 (L.1974).

In view of this section setting forth as one of the specific grounds upon which voters may contest an election as malconduct on part of members of district board, suit challenging validity of election on ground that the published notices of election did not notify, as required by § 19:12-7, that a public question would be voted on was properly before court. *Richards v. Barone*, 114 N.J.Super. 243, 275 A.2d 771 (L.1971).

Evidence of writing in of names of candidates in primary election by some one other than individual voters justified setting aside of election on ground of malconduct and fraud that would tend to challenge result of election. In re *Stoebling*, 16 N.J. Misc. 34, 196 A. 423 (1938).

In primary election contest proceedings brought by candidates for members of Republican State Committee, evidence that three election officers in certain district wrote in name of a candidate on blank provided for voter to write in a name, and fourth officer signed certification of statement of election and failed to obtain affidavit of voters asking for assistance, was sufficient to show election officers conducted election in fraudulent and corrupt manner and had effect of challenging result of election. In re *Stoebling*, 16 N.J. Misc. 34, 196 A. 423 (1938).

In election contest, evidence that large number of names were added to registry lists on election day without affidavits, and that some members of district boards assisted floaters in spelling their assumed names established that members of boards were guilty of misconduct, fraud, or corruption sufficient to challenge result of election; word "challenge," within this section authorizing election contests, meaning to call in question or render doubtful. In re *Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

Violation of § 19:15-35 (repealed), requiring that affidavits be taken by election officers of voters to whom assistance was rendered, was evidence of malconduct, fraud, and corruption sufficient to challenge result of primary election, notwithstanding evidence that it was common practice not to take affidavits. In re *Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

Election irregularities consisting of list of challengers failing to be signed by candidates and failing to include their names and addresses and of failure of board secretary to make certificate of appointment of challengers were insufficient to invalidate school board election. Matter of *School Election Held in School Dist. Borough of Fairview, Bergen County*, 93 N.J.A.R.2d (EDU) 409 (1993).

School board election irregularities did not thwart will of voters, even though logistical arrangements for elections should have been better, and even though candidate's presence at parent-teacher bake sale was contrary to spirit of election law if not its letter. Matter of *Annual School Election Held in School Dist. of Tp. of Hainesport*, 92 N.J.A.R.2d (EDU) 504 (1992).

Exercise of discretion of Commissioner of Education to conduct election inquiry was appropriate where alleged violations, which included filing of false voting affidavits, were of such character as not to have been facially apparent at time of election, and defeated board of education candidate, who lost by three votes, cited six specific instances of alleged voting fraud. Matter of *Election Inquiry in School Dist. of Tp. of Pennsauken, Camden County*, 92 N.J.A.R.2d (EDU) 219 (1991).

Will of people was thwarted, and irregularities and deviations from election

## Note 12

laws were sufficient to void election to fill two seats of school district board of education; irregularities included transportation to poll of mental health care facility residents, many of whom were on medication such as Thorazine, Novane, Coget, Prolixin and Stellazine by facility manager, and manager's instructing residents for whom to vote and how to mark ballot. Matter of Annual School Election Held in Chesilhurst School Dist., Camden County, 92 N.J.A.R.2d (EDU) 213 (1992), affirmed 92 N.J.A.R.2d (EDU) 427.

### 13. — Challenge of result, malconduct, fraud or corruption

Subdivision (a) of this section uses the word "challenge" as meaning to call in question, dispute or doubtful. *Burkett v. Francesconi*, 127 N.J.L. 541, 23 A.2d 780 (1942).

The word "challenge" in this section providing that election can be contested for malconduct, fraud, or corruption of members of district board or of board of canvassers, sufficient to challenge result, means to put into dispute or to put in question. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

### 14. Rejection of votes

Voter who was within polling place before 8 p.m. when door was closed but was not allowed to vote was a legal voter rejected in election to fill two seats on township committee; however, that vote would be treated as open ballot where court did not know for whom he would have voted. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

In order to set aside an election on ground that legal votes rejected at polls were sufficient to change the result, it is not necessary to show how the rejected voters would have voted; however, the contrary is true with respect to votes cast which were illegal. In re 1984 General Election for the Office of Council of the Tp. of Maple Shade Burlington County, 203 N.J.Super. 563, 497 A.2d 577 (L.1985).

When, by reason of irregularities in a particular election district, correct and genuine results cannot be determined with reasonable certainty in that district, entire result from that district should be

rejected; in such case, election is determined on vote in balance of districts. *Application of Bonsanto*, 171 N.J.Super. 356, 409 A.2d 290 (A.D.1979).

Even if local election officials failed to observe in any way statutory procedure for assistance to disabled voters, such delinquency was not a ground for invalidating those votes. *Application of Bonsanto*, 171 N.J.Super. 356, 409 A.2d 290 (A.D. 1979).

Even if voter's ballot was illegal, in absence of showing how she voted, it was equally probable that she voted for one of four candidates; thus one candidate should not have been penalized by reduction of the allegedly illegal vote from his total. *Petition of Hartnett*, 163 N.J.Super. 257, 394 A.2d 871 (A.D.1978).

*Petition by candidate to set aside election of township committee member would not be denied because of candidate's failure to prove that he was person legally elected where petition was not based on illegal voting but on malfunctioning of voting machine resulting in rejection of legal votes. Application of Moffat*, 142 N.J.Super. 217, 361 A.2d 74 (A.D.1976), certification denied 71 N.J. 527, 366 A.2d 682.

Term "rejected" within this section, which provides that election may be contested if illegal votes have been received, or legal votes rejected at the polls sufficient to change result, includes any situation in which qualified voters are denied access to the polls, including a denial due to malfunction in voting machine. *Magura v. Smith*, 131 N.J.Super. 395, 330 A.2d 52 (L.1974).

In contested election case, where trial judge found that fraud in certain districts was so extensive that it was impossible to segregate ballots that should be given legal efficacy from those that had been tampered with, he was justified in rejecting the vote in such district or districts in toto. *Burkett v. Francesconi*, 127 N.J.L. 541, 23 A.2d 780 (1942).

Since Rev.1877, p. 355, § 101, repealed, required that the legal votes rejected, or the illegal votes received, must be "sufficient to change the result," a showing that a certain number of illegal ballots were received, without any showing as to whom they were cast for, was not ground for contest. *Lehibach v. Haynes*, 54 N.J.L. 77, 23 A. 422 (1891).

Election irregularity occurred and affected outcome of board of education election, thus warranting new election, where there was tie vote for Board seat, one voter was erroneously denied right to vote because he was believed to have requested absentee ballot, and voter asserted that he would have voted for one of two candidates with equal vote totals; however, it was beyond authority of Commissioner of Education to tally vote not actually cast. Matter of Annual School Election Held in School Dist. of Borough of Keansburg, 93 N.J.A.R.2d (EDU) 574 (1993).

Absent proof either of illegality of voting by two voters or of how they voted, new school board election would not be ordered, even though election was so close that shift of one vote could have produced tie and shift of two votes could have changed outcome. Matter of Annual School Election Held in School Dist. of Borough of Laurel Springs, 92 N.J.A.R.2d (EDU) 658 (1992).

#### 15. Voter qualifications

Mere fact that voter had lived outside of municipality during trial separation from his wife did not render voter ineligible to vote in municipal council election, since it was voter's clear intent to maintain municipality as his home. Matter of Mallon, 232 N.J.Super. 249, 556 A.2d 1271 (A.D.1989), certification denied 117 N.J. 166, 564 A.2d 883.

Mere fact that married voters failed to file change of residence notice after having moved outside of municipality for two months did not render illegal voters' ballots in municipal council election; temporary move had not effectively withdrawn their voting registration in municipality and any failure to file change of residence was a "mere irregularity" which did not void their votes once they had been cast. Matter of Mallon, 232 N.J.Super. 249, 556 A.2d 1271 (A.D.1989), certification denied 117 N.J. 166, 564 A.2d 883.

Election contestee could not challenge validity of certain student votes on basis that they lacked mental capacity to vote where those students were duly registered. Application of Bonsanto, 171 N.J.Super. 356, 409 A.2d 290 (A.D.1979).

Election regulations are to be liberally construed and mere irregularities involving compliance with provisions of elec-

tion laws, although sufficient to challenge rights to vote at polls, are not sufficient to set aside election and thereby defeat will of electorate. Petition of Hartnett, 163 N.J.Super. 257, 394 A.2d 871 (A.D.1978).

#### 16. Incumbents—In general

County canvassers' statement filed with secretary of state showing that certain candidate received greatest number of votes was legally equivalent, in so far as canvassers' authority extended, to declaration that such candidate was elected, and hence such candidate was the "incumbent" within this section authorizing election contest, notwithstanding canvassers, acting under misconception of court's order, crossed off his name on certificate. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

#### 17. — Eligibility, incumbents

A person elected to office of borough councilman should not be prevented from taking office unless clearly ineligible under some constitutional or statutory provision. In re Ray, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

That the candidate who stood highest on the list was ineligible did not give the election to the next highest. Chandler v. Wartman, 6 N.J.L.J. 301 (1883).

#### 18. Errors and irregularities, in general

Refusal of qualified registered voter to go to borough hall and execute affidavit so she would be permitted to vote, after she was informed that her page was missing from registration book, did not constitute a voter irregularity, since her failure to vote was result of her own voluntary decision. Petition of Hartnett, 163 N.J.Super. 257, 394 A.2d 871 (A.D.1978).

Failure of district board to exact formal written declaration of individual elector's desire to cast his vote in primary for which he was concededly qualified under the law was a mere irregularity and did not render his vote illegal. Wene v. Meyner, 13 N.J. 185, 98 A.2d 573 (1953).

#### 19. Voiding elections—In general

Right of suffrage is too sacred to be defeated by an act for which voter is in no way responsible, unless by direct mandate of a valid statute no other construction can be given. Sharrock v. Borough of Keansburg, 15 N.J.Super. 11, 83 A.2d 11 (A.D.1951).

## Note 19

Where statute expressly declares that a specified irregularity shall nullify an election, courts, irrespective of their views of wisdom or serviceability of requirements, uniformly respect legislative declaration. *Sharrock v. Borough of Keansburg*, 15 N.J.Super. 11, 83 A.2d 11 (A.D.1951).

Where there is no legislative declaration that specified irregularity nullifies an election, courts consider nature of irregularity, its materiality, significance of its influence and consequential derivation in order to determine whether digression or deviation from prescribed statutory requisitions had, in reasonable probability, so imposing and so vital an influence on election proceedings as to have repressed or contravened a full and free expression of popular will, and thus deduce legislative intent reasonably to be implied. *Sharrock v. Borough of Keansburg*, 15 N.J.Super. 11, 83 A.2d 11 (A.D.1951).

The election laws including this chapter were enacted to secure freedom of choice and to prevent fraud and corruption, and technicalities should not be used to make the right of the voter insecure. In *re Stoebling*, 16 N.J. Misc. 34, 196 A. 423 (1938).

## 20. — Illegality, voiding elections

Final tally of votes in municipal council election could not be changed, even though it was uncontroverted that four absentee votes were illegal, since it was unknown for which municipal council candidate any of the four individuals had voted. *Matter of Mallon*, 232 N.J.Super. 249, 556 A.2d 1271 (A.D.1989), certification denied 117 N.J. 166, 564 A.2d 883.

Unsuccessful municipal council candidate failed to establish that illegal votes cast in election had been cast for opposing candidate, as was required to set aside election. *Matter of Mallon*, 232 N.J.Super. 249, 556 A.2d 1271 (A.D. 1989), certification denied 117 N.J. 166, 564 A.2d 883.

Where voters, in selecting successful candidate for democratic nomination to General Assembly from district, in effect rejected candidacies of his competitors, election was voidable only if such showing of illegality was made so as to render voters' decision fraudulent. *Alston v. Mays*, 152 N.J.Super. 509, 378 A.2d 72 (L.1977).

The rule that, in absence of something to indicate for whom illegal ballots were voted, court cannot say that illegal votes were sufficient to change result, has no application where evidence clearly demonstrates that any fraud perpetrated in particular election district was committed for benefit of one candidate. In *re Donahay's Contested Election*, 21 N.J. Misc. 360, 34 A.2d 299 (1943).

Elections should not be set aside unless clearly illegal, and where the result of the fraudulent conduct of the board of county canvassers may be ascertained and its effect excluded, and true will of the electorate determined, this should be done. *Burkett v. Francesconi*, 127 N.J.L. 541, 23 A.2d 780 (1942).

Courts will not regard an election as void unless clearly illegal. They will rather give effect to it if possible. *Love v. Board of Chosen Freeholders of Hudson County*, 35 N.J.L. 269 (1871).

An unsuccessful candidate in a school district election failed to carry his burden of proving that irregularities and illegal voting in election affected its outcome. *Matter of Inquiry into 1991 Annual School Election Held in Pennsauken Tp. School Dist.*, 92 N.J.A.R.2d (EDU) 396 (1992).

## 21. — Breach of directory duty, voiding elections

Courts will not regard election as void because of failure to effectuate a merely directory requirement of election laws, unless fraud or miscarriage of free election is shown. *Application of Wene*, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

Election statutes are to be tested like other statutes, but with a leaning to liberality in view of great public interest which they accomplish, and except where they specifically provide that a thing shall be done in manner indicated, and not otherwise, their provisions designed merely for information and guidance of officers must be regarded as directory only, and election will not be defeated by failure to comply with them, providing irregularity has not hindered any who were entitled from exercising right of suffrage, or rendered doubtful, evidence from which result was to be declared. *Sharrock v. Borough of Keansburg*, 15 N.J.Super. 11, 83 A.2d 11 (A.D.1951).

The failure of election officers in charge of election districts to perform a directory duty cannot invalidate result of election. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

## 22. — Effect on result or outcome, voiding elections

Township council election results in particular voting district had to be set aside, as more than 14 voters testified that they did not vote because of unacceptable delay in providing them with any way to vote after only voting machine in district broke down, and as that was enough voters to have changed the election result. *In re 1984 General Election for the Office of Council of the Tp. of Maple Shade Burlington County*, 203 N.J.Super. 563, 497 A.2d 577 (L.1985).

Where irregularities at an election are such that court cannot with reasonable certainty determine who received a majority of the legal votes, election should be set aside. *Application of Bonsanto*, 171 N.J.Super. 356, 409 A.2d 290 (A.D. 1979).

Malfunctioning of voting machine in election district resulting in rejection of legal votes for one candidate and probable altering of outcome of election of township committee member justified setting aside of election. *Application of Moffat*, 142 N.J.Super. 217, 361 A.2d 74 (A.D.1976), certification denied 71 N.J. 527, 366 A.2d 682.

For any irregularity or other deviation from election law by election officials to invalidate vote or election, where statute does not expressly so provide, irregularity must have been producing cause of illegal votes which would not have been cast, or of defeating legal votes which would have been counted, and irregularity not occurred, and to such extent as to challenge or change result of election, or irregularity must be shown to have influenced election some other way so as to repress a full and free expression of popular will. *Wene v. Meyner*, 13 N.J. 185, 98 A.2d 573 (1953).

## 23. Additional grounds

L.1898, p. 312, § 163, repealed, did not make the refusal of a county clerk to place a candidate's name upon a ticket to be voted upon at an election a ground for a contest against the candidate declared

elected. *Smith v. Ashmead*, 74 N.J.L. 229, 65 A. 877 (1907).

## 24. Other issues

The power of revision given to the circuit courts in case of contested county and township elections could be exercised only with reference to the grounds of contest enumerated in the act. In such procedure, the constitutionality of the law by force of which the election had been held could not be adjudged. *Ellingham v. Mount*, 43 N.J.L. 470 (1881).

## 25. Other remedies

Prerogative writ action was not appropriate means to challenge election of candidate to township committee on ground he lacked required domicile in municipality. *In re Evans*, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

No right to challenge eligibility of official elected to public office existed at common law, but statute provides statutory source for election challenge of successful candidate. *Jones v. Mitchell*, 194 N.J.Super. 387, 476 A.2d 1276 (L.1983), affirmed 194 N.J.Super. 337, 476 A.2d 1249.

In election contest, defendant could not avoid requirement of § 19:28-1 that application for recount be made on or before second Saturday following election by attempting in counterclaim to secure a recount under this section et seq., relating to contest of nomination or election. *Goddard v. Kelly*, 27 N.J.Super. 517, 99 A.2d 667 (A.D.1953).

The fact that contestant of election to office of city commissioner asked for statutory recount did not estop him from maintaining statutory contest for fraud for receipt of illegal votes, but he could avail himself of both remedies. *Richardson v. Radics*, 21 N.J. Misc. 466, 35 A.2d 425 (1943), reversed on other grounds 131 N.J.L. 406, 37 A.2d 293.

The charge of fraud in an election district by a present contestant should not prevent the present incumbent from thereafter having alleged fraud investigated in other districts, should he thereafter be compelled to assume the character of contestant in a subsequent and separate contest. *Burrough v. Branning*, 9 N.J.L.J. 110 (1886).



**19:29-2. Petition filed with Clerk of Superior Court; contents; verification; bond to incumbent**

In the case of an office or proposition voted for by the voters of the entire State or more than 1 county thereof, the contest shall be heard by any judge of the Superior Court assigned for that purpose by the Chief Justice of the Supreme Court, and shall be commenced by the filing of a petition therefor with the Clerk of the Superior Court signed by at least 25 voters of the State or by any defeated candidate for such nomination, party position or public office.

In all other cases the contest shall be heard and determined by a judge of the Superior Court assigned to the county wherein such office or proposition is to be contested, and shall be commenced by the filing of a petition therefor with the Clerk of the Superior Court, signed by at least 15 voters of the county or by any defeated candidate for such nomination, party position or public office.

The petition shall be verified by the oath of at least 2 of the petitioners, or by the candidate filing the same, as the case may be, which verification may be made on information and belief. The petition shall be accompanied by a bond to the State in the case approval or disapproval of any proposition is to be contested and to the incumbent in all other cases, with 2 or more sureties, or a deposit of cash security, to be approved by such judge, in the penal sum of \$500.00, conditioned to pay all costs in case the election be confirmed, or the petition be dismissed or the prosecution fail. When the reception of illegal or the rejection of legal voters is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the election district where they voted, or offered to vote, shall be set forth in the petition, if known.

No petition heretofore filed pursuant to this section shall be dismissed or the prosecution fail because the petitioner shall not have filed a bond with sureties as required herein, and the court shall be construed to have acquired jurisdiction to hear and determine such contest if the petitioner shall have filed with the petition a bond, without sureties, in the penal sum of \$500.00, conditioned as required in this section, with a deposit of \$500.00 as cash security therefor, approved by a judge of the Superior Court.

Amended by L.1947, c. 6, p. 21, § 1; L.1953, c. 19, p. 342, § 33; L.1956, c. 128, p. 533, § 2.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §356, p. 831.

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## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

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## 1. Validity

This section, authorizing circuit courts, except as to contest relating to office or proposition voted for by voters of more than one county, to hear contest involving election of any person to any public office was constitutional as applied to contest of election of State Senator, notwithstanding some of statutory provisions might be

inapplicable to election of members of Legislature; word "any" meaning one out of many, and having force of "every" or "all." In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

## 2. Liberal construction

The rule that statutes authorizing election contests should be liberally construed is limited to cases where causes of contest recognized by statute are presented in specific form in petition duly verified. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

## 3. Parties

In election contest, contestants need not prove that petitioners, or at least 15 of them, were voters of county, unless their qualifications are appropriately challenged, although judge, if reasonably suspicious, may demand proof of petitioners' essential qualifications. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

## 4. Jurisdiction

Judges hearing election contests are authorized to act judicially, not as agents of the legislature; disagreeing with *In re Recheck of Ballots in South River*, 27 N.J.Super. 109, 98 A.2d 900. In re 1984 General Election for the Office of Council of the Tp. of Maple Shade Burlington County, 203 N.J.Super. 563, 497 A.2d 577 (L.1985).

Where County Court judge was sitting as a legislative agent under a chapter 28 proceeding, to determine whether count of votes was correct, he could decide that any ballot was defective, but could not consider anything in relation to the certificate, that had been attached to the inner

envelope of an absentee ballot, since once the certificates had been detached from the inner envelopes, and the votes counted, exclusive jurisdiction of any dispute relating to qualifications of the absentee voter or any certificate was vested in the Superior Court. In re General Election in Bethlehem Tp., Hunterdon County, 74 N.J.Super. 448, 181 A.2d 523 (A.D.1962).

The County Court was without jurisdiction to hear a case arising under this chapter. In re General Election in Bethlehem Tp., Hunterdon County, 74 N.J.Super. 448, 181 A.2d 523 (A.D.1962).

A proceeding to contest primary election which, under this section, must be brought before a judge of Superior Court, comes before such judge as legislative agent and was not "in Superior Court" within authority of Chief Justice under Const.1947, Art. 11, § 4, par. 5, to assign any judge of County Court to sit temporarily in Superior Court. Application for Recheck of Irregular Ballots Cast for Mayor & Councilmen of Borough of South River, Middlesex County, 27 N.J.Super. 109, 98 A.2d 900 (L.1953).

The Somerset County Circuit Court in a "ministerial" capacity had jurisdiction to hear and determine contest concerning election of member to General Assembly of New Jersey from Somerset county. In re Hess, 20 N.J. Misc. 12, 65 N.J. L.J. 1, 23 A.2d 298 (1941), affirmed 128 N.J.L. 387, 26 A.2d 277.

Constitution making each house of Legislature judge of elections, returns, and qualifications of its own members conferred on State Senate exclusive power finally to determine judicially election of State Senator, as regards circuit court's jurisdiction over election contest. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

The circuit court was without jurisdiction in a contested election case, where the proceedings were initiated by the person originally declared elected, although his certificate of election had been subsequently revoked by a justice of the Supreme Court upon a recount of the ballots. Darling v. Murphy, 70 N.J.L. 435, 57 A. 263 (1904).

#### 5. Petitions—In general

Proceeding initiated by petition denominated as "petition and complaint in lieu of prerogative writ," but seeking relief

expressly provided for by this section et seq., would be construed as proceeding under such statute. Lynch v. Acquilone, 32 N.J.Super. 513, 108 A.2d 645 (A.D. 1954).

Defendants in an election contest are entitled to a statement of charges sufficiently explicit to permit preparation for trial but it is desirable, in view of the public interest, that the controversy be determined on the merits and not on artistry in pleading. In re Smock, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

An election contest petition must be sufficient to enable incumbent to prepare his defense to the charges set forth. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

#### 6. — Statutory language, petitions

An election contest petition stating generally the broad grounds of the statute, without detail sufficient to frame an issue against which the incumbent can prepare his defense, is insufficient. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

#### 7. — Prima facie case, petitions

Petition to contest election for fraud of election officers must show that irregularities or fraud complained of produced a result so different from that which would have been declared in their absence as to lead the court to conclude prima facie that on account of the irregularities the result was legitimately challenged. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

Petition in primary election contest should set forth with reasonable particularity facts and circumstances sufficient to render probable any statutory ground of contest. In re Stoebling, 16 N.J. Misc. 34, 196 A. 423 (1938).

#### 8. — Suspicion or conjecture, petitions

Suspicious circumstances are not sufficient to ground a petition for an election contest. Mere suspicions do not establish the legality of the election of the petitioner or the defeat of the incumbent. Groth v. Schlemm, 65 N.J.L. 431, 47 A. 502 (1900).

#### 9. — Signatures, petitions

Defeated candidate's petition in an election case which was signed by attorney and verified by candidate, complied

with provisions of this section requiring petition to be signed by the defeated candidate. *Perri v. Kisselbach*, 34 N.J. 84, 167 A.2d 377 (1961).

#### 10. — Malconduct, fraud or corruption, petitions

Allegations in election contest petition that contestant's representative examined and compared signatures of election books of one district and found a number of forgeries, and that 55,000 illegal votes were cast for incumbent, were so indefinite that incumbent could not prepare a defense and were insufficient to charge that illegal votes were received sufficient to change result of election. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

The addition of word "fraudulent" to allegation otherwise insufficient on its face to charge fraud of election officers, as a ground for contesting election, will not render allegation sufficient. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

#### 11. — Rejection of votes, petitions

In proceeding to contest nomination of political party's candidate for governor in primary election, amended complaint, alleging that voters who had not voted for two annual primary elections of such party were allowed to vote in such election without signing declaration stating party in whose primary they desired to vote, as provided by § 19:23-45, was insufficient as against respondent's motion for summary judgment dismissing complaint as showing no genuine material fact issue or statutory violation affecting legality of votes cast or of election in absence of any charge therein that number of voters skipping two primary elections after voting in a primary was so great as to challenge or change result of election. *Application of Wene*, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

An election contest petition alleging receipt of illegal votes must contain a reasonable identification of the legal voters. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

Allegations in election contest petition that election officers compelled voters to receive assistance in marking ballots, that officials did not require voters to declare under oath that they needed assistance, that they permitted unauthorized persons

to enter booths to mark ballots of voters, and that as a result thereof some 48,000 illegal votes were cast, were insufficient to charge illegal voting and fraud in absence of allegations as to districts in which any particular number of such votes were received, or that votes were cast for candidates for whom voters did not intend to vote, or that voters were not entitled to vote and that ballots were invalid. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

In a petition to the circuit court contesting an election on the ground that legal ballots had been rejected by the election officers, the reason for such rejection need not be stated. *Hackett v. Mayhew*, 62 N.J.L. 481, 41 A. 688 (1898).

An allegation, in an election contest petition, that several hundred ballots cast and counted for the incumbent were not in conformity with law, was too vague. *Lehlbach v. Haynes*, 54 N.J.L. 77, 23 A. 422 (1891).

The petition in an election contest must show in what districts the legal votes were rejected, and illegal votes received, and how many in each district; and such allegation cannot be excused on the ground that petitioners have not definite information. *Lehlbach v. Haynes*, 54 N.J.L. 77, 23 A. 422 (1891).

#### 12. — Any other cause, petitions

In a proceeding to contest an election under L.1898, p. 312, § 163, subd. 7, repealed, authorizing a contest "for any other cause which shows that another person was legally elected" than the cause mentioned in the preceding subdivisions, the facts and circumstances set out in the petition must be of such a character upon the face of the petition as to reasonably establish that some other person than the incumbent was legally elected to the office; and an allegation of mere suspicious circumstances tending to indicate that the ballot boxes had been tampered with were insufficient. *Groth v. Schlemm*, 65 N.J.L. 431, 47 A. 502 (1900).

#### 13. — Result or outcome, allegations, petitions

Allegations in election contest petition that contestant's representative examined and compared signatures of election books of one district and found a number of forgeries, and that 55,000 illegal votes

were cast for incumbent, were so indefinite that incumbent could not prepare a defense and were insufficient to charge that illegal votes were received sufficient to change result of election. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

#### 14. — Verification of petition

Where, in a contested election proceeding, the petition, signed by contestant and seventeen alleged qualified voters, was verified by an affidavit, made by contestant and two of the signers, stating that the facts contained in such petition are true, to the best of their knowledge, information, and belief, and that, at the election contested, "seventeen ballots were cast by the following named qualified voters" (naming the seventeen persons who signed the petition), such verification was sufficient, under L.1898, p. 313, § 166, repealed. *Smith v. Smith*, 41 A. 753 (1898).

In an affidavit verifying a petition to the circuit court, contesting an election on the ground that legal ballots had been rejected by the election officers, the circumstances of the case need not be set forth. *Hackett v. Mayhew*, 62 N.J.L. 481, 41 A. 688 (1898).

Under Rev. 1877, p. 356, § 104, repealed, requiring, as the foundation of an election contest, a petition by 15 voters, setting forth "the particular circumstances of the case, duly verified by the oath or affirmation of at least two of the petitioners," the affidavit was required to be made by persons actually cognizant of the facts of the case, and is insufficient if it states merely that the facts are true to the best of affiants' knowledge, information, and belief. *Johnson v. Allen*, 55 N.J.L. 400, 27 A. 1014 (1893).

Where the affidavit annexed to the petition was defective, the omission could not be supplied by the affidavits of strangers to the record. *Cleary v. Kendall*, 13 N.J.L.J. 134 (1890).

The affidavit annexed to a petition, in a contested election case under Rev.1877, p. 355, § 100, et seq., repealed, must show means of knowledge in the affiant of the facts sworn to, and must state particular facts, not merely belief in the truth of the general matters contained in the petition. *Cleary v. Kendall*, 13 N.J.L.J. 134 (1890).

#### 15. — Challenges to petition

Though sufficiency of amended complaint in proceeding to contest nomination in primary election, must be adjudged only on basis of legal sufficiency of facts well pleaded therein, superior court may look to supporting affidavits for light as to surrounding circumstances. *Application of Wene*, 26 N.J.Super. 363, 97 A.2d 748 (L.1953), affirmed 13 N.J. 185, 98 A.2d 573.

A motion to dismiss a petition instituting an election contest, like a demurrer, raises legal question and as in case of demurrer admits all facts well pleaded but challenges the legal conclusion of the pleader. In re *Hess*, 128 N.J.L. 387, 26 A.2d 277 (1942).

An election contest petition filed under this section is subject to motion to dismiss on ground that petition is legally insufficient. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

An election contest petition must be judged on its face as any other pleading. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

The dismissal of one petition in a contested election case under Rev.1877, p. 355, § 100, et seq., repealed, was not a bar to the filing of other petitions by the same contestant. *Cleary v. Kendall*, 13 N.J.L.J. 134 (1890).

#### 16. Answer by incumbent

Although election contest proceedings are purely statutory, the court is not required to confine itself exclusively to the allegations of fraud set forth by contestant, since the proceedings are similar to those in an action at law and incumbent may by counterclaim set up fraud in election districts other than districts set up by contestant, so that the court may ascertain the merits and justice of the dispute. In re *Donahay*, 21 N.J. Misc. 159, 32 A.2d 499 (1943).

In an election contest under § 100 et seq. of Rev.1877, p. 355, repealed, the incumbent was not bound to file any answer to contestant's petition, and his failure to do so could not be treated as a default entitling contestant to judgment. *Lippincott v. Felton*, 61 N.J.L. 291, 39 A. 646 (1898).

In a contested election under Rev.1877, p. 355, § 100, et seq., repealed, the admission by the incumbent of the facts

stated generally, in the petition, was not sufficient basis for a final judgment. *Cleary v. Kendall*, 13 N.J.L.J. 134 (1890).

Although Rev.1877, p. 355, § 100 et seq., repealed, did not require the incumbent whose election to an office was contested to file an answer, it was proper to file a written denial of the petition; but, as Rev.1877, p. 356, § 107, repealed, enacted that the proceedings should be similar to an action at law so far as practicable, if he chose to file an answer, it had to conform to the rules of pleading, and be responsive to the charges in the petition. *Burrough v. Branning*, 9 N.J.L.J. 110 (1886).

#### 17. Bond of contestant

Objection that election contestant's bond was not approved by Supreme Court justice, not raised at commence-

ment of hearing, but before hearing was concluded and decision rendered, was not waived. *Kuestner v. Boscarell*, 5 N.J. Misc. 303, 136 A. 506 (1927).

#### 18. Waiver and estoppel

Where the prosecutor was present at, and participated in, an election in a street lighting district, and, without objection or protest, voted upon the question of the sum to be raised for street lighting purposes in the district for the ensuing year, he was estopped from questioning the regularity of the election because of an allegation that the requisite ten days' notice thereof was not given by the township clerk. *Brown v. Street Lighting Dist. No. 1 of Woodbridge Tp.*, 69 N.J.L. 485, 55 A. 1080 (1903), affirmed 70 N.J.L. 762, 58 A. 339.

### 19:29-3. Filing petition; time for

The petition contesting any nomination to public office, election to party office or position or the proposal of any proposition shall be filed not later than 10 days after the primary election.

The petition contesting any election to public office or approval or disapproval of any proposition shall be filed not later than 30 days after such election, unless the ground of action is discovered from the statements, deposit slips or vouchers filed under this Title, subsequent to such primary or other election, in which event such petition may be filed 10 or 30 days respectively after such statements, deposit slips or vouchers are filed.

Any petition of contest may be filed within 10 days after the result of any recount has been determined or announced.

Amended by L.1956, c. 128, p. 534, § 3.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶357, p. 831.

#### Library References

Elections ⇄278.

WESTLAW Topic No. 144.

C.J.S. Elections § 258.

#### Texts and Treatises

26 Am Jur 2d, Elections § 326.

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### 1. Contests subject to statute

This section setting a ten-day limitation for contesting a nomination or election was inapplicable for purpose of determining timeliness of action contesting county clerk's certification of defendant as a candidate for office of municipal tax assessor, where there was no challenge to defendant's nomination, and where no election had been held at time complaint was filed. *Alongi v. Schatzman*, 57 N.J. 564, 274 A.2d 33 (1971).

### 2. Primary election challenge

Petition filed more than ten days after primary election was untimely, where opposing candidate was not required to file statement of expenses, even though it was alleged in petition that contestee's expenditures had been excessive. *Lynch v. Acquillone*, 32 N.J.Super. 513, 108 A.2d 645 (A.D.1954).

### 3. General election challenge

This section that permits contest petition to be filed within ten days after result of any recount has been determined or announced must be read as permitting general election challenge, although the statute earlier refers to petition protesting any nomination for public office and requires filing not later than ten days after primary election. In *re Evans*, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

### 4. Statements, deposit slips or vouchers

Prior knowledge of the same "ground of action" does not defeat right to extension of time for filing municipal election contest where the ground of action is discovered from statements, deposit slips or vouchers filed under the statute subsequent to the election. In *Matter of Tyler*, 167 N.J.Super. 115, 400 A.2d 541 (L.1979).

Although neither court order concerning the validity of ballots nor certificates

of election issued by county board of canvassers were adequate, taken separately or together, to disclose ground of action within this section concerning extension of time for filing election contest petition, such order and certificate were sufficient within this section in that they led any inquiring person directly to court's opinion in which the ground of action was clearly set forth. In *Matter of Tyler*, 167 N.J.Super. 115, 400 A.2d 541 (L.1979).

Since order issued by court concerning validity of ballots and certificates of election issued by county board of canvassers were writings required to be filed by Title 19 with office of clerk of municipality, each constituted a "statement" filed under Title 19, subsequent to the election, providing 30 days for filing contest petition unless ground of action is discovered from statements, deposit slips or vouchers filed under Title 19. In *Matter of Tyler*, 167 N.J.Super. 115, 400 A.2d 541 (L.1979).

### 5. Post-recount contests

Only court order could fix necessary date of determination or announcement of recount, so as to trigger statutory ten-day limit on filing of contest petition, unless election statutes were amended to define words "determined or announced." In *re Evans*, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

Election board's announcement of result of recount was not made "under the direction" of the court, and result had never been announced or determined as required by N.J.S.A. 19:28-3, so contest petition was timely filed, as N.J.S.A. 19:29-3 requires petition to be filed within ten days after result of recount has been determined or announced; contest petition was filed within at least ten days of date of filing of election board's certificate, and well-drawn order authorizing recount could define announcement of result as filing of the certificate. In *re Evans*, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

Where county court directed County Board of Elections to recount votes cast in 12 districts, and after recount in 8 districts was completed, board on June 10, at request of unsuccessful candidate, announced that recount had been abandoned, and on June 13 county court en-

tered an order dismissing recount proceedings, election contest begun June 21 was within 10 days required by this section, since result of recount was not "determined or announced" within meaning of statute until order of county court was entered. In re Smock, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

Where petition for recount filed by one unsuccessful candidate in election of five city councilmen, prayed for recount of entire election, election contest filed within ten days of the determination of the recount proceedings, but more than 30 days after election, was timely as to all five successful candidates and not just as to the candidate who finished fifth. In re Smock, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

#### 6. Untimely contest

Where plaintiff seeking to challenge defendant's eligibility to serve as elected officer asserted no grounds provided in § 19:29-1 permitting election challenge to be made later than 30 days after election day, nor did he establish grounds for tolling the 30-day period, the challenge was barred by 30-day period provided for by § 19:29-3, even if legislative policy not to disturb election results after limited period of time might allow defendant to occupy elected office for which he might not be eligible. Jones v. Mitchell, 194 N.J.Super. 387, 476 A.2d 1276 (L.1983),

affirmed 194 N.J.Super. 337, 476 A.2d 1249.

#### 7. Waiver and estoppel

Persons who challenged election of candidate to township committee on ground he lacked required domicile in the municipality had not waived their statutory right to contest election, although challengers allegedly had knowledge of domicile issue long before general election, where no facts were offered, beyond knowledge and lapse of time, to show that challengers knowingly waived their right to contest the election. In re Evans, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

Persons challenging election of candidate to township committee on ground he lacked required domicile in municipality and election of other candidates on ground they improperly assisted would not be estopped from contesting the election on ground challengers had knowledge of domicile issue long before general election, candidates proceeded with election efforts on assumption no question existed as to their eligibility, and candidates changed their position by losing opportunity to substitute eligible candidates; candidates were presumed to have known the law and knew or should have known that this section gave challengers right to file election contest petition after general election took place. In re Evans, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

### 19:29-4. Time for trial; notice

The judge shall appoint a suitable time for hearing such complaint, not more than 30 nor less than 15 days after the filing of the petition, and the contestant shall cause a notice of such hearing, with a copy of the contestant's petition, to be served, in the case approval or disapproval of any proposition is to be contested, on the Secretary of State, the county clerk or the municipal clerk, as the case may be, who caused the proposition to be printed on the ballot, and in all other cases on the incumbent at least 10 days before the day set for trial.

Amended by L.1953, c. 19, p. 343, § 34; L.1956, c. 128, p. 535, § 4.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶358, p. 832.



**Library References**

Elections  $\Leftrightarrow$  300.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S$  300.

**Texts and Treatises**

26 Am Jur 2d, Elections  $\S\S$  332, 333.

**Notes of Decisions****Dismissal of action 1****1. Dismissal of action**

Superior Court rule 3:41-2 (revised; see, now, rule 4:37-2), that for failure to

cause a summons to issue within five days after filing a complaint, court in its discretion could on motion dismiss an action, had no application to election contest. In re Smock, 5 N.J. Super. 495, 68 A.2d 508 (L.1949).

**19:29-5. Procedure at trial**

The proceedings shall be similar to those in a civil action so far as practicable, but shall be under the control and direction of the court, which shall hear and determine the matter without a jury, with power to order any amendments in the petition, or proceedings as to form or substance, and to allow adjournments to any time not more than thirty days thereafter for the benefit of either party, on such terms as shall seem reasonable to the court, the grounds for such adjournment being shown by affidavit.

Amended by L.1953, c. 19, p. 343,  $\S$  35.

**Historical and Statutory Notes**

Source: L.1930, c. 187,  $\S$  359, p. 832.

**American Law Reports**

Admissibility of parol evidence of election officials to impeach election returns, 46 ALR2d 1385.

**Library References**

Elections  $\Leftrightarrow$  154(1), 300.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections  $\S\S$  120, 123, 148, 300.

**Texts and Treatises**

26 Am Jur 2d, Elections  $\S\S$  342-54.

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**1. Civil actions**

This section making practice in election contests "similar \* \* \* so far as practicable" to practice in civil action does not make practice same as in civil action. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

**2. Pleadings**

Trial court in election contest proceeding had discretion to consider ballots tendered by contestee though he had filed no counterclaim. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D. 1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

Where election contestant, after a recount in certain election districts selected by him, alleged fraud on part of election board in one district thereby seeking to nullify a plurality in incumbent's favor, incumbent's counterclaim alleging fraud in other districts wherein contestant received a plurality was not improper. In *re Donahay*, 21 N.J. Misc. 159, 32 A.2d 499 (1943).

A litigant in an election contest can address a motion to a pleading in an action at law on the ground that the pleading is legally insufficient. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

In a contest under Rev.1877, p. 355, § 100 et seq., repealed, the incumbent was not bound to file any answer to contestant's petition, and his failure to do so could not be treated as a default entitling contestant to judgment. *Lippincott v. Felton*, 61 N.J.L. 291, 39 A. 646 (1898).

**3. Discovery**

A party contesting an election was not entitled to order permitting examination of poll books and signature copy registers

in advance of trial under § 19:18-8 authorizing Supreme Court, when necessary, to issue order for opening ballot boxes and for removal of documents and books from file of any municipal or county office in view of this section and § 19:29-6 providing for plenary process in election contests to compel production of ballot boxes, books, and other documents which may be required at hearing. *Clee v. Moore*, 119 N.J.L. 215, 195 A. 530 (1937).

**4. Amendments**

This section providing that election contest proceedings shall be under control and direction of court gives trial court broad powers in control and direction of proceedings, including right to order amendments in those proceedings as to form and substance. *Petition of Keogh-Dwyer*, 85 N.J.Super. 188, 204 A.2d 351 (A.D.1964), reversed on other grounds 45 N.J. 117, 211 A.2d 778.

**5. Adjournments**

Where more than two months had elapsed since election of city councilmen, contestants' request for further adjournment would be denied. In *re Smock*, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

**6. Presumptions and burden of proof**

Persons challenging election of candidate to township committee on ground he lacked required domicile in municipality had to carry their burden of going forward with evidence to sustain claim candidate was not domiciled as required by election laws through clear and convincing evidence, rather than only through preponderance of the evidence. In *re Evans*, 227 N.J.Super. 339, 547 A.2d 344 (L.1988).

Burden of proving that legal votes were rejected and that number of rejected votes was sufficient to change result of election so to warrant setting aside election is upon the contestant. *Application of Moffat*, 142 N.J.Super. 217, 361 A.2d 74 (A.D.1976), certification denied 71 N.J. 527, 366 A.2d 682.

Burden of showing specifically for whom votes were cast, while pertinent in cases of illegality, has no place where issue is the rejection of legal votes; in such situations, contestant's burden is

## Note 6

met by demonstration that had votes been cast for him, result would have been different. Application of Moffat, 142 N.J.Super. 217, 361 A.2d 74 (A.D.1976), certification denied 71 N.J. 527, 366 A.2d 682.

Where election is contested on sole ground that illegal votes were received sufficient to change result, contestant has not only burden of showing that illegal votes were cast in number sufficient to change result if they had in fact been cast for contestee but also burden of showing, to extent possible under circumstances, for whom illegal votes were cast. Application of Murphy, 101 N.J.Super. 163, 243 A.2d 832 (A.D.1968).

## 7. Recounts

Where plaintiff and defendant were candidates for the Republican nomina-

tion for office of member of township committee, and after primary election plaintiff was declared nominated with plurality of three votes, and defendant applied for a recount, and on recount the county board of elections held that there was a tie, determination of county board of elections that there was a tie was not conclusive on Superior Court in suit brought by plaintiff to contest the election. *Goddard v. County Bd. of Elections of Monmouth County*, 27 N.J.Super. 30, 98 A.2d 688 (A.D.1953).

An application for a recount of ballots in a contested election case, not offered as part of a party's proofs, must conform to the statutory requirements governing such applications. *McCoy v. Boyle*, 51 N.J.L. 53, 16 A. 15 (1888).

## 19:29-6. Witnesses and evidence

The court may compel the attendance of any officer of such election and of any other person capable of testifying concerning the same, and also compel the production of all ballot boxes, books, papers, tally lists, ballots and other documents which may be required at such hearing. The style, form and manner of service and process and papers, and the fees of officers and witnesses, shall be the same as in the Superior Court in other cases, as far as the nature of the case admits.

Amended by L.1953, c. 19, p. 344, § 36.

## Historical and Statutory Notes

Source: L.1930, c. 187, §360, p. 832.

## Library References

Witnesses ¶1, 16.

WESTLAW Topic No. 410.

C.J.S. Witnesses §§ 2 et seq., 25.

## Notes of Decisions

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 Weight and sufficiency of evidence 9

## Witnesses 2

## 1. Inherent powers of court

Courts should not invoke their general or inherent jurisdiction in a strictly statutory proceeding where terms of statute invoked provide ample means to bring into court whatever proof exists in sup-

port of statutory petition. *Clee v. Moore*, 119 N.J.L. 215, 195 A. 530 (1937).

In election contest, under this chapter, contestants need not prove that petitioners, or at least 15 of them, were voters of county, unless their qualifications are appropriately challenged, although judge, if reasonably suspicious, may demand proof of petitioners' essential qualifications. In *re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

## 2. Witnesses

Contestees in election contest based on sole ground that illegal votes had been received sufficient to change result had no obligation to accept judge's offer to compel illegally-voting witnesses to disclose for whom they had voted. Application of *Murphy*, 101 N.J. Super. 163, 243 A.2d 832 (A.D.1968).

In election contest, testimony of acknowledged floaters should be earnestly scrutinized and cautiously weighed. In *re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

## 3. Ballot boxes

Where plaintiff rests his case without introducing the ballot box or ballots, and announces that he does not intend to introduce them, it is error for the court, of its own motion, to order the ballot box and ballots into the case as evidence, after the case has been closed. *Convery v. Conger*, 53 N.J.L. 658, 24 A. 1002 (1891).

## 4. Illegal votes

Evidence that total votes shown on voting machines exceeded number of voting authorities issued did not support determination that excessive votes were illegal in absence of showing that vote also exceeded number of persons signing voting books. Application of *Murphy*, 101 N.J. Super. 163, 243 A.2d 832 (A.D.1968).

Where election is contested on sole ground that illegal votes were received sufficient to change result, contestant has not only burden of showing that illegal votes were cast in number sufficient to change result if they had in fact been cast for contestee but also burden of showing, to extent possible under circumstances, for whom illegal votes were cast. Application of *Murphy*, 101 N.J. Super. 163, 243 A.2d 832 (A.D.1968).

In election contest, a presumption does not exist that illegal ballots were cast for incumbent rather than for contestant. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

In primary election contest proceedings, contestants had burden to prove allegation that illegal votes were received sufficient to change result of election, and, to sustain this burden, contestants should prove the actual casting of sufficient illegal votes for the incumbent to enable the court with reasonable certainty to determine that the rejection of such votes changes the result of the election. In *re Stoebling*, 16 N.J. Misc. 34, 196 A. 423 (1938).

Evidence that numerous floaters were systematically gathered together and sent out to various voting districts and that many of them voted several times under assumed names, was sufficient to show fraudulent and illegal voting which materially benefited incumbent, though evidence was insufficient to show that rejection of illegal votes for incumbent would change result of election. In *re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

Contestant's petition charged that 18 illegal ballots were cast for incumbent by persons whom he named therein as known to him. His proofs established the fact that 18 ballots were cast illegally, but not by whom they were cast or that they were cast by the persons named in his petition. The charges were not thereby sufficiently proved, and, in the absence of other grounds in support of the petition, the failure justified its dismissal. *Lippincott v. Felton*, 61 N.J.L. 291, 39 A. 646 (1898).

## 5. Residence

In election contest in Surf City, N.J., where voter's husband had several residences and she had registered in Philadelphia less than five months prior to contested election and had then given previous home as Brooklyn, evidence held to show that she had not been resident of New Jersey for a year, nor of county of election five months prior thereto, notwithstanding her husband's voting domicile was in that county. *Snyder v. Callahan*, 129 A. 410, 3 N.J. Misc. 269 (1925). See, also, *Eckert v. Donahue*, 129 A. 413, 3 N.J. Misc. 276 (1925).

The allegation that a candidate had not resided in New Jersey one year before the

## Note 5

election, must be proved by the contestant of his election. *Chandler v. Wartman*, 6 N.J.L.J. 301 (1883).

## 6. Inability to vote

Evidence in action to set aside mayoral election, which had been won by 18 votes, and to declare new election on basis of fact that voters in one district were unable to cast votes for 2½-hour period due to voting machine malfunction failed to establish that as many as 18 voters were frustrated in their access to the polls; thus, setting aside of election was not warranted. *Magura v. Smith*, 131 N.J.Super. 395, 330 A.2d 52 (L.1974).

## 7. Circumstantial evidence

Circumstantial evidence is admissible to prove for whom illegal votes were cast,

and among circumstances that may be considered are party affiliations of voter or relations between voter and candidates or between him and others actively interested in advancing cause of candidates. *Application of Murphy*, 101 N.J.Super. 163, 243 A.2d 832 (A.D.1968).

## 8. Presumptions and burden of proof

Certificate of election, in proceeding under this chapter, constitutes prima facie evidence of candidate's title to office. *In re Hunt*, 15 N.J. Misc. 331, 191 A. 437 (1937).

## 9. Weight and sufficiency of evidence

The unsupported testimony of a single voter as to how he voted should not be accepted to overthrow an election. *In re Election in Township of Elk*, 14 N.J.L.J. 263 (1891).

## 19:29-7. Witnesses required to testify

The judge may require any person called as a witness who voted at such election to answer touching his qualification as a voter, and if the court, from his examination, or otherwise, is satisfied that he was not a qualified voter in the election district where he voted, he may compel him to disclose for whom he voted.

Amended by L.1953, c. 19, p. 344, § 37.

## Historical and Statutory Notes

Source: L.1930, c. 187, ¶361, p. 833.

## Library References

Witnesses ⇄5.

WESTLAW Topic No. 410.

C.J.S. Witnesses § 16.

## Texts and Treatises

26 Am Jur 2d, Elections § 347.

## Notes of Decisions

Disclosure of vote 2  
Validity 1

## 1. Validity

New Jersey's "Election Contest Subpoena Laws," under which court may compel illegal voter to disclose nature of

her vote in order to expunge that illegally cast vote, do not directly abridge voters' First Amendment rights; there is no right to vote illegally, and compelled disclosure of person's vote cannot impact on witness' protected constitutional rights, as court must first determine whether vote was illegally cast before requiring illegal voter to disclose nature of her vote.

Hoch v. Phelan, D.N.J.1992, 796 F.Supp. 130.

**2. Disclosure of vote**

Privilege for a person not to disclose a vote does not apply where the vote has been found to be illegal. Matter of Malon, 232 N.J.Super. 249, 556 A.2d 1271 (A.D.1989), certification denied 117 N.J. 166, 564 A.2d 883.

Contestees in election contest based on sole ground that illegal votes had been received sufficient to change result had no obligation to accept judge's offer to compel illegally-voting witnesses to disclose for whom they had voted. Application of Murphy, 101 N.J.Super. 163, 243 A.2d 832 (A.D.1968).

**19:29-8. Judgment; misconduct by members of district boards**

The judge shall pronounce judgment whether the incumbent or any contestant was duly elected, and the person so declared elected will be entitled to his certificate; and in the case of a proposition, whether the same was approved or disapproved. If misconduct is complained of on the part of the members of any district board it shall not be held sufficient to set aside the election unless the rejection of the vote of such district would change the result as to that office.

Amended by L.1953, c. 19, p. 344, § 38; L.1956, c. 128, p. 535, § 5.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §362, p. 833.

**Library References**

Elections ⇄154(12).  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 127, 148.

**Forms**

9 Am Jur Pl & Pr Forms, Rev, Elections, Forms 121 et seq.

**Texts and Treatises**

26 Am Jur 2d, Elections § 357.

**Notes of Decisions**

- Conclusiveness of judgment** 4
- Misconduct of board** 1
- Relief granted** 3
- Vacancy in office** 2
- Vacation of judgment** 5

**1. Misconduct of board**

Fact that voters were registered at places other than official places for registration described in § 19:31-6, that mu-

nicipal clerk failed to transport registration forms to county board of elections daily as required by § 19:31-7, and that in fact some were so transmitted after the fortieth day before the election, did not require setting aside of results of election of city councilmen in election contest, where it was not contended that voters so registered lacked qualifications for voting, and it was not claimed that any voter was in fact registered within 40 days'

## Note 1

period preceding the election. In re Smock, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

Where election officers had rejected ballots printed with the name of "William J. Keares," instead of "William J. Kearns," as prescribed by the county clerk in preparing the official ballot, the rejection of these ballots was sufficient to change the result; a certificate for a new election should not have been ordered. *Kearns v. Edwards*, 17 N.J.L.J. 51 (1894).

## 2. Vacancy in office

The power of the circuit court on an election contest does not extend to the determination whether a vacancy existed in the office in respect to which the contest is made. *Lippincott v. Felton*, 61 N.J.L. 291, 39 A. 646 (1898).

## 3. Relief granted

Although there was an admitted failure to publish notice of the proposed public question at general election as required by 19:12-7 in view of the mailing of sample ballots to all township residents showing such question thereon and the vast amount of publicity concerning the issue of the charter study commission embodied in public question which was approved by nearly a two to one vote of those who actually voted on question, it could not be said that the procedural omission had the effect of imposing so vital an influence on election that the election should be vitiated, and the election was valid. *Richards v. Barone*, 114 N.J.Super. 243, 275 A.2d 771 (L.1971).

The presence and availability in polling places of rubber stamps containing names of persons seeking nomination in primary election and making such stamps available to persons eligible to vote in such election was not such violation of election laws as would invalidate entire election. Application for Recheck of Irregular Ballots, Borough of South River, Middlesex County, Districts 1 to 11, 26 N.J.Super. 357, 97 A.2d 773 (L.1953), vacated on other grounds 27 N.J.Super. 109, 98 A.2d 900.

In an election contest, where fraudulent voting has been clearly established and court can determine with reasonable certainty number of fraudulent votes cast and candidate for whom they were cast, court must strike from such candidate's total the number of such votes which

court finds have been included in candidate's total vote. In re Donahay's Contested Election, 21 N.J. Misc. 360, 34 A.2d 299 (1943).

The charge that unauthorized persons participated in discharge of duties of election boards is not ground for voiding election. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

Irregularities of election boards having no effect upon the voting will not vitiate an election. Petition of Clee, 119 N.J.L. 310, 196 A. 476 (1938).

In proceeding to contest election of State Senator, where evidence of misconduct of members of district boards was sufficient to challenge result of election, and exact number of fraudulent and illegal votes could not be determined, circuit court was empowered only to set aside election, as against contention that if rejection of all votes in districts in which board members were guilty of fraud and malconduct would change result, certificate of election should be awarded to incumbent's opponent. In re Hunt, 15 N.J. Misc. 331, 191 A. 437 (1937).

## 4. Conclusiveness of judgment

A decision in election contest, settling for immediate purposes and as a part of the electoral process the right to office of borough councilman, would not operate as a bar to further judicial inquiry by quo warranto. In re Ray, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

The judgment of the circuit court in contested election proceedings, under Rev.1877, p. 357, § 111, repealed, giving that court authority, in cases of contested elections of county and township officers, to determine who was duly elected, annul certificates of election, or to set the election aside, will not oust the supreme court of its jurisdiction to subsequently try the title to the office by quo warranto proceedings. *Conger v. Convery*, 52 N.J.L. 417, 20 A. 166 (1890), affirmed 53 N.J.L. 658, 24 A. 1002.

## 5. Vacation of judgment

A judgment entered by judge of County Court in proceeding to contest a primary election, in which judge heard matter and entered judgment purportedly pursuant to order of Chief Justice which assigned judges of County Court to sit temporarily "in" Superior Court, Law Division, to try cases and hear motions pending in that

court pursuant to Rule A18, which deals with integrated lists in certain counties, was coram non iudice, and Law Division, could vacate judgment more than 30 days after filing of complaint, without requiring plaintiffs to appeal to obtain relief, notwithstanding this section requiring

Superior Court judge to appoint time for hearing not more than 30 days after filing of complaint. Application for Recheck of Irregular Ballots Cast for Mayor & Councilmen of Borough of South River, Middlesex County, 27 N.J.Super. 109, 98 A.2d 900 (L.1953).

**19:29-9. Form and effect of judgment**

If the judgment be against the incumbent, and he has already received a certificate of election, the judgment shall annul it. If the judge finds that no person was duly elected, the judgment shall be that the election be set aside.

Amended by L.1953, c. 19, p. 344, § 39.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §363, p. 833.

**Notes of Decisions**

- Certificates of election 1**
- Setting aside election 2**
- Voiding or setting aside election 2**

**1. Certificates of election**

Where primary elections for county committeemen of party were decided by only one vote each in favor of persons who conducted write-in campaign and names of candidates who appeared on ballot in voting machine had been obliterated but machines had not been checked by election official as required by § 19:52-2 irregularities affected contest so that a full and free expression of popular will had been subjected to interference, and certificates of election were annulled and positions declared vacant. Application of Klayman, 97 N.J.Super. 295, 235 A.2d 45 (L.1967).

**2. Voiding or setting aside election**

Although actions and inactions of election officials in connection with election to fill township committee seats were not fraudulent, when taken in their totality they demonstrated that election results had to be voided, certification of election annulled, elected candidate removed from office, and new special election held. In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

Election could not be voided on mere showing that successful candidate's majority was smaller than number of illegal votes cast, without any attempt by contestant to show for whom illegal votes were cast, where neither fraud, corruption nor widespread illegality was shown and there was no proof that illegal votes were cast at contestee's instigation or with his knowledge and consent. Application of Murphy, 101 N.J.Super. 163, 243 A.2d 832 (A.D.1968).

In election contest wherein number of illegal votes as to which trial court concluded it was unable to say for whom they were cast exceeded difference between respective vote totals of candidates, neither candidate was entitled to certificate of election and election should be set aside. Application of Dorgan, 44 N.J. 440, 210 A.2d 67 (1965).

The existence of fraud sufficient to challenge the result in four election districts only in the city of Camden did not warrant setting aside election of members of the Board of Chosen Freeholders of Camden county who were voted for throughout the county, but the election of such board members was properly determined on the basis of the vote in the other districts, the election district being the "geographical political unit" under the election law. *Burkett v. Francesconi*, 127 N.J.L. 541, 23 A.2d 780 (1942).



## Note 2

The court must uphold an election unless it clearly appears that election was illegal. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

A recount of a part of the votes cast at an election for State Senator in the county of Ocean was ordered by a justice of the Supreme Court who was present during the counting of the ballots by the county board of elections, by which it appeared that an error had been made sufficient to change the result of such election, whereupon the relator moved the said justice to revoke the certificate of

election already issued and to issue in its place a certificate in favor of the relator, as the part found to have received a majority of the votes cast at such election, which the said justice refused to do upon the ground that ballots so counted in his presence were not the votes cast at such election. Upon an application for a writ of mandamus compelling the said justice to make such orders, for the reasons stated in the opinion, the application should be denied. *Mathis v. Voorhees*, 81 N.J.L. 26, 78 A. 1059 (1911).

**19:29-10. Order of court putting successful party in office**

When either the contestant or incumbent shall be in possession of the office, by holding over or otherwise, the judge shall, if the judgment be against the party in possession of the office and in favor of his antagonist, issue an order to carry into effect his judgment, which order shall be under the seal of the court, and shall command the sheriff of the county to put the successful party into possession of the office without delay, and to deliver to him all books, papers and effects belonging to the same.

Amended by L.1953, c. 19, p. 345, § 40.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶364, p. 833.

**Library References****Texts and Treatises**

26 Am Jur 2d, Elections §§358-365.

**19:29-11. Review**

The party against whom judgment is rendered may have it reviewed by the Appellate Division of the Superior Court on an appeal in lieu of prerogative writ.

Amended by L.1953, c. 19, p. 345, § 41.

**Historical and Statutory Notes**

Source: L.1930, c. 187, ¶365, p. 833.

**Library References**

Elections ⇨305(1) et seq.

WESTLAW Topic No. 144.

C.J.S. Elections § 308 et seq.

## Notes of Decisions

## Findings 2

Questions reviewable 1

Void judgments 3

## 1. Questions reviewable

Where contestant appealed from adverse judgment in election contest and contestee did not cross-appeal from portion of order providing that costs should not be allowed, question whether the contestee was entitled to costs was not presented. *In re Hess*, 128 N.J.L. 387, 26 A.2d 277 (1942).

At a township election, 14 ballots were cast, on which a person had written his own name as a candidate in a blank space left under the words "Chosen Freeholder," as printed on the ballots. The question whether these ballots were invalid, as marked ballots, was one of fact for the circuit court, and that the decision of that court thereon could not be reviewed by the Supreme Court on appeal. *Hackett v. Mayhew*, 62 N.J.L. 481, 41 A. 688 (1898).

Under Rev.1877, p. 357, § 113, repealed, on an appeal taken from the judgment of the circuit court in a disputed election case, there must have been some formal act done in the court from which the appeal was taken. *Cleary v. Kendall*, 53 N.J.L. 130, 20 A. 747 (1890).

## 2. Findings

In contested election case, trial court's finding that fraud in certain district was so extensive that it was impossible to segregate ballots entitled to legal efficacy

from those which had been tampered with, so as to require rejection of votes from such district in toto, was binding upon Supreme Court, where there was plenary evidence in support of such finding. *Burkett v. Francesconi*, 127 N.J.L. 541, 23 A.2d 780 (1942).

The finding of the circuit court on the facts in a contested election case was binding upon the Supreme Court, under L.1898, p. 315, § 175, repealed, if there was any evidence to support the finding. *Somers v. Steelman*, 77 N.J.L. 119, 71 A. 119 (1908).

## 3. Void judgments

A judgment entered by judge of County Court in proceeding to contest a primary election, in which judge heard matter and entered judgment purportedly pursuant to order of Chief Justice which assigned judges of County Court to sit temporarily "in" Superior Court, Law Division to try cases and hear motions pending in that court pursuant to rule which deals with integrated lists in certain counties, was coram non iudice, and Law Division, could vacate judgment more than 30 days after filing of complaint, without requiring plaintiffs to appeal to obtain relief, notwithstanding § 19:29-4, requiring Superior Court judge to appoint time for hearing not more than 30 days after filing of complaint. Application for Recheck of Irregular Ballots Cast for Mayor & Councilmen of Borough of South River, Middlesex County, 27 N.J.Super. 109, 98 A.2d 900 (L.1953).

## 19:29-12. Repealed by L.1953, c. 19, p. 345, § 42

## Historical and Statutory Notes

The repealed section, which derived from L.1930, c. 187, p. 834, § 366, pro-

vided for precedence of appeal and notice of argument.

## 19:29-13. Enforcement of judgment on appeal

The Appellate Division of the Superior Court in the appeal in lieu of prerogative writ shall enforce its judgment in such manner as may be appropriate and where appropriate, remove from office the party against whom judgment is rendered, if he is in possession of the office.

Amended by L.1953, c. 19, p. 345, § 43.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶367, p. 834.

### Library References

Elections ⇐305(9).

WESTLAW Topic No. 144.

C.J.S. Elections §§ 317, 318.

### 19:29-14. Costs; liability for

The contestant and incumbent shall be liable to the officers and witnesses for the costs made by them, respectively. If the election be confirmed, or the petition dismissed, or the prosecution fail, judgment shall be rendered against the contestant for costs; and if the judgment be against the incumbent, or the election be set aside, he shall pay the costs at the discretion of the court; and in the case a contestant is successful in contesting the approval or disapproval of a proposition, the State, county or municipality, as the case may be, which caused the proposition to be submitted to the voters, shall pay the costs at the discretion of the court. After the entry of the judgment of the court the costs may be collected by attachment or otherwise.

Amended by L.1956, c. 128, p. 535, § 6.

### Historical and Statutory Notes

Source: L.1930, c. 187, ¶368, p. 834.

### Library References

Elections ⇐307.

WESTLAW Topic No. 144.

C.J.S. Elections § 319 et seq.

### Notes of Decisions

#### In general 1 Master's fee 2

##### 1. In general

Under L.1898, p. 314, § 172, repealed, providing that a contestant and incumbent shall be liable for the costs, but, if the election be confirmed or the prosecution fail, judgment shall be rendered against the contestant, where the Su-

preme Court on appeal reverses the judgment in an election contest and orders the petition dismissed, appellant was entitled to costs. *Darling v. Murphy*, 71 N.J.L. 524, 59 A. 225 (1904).

##### 2. Master's fee

Master's fee in an election contest is a "cost" for which unsuccessful challengers are liable. *Matter of Quintana*, 250 N.J.Super. 419, 594 A.2d 1356 (L.1991).

## SUBTITLE 6

# REGISTRATION OF VOTERS

### Chapter

- 30. Municipalities Not Having Permanent Registration [Repealed].
- 31. Municipalities Having Permanent Registration.
- 31A. Signature Comparison Records; Form and Use.

## CHAPTER 30

### MUNICIPALITIES NOT HAVING PERMANENT REGISTRATION [REPEALED]

#### ARTICLE 1. REGISTRY LISTS

**19:30-1, 19:30-2.** Repealed by L.1947, c. 347, p. 1138, § 5

#### Historical and Statutory Notes

Section 19:30-1, which derived from L.1930, c. 187, p. 835, § 369, amended by L.1933, c. 259, § 1, p. 698, provided for the form and delivery to county clerk of registry lists.

Section 19:30-2, which derived from L.1930, c. 187, p. 835, § 370, amended by L.1947, c. 168, § 16, provided for the printing and distribution of registry lists.

#### ARTICLE 2. REGISTRATION—REGISTRATION DAYS

**19:30-3 to 19:30-10.** Repealed by L.1946, c. 11, p. 32, § 16

#### Historical and Statutory Notes

Section 19:30-3, which derived from L.1930, c. 187, p. 836, § 371, amended by L.1935, c. 9, p. 30, § 16, L.1935 c. 299, p. 939, § 9, provided for first registration day, canvassing books and enumeration of legal voters.

Section 19:30-4, which derived from L.1930, c. 187, p. 838, § 372, amended by L.1935, c. 9, p. 31, § 17, L.1935, c. 299, § 10, p. 940, provided for the second registration day and addition of names to register.

Section 19:30-5 which derived from L.1930, c. 187, p. 838, § 373, related to names transcribed to general registry on second registration day.

Section 19:30-6, which derived from L.1930, c. 187, p. 838, § 374, amended

by L.1933, c. 259, p. 699, § 1, related to third registration day revision and correction of register of voters.

Section 19:30-7, which derived from L.1930, c. 187, p. 839, § 375, amended by L.1933, c. 259, p. 699, § 1, related to names transcribed to general registry list on third registry day.

Section 19:30-8, which derived from L.1930, c. 187, p. 839, § 376, amended by L.1931, c. 374, p. 959, § 19, related to custody, use and disposition of register of voters.

Section 19:30-9, which derived from L.1930, c. 187, p. 839, § 377, amended by L.1931, c. 374, p. 959, § 20, provided for transfers of voters.

**19:30-3 to 19:30-10**  
**Repealed**

**ELECTIONS**

Section 19:30-10, which derived from L.1930, c. 187, p. 840, § 378, provided for first registers of newly created municipalities.

# CHAPTER 31

## MUNICIPALITIES HAVING PERMANENT REGISTRATION

### ARTICLE 1. GENERAL PROVISIONS

#### Section

- 19:31-1. Necessity.
- 19:31-1.1. Repealed.
- 19:31-2. Commissioner of registration; employees; civil service; evening and out-of-office registration facilities; expenses; powers and duties.
- 19:31-3. Original and duplicate registration forms; contents.
- 19:31-3.1. Voter registration information on computer or magnetic tape or electronic data processing equipment to be maintained for 10 years in certain second class counties.
- 19:31-3.2. Registration by certain victims of domestic violence; nondisclosure of street address allowed; violations.
- 19:31-3.3. Elimination of duplicate permanent registration binders in counties with equipment capable of creating, receiving, storing or printing digitalized image of signatures.
- 19:31-4. Repealed.

### ARTICLE 2. REGISTRATION AND TRANSFERS

- 19:31-5. Persons entitled to register.
- 19:31-6. Methods of registration; in person or by mail.
- 19:31-6a. Secretary of State designated chief state election official; responsibilities.
- 19:31-6.1. Acceptance of applications for registration during 28-day period prior to election; ineligibility to vote.
- 19:31-6.2. Application of other provisions to persons registered under act.
- 19:31-6.3. Registration by registration form; employees or agents of public agency.
- 19:31-6.4. Voter registration application; contents; availability.
- 19:31-6.4a. Rules and regulations.
- 19:31-6.4b. Voter registration; immunity granted to government employees; exception.
- 19:31-6.5. Acceptance or denial of registration; notice to registrant; disposition of form.
- 19:31-6.6. Prevention of fraudulent registration and voting; procedures.
- 19:31-6.7. Registration by door-to-door canvassing; certification of number; allocation of funds.
- 19:31-6.8. Amount of reimbursement of counties for new registrants.
- 19:31-6.9. Rules and regulations.
- 19:31-6.10. Severability.
- 19:31-6.11. Voter registration agency defined; declination forms; contents.
- 19:31-6.12. Development of procedures for voter registration at armed forces recruitment offices.
- 19:31-6.13. Commissioners of registration; assistance in registration.
- 19:31-7. Registration by municipal clerks.
- 19:31-7.1. Municipal clerks' offices; registration assistance.

**Section**

- 19:31-8. Repealed.  
 19:31-9. Repealed.  
 19:31-10. Filing of registration forms.  
 19:31-10.1. Elimination of original permanent registration binders in counties using electronic data processing equipment; requirements.  
 19:31-11. Change of residence notice.  
 19:31-11.1. Repealed.  
 19:31-12. Errors in registration corrected.  
 19:31-13. Change in registration on marriage, divorce or judgment of court; notification of commissioner.  
 19:31-13.1. Previous registration in another county; notice; transfer to inactive file.  
 19:31-14. New or altered districts; notice to registrants and to commissioner; registrations not invalidated.  
 19:31-14.5. Report of registrations.  
 19:31-15. Removal of name of registered voter from county registry list; confirmation of change of residence; correction of registry list.  
 19:31-16. Reports of death by health or vital statistics officers; records transferred to death file.  
 19:31-17. Commissioner to be notified of conviction of county resident of state or federal crime constituting grounds for disfranchisement; transfer of registration to conviction file.  
 19:31-18. Registry lists; certification and transmission.  
 19:31-18.1. Copies of registry lists; distribution; prohibition of use for commercial solicitation; penalty.  
 19:31-18.2. Repealed.  
 19:31-18.3. Filing of original registry lists.  
 19:31-18.4. Repeal.  
 19:31-19. Correction of records by commissioner; notice; stamping registration forms; registration.

**ARTICLE 3. SIGNATURE COPY REGISTERS**

- 19:31-20. To be transmitted for use by district boards.  
 19:31-21. Use of signature copy registers on election days.  
 19:31-22. Return of signature copy registers to commissioner; check-up and correction of records.

**ARTICLE 4. RECORDS AND FILES**

- 19:31-23. Commissioner to check records.  
 19:31-24. Destruction or loss of records; general registration.  
 19:31-25. Repealed.  
 19:31-26. Master index files; card index; entries on; correction.  
 19:31-27, 19:31-28. Repealed.  
 19:31-29. Violations of voter registration provisions; remedies available.  
 19:31-30. Rules and regulations.

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## ARTICLE 1. GENERAL PROVISIONS

### Law Review and Journal Commentaries

Voter registration reform: A method to increase New Jersey voter participation. Joseph J. Bell and Kathleen Cloutier, 10 Seton Hall Legis.J. 133 (1986).

### Library References

Elections Ⓒ97, 106.  
WESTLAW Topic No. 144.  
C.J.S. Elections §§ 38, 39, 46.

### 19:31-1. Necessity

No person shall be permitted to vote at any election unless such person shall have been registered in the manner hereinafter in this chapter provided.

Amended by, L.1940, c. 18, p. 92, § 1, eff. March 21, 1940; L.1940, c. 19, p. 93, § 1, eff. March 23, 1940; L.1981, c. 462, § 23. Amended by L.1994, c. 182, § 1.

### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, ¶379, p. 840, amended by L.1933, c. 174, § 1, p. 373.

Effective date of L.1981, c. 462, see Historical Note under § 2A:4-4.

### Library References

Elections Ⓒ97.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 38.

### Texts and Treatises

25 Am Jur 2d, Elections §§96, 97.



## Notes of Decisions

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## 1. Purpose

The purpose of requiring voters to register permanently is to protect purity of ballot box by ascertaining before vote is cast whether or not such persons possess qualifications to vote and by preventing impersonations thereafter at the polls. In re Ray, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

## 2. Right to vote

A person can be qualified or legal voter under Constitution without exercising right to vote, and registration does not confer right to vote, but is merely a condition precedent to exercise of such right. In re Ray, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

## 3. Public office

The permanent registration law was not intended to alter qualifications of office holders. In re Ray, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

## 19:31-1.1. Repealed by L.1994, c. 182, § 45

## Historical and Statutory Notes

Repealed section, L.1941, c. 273, § 1; amended by L.1941, c. 378, § 1; L.1943, c. 218, § 1, related to necessity of registration; register of voters; primary election register book; revision and correction of register; eligibility to vote; and permanent registration.

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-2. Commissioner of registration; employees; civil service; evening and out-of-office registration facilities; expenses; powers and duties**

In all counties having a superintendent of elections, the superintendent of elections is hereby constituted the commissioner of registration and in all other counties the secretary of the county board is hereby constituted the commissioner of registration.

The commissioner of registration shall have complete charge of the registration of all eligible voters within their respective counties.

The commissioner of registration shall have power to appoint temporarily, and the commissioner of registration in counties of the first class having more than 800,000 inhabitants shall have power to appoint on a permanent, or temporary basis, such number of persons, as in the commissioner's judgment may be necessary in order to carry out the provisions of this Title. All persons appointed by the commissioner of registration in counties of the first class having more than 850,000 inhabitants according to the latest federal decennial census to serve for terms of more than six months in any one year shall be in the career service of the civil service and shall be appointed, and hold their positions, in accordance with the provisions of Title 11A, Civil Service. All persons appointed by the

commissioner of registration in counties of the first class having more than 600,000 but less than 850,000 inhabitants according to the latest federal decennial census to serve for terms of more than six months in any one year, other than the chief deputy and chief clerk and confidential secretary and chief custodian, shall be in the career service of the civil service and shall be appointed and hold their positions, in accordance with the provisions of Title 11A, Civil Service. Persons appointed by the commissioner of registration in such counties to serve for terms of six months or less in any one year and persons appointed by the commissioner of registration shall not be subject to any of the provisions of Title 11A, Civil Service, but shall be in the unclassified service.

In each county the commissioner of registration shall submit to the Secretary of State on or before February 15 of each year a plan providing for evening registration for the primary election and on or before July 1 plans providing for evening registration for the general election, which plans shall be subject to approval by the Secretary of State. Evening registration shall be made available in the office of each commissioner of registration between the hours of 4 p.m. and 9 p.m. on the 29th day preceding the primary and general elections and , in any year in which municipal elections are to be held in any municipality within the county, on the 29th day preceding those municipal elections.

In each county, the commissioner of registration may also establish a plan for out-of-office registration , including door-to-door registration.

Nothing in this section shall preclude the commissioner from providing pursuant to plan evening registration in excess of the requirements of this section, or shall preclude or in any way limit out-of-office registration conducted by persons or groups other than the commissioner.

The commissioner of registration shall provide such printed forms, blanks, supplies and office telephone and transportation equipment and shall prescribe such reasonable rules and regulations not inconsistent with those of the Secretary of State as are necessary in the opinion of the commissioner to carry out the provisions of this Title and any amendments or supplements thereto.

Subject to the limitations set forth in chapter 32 of this Title , all necessary expenses incurred, as and when certified and approved by the commissioner of registration shall be paid by the county treasurer of the county.

Nothing in the provisions of subtitle 2 of the Title, Municipalities and Counties (R.S.40:16-1 et seq.), shall in anywise be construed to

affect, restrict or abridge the powers herein conferred on the commissioners of registration of the several counties.

All powers granted to the commissioner in all counties not having superintendents of elections by the provisions of this Title are hereby conferred on the county board in such counties and any and all duties conferred upon the commissioner in all counties not having a superintendent of elections by the provisions of this Title shall only be exercised and performed by such commissioner under the instructions and directions of and subject to the approval of the county board of such counties.

Amended by L.1940, c. 165, p. 517, § 1; L.1941, c. 275, p. 744, § 8; L.1947, c. 168, p. 751, § 17; L.1952, c. 290, p. 978, § 1; L.1953, c. 348, p. 345, § 1; L.1961, c. 59, p. 550, § 3; L.1963, c. 138, § 1; L.1966, c. 117, § 1; L.1967, c. 73, § 1, eff. May 25, 1967; L.1974, c. 30, § 4; L.1975, c. 15, § 1, eff. Feb. 15, 1975; L.1975, c. 204, § 1, eff. Sept. 18, 1975; L.1979, c. 393, § 1, eff. Feb. 6, 1980; L.1981, c. 462, § 24; L.1994, c. 182, § 2.

### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

L.1930, c. 277, § 1, p. 1281.

L.1930, c. 279, § 1, p. 1285.

Effective date of L.1981, c. 462, see Historical Note under § 2A:4-4.

#### Source:

L.1930, c. 187, ¶380, p. 840.

### Library References

Elections ⇔ 100.

WESTLAW Topic No. 144.

C.J.S. Elections § 42.

### Texts and Treatises

25 Am Jur 2d, Elections § 103.

### Notes of Decisions

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### Specific employees 6

#### 1. Purpose

Purpose of this section was not to make commissioner's certification of necessary expenses totally inviolate, but only to prevent operation of commissioner's office from being curtailed by an interruption of funds, until court determination as to legality thereof could be secured. *Keenan v. Board of Chosen Freeholders of Essex County*, 105 N.J.Super. 271, 251 A.2d 785 (L.1969).

**2. Repeals**

Appointment and salary provisions relating to the superintendent of elections have not been impliedly repealed. *Mercer County v. Mercer County Superintendent of Elections*, 172 N.J.Super. 406, 412 A.2d 461 (A.D.1980).

**3. Employees—In general**

This section does not imply unlimited discretion to appoint, the commissioners powers are circumscribed by its stated purpose of carrying out provisions of title. *Keenan v. Board of Chosen Freeholders of Essex County*, 105 N.J.Super. 271, 251 A.2d 785 (L.1969).

**4. — Compensation, employees**

County treasurer was not required to pay salary of person named as administrative assistant to county commissioner of registration as part of necessary expenses incurred in management of commissioner's office, where commissioner had no authority to appoint such person and, therefore, person was serving unlawfully. *Keenan v. Board of Chosen Freeholders of Essex County*, 105 N.J.Super. 271, 251 A.2d 785 (L.1969).

The 1948 bonus act, § 40:21-13, note granting a cost of living bonus to county paid lower salaried employees, and covering state employees generally whose compensation was paid in full by county, embraced lower salaried employees of Commissioner of Registration and Superintendent of Elections, and they were entitled to benefits thereunder. *MacPhail v. Board of Chosen Freeholders of Hudson County*, 6 N.J.Super. 613, 70 A.2d 508 (L.1950).

**5. — Removal of employees**

Superintendent of Elections and Commissioner of Registration of Essex County, under his authority under § 19:32-1, to remove assistants whenever he deems it necessary, had authority to remove temporary clerk-investigators without reference to veterans' tenure statute. *Bar-*

*ringer v. Miele*, 6 N.J. 139, 77 A.2d 895 (1951).

**6. — Specific employees**

Under this section appointment by county commissioner of an administrative assistant for purpose of acting as a legislative representative in state capitol was not necessary and, therefore, appointment was unauthorized. *Keenan v. Board of Chosen Freeholders of Essex County*, 105 N.J.Super. 271, 251 A.2d 785 (L.1969).

**7. Canvassers**

Canvassers have no civil service status, but are temporary employees personally selected by board members to make the canvas. *Greenan v. Braca*, 18 N.J. 361, 113 A.2d 772 (1955).

**8. Appointment of counsel**

County superintendent of elections, who was also commissioner of registration, was not empowered to appoint legal counsel of his own choosing. *Keenan v. Board of Chosen Freeholders of Essex County*, 101 N.J.Super. 495, 244 A.2d 705 (L.1968), affirmed 106 N.J.Super. 312, 255 A.2d 786.

**9. Expenses**

Under this section an appropriating body is not empowered to review and modify to its satisfaction the budgetary certifications of requisitioning agency, but has a mandatory duty to provide monies requested. *Keenan v. Board of Chosen Freeholders of Essex County*, 105 N.J.Super. 271, 251 A.2d 785 (L.1969).

Under this section and § 19:32-2, Board of Chosen Freeholders of Hudson County, in appropriating amounts for office expenses of superintendent and commissioner was not entitled to assume that needs of offices were the same as had been submitted in another county for related departmental use. *Sewell v. Board of Chosen Freeholders of Hudson County*, 126 N.J.L. 186, 18 A.2d 408 (1941).

**19:31-3. Original and duplicate registration forms; contents**

a. The commissioner of registration in each county shall maintain one original and one duplicate registration form for the registration of each duly registered voter in the county. Such forms shall consist of an equal number of original forms of one color and duplicate forms of another color. Each set of original and duplicate

registration forms shall be serially numbered and each of such forms shall be suitable for locking in a looseleaf binder, shall be approximately 10 inches by 16 inches so as to contain on the face thereof a margin of approximately 2 inches for binding, and shall contain the information hereinafter required.

b. Space shall be provided on both the original and duplicate forms at the top for the word "original" on the original forms and the word "duplicate" on the duplicate forms, to be followed immediately below by the word "registration" on both forms

Immediately to the left of the registration and identification statement shall be printed a column approximately 2 1/2 inches wide for subsequent changes in address or removals of such applicant from one district to another.

Immediately to the right of the registration and identification statement shall be printed a form for recording the fact that the registered voters have voted. The face of the record of voting form shall be ruled to provide for serial number, the words "original voting record" on the original record of voting form and the words "duplicate voting record" on the duplicate record of voting forms, followed by the name, address and the municipality, ward and district of the registrant at the top of the space. The remainder of the space shall be ruled to provide a record for a period of 20 years of the number of the ballot cast by the registrant at the primary election for the general election, the general election and other elections and also the first three letters of the name of the political party whose ballot such registrant cast at the primary election for the general election.

c. The original and duplicate registration and voting forms shall be in the form the Secretary of State prescribes pursuant to section 16 of P.L.1974, c. 30 (C. 19:31-6.4).

Amended by L.1941, c. 174, p. 547, § 1; L.1959, c. 127, p. 561, § 2; L.1964, c. 7, § 3; L.1972, c. 82, § 1, eff. July 5, 1972; L.1974, c. 30, § 5; L.1994, c. 182, § 3.

#### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, ¶381, p. 841.

#### Cross References

Naturalization, grant of within 30 days of an election, see § 2A:53-2.

Library References

Elections ¶106.
WESTLAW Topic No. 144.
C.J.S. Elections §§ 39, 46.

Forms

9 Am Jur Pl & Pr Forms, Rev, Elec-
tions, Forms 21 et seq.

Texts and Treatises

25 Am Jur 2d, Elections §§105 to 107.

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Name of registrant 1

name. In re Faith's Application, 22 N.J.
Misc. 412, 39 A.2d 638 (1944).

1. Name of registrant

The purpose of requiring voters to reg-
ister under their full or previous or birth
names is to prevent fraud by ascertaining
before the vote is cast whether such per-
son possesses the qualifications to vote,
and by preventing impersonation thereaf-
ter at the polls. In re Faith's Application,
22 N.J. Misc. 412, 39 A.2d 638 (1944).

One who registered for voting purposes
under an assumed name, which gave no
inkling as to previous identity, and who
refused to reveal her previous name, was
not properly registered and was not enti-
tled to vote. In re Faith's Application, 22
N.J. Misc. 412, 39 A.2d 638 (1944).

The "Christian name" which, under
this section, must be included in voter's
full name when registering to vote, is the
baptismal name as distinct from the sur-

The marriage of a woman voter regis-
trant does not in itself change the regis-
trant's name within the meaning of this
section if she continues to use her maiden
name rather than assuming her hus-
band's surname as her own. Atty.Gen.
F.O.1975, No. 20.

19:31-3.1. Voter registration information on computer or mag-
netic tape or electronic data processing equipment
to be maintained for 10 years in certain second class
counties

a. In any county of the second class with a population of greater
than 590,000 according to the 1980 federal decennial census which
maintains voter registration information on computer or magnetic
tape or electronic data processing equipment of any kind, the com-
missioner of registration shall maintain on such tape or equipment
for a period of 10 years the following information as it applies to
each voter who registered prior to the enactment of this act and to
each voter who registers subsequently:

- (1) the date of registration of the registrant;
(2) the date of birth of the registrant;
(3) the party affiliation of the registrant, if any; and

(4) when a registrant has voted or votes in a primary or general election. The information on each registrant shall be updated after every primary and general election and shall be readily accessible from the tape or equipment on which it is maintained.

b. If the commissioner of registration has maintained information in any form regarding a registrant's party affiliation or when that registrant has voted in a primary or general election which dates to the year 1987, the commissioner shall be responsible for maintaining that information for a period of 10 years as part of the current voter information file of the registrant if it is already on computer or magnetic tape or electronic data processing equipment of any kind and for converting such information to such tape or equipment if the information exists but is not on such tape or equipment, so that it becomes part of the current voter information file of the registrant. L.1991, c. 504, § 1, eff. Jan. 18, 1992.

#### Historical and Statutory Notes

**Title of Act:**

An Act concerning the maintenance of certain voter registration information and

supplementing chapter 31 of Title 19 of the Revised Statutes.

#### **19:31-3.2. Registration by certain victims of domestic violence; nondisclosure of street address allowed; violations**

a. A person who is a victim of domestic violence who has obtained a permanent restraining order against a defendant pursuant to section 13 of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c. 261 (C. 2C:25-29) and fears further violent acts by the defendant shall be allowed to register to vote without disclosing the person's street address. Such a person shall leave the space for a street address on the original permanent registration form blank and shall, instead, attach to the form a copy of the permanent restraining order and a note which indicates that the person fears further violent acts by the defendant and which contains a mailing address, post office box or other contact point where mail can be received by the person. Upon receipt of the person's voter registration form, the commissioner of registration in all counties having a superintendent of elections, and the county board of elections in all other counties, shall provide the person with a map of the municipality in which the person resides which shows the various voting districts. The person shall indicate to the commissioner or board, as appropriate, the voting district in which the person resides and shall be permitted to vote at the polling place for that district. If such a person thereafter changes residences, the person shall so inform the commissioner or board by completing a new permanent registration form in the manner described above.

b. Any person who makes public any information which has been provided by a victim of domestic violence pursuant to subsection a. of this section concerning the mailing address, post office box or other contact point of the victim or the election district in which the victim resides is guilty of a crime of the fourth degree.

L.1994, c. 148, § 1, eff. Dec. 2, 1994.

### Senate State Government Committee Statement

#### Senate, No. 716—L.1994, c. 148

The Senate State Government Committee reports favorably and with committee amendments Senate, No. 716.

The purpose of this bill is to allow certain victims of domestic violence to register to vote without publicly disclosing the street addresses of those persons.

Specifically, the bill would allow a victim of domestic violence who has obtained a permanent restraining order against a defendant pursuant to the "Prevention of Domestic Violence Act of 1991," N.J.S.A.2C:25-17 et seq., and who fears further violent acts by the defendant, to register to vote without disclosing the victim's street address. Such a individual would, instead, leave the space for a street address on the original permanent registration form blank and attach thereto a copy of the restraining order together with a note which indicates that the person fears further violent acts by the defendant. The note must contain a mailing address, post office box or other contact point where mail can be received. Upon receipt of the person's voter registration form, the commissioner of registration or the county board of elections, as the case may be, would provide the person with a map of the municipality in which the person resides which shows the various voting districts. The person would indicate to the appropriate election official the voting district in which the person resides and shall be permitted to vote at the polling place for that district. If the person thereafter changes residences, the person shall so inform the appropriate election official by completing a new permanent registration form in the manner described above.

The bill provides that any person who makes public any information concerning the contact point of a victim of domestic violence or the election district in which such a person resides is guilty of a crime of the fourth degree.

If enacted, this bill would establish in statute the holding of the Superior Court, Law Division in *D.C. v. Superintendent of Elections and Commissioner of Registration, Monmouth Co.*, 261 N.J. Super 366 (L.1992).

#### COMMITTEE AMENDMENTS

Amendments were adopted to: 1) clarify a reference to the original (white) permanent registration form; and 2) provide that any person who makes public any information concerning the contact point of a victim of domestic violence or the election district in which such a person resides is guilty of a crime of the fourth degree.



**Historical and Statutory Notes**

**Title of Act:** disclosing a street address and supplementing chapter 31 of Title 19 of the Revised Statutes. L.1994, c. 148.  
 An Act allowing certain victims of domestic violence to register to vote without

**Library References****Comments**

Domestic violence act, see 10 New Jersey Practice, Silverman, § 298.

**19:31-3.3. Elimination of duplicate permanent registration binders in counties with equipment capable of creating, receiving, storing or printing digitalized image of signatures.**

In those counties in which the commissioner of registration employs data processing equipment capable of creating or receiving, storing, and printing a digitalized image of the signature of a person registered to vote, the commissioner may eliminate the use of the duplicate permanent registration binders and may authorize and direct the use at the polls in place of such a binder, as a signature copy register for the purposes of this Title and Title 40 of the Revised Statutes, of a polling record which identifies on each page the election at which the record is used, which indicates for each registrant the name and address of the registrant and identifies the municipality and the particular election district therein from which the person is registered, and which includes adjacent to the registrant's name and address an imprint of the digitalized image of the registrant's signature and sufficient space, immediately to the left or right of that imprint, for the registrant to sign the record, which imprint and signature shall be used as the signature comparison record as prescribed by this Title. The polling record shall also include for each registrant sufficient space for the notation of remarks as provided by R.S. 19:15-23 and for the recording of any challenge and the determination thereof by the district board as provided by R.S. 19:15-24, or by other elections officials charged with the same duties as the district board in connection with the conduct of an election. In the case of a primary election, the polling record shall also indicate for each registrant the political party, if any, of which the registrant is a member for the purpose of voting at that primary election.

Polling records for each election shall be prepared by the commissioner of registration not later than the 14th day preceding the election. At each election, the delivery of the polling records to the municipal clerk and to the district boards or other elections officials

charged with the same duties as the district board in connection with the conduct of an election, and the return of those records by the district boards or such other elections officials to the commissioner of registration, shall be made in the manner and in accordance with the schedule prescribed by law for the delivery and return at that election of the signature copy registers.

The commissioner of registration shall retain the polling records for any election for a period of not less than six years following that election.

L.1994, c. 170, § 2, eff. Dec. 20, 1994; L.1995, c. 278, § 20, eff. March 14, 1996; L.1996, c. 3, § 5, eff. Feb. 29, 1996.

**19:31-4. Repealed by L.1941, c. 174, p. 550, § 2**

**Historical and Statutory Notes**

The repealed section, which derived from L.1930, c. 187, ¶383, p. 847, provided for record of voting forms.

**ARTICLE 2. REGISTRATION AND TRANSFERS**

**Library References**

Elections §98 et seq., 119.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 40 et seq., 52.

**Comments**

Administration of elections, see 35 New Jersey Practice, Pane, § 462 et seq.

**19:31-5. Persons entitled to register**

Each person, who at the time he applies for registration resides in the district in which he expects to vote, who will be of the age of 18 years or more at the next ensuing election, who is a citizen of the United States, and who, if he continues to reside in the district until the next election, will at the time have fulfilled all the requirements as to length of residence to qualify him as a legal voter, shall, unless otherwise disqualified, be entitled to be registered in such district; and when once registered shall not be required to register again in such district as long as he resides therein, except when required to do so by the commissioner, because of the loss of or some defect in his registration record.

The registrant, when registered as provided in this Title, shall be eligible to vote at any election to be held subsequent to such registra-

tion, if he shall be a citizen of the United States of the age of 18 years and shall have been a resident of the State for at least 30 days and of the county at least 30 days, when the same is held, subject to any change in his qualifications which may later disqualify him. No registrant shall lose the right to vote, and no registrant's name shall be removed from the registry list of the county in which the person is registered, solely on grounds of the person's failure to vote in one or more elections.

Amended by L.1949, c. 123, p. 493, § 1; L.1959, c. 127, p. 566, § 3; L.1964, c. 7, § 4; L.1974, c. 30, § 6; L.1994, c. 182, § 4.

### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, § 383, p. 847.

### Cross References

Naturalization, grant of within 30 days of an election, see § 2A:53-2.

### Administrative Code References

Elections; rules and regulations, see N.J.A.C. 15:10-1.1 et seq.

### Library References

Elections ⇨98, 113.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 40, 49.

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Residency 2

Gas Co. v. City of Camden, 13 N.J. Misc. 693, 180 A. 778 (1935).

#### 2. Residency

If permanently registered voter moves within state after registration books are closed and after he or she is therefore able to change his or her registration, constitutional 30-day residency requirement does not preclude voter from claiming vote in county of his or her permanent registration in which he or she resided up until closing of books, provided that he or she continues to reside within state. *Afran v. County of Somerset*, 244 N.J. Super. 229, 581 A.2d 1359 (A.D.1990).

Residency requirement necessary for voter registration insures that only the individuals who have a stake in outcome

#### 1. Legal voters

"Legal voters", are persons entitled to vote by virtue of Constitution. In re *Ray*, 26 N.J. Misc. 56, 56 A.2d 761 (1947).

"Legal voters" must possess not only constitutional requirements, but also must be registered, as regards sufficiency of petition for submission to voters of proposal to acquire municipal light and power plant. *Public Service Electric &*

of the election by reason of their residency within the community are allowed to vote. Friends of Jim Usry for Mayor Campaign v. Matthews for Mayor Campaign, 187 N.J.Super. 176, 453 A.2d 1360 (A.D.1982).

Generally, student is presumed not to have the right to vote in municipality where university is located, and must overcome such presumption by preponderance of the evidence. Michaud v. Yeomans, 115 N.J.Super. 200, 278 A.2d 537 (L.1971).

"Domicile" is not synonymous with residence, the difference being one of intention; person may have more than one residence but not more than one domicile. Michaud v. Yeomans, 115 N.J.Super. 200, 278 A.2d 537 (L.1971).

A mere taking up of residence is insufficient to establish residence for voting purposes unless there is an intention to abandon former domicile, but intention alone is insufficient and there must be some act in furtherance of the intention. In re Sullivan, 17 N.J. Misc. 42, 5 A.2d 57 (1939).

WPA workers from other states and other sections of the state, who resided in federal camp within borough for over a year before general election, and who were properly registered, and who took statutory oath of qualification when challenged, did not qualify to vote in general election in the borough, where there was no showing of change of residence outside of attendance at camp. Schweitzer v. Buser, 15 N.J. Misc. 217, 190 A. 89 (1936).

**3. Homeless persons**

Homeless persons may register and vote, notwithstanding the lack of a permanent place of residence, as long as they satisfy the constitutional requirements of age and of residence within the state, and a given county and election district. Atty.Gen.F.O. 1991, No. 2.

**4. English language**

The ability to speak or read the English language is not a qualification for registering and voting in New Jersey. Atty. Gen.F.O.1959, No. 19.

**5. Post-registration elections**

Registrant is entitled to vote at any election held subsequent to such registration if he or she is a resident of the state and county for at least 30 days at the time of the holding of such election. Atty.Gen. F.O.1974, No. 3.

A person registered pursuant to §§ 19:4-1 and 19:31-5 of the election law, must have the constitutional age qualification at the time he attempts to vote in any commission or city manager election which takes place between the primary and general election. Op.Atty. Gen., May 23, 1949, No. 56.

**6. Determination of qualifications**

Responsibility to assure that only properly qualified persons are registered to vote is vested in county board of elections. Application of Bonsanto, 171 N.J.Super. 356, 409 A.2d 290 (A.D.1979).

Whether homeless persons registering to vote satisfy constitutional requirements of age and of residence within the State, and a given county and election district is a fact-based assessment to be made in the cases of individual voters in the judgment of, and subject to verification by, the Superintendent or County Board of Elections. Atty.Gen.F.O. 1991, No. 2.

**7. Failure to vote**

A registered voter who has not voted for four consecutive years except at a school election, which is not "any election" as defined in § 19:1-1, must re-register in order to vote at any subsequent election, as required by this section. Atty.Gen.F.O.1965, No. 3.

**19:31-6. Methods of registration; in person or by mail**

Any person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 29th day preceding the election

by:

- a. registering in person at any offices designated by the commissioner of registration for providing and receiving registration forms;

b. completing a voter registration form while applying for a motor vehicle driver's license from an agent of the Division of Motor Vehicles, as provided for in section 24 of P.L.1994, c. 182 (C. 39:2-3.2);

c. completing and returning to the Secretary of State or having returned thereto a voter registration form received from a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c. 182 (C. 19:31-6.11), while applying for services or assistance or seeking a recertification, renewal or change of address at an office of that agency;

d. completing and returning to the Secretary of State a voter registration form obtained from a public agency, as defined in subsection a. of section 15 of P.L.1974, c. 30 (C. 19:31-6.3);

e. completing and returning to the Secretary of State or having returned thereto a voter registration form received from a door-to-door canvass or mobile registration drive, as provided for in section 19 of P.L.1974, c. 30 (C. 19:31-6.7);

f. completing and returning to the Secretary of State a federal mail voter registration form, as prescribed in subsection (b) of section 9 of the "National Voter Registration Act of 1993," (42 U.S.C. § 1973gg et seq.); or

g. completing and returning to the Secretary of State or the appropriate county clerk an application for a federal postcard application form to register to vote, as provided for in the "Overseas Absentee Voting Act" (42 U.S.C. § 1973ff-1 et seq.) and section 4 of P.L.1976, c. 23 (C. 19:59-4).

When the commissioner has designated a place or places other than his office for receiving registrations, the commissioner shall cause to be published a notice in a newspaper circulated in the municipality wherein such place or places of registration shall be located. Such notice shall be published pursuant to R.S.19:12-7.

Any office designated by the commissioner of registration for receiving registration forms shall have displayed, in a conspicuous location, registration and voting instructions. These instructions shall be the same as those provided for polling places under R.S.19:9-2 and shall be provided by the commissioner .

Amended by L.1940, c. 135, p. 294, § 2; L.1945, c. 36, p. 93, § 1; L.1947, c. 168, p. 753, § 18; L.1952, c. 60, p. 379, § 1; L.1955, c. 133, p. 619, § 1; L.1974, c. 30, § 7; L.1975, c. 15, § 2, eff. Feb. 14, 1975; L.1991, c. 429, § 10; L.1994, c. 182, § 5.

Historical and Statutory Notes

For effective date and application of L.1991, c. 429, see note set out under § 19:8-3.1.

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**Short Title:** L.1994, c. 182, §§ 1 to 46, popularly known as the "Motor Voter Law", enacted §§ 19:31-6a, 19:31-6.11 to 19:31-6.13, 19:31-7.1, 19:31-29, 19:31-30, 19:34-1.1, 26:1A-36.3a, 30:4D-19.1, 30:6-1.6, 30:6D-27.1, 34:16-29.1, 38A:3-6.19, 39:2-3.2,

39:3-10m, 40:33-8.2, 40:33-13.9a, 40:54-12.2, 40:54-29.13a, 44:8-158, 44:10-5.9, 52:14-34.7, amended §§ 19:31-1 to 19:31-3, 19:31-5, 19:31-6, 19:31-6.3 to 19:31-6.5, 19:31-6.7, 19:31-10, 19:31-11, 19:31-13, 19:31-15 to 19:31-17, 19:31-23, 19:31-24, 19:31-26, 34:1A-12.4, 44:1-24.2, 52:18A-24.1, repealed §§ 19:31-1.1, 19:31-9, 19:31-11.1, 19:31-27, 19:31-28, 19:32-15 to 19:32-20, 19:32-38 to 19:32-43 and 39:2-3.1, and enacted provisions set out as notes under these sections.

**Source:** L.1930, c. 187, ¶1384, p. 847.

Library References

Elections ⇄ 106.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 39, 46.

Texts and Treatises

25 Am Jur 2d, Elections §§105, 106.

Notes of Decisions

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1. Duty of election officials

There is a responsibility upon the commissioner of registration to assure that only properly qualified persons be registered. *Cabrera v. Board of Elections of Camden County*, D.C.N.J.1972, 350 F.Supp. 25.

County board of elections has responsibility to assure that only properly qualified persons are registered to vote. *Carroll v. Cobb*, 139 N.J.Super. 439, 354 A.2d 355 (A.D.1976).

2. Designated places of registration

Where this section provides that commissioner of registration shall receive registration applications at commissioner's office "or at such other place or places as may from time to time be designated by him \* \* \* for registration," and

where county commissioner of registration scheduled off-premises registration during 1970 on 19 different occasions and had scheduled registration in three centrally located shopping centers on three Saturdays in September, registered voter could not by way of mandamus seek to have commissioner directed to permit such registered voter and other qualified volunteers to act as volunteer registrars at high schools, colleges, business areas and other suitable areas in the county. *Edelstein v. Ferrell*, 120 N.J.Super. 583, 295 A.2d 390 (L.1972).

It is necessary to publish a notice in the local newspaper before any place, other than the office of the county board of elections, may be designated as a place for the registration of voters, and it would be unlawful to accept registrations at any place so designated until at least 10 days after the publication of such notice. *Op. Atty.Gen.*, Sept. 18, 1953, No. 36.

3. Oath or affirmation

The oath or affirmation which applicant must subscribe as part of the process of registration for election may be admin-

## Note 3

istered in any language. Atty.Gen.F.O. 1959, No. 19.

#### 4. Questioning of applicant

Function of municipal clerk with respect to voter registration is simply to assure that applicant is able to and does complete form properly under oath and affix thereto either his signature or mark; if applicant is unable for any reason to complete form or give affirmative answers to questions concerning age, citizenship and residence, application may not be received. Carroll v. Cobb, 139 N.J.Super. 439, 354 A.2d 355 (A.D.1976).

Where plaintiffs answered questions on voter registration form, all that remained to be done by municipal clerk was to comply with statutory direction to transmit daily to commissioner of registration all filled out forms, and clerk was without power to subject a class to questioning

beyond all other applicants. Carroll v. Cobb, 139 N.J.Super. 439, 354 A.2d 355 (A.D.1976).

#### 5. Noncompliance

Fact that voters were registered at places other than official places for registration described in this section, that municipal clerk failed to transport registration forms to county board of elections daily as required by § 19:31-7, and that in fact some were so transmitted after the fortieth day before the election, did not require setting aside of results of election of city councilmen in election contest, where it was not contended that voters so registered lacked qualifications for voting, and it was not claimed that any voter was in fact registered within 40 days' period preceding the election. In re Smock, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

### 19:31-6a. Secretary of State designated chief state election official; responsibilities

The Secretary of State is designated the chief State election official and shall be responsible for the coordination of this State's responsibilities pursuant to the provisions of the "National Voter Registration Act of 1993," Pub.L. 103-31 (42 U.S.C. § 1973gg et seq.).

L.1994, c. 182, § 25.

#### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

### 19:31-6.1. Acceptance of applications for registration during 28-day period prior to election; ineligibility to vote

Notwithstanding any other provisions of the Title to which this act is a supplement, any person authorized by law to accept applications for voter registration shall accept, during the 28-day period prior to any election, the application for registration of all eligible voters who shall personally appear for registration before such person, or the registration card mailed or delivered to such person, but no eligible voter so registered shall be entitled to vote in the election immediately following said 28-day period. Any person registered under the provisions of this act shall be advised that he will not be eligible to vote in the election immediately forthcoming but will be eligible to vote in elections held thereafter.

Applications for registration pursuant to the provisions of this act shall be received at such place or places as may be designated by any duly authorized election official.

L.1966, c. 177, § 1, eff. June 18, 1966. Amended by L.1974, c. 30, § 8.

**Historical and Statutory Notes**

**Title of Act:**

An Act concerning elections and supplementing Title 19 of the Revised Statutes. L.1966, c. 177.

**Administrative Code References**

Voter registration, see N.J.A.C. 15:10-1.1 et seq.

**Library References**

Elections ⇨106.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 39, 46.

**19:31-6.2. Application of other provisions to persons registered under act**

Except to the extent inconsistent herewith concerning the registration of voters, all other provisions shall be applicable to persons registered under the provisions of this act.

L.1966, c. 177, § 2.

**Library References**

Statutes ⇨157.

WESTLAW Topic No. 361.

C.J.S. Statutes § 285.

**19:31-6.3. Registration by registration form; employees or agents of public agency**

a. As used in this section, "public agency" shall mean:

The

Division of Worker's Compensation, the Division of Employment Services and the Division of Unemployment and Temporary Disability Insurance, established initially by section 5 of P.L.1948, c. 446 (C. 34:1A-5), in the Department of Labor;

The Division of Taxation in the Department of the Treasury, continued under section 24 of P.L.1948, c. 92 (C. 52:18A-24);

The New Jersey Transit Corporation, established pursuant to section 4 of P.L.1979, c. 150 (C. 27:25-4);



Any free county library established under the provisions of article 1 of chapter 33 of Title 40 of the Revised Statutes;

Any regional library established under the provisions of P.L.1962, c. 134 (C. 40:33-13.3 et seq.);

Any free public library established under the provisions of article 1 of chapter 54 of Title 40 of the Revised Statutes;

Any joint free public library established under the provisions of P.L.1959, c. 155 (C. 40:54-29.3 et seq.);

Any office or commercial establishment where State licenses or permits, other than licenses or permits issued by a professional or occupational board established under the laws of this State, are available to individual members of the public; and

Any recruitment office of the New Jersey National Guard.

b. Any person entitled to register to vote may register as a voter in the election district in which that person resides at any time prior to the twenty-ninth day preceding any election by completing a registration form described in section 16 of P.L.1974, c. 30 (C. 19:31-6.4) and submitting the form to the commissioner of registration of the county wherein the person resides or alternatively, in the case of a registration form provided by the employees or agents of a public agency or a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c. 182 (C. 19:31-6.11), to those employees or agents or to the Secretary of State. Any registration form addressed to a commissioner of registration may be mailed to or delivered to the office of that commissioner, and in the case of a registration form available at a public agency, the form shall be mailed to the Secretary of State, or delivered to the commissioner of registration in the county of the registrant. A registration form postmarked, stamped or otherwise marked as having been received from the registration applicant, on or before the twenty-ninth day preceding any election shall be deemed timely.

L.1974, c. 30, § 15. Amended by L.1974, c. 51, § 4, eff. June 25, 1974; L.1991, c. 318, § 1, eff. Feb. 18, 1992; L.1994, c. 182, § 6.

### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

#### Title of Act:

An Act concerning voter registration, amending R.S. 19:6-1, 19:14-21,

19:14-25, 19:31-2, 19:31-3, 19:31-5, 19:31-6, 19:31-7, 19:31-11, 19:31-13, 19:31-18, 19:49-4, P.L.1966, c. 177, section 1 and P.L.1947, c. 347 section 2 and supplementing chapter 31 of Title 19 of the Revised Statutes, L.1974, c. 30.

Library References

Elections ⇄98.

WESTLAW Topic No. 144.

C.J.S. Elections § 40.

19:31-6.4. Voter registration application; contents; availability

a. The Secretary of State shall cause to be prepared and shall provide to each county commissioner of registration registration forms of size and weight suitable for mailing, which shall require the information required by R.S.19:31-3 in substantially the following form:

VOTER REGISTRATION APPLICATION

Print clearly in ink . Use ballpoint pen or marker.

(1) This form is being used as (check one):

[ ] New registration

[ ] Address change

[ ] Name change

(2) Name: .....  
Last First Middle

(3) Street Address where you live:

.....  
Street Address Apt. No.

(4) City or Town County Zip Code

(5) Address Where You Receive Your Mail (if different from above):

(6) Date of Birth:

.....  
Month Day Year

(7) Telephone Number (optional) .....

(8) Name and address of Your Last Voter Registration

.....  
.....  
County

(9) Declaration—I swear or affirm that:

I am a U.S. citizen

I live at the above address

I will be at least 18 years old on or before the day of the next election  
I am not on parole, probation or serving sentence due to a conviction for an indictable offense under any federal or State laws

I UNDERSTAND THAT ANY FALSE OR FRAUDULENT REGISTRATION MAY SUBJECT ME TO A FINE OF UP TO \$1,000.00 , IMPRISONMENT UP TO FIVE YEARS, OR BOTH PURSUANT TO R.S.19:34-1.

.....  
Signature or mark of the registrant      Date

(10) If applicant is unable to complete this form, print name and address of individual who completed this form.

\_\_\_\_\_  
Name  
\_\_\_\_\_  
Address

In addition, the form may include notice to the applicant of information and options relating to the registration and voting process, including but not limited to notice of qualifications required of a registered voter; notice of the final day by which a person must be registered to be eligible to vote in an election; a place at which the applicant may indicate availability for service as a member of the district board of elections; and a place at which the applicant may indicate a desire to receive information concerning absentee voting.

b. The reverse side of the registration form shall bear the address of the Secretary of State or the commissioner of registration to whom such form is supplied, and a United States postal permit the charges upon which shall be paid by the State.

c. The Secretary of State shall cause to be prepared registration forms of the size, weight and form described in subsection a. of this section in both the English and Spanish language and shall provide such forms to each commissioner of registration of any county in which there is at least one election district in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c. 29 (C. 19:23-22.4).

d. The commissioner of registration shall furnish such registration forms upon request in person to any person or organization in such reasonable quantities as such person or organization shall

request. The commissioner shall furnish no fewer than two such forms to any person upon request by mail or by telephone.

e. Each such registration form shall have annexed thereto instructions specifying the manner and method of registration and stating the qualifications for an eligible voter.

f. The Secretary of State shall also furnish such registration forms and such instructions to the Director of the Division of Worker's Compensation, the Director of the Division of Employment Services, and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor; to the Director of the Division of Taxation in the Department of the Treasury; to the Executive Director of the New Jersey Transit Corporation; to the appropriate administrative officer of any other public agency, as defined by subsection a. of section 15 of P.L.1974, c. 30 (C. 19:31-6.3); to the Adjutant General of the Department of Military and Veterans' Affairs; and to the chief administrative officer of any voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c. 182 (C. 19:31-6.11).

g. All registration forms received by the Secretary of State in the mail or forwarded to the Secretary of State shall be forwarded to the commissioner of registration in the county of the registrant.

h. An application to register to vote received from the Division of Motor Vehicles or a voter registration agency, as defined in subsection a. of section 26 of P.L.1994, c. 182 (C. 19:31-6.11), shall be deemed to have been timely made for the purpose of qualifying an eligible applicant as registered to vote in an election if the date on which the division or agency shall have received that document in completed form, as indicated in the lower right hand corner of the form, was not later than the 29th day preceding that election.

L.1974, c. 30, § 16. Amended by L.1974, c. 51, § 5, eff. June 25, 1974; L.1975, c. 15, § 3, eff. Feb. 14, 1975; L.1991, c. 318, § 2, eff. Feb. 18, 1992; L.1994, c. 182, § 7.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**Administrative Code References**

Voter registration, see N.J.A.C. 15:10-1.1 et seq.

**Library References**

Elections ⇨ 106.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections §§ 39, 46.

## Notes of Decisions

Names 1

trant's name within the meaning of this section if she continues to use her maiden name rather than assuming her husband's surname as her own. Atty.Gen. F.O.1975, No. 20.

## 1. Names

The marriage of a woman voter registrant does not in itself change the regis-

**19:31-6.4a. Rules and regulations**

The Secretary of State may promulgate, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations to effectuate the purposes of this act.

L.1991, c. 318, § 10, eff. Feb. 18, 1992.

**19:31-6.4b. Voter registration; immunity granted to government employees; exception**

No State or county government employee shall be subject to any penalty, liability or disciplinary action for failure to fulfill any responsibility under the provisions of this act except if the employee engages in the fraudulent registration of a voter.

L.1991, c. 318, § 11, eff. Feb. 18, 1992.

**19:31-6.5. Acceptance or denial of registration; notice to registrant; disposition of form**

a. Upon receipt of any completed registration form, the commissioner of registration shall review it, and if it is found to be in order, shall:

(1) Send to the registrant written notification that such registrant is duly registered to vote. No registrant shall be considered a registered voter until the commissioner of registration reviews the application submitted by the registrant and deems it acceptable. On the face of such notification in the upper left-hand corner shall be printed the words: "Do Not Forward. Return Postage Guaranteed. If not delivered in 2 days, return to the Commissioner of Registration."

(2) Paste, tape, or photocopy the completed registration form onto an original registration form, and shall paste or tape a copy of such completed registration form onto a duplicate registration form, both of which shall be filed as provided in R.S.19:31-10. Nothing in this paragraph shall preclude any commissioner of registration from keeping the original mail registration form on file.

(3) In the case of a registrant currently registered in another county of this State, notify the commissioner of registration of such

other county to delete such registrant's name from the list of persons registered in such other county.

b. The commissioner shall notify a registrant of the reasons for any refusal to approve his registration.

c. (Deleted by amendment, P.L.1994, c. 182.)

L.1974, c. 30, § 17. Amended by L.1974, c. 51, § 6, eff. June 25, 1974; L.1976, c. 49, § 1, eff. July 19, 1976; L.1994, c. 182, § 8.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides: "This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**Administrative Code References**

Acceptance of application, see N.J.A.C. 15:10-1.3, 15:10-1.4.

**Library References**

**Texts and Treatises**

25 Am Jur 2d, Elections § 111.

**19:31-6.6. Prevention of fraudulent registration and voting; procedures**

For the purpose of preventing fraudulent registration and voting, the commissioner of registration in counties having a superintendent of elections, and the county board in all other counties, may, at any time deemed necessary, utilize the procedures set forth by R.S. 19:31-15 and by R.S. 19:32-5.

L.1974, c. 30, § 18.

**19:31-6.7. Registration by door-to-door canvassing; certification of number; allocation of funds**

a. On December 31 of every year in which a Presidential Election has been held, each county may certify to the Secretary of State the number of newly registered voters who have been registered by door-to-door canvassing and registration, if any, during that calendar year. The funds provided pursuant to subsection c. of this section shall be allocated by the Secretary of State to each county wherein such canvassing and registration has been conducted in the same proportion as the number of voters newly registered by door-to-door canvassing in each such county is to the total number of voters newly registered by door-to-door canvassing in all such counties throughout the State.

b. Plans for any door-to-door canvassing and registration may be included in the plan, if any, for mobile registration for the general election submitted pursuant to R.S.19:31-2.

c. (Deleted by amendment, P.L.1994, c. 182.)

L.1974, c. 30, § 19. Amended by L.1994, c. 182, § 9.

#### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

#### Library References

##### Texts and Treatises

25 Am Jur 2d, Elections § 105.

### 19:31-6.8. Amount of reimbursement of counties for new registrants

The Secretary of State shall each year reimburse the counties \$0.50 per new registrant, whether the registration was by mail or in person.

L.1974, c. 30, § 20. Amended by L.1974, c. 51, § 7, eff. June 25, 1974.

### 19:31-6.9. Rules and regulations

To effectuate the purposes of this act and in addition to any other powers and duties provided in or by this act, the Secretary of State may promulgate such rules as may be necessary, including rules delineating which defects if any in partially completed voter registration forms may be cured and the manner in which such defects if any may be cured, all of which shall have the force of law.

L.1974, c. 30, § 21. Amended by L.1975, c. 15, § 4, eff. Feb. 14, 1975.

#### Administrative Code References

Elections; rules and regulations, see N.J.A.C. 15:10-1.1 et seq.

### 19:31-6.10. Severability

If any section, subsection, paragraph, sentence or other part of this act is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this act, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this act directly involved in the controversy in which said judgment shall have been rendered.

L.1974, c. 30, § 22.

### 19:31-6.11. Voter registration agency defined; declination forms; contents

a. As used in this section, "voter registration agency" means:

Any agency or office serving as a food stamp issuer, pursuant to P.L.1988, c. 79 (C. 44:8-153 et seq.) and the "Food Stamp Act of 1977," Pub.L. 95-113 (7 U.S.C. § 2011 et seq.);

Any agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program," pursuant to P.L.1968, c. 413 (C. 30:4D-1 et seq.) and 42 U.S.C. § 1395 et seq.;

Any agency or office distributing food pursuant to the special supplemental food program for women, infants and children (WIC), established pursuant to P.L.1987, c. 261 (C. 26:1A-36.1 et seq.) and Pub.L. 95-267 (42 U.S.C. § 1786);

Any agency or office administering assistance under the "Aid to Families With Dependent Children Program," established pursuant to P.L.1959, c. 86 (C. 44:10-1) and 42 U.S.C. § 601 et seq.;

Any public office of the Division of Developmental Disabilities, established pursuant to section 2 of P.L.1985, c. 145 (C. 30:6D-24), in the Department of Human Services;

Any recruitment office of the Armed Forces of the United States, subject to any agreement between this State and the Secretary of Defense of the United States for the joint development and implementation, as provided under subsection (c) of section 7 of Pub.L. 103-31 (42 USC § 1973gg-6), of procedures for applying at those offices to register to vote;

Any office of the Division of Vocational Rehabilitation Services of the New Jersey Department of Labor;

Any office of the Commission for the Blind and Visually Impaired of the New Jersey Department of Human Services;

Any county welfare agency or county board of social services established pursuant to the provisions of chapter 1 or chapter 4 of Title 44 of the Revised Statutes;

The office of the commissioner of registration in the several counties of this State; and

Any office of the municipal clerk in the several municipalities of this State.

b. With each voter registration form and instructions provided to the chief administrative officer at each voter registration agency under subsections e. and f. of section 16 of P.L.1974, c. 30 (C. 19:31-6.4), the Secretary of State shall provide at the same time a declination form that includes:

(1) the question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";



(2) the statement: "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(3) boxes for the applicant to check to indicate whether the applicant would or would not like to register to vote, together with the statement "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(4) the statement: "If you would like help in filling out the voter registration application form, we will help you. The decision to seek or accept help is yours. You may fill out the application form in private.";

(5) the statement: "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with the Secretary of State." (insert address and current telephone number); and

(6) the statement: IF YOU DECLINE TO REGISTER TO VOTE AT THIS TIME, YOUR DECISION WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES. IF YOU DO REGISTER TO VOTE, THE WAY IN WHICH YOU DO SO WILL REMAIN CONFIDENTIAL AND WILL BE USED ONLY FOR VOTER REGISTRATION PURPOSES.

c. The Secretary of State shall cause to be prepared declination forms in the form provided for by subsection b. of this section in both the English and Spanish languages and shall provide such forms to the chief administrative officer of each voter registration agency which has an office in any county in which there is at least one election district in which bilingual sample ballots must be provided pursuant to R.S.19:14-21, R.S.19:49-4 or section 2 of P.L.1965, c. 29 (C. 19:23-22.4).

d. The Secretary of State shall adopt, pursuant to consultation with the chief administrative officers at voter registration agencies, regulations for the prompt return of the completed voter registration forms, but in no case shall the forms be returned later than the fifth day following the date on which the completed forms are received by the voter registration agencies.

e. All registration forms received by the Secretary of State in the mail or forwarded to the Secretary of State by employees or agents of the voter registration agencies shall be forwarded to the commissioner of registration in the county of the registrant.

f. Each completed declination form received by a voter registration agency shall be kept confidential for a period of at least two years. The Secretary of State shall determine, pursuant to consultation with the chief administrative officers at voter registration agencies, which office or agency shall retain the declination forms. L.1994, c. 182, § 26.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-6.12. Development of procedures for voter registration at armed forces recruitment offices**

The Secretary of State is authorized, on behalf of this State, to enter into and to carry out an agreement with the Secretary of Defense of the United States for joint development and implementation of procedures for persons to apply at recruitment offices of the Armed Forces of the United States to register as voters of this State. The terms of the agreement with respect to the implementation of those procedures shall conform as nearly as possible to the provisions for the implementation of such procedures at each agency or office providing or administering assistance under the "New Jersey Medical Assistance and Health Services Program" pursuant to the provisions of section 28 of P.L.1994, c. 182 (C. 30:4D-19.1).

L.1994, c. 182, § 20.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**Title of Act:**

An Act concerning voter registration and revising and supplementing various parts of the statutory law. L.1994, c. 182.

**19:31-6.13. Commissioners of registration; assistance in registration**

The commissioner of registration in each of the several counties shall make available at the office of the commissioner to each person appearing in person thereat to apply for services or assistance provided thereby the assistance in registration prescribed by paragraph (4) of subsection (a) of section 7 of Pub.L. 103-31 (42 U.S.C. § 1973gg-5). Any person providing such assistance in registration shall be subject to the restrictions of paragraph (5) of that subsection.

L.1994, c. 182, § 34.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-7. Registration by municipal clerks**

For the convenience of the voters the respective municipal clerks or their duly authorized clerk or clerks in all municipalities shall also be empowered to register applicants for permanent registration up to and including the twenty-ninth day preceding any election and after any such election in the manner indicated above, subject to such rules and regulations as may be prescribed by the commissioner, in counties having a superintendent of elections, and the county board in all other counties. Duly authorized clerk as used in this section shall mean a clerk who resides within the municipality and has been approved by the commissioner or the county board as the case may be. For this purpose the commissioner shall forward to each municipal clerk a sufficient supply of registration forms. The commissioners shall keep a record of the serial numbers of these forms and shall periodically make such checks as are necessary to accurately determine if all such forms are satisfactorily accounted for. Each municipal clerk shall transmit daily to the commissioner all of the filled out registration forms that he may have in his office at the time.

Amended by L.1940, c. 135, p. 295, § 3; L.1945, c. 36, p. 94, § 2; L.1952, c. 60, p. 381, § 2; L.1956, c. 28, p. 71, § 1; L.1966, c. 83, § 1; L.1967, c. 73, § 2, eff. May 25, 1967; L.1974, c. 30, § 9; L.1994, c. 170, § 3, eff. Dec. 20, 1994.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, §385, p. 848.

**Library References**

Elections ⇄100.

WESTLAW Topic No. 144.

C.J.S. Elections § 42.

**Texts and Treatises**

25 Am Jur 2d, Elections § 103.

**Notes of Decisions**

**Function of clerk 1  
Noncompliance 2**

beyond all other applicants. *Carroll v. Cobb*, 139 N.J.Super. 439, 354 A.2d 355 (A.D.1976).

**1. Function of clerk**

Function of municipal clerk with respect to voter registration is simply to assure that applicant is able to and does complete form properly under oath and affix thereto either his signature or mark; if applicant is unable for any reason to complete form or give affirmative answers to questions concerning age, citizenship and residence, application may not be received. *Carroll v. Cobb*, 139 N.J.Super. 439, 354 A.2d 355 (A.D.1976).

Where plaintiffs answered questions on voter registration form, all that remained to be done by municipal clerk was to comply with statutory direction to transmit daily to commissioner of registration all filled out forms, and clerk was without power to subject a class to questioning

**2. Noncompliance**

Fact that voters were registered at places other than official places for registration described in § 19:31-6, that municipal clerk failed to transport registration forms to county board of elections daily as required by this section, and that in fact some were so transmitted after the fortieth day before the election, did not require setting aside of results of election of city councilmen in election contest, where it was not contended that voters so registered lacked qualifications for voting, and it was not claimed that any voter was in fact registered within 40 days' period preceding the election. In re *Smock*, 5 N.J.Super. 495, 68 A.2d 508 (L.1949).

**19:31-7.1. Municipal clerks' offices; registration assistance**

The municipal clerk in each of the several municipalities of this State shall make available at the office of the clerk to each person appearing in person thereat to apply for services or assistance provided thereby the assistance in registration prescribed by paragraph (4) of subsection (a) of section 7 of Pub.L. 103-31 (42 U.S.C. § 1973gg-5). Any person providing such assistance in registration shall be subject to the restrictions of paragraph (5) of that subsection. L.1994, c. 182, § 35.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-8. Repealed by L.1952, c. 60, p. 381, § 3**

**Historical and Statutory Notes**

The repealed section, which derived from L.1930, c. 187, p. 849, § 386, provided for general registration in municipi-

pality becoming a municipality having permanent registration.

**19:31-9. Repealed by L.1994, c. 182, § 45**

**Historical and Statutory Notes**

Repealed section related to authority to take affidavits of permanent registration and was derived from L.1930, c. 187, § 1387.

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-10. Filing of registration forms**

The original and duplicate registration forms when filled out shall be filed alphabetically by districts at the office of the commissioner in separate sets of locked binders, one for the permanent office record and the other for use in the polling places on election days. Each set of the locked binders of original and duplicate registration forms shall consist of two volumes for each election district to be known as volume I and volume II. Volume I shall contain an index alphabetically arranged beginning with the letter "A" and ending with the letter "K", and volume II shall contain a similar index beginning with the letter "L" and ending with the letter "Z". In filing the forms there shall be inserted after the original and duplicate registration forms of each registrant a record of voting form with the corresponding serial number and the name and address of the registrant thereon. The binders containing the duplicate registration forms and the corresponding record of voting forms shall constitute and be known as the signature copy registers.

The original registration forms shall not be open to public inspection except during such period as the duplicate registration forms are in process of delivery to or from the district boards or in the possession of such district boards. The original registration forms shall not be removed from the office of the commissioner except upon the order of a court of competent jurisdiction. The signature copy registers shall at all times, except during the time as above provided and subject to reasonable rules and regulations be open to public inspection.

Amended by L.1994, c. 182, § 10.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, § 1388, p. 849.

Notes of Decisions

Copying of register 2  
Inspection of register 1

March 31, 1949. Casey v. MacPhail, 2 N.J.Super. 619, 65 A.2d 657 (L.1949).

1. Inspection of register

One who is a citizen, taxpayer and voter of the City of New Jersey and a member of the Board of Commissioners of such city and Director of the Department of Public Safety and a candidate for election to the Board of Commissioners of the city at municipal election to be held on May 10, 1949, was entitled to make an inspection of the duplicate registration forms of registrations filed with the Superintendent of Elections and Commissioners of Registration of the County of Hudson after March 10, 1949, and up to

2. Copying of register

Court, in its discretion, would not issue order, on newspaper's motion for summary judgment to require municipal county commissioner of registration to allow newspaper to photograph a signature copy register, sought under this section, providing that such records are open to public inspection, in developing news story regarding charge that a certain candidate for election had previously been on city payroll as laborer. Evening Journal Ass'n v. MacPhail, 45 N.J.Super. 184, 131 A.2d 887 (L.1957).

19:31-10.1. Elimination of original permanent registration binders in counties using electronic data processing equipment; requirements

In those counties in which the commissioner of registration employs electronic data processing equipment to file and store registration information for the voters registered in the county, the commissioner may eliminate use of original permanent registration binders, as provided for in R.S.19:31-10, and use in their place the electronic data processing equipment if:

a. the voter registration information for each voter that is filed and stored in the electronic data processing equipment is made identical with the voter registration information for each voter that is required to be in the original permanent registration binder pursuant to R.S.19:31-3;

b. the voting information for each voter that is required to be entered in the original permanent registration binders after each election, pursuant to R.S.19:31-23, is entered into the appropriate voter registration records of each voter contained in the electronic data processing equipment after each election; and

c. the commissioner maintains in a permanent and separate file the original completed voter registration form of each voter, and any new or amended forms filed by that voter.

L.1994, c. 170, § 1, eff. Dec. 20, 1994.

Historical and Statutory Notes

Title of Act: R.S.19:31-23, R.S.19:31-24, and R.S.19:31-26, and supplementing chapter An Act concerning certain voter registration records, amending R.S.19:31-7,

31 of Title 19 of the Revised Statutes.  
L.1994, c. 170.

### 19:31-11. Change of residence notice

a. In all counties within the State, change of residence notices shall be made by a written request, signed by the registrant, forwarded to the commissioner by mail, and actually received by the commissioner, or by calling in person at the office of the commissioner or the municipal clerk. The commissioner shall provide change of residence notices in card form for the use of any registered voter moving to another address within the same election district or to another election district within the same county. Copies of these notices shall also be available at the office of the municipal clerk in each municipality. Each municipal clerk shall transmit daily to the commissioner all the filled out change of residence notices that may be in the municipal clerk's office at the time. These notices shall be printed upon cards, shall contain a blank form showing where the applicant last resided and the address and exact location to which the applicant has moved and shall have a line for the applicant's signature. Upon receipt of such change of residence notice the commissioner shall cause the signature to be compared with the registration forms of the applicant and, if such signature appears to be of and by one and the same legal voter, the commissioner shall cause the entry of the change of residence to be made on those registration forms and the registrant shall thereupon be qualified to vote in the election district to which the registrant shall have so moved. If the commissioner is not satisfied as to the signature on the request for a change of residence, a confirmation notice as prescribed by subsection d. of R.S.19:31-15 shall be sent by mail with postage prepaid to the registrant at the new address .

The application for change of residence shall be filed with the commissioner or municipal clerk, as the case may be, on or before the twenty-ninth day preceding any election. All applications for change of residence postmarked on or before the twenty-ninth day preceding any election shall be deemed timely.

b. In any county any voter who, prior to an election, shall move within the same county after the time above prescribed for filing an application for change of residence without having made application for change of residence, or who has not returned a confirmation notice sent to the voter by the commissioner of registration of the county or has otherwise failed to notify the commissioner of registration of the voter's change of address within the county, shall be permitted to vote in that election in the district to which the voter has moved, upon signing an affidavit, which shall set forth (1) the date upon which the voter moved, (2) the address from which the

voter moved, and (3) the address to which the voter moved, and submitting that affidavit, completed and signed, to the municipal clerk of the municipality in which the voter resides, and such affidavit shall constitute a transfer to the said new residence for any subsequent election. The municipal clerk shall, immediately following the election, transmit each such affidavit so submitted to the commissioner of registration for the county in which the district is located, and the commissioner shall correct the voter's address in the registry list of the county. The county clerk shall furnish to the municipal clerks form affidavits for this purpose and the municipal clerks shall turn over all signed affidavits to the commissioner; provided, however, if the voter has moved from one residence to another within the same election district at any time, the voter shall be permitted to vote in such election district at any election upon written affirmation by the registrant to the municipal clerk of the registrant's change of address.

c. A voter who moves from an election district in one county to an election district in another county shall register in the new county of residence, in accordance with the provisions of R.S.19:31-6, in order to be permitted to vote.

Amended by L.1940, c. 135, p. 296, § 4; L.1941, c. 165, p. 522, § 1; L.1944, c. 251, p. 815, § 1; L.1945, c. 75, p. 402, § 1; L.1946, c. 149, p. 698, § 1; L.1974, c. 30, § 10; L.1974, c. 51, § 3, eff. June 25, 1974; L.1977, c. 89, § 1, eff. May 16, 1977; L.1994, c. 182, § 11.

#### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, ¶389, p. 850, amended by L.1933, c. 140, § 1, p. 288.

#### Library References

Elections ⇨ 119.

WESTLAW Topic No. 144.

C.J.S. Elections § 52.

#### Texts and Treatises

25 Am Jur 2d, Elections § 107.



## Notes of Decisions

Duty to give notice	3
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## 1. Validity

This section does not discriminate against Newark blacks on basis that because of urban renewal projects, etc., they change addresses more often than other Newark citizens. *Gibson v. Kugler*, D.C.N.J. 1970, 315 F.Supp. 1003, affirmed 90 S.Ct. 1883, 398 U.S. 955, 26 L.Ed.2d 299.

## 2. Related statutes

Section 19:33-1 providing for summary proceeding to strike names from permanent register of voters is not in conflict with this section since voter is not deprived of voting from bona fide residence if name is stricken from register. In re *Sullivan*, 17 N.J. Misc. 42, 5 A.2d 57 (1939).

## 3. Duty to give notice

Section 19:31-15 does not place burden on commissioner to obtain new address of registered voter and to amend records accordingly, and does not relieve voter of duty under this section of notifying commissioner of change of address. *Miele v. Flannagan*, 125 N.J.L. 424, 16 A.2d 66 (1940).

## 4. Failure to give notice

Mere fact that married voters failed to file change of residence notice after having moved outside of municipality for two months did not render illegal voters'

ballots in municipal council election; temporary move had not effectively withdrawn their voting registration in municipality and any failure to file change of residence was a "mere irregularity" which did not void their votes once they had been cast. *Matter of Mallon*, 232 N.J.Super. 249, 556 A.2d 1271 (A.D. 1989), certification denied 117 N.J. 166, 564 A.2d 883.

Failure by a voter to give notice of change of residence is a basis on which to deny the voter his franchise at time he or she attempts to vote but is no basis for disqualifying the vote after it is cast, absent malconduct or fraud. *Friends of Jim Usry for Mayor Campaign v. Matthews for Mayor Campaign*, 187 N.J.Super. 176, 453 A.2d 1360 (A.D.1982).

A voter's failure to act with reasonable diligence to effect change in permanent register when he moves from one address to another does not preclude the legally constituted authorities from performing their duties to keep register of voters as an accurate record of persons qualified to vote. In re *Sullivan*, 17 N.J. Misc. 42, 5 A.2d 57 (1939).

## 5. Errors and omissions

Erroneous statement of residence on permanent registration card utilized for prior election cannot affect or invalidate current franchise of voter as long as his permanent registration card indicates that transfer of residence has been made thereon in accordance with election laws to coincide with actual residence. *Haack v. Ranieri*, 83 N.J.Super. 526, 200 A.2d 522 (L.1964).

## 19:31-11.1. Repealed by L.1994, c. 182, § 45

## Historical and Statutory Notes

Repealed section, L.1940, c. 54, § 1; amended by L.1947, c. 310, § 1, related to filing list of permittees for moving permits.

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

## 19:31-12. Errors in registration corrected

When by error an eligible voter has been registered in a district other than the one in which he resides the commissioner shall cause

the error to be corrected, of which correction the registrant shall be notified by postal card.

Historical and Statutory Notes

Source: L.1930, c. 187, ¶390, p. 852.

American Law Reports

Elections: effect of conviction under federal law, or law of another state or country, on right to vote or hold public office, 39 ALR3d 303.

Library References

Texts and Treatises

25 Am Jur 2d, Elections §§107-110.

19:31-13. Change in registration on marriage, divorce or judgment of court; notification of commissioner

Whenever the registrant after his or her original registration shall change his or her name due to marriage, divorce, or by judgment of court, the registrant shall in person or by mail submit to the commissioner of registration a written statement notifying the commissioner of the change, which statement shall take such form, and be printed on a postal card suitable for mailing of such design, as the Secretary of State shall prescribe and shall be signed by the registrant. The commissioner, upon receipt of such a notice of change of name, shall revise accordingly the name of the registrant as it appears among the items of information concerning the registrant included on the registrant's registration forms, shall make a photographic copy of the notice of name change submitted by the registrant, and shall affix the original notice so submitted to the registrant's original registration form and the photographic copy of that notice to the registrant's duplicate registration record.

When notice of such change in name has not been received by or filed with the commissioner prior to the twenty-ninth day preceding any election, such person may be permitted to vote under the name under which the person was registered prior to that change at the first election following such change in name at which the person shall appear to vote, after signing the signature copy register with both the registered name and his or her new name. The commissioner shall then revise accordingly the name of the registrant as it appears on the registrant's registration forms, make a photographic copy of the notice, and affix the original and copy of the notice to the registrant's permanent registration forms as hereinabove prescribed.

Amended by L.1945, c. 117, p. 472, § 1; L.1953, c. 19, p. 345, § 44; L.1960, c. 139, p. 659, § 1; L.1974, c. 30, § 11; L.1994, c. 182, § 12.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, ¶1391, p. 852.

**Cross References**

Domicile of married woman, see § 37:2-3.

**Notes of Decisions****Marital names 1****1. Marital names**

A woman may retain her maiden name by antenuptial agreement or by holding herself out consistently by that name after marriage, and she is not compelled by law to assume her husband's surname as

her legal name. Application of Lawrence, 133 N.J.Super. 408, 337 A.2d 49 (A.D.1975).

The marriage of a woman voter registrant does not in itself change the registrant's name within the meaning of this section if she continues to use her maiden name rather than assuming her husband's surname as her own. Atty.Gen. F.O.1975, No. 20.

**19:31-13.1. Previous registration in another county; notice; transfer to inactive file**

When a person appears to register in any county of this State, and in answer to the statement on the registration forms, to wit: "Municipality, house number and street address from which last registered," such person gives information as to previous registration in another county of this State, the commissioner of registration of the county in which such person newly registers shall forthwith notify the commissioner of registration of the county in which such person was last registered, by postal card signed by the registrant, of the new registration, upon receipt of which information the said commissioner shall transfer the registration forms of such person to the inactive file without any publication thereof being required.

L.1947, c. 414, p. 1288, § 1.

**Historical and Statutory Notes****Title of Act:**

An Act concerning elections, and supplementing subtitle six of Title 19 of the

Revised Statutes. L.1947, c. 414, p. 1288.

**19:31-14. New or altered districts; notice to registrants and to commissioner; registrations not invalidated**

When a new district has been created or the boundaries of any district have been changed, the commissioner shall transfer the permanent registration forms of registered voters whose voting dis-

tricts have been changed, of which change the registrant may be notified by postal card. Within ten days after the creation of any such new district, the commissioner of registration shall notify the Secretary of State of such fact.

The registration of a voter shall not be invalidated by such alteration nor shall the right of any registered voter to vote be prejudiced by any error in making the transfers of the registration forms. Amended by L.1947, c. 277, p. 982, § 1.

#### Historical and Statutory Notes

Source: L.1930, c. 187, §392, p. 853, amended by L.1933, c. 93, § 1, p. 192.

#### 19:31-14.5. Report of registrations

At least ten days prior to the general election, the commissioner shall transmit and certify to the Secretary of State a report of the total number of registrations in his said county.

L.1947, c. 277, p. 982, § 2.

#### Historical and Statutory Notes

**Title of Act:** thirty-one of Title 19 of the Revised Statutes.  
An Act to regulate elections, to amend § 19:31-14 and supplementing chapter

#### Library References

Elections ⇐106, 110.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 39, 46, 47.

#### 19:31-15. Removal of name of registered voter from county registry list; confirmation of change of residence; correction of registry list

a. Upon receipt by the commissioner of registration of a county from a registered voter of that county of a request that the name of the registrant be removed from the registry list of voters of the county, the commissioner shall so remove the registrant's name from that list. Notice by a registered voter to the commissioner of registration of a county that the registrant has ceased to reside in the county shall, for the purposes of this subsection, be deemed a request for removal of the registrant's name from the county registry list.

b. The commissioner of registration of any county may agree with the United States Postal Service or its licensee to receive information provided by the Postal Service concerning the change by any Postal Service customer of that customer's address within the county. If it

appears from information so received that a Postal Service customer registered to vote in the county has moved to a different address, then (1) if that address is within the county, the commissioner shall cause the registration records of the registrant to be corrected accordingly and shall transmit to the resident by forwardable mail a notice of the change and a postage prepaid, pre-addressed return form by which the registrant may verify or correct the address information, or (2) if that address is not within the county, the commissioner shall undertake the confirmation notice procedure prescribed under subsection d. of this section to confirm the change of address.

c. The commissioner of registration of a county shall cause the name of a registrant to be removed from the registry list of the county if the registrant (1) confirms in writing, by return of a confirmation notice as prescribed under subsection d. of this section or by other means, that the registrant has changed residence to a place outside the county, or (2) has failed to respond to a confirmation notice as so prescribed and has not, in any election during the period beginning on the date on which the commissioner sends the confirmation notice to the registrant and ending on the day after the second general election for federal office following that date on which the notice is sent, (a) voted, or (b) appeared to vote and, if necessary, correct the official record of the registrant's address.

Other than as provided under subsection a. of this section, the name of a registrant shall not be removed from the registry list of a county on the ground that the registrant has changed residence except as provided by this subsection.

d. A confirmation notice sent to ascertain whether a registrant continues to reside at the address from which that registrant is registered to vote shall be a postage prepaid and pre-addressed return card, sent by forwardable mail, which shall include: (1) space on which the registrant's current address may be entered; (2) the statement "To any voter who continues to reside at the residence address to which this notice is addressed or who no longer resides at that residence address but continues to reside in ..... (name of county): please mail or personally deliver this postage prepaid card to the commissioner of registration to whom it is addressed not later than ..... (calendar date of the 29th day preceding the next election to be held in the county). If you do not return this card by that date, then at any election held subsequent to that date and on or before ..... (calendar date of the day after the second general election for federal office following that date), you may be required at the polls to affirm or confirm your address before you are permitted to vote, and if you do not vote in an

election during that period, your name will be removed from the registry of eligible voters.”; and (3) a statement, the text of which shall be prescribed by the Secretary of State, setting forth the means by which a registrant who has changed residence to a county different from that in which is located the residence to which the notice was originally addressed may retain the right to vote.

e. The commissioner of registration shall correct the registry list of eligible voters in accordance with change of residence information obtained in conformity with the provisions of this section.

Amended by L.1940, c. 155, p. 348, § 1; L.1941, c. 273, p. 708, § 2; L.1945, c. 18, p. 53, § 1; L.1947, c. 168, p. 754, § 19; L.1952, c. 292, p. 985, § 1; L.1953, c. 206, p. 1556, § 1; L.1991, c. 91, § 249, eff. April 9, 1991; L.1994, c. 182, § 13.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

“This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995.”

L.1930, c. 276, § 1, p. 1278.

L.1931, c. 43, § 1, p. 88.

L.1931, c. 374, § 21, p. 960.

L.1933, c. 93, § 2, p. 192.

L.1934, c. 81, § 1, p. 208.

**Source:**

L.1930, c. 187, ¶393, p. 853.

**Library References**

Elections ⇨ 103, 107, 117.

WESTLAW Topic No. 144.

C.J.S. Elections §§ 43, 46, 51.

**Notes of Decisions**

**Correction of registry lists 1**

**1. Correction of registry lists**

This section does not place burden on commissioner to obtain new address of

registered voter and to amend records accordingly, and does not relieve voter of duty under § 19:31-11 of notifying commissioner of change of address. *Miele v. Flannagan*, 125 N.J.L. 424, 16 A.2d 66 (1940).

**19:31-16. Reports of death by health or vital statistics officers; records transferred to death file**

The health officer or other officer in charge of records of death in each municipality shall file with the commissioner of registration for the county in which the municipality is located once each month, during the first five days thereof, the age, date of death, and the names and addresses of all persons 18 years of age or older who have died within such municipality during the previous month. Upon receipt of such list the commissioner shall make such investigation as is necessary to establish to his satisfaction that such

deceased person is registered as a voter in the county. If such fact is so established, the commissioner shall cause the registration and record of voting forms of the deceased registrant to be transferred to the death file. If the deceased person was not so registered in the county, but the list filed with the commissioner indicates that the person maintained a residence in one or more other counties of this State, the commissioner shall notify the commissioner in that other county or those other counties of having received official notice of the death of the person, and any commissioner of such other county who receives such notification shall undertake the procedures prescribed herein with respect to the registration in that county of the decedent.

Amended by L.1947, c. 168, p. 760, § 20; L.1994, c. 182, § 14.

#### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, §394, p. 854.

#### Library References

Elections ¶113.

WESTLAW Topic No. 144.

C.J.S. Elections § 49.

### **19:31-17. Commissioner to be notified of conviction of county resident of state or federal crime constituting grounds for disfranchisement; transfer of registration to conviction file**

a. Once each month during the first five days thereof, the chief State election official shall notify the commissioner of registration of a county of any information which the official shall have received during the previous month from the United States Attorney under subsection g. of section 8 of Pub.L. 103-31 (42 U.S.C. § 1973gg-6) concerning the conviction of a resident of the county of a crime under the laws of the United States, or any other official action relating to such a conviction, that would constitute grounds for disfranchisement of the person under the laws of this State.

b. Once each month during the first five days thereof the prosecutor of the county shall deliver to the commissioner a list of the names and addresses of all persons and their ages and offenses who have been convicted during the previous month of a crime which would disfranchise them under the laws of this State, including therewith the date upon which judgment of conviction was entered

against the person, and also including a statement of any sentence imposed by the court during the month upon any person so convicted during that month or any previous month; provided, however, if the address of the person so convicted is located in a county other than the county in which the conviction was obtained the said prosecutor shall mail a report of such conviction to the proper election official of the county in which the address of such person is located.

c. Upon the receipt of the notice prescribed under subsection a. of this section or the list prescribed under subsection b. hereof, the commissioner shall make such investigation as is necessary to establish to his satisfaction that the convicted person is registered to vote in the county. If it is so established, the commissioner shall cause the registration and record of voting forms of such convicted registrant to be transferred to the conviction file. In the event the person so convicted is not registered at the time the list or report is received, the commissioner shall cause an index card to be made out and inserted in its proper place in the master index file bearing the information received from the State election official or a county prosecutor, and the person so convicted shall be denied the right to register. Such persons upon the restoration of their citizenship rights or upon being pardoned shall be required to register or reregister before being allowed to vote.

Amended by L.1947, c. 168, p. 761, § 21; L.1950, c. 37, p. 73, § 1; L.1994, c. 182, § 15.

#### Historical and Statutory Notes

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

Source: L.1930, c. 187, ¶395, p. 855.

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

#### Library References

Elections ¶113.

WESTLAW Topic No. 144.

C.J.S. Elections § 49.

### 19:31-18. Registry lists; certification and transmission

On or before the fifteenth day preceding any general election the commissioner shall certify and transmit to the county clerk a complete list of all persons who are registered in each election district in each municipality in the county together with a statement as to the number of persons registered in each district. On the face of the list of registered voters the commissioner shall in figures state the total number of names of persons registered. Such lists shall be arranged substantially in the following form:



## Grand Street

Residence number or other designation	Name of voter
14	Jones, Charles M.
15	Smith, John M.

Amended by L.1947, c. 347, p. 1137, § 1; L.1974, c. 30, § 12; L.1976, c. 22, § 1, eff. May 7, 1976.

**Historical and Statutory Notes**

**Source:** L.1930, c. 187, § 396, p. 856,  
amended by L.1933, c. 76, § 1, p. 151.

**Library References**

Elections ⇄ 110.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 47.

**19:31-18.1. Copies of registry lists; distribution; prohibition of use for commercial solicitation; penalty**

a. The county clerk in all counties shall cause copies of the registry lists, certified and transmitted under R.S. 19:31-18, to be printed in handbill form, and shall furnish to any voter applying for the same such copies, charging therefor \$0.25 per copy of the list of voters of each election district. He shall also furnish five printed copies thereof to each district board, which shall within two days post two such registry lists, one in the polling place and one in another conspicuous place within the election district. The county clerk shall also forthwith deliver to the superintendent of elections of the county, if any there be, and to the chairmen of the county committees of each of the several political parties in the county, five copies of the lists of voters of each election district in the county; and to the municipal clerk of each of the municipalities in the county five copies of the lists of voters of each election district in such municipality; and to the county board 10 copies of the lists of voters of each election district in each of such municipalities. The county clerk shall also, upon the request of the chairman of the State committee of any of the several political parties, but not more than once in each calendar year, forthwith deliver a copy of the lists of voters of each election district in each of the municipalities in his county. In any county where the voter registration lists are recorded on magnetic tape, the county clerk shall satisfy the request by delivery of a copy of the magnetically recorded lists, including with the tape, where available, a statement of the number of records on the tape and the length, layout and block size of those records.

b. In any county where the voter registration lists are recorded on magnetic tape or electronic data processing cards, the commissioner of registration shall furnish a copy of such tape or cards to any voter requesting such tape or cards, for which copy such commissioner shall make a charge which shall be uniform in any calendar year and which shall reflect only the cost of reproducing such tape or cards, but which in any case shall not exceed \$375.

c. No person shall use voter registration lists or copies thereof prepared pursuant to this section as a basis for commercial solicitation of the voters listed thereon. Any person making such use of such lists or copies thereof shall be a disorderly person, and shall be punished by a fine not exceeding \$500.00.

L.1947, c. 347, p. 1137, § 2. Amended by L.1951, c. 273, p. 941, § 1; L.1966, c. 117, § 2, eff. June 17, 1966; L.1974, c. 30, § 13; L.1975, c. 115, § 1; L.1990, c. 60, § 1, eff. July 10, 1990; L.1991, c. 113, § 1, eff. April 19, 1991.

**Senate County and Municipal Government Committee Statement**  
**Senate, No. 3168—L.1991, c. 113**

The Senate County and Municipal Government Committee reports favorably Senate Bill No. 3168 with Senate committee amendments. Senate Bill No. 3168, as amended by the committee, limits the amount that can be charged by the county board of elections for providing a computer tape containing a list of registered voters requested by a voter.

The committee amended the bill to increase the maximum limit that the county board of elections can charge for such a computer tape from \$300 to \$375.

**Assembly State Government Committee Statement**  
**Assembly, No. 1097—L. 1990, c. 60**

The Assembly State Government Committee reports favorably Assembly Bill No. 1097.

This bill revises the statute providing for transmittal of voter registration lists to the State chairmen of the several political parties. The law requires the county commissioner of elections, on or before the fifteenth day preceding a general election, to certify and transmit to the county clerk a list of the names and addresses of the registered voters in each election district in the county. Currently, the clerk must then deliver "forthwith" to the State party chairmen five copies, printed in handbill form, of the lists for that county. Under the bill, the clerk will be required to deliver the lists to a State chairman only upon that chairman's request, and not more frequently than once in each calendar year; only one copy of the lists will be required.

In addition, the bill requires that, if the voter registration lists for a county are recorded on magnetic tape, the clerk shall satisfy a State

chairman's request for the lists for that county by delivering a copy of the tape, rather than the printed lists.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

### Historical and Statutory Notes

L.1975, c. 115, § 2, approved June 3, 1975, provided:

"This act shall take effect in 90 days following its enactment."

#### Title of Act:

An Act concerning elections, amending § 19:31-18 and repealing §§ 19:30-1 and

19:30-2, and supplementing chapter thirty-one of Title 19 of the Revised Statutes.

### Library References

Elections ⇄111.

WESTLAW Topic No. 144.

C.J.S. Elections § 50.

### Notes of Decisions

#### Confidentiality of voter information 2 Printing of lists 1

##### 1. Printing of lists

A county clerk is not required to have copies of registry list printed in handbill form, but if clerk in exercise of his discretion does cause copies to be so printed he must furnish copies thereof to any voter upon request and payment of stated fee. *Remsen v. Woolley*, 22 N.J.Super. 459, 92 A.2d 87 (A.D.1952).

No mandatory duty is imposed upon clerk to cause registry list of voters to be printed in handbill form, but it is within discretion of each county clerk to determine whether to cause registry lists to be

so printed, but if clerk causes lists to be printed, it is his mandatory duty to furnish or deliver copies as prescribed. *Op. Atty.Gen.*, Sept. 12, 1949, No. 91.

##### 2. Confidentiality of voter information

Female registrant, who had to move because her ex-husband repeatedly violated permanent restraining order issued pursuant to Prevention of Domestic Violence Act and who had sustained permanent injuries, was entitled to register to vote without making her address matter of public record, despite statute requiring that registry list, including registrants' addresses, be publicly available. *D.C. v. Superintendent of Elections*, 261 N.J.Super. 366, 618 A.2d 931 (L.1992).

## 19:31-18.2. Repealed by L.1951, c. 273, p. 942, § 2

### Historical and Statutory Notes

The repealed section was derived from L.1947, c. 348, p. 1138, § 3, and provided

for investigation of names on registry lists.

**19:31-18.3. Filing of original registry lists**

The county clerk, after causing copies of such registry lists to be printed, shall file the original registry lists in his office and keep same on file for one year.

L.1947, c. 347, p. 1138, § 4.

**Library References**

Elections ⇨109.

WESTLAW Topic No. 144.

C.J.S. Elections § 47.

**19:31-18.4. Repeal**

Sections 19:30-1 and 19:30-2 of the Revised Statutes are repealed.  
L.1947, c. 347, p. 1138, § 5.

**19:31-19. Correction of records by commissioner; notice; stamping registration forms; registration**

The commissioner shall transfer to the inactive file the permanent registration and record of voting forms of such persons as a judge of the Superior Court may, as hereinafter provided, order stricken from the signature copy register.

The registrant shall be notified by the commissioner by registered mail of any transfer made pursuant to this section.

After the permanent registration form of any person has been placed in the inactive file for any reason whatsoever, the Commissioner of Registration shall stamp across the face of said registration form in red ink with a rubber stamp, in type at least one inch high, the word void and underneath said word, inactive, and thereafter, the said form shall not be restored, reinstated or re-transferred to the active file.

Any person whose permanent registration form has been transferred to the inactive file shall be required to reregister, in order to be eligible to vote.

In no event, shall any person's registration form number which has been transferred to the inactive file be again used as the registration number of that person or any other person.

Amended by L.1940, c. 31, p. 111, § 1; L.1953, c. 19, p. 346, § 45; L.1991, c. 91, § 250, eff. April 9, 1991.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §397, p. 856,  
amended by L.1931, c. 374, § 22, p. 963.

**Library References**

Elections Ⓒ108.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 48.

**ARTICLE 3. SIGNATURE COPY REGISTERS****Library References**

Elections Ⓒ212.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 197.

**19:31-20. To be transmitted for use by district boards**

On or before the second Monday preceding the primary election for the general election and the general election, respectively, the commissioner in counties not having a superintendent of elections, shall deliver to the municipal clerk in each municipality the signature copy registers for each election district in such municipality and shall take a receipt for same. The municipal clerk shall thereupon deliver at his office, or in any other way he sees fit, such registers to a member or members of the proper district boards at the same time and together with the primary for the general election sample ballots or the general election sample ballots, as the case may be. The registers shall be used by the district boards on election days and for the purpose of mailing the sample ballots. The commissioner in counties having a superintendent of elections shall deliver such registers at his office, or in any other way he may see fit, to the various district boards, taking a receipt for same.

Before delivering the registers the commissioner shall cause to be printed upon a separate sheet or sheets of paper, to be inserted inside of the front cover of such registers in conspicuous type, such instructions to election officers regarding the use and disposition of the binders and forms as he deems necessary.

Amended by L.1947, c. 168, p. 762, § 22.

**Historical and Statutory Notes**

Source: L.1930, c. 187, §398, p. 856.

**Library References**

Elections Ⓒ212.  
 WESTLAW Topic No. 144.  
 C.J.S. Elections § 197.

**19:31-21. Use of signature copy registers on election days**

A person whose name appears in the signature copy register and who upon applying for a ballot or voting authority shall have given the information and signed the signature comparison record as provided in this Title and whose signature in the signature comparison record shall have been compared by a member of the district board and in the presence and view of the challengers with the signature of the applicant as recorded in the register shall be eligible to receive a ballot or voting authority unless it be shown to the satisfaction of a majority of the members of the district board that he is not entitled to vote in the district or has otherwise become disqualified.

No person shall be required to sign the signature comparison record as a means of identification if he shall have been unable to write his name when he registered, or if, having been able to write his name when registered, he subsequently shall have lost his sight or lost the hand with which he was accustomed to write or shall by reason of disease or accident be unable to write his name when he applies to vote, but each such person shall establish his identity in the manner provided in this Title.

In addition to signing the signature comparison record and after the comparison of the signature with the signature in the register, a person offering to vote at a primary election for the general election shall announce his name and the party primary in which he wishes to vote.

After a person has voted the member of the district board having charge of the signature copy registers shall place the number of the person's ballot in the proper column on the record of voting form of such person, which number shall constitute a record that the person has voted. In the case of a primary election for the general election such member of the district board shall also place in the proper column on the record of voting form the first three letters of the name of the political party whose primary ballot such person has voted.

In the event that the duplicate permanent registration form of any person cannot be found in the signature copy register at the time he applies for a ballot or voting authority, a member of the district board shall promptly ascertain from the commissioner or a duly authorized clerk if such person is permanently registered. Upon information that such is the fact, such member of the district board shall require the person applying for a ballot or voting authority to obtain an order from the commissioner authorizing him to receive a ballot or voting authority. The commissioner shall specially autho-

rise and deputize clerks to issue such orders in municipalities within his county. The commissioner or his clerk shall require the voter to sign his name upon such order for the purpose of signature comparison. The district board shall require the voter to again sign his name on said order, in the presence of the board, and if the signatures compare, to permit him to vote. At primary elections the commissioner or his duly authorized clerk shall endorse on the order the political party whose ballot such person voted at the last preceding primary election. The order shall be returned to the commissioner at the same time and along with the signature copy registers.

Amended by L.1945, c. 77, p. 409, § 1.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶399, p. 857.

### 19:31-22. Return of signature copy registers to commissioner; check-up and correction of records

Not later than noon of the day following the canvass of the votes cast at the primary election for the general election or the general election, the signature copy registers shall be returned by each district board to the commissioner at his office or in any other way as the commissioner may see fit.

Upon receipt of the registers the commissioner shall inspect them and verify from the party primary poll books and the general election poll books, as the case may be, that the entries required to be made on the record of voting forms in such registers by the district boards have been made. If the commissioner shall ascertain that such entries have not been made or have been improperly made, he shall cause such entries and corrections to be made forthwith and also notify the county board of such failure of duty and the members of such district board who have so failed in their duty and shall be ineligible for appointment as members of any district board thereafter.

Amended by L.1965, c. 106, § 1.

#### Historical and Statutory Notes

Source: L.1930, c. 187, ¶400, p. 859.

## ARTICLE 4. RECORDS AND FILES

### Library References

Elections ⇨110.  
WESTLAW Topic No. 144.  
C.J.S. Elections § 47.

**19:31-23. Commissioner to check records**

Following each election the commissioner shall cause the record of voting as shown on the record of voting forms in the signature copy registers or, in counties in which polling records are used in place of those signature copy registers pursuant to section 2 of P.L.1994, c. 170 (C. 19:31-3.3), as shown in the polling records, to be entered on the record of voting forms in the original registration binders or to be entered into electronic data processing equipment used to file and store voter information for the voters registered in a county, pursuant to section 1 of P.L.1994, c. 170 (C. 19:31-10.1). An entry of any record of voting which shall have been made by means of electronic data processing equipment under that section 1 shall be retained for a period of not less than six years following the election at which the vote so recorded was cast.

Amended by L.1994, c. 170, § 4, eff. Dec. 20, 1994; L.1994, c. 182, § 16.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

Source: L.1930, c. 187, §401, p. 859.

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-24. Destruction or loss of records; general registration**

In the event of the loss or destruction of any or all of the original or duplicate registration binders for any reason other than their elimination as permitted pursuant to sections 1 and 2, respectively, of P.L.1994, c. 170 (C. 19:31-10.1 and 19:31-3.3), or, in counties in which registration information has been filed and is stored by means of electronic data processing equipment in accordance with the provisions of that section 1 of P.L.1994, c. 170, in the event of the loss or destruction of any or all of the original completed voter registration forms or any new or amended forms required under subsection c. of that section to be maintained in a permanent and separate file, the commissioner shall promptly provide for a general registration at the regular polling places in the district or districts for which the binders, registration forms, or other official voter registration information have been lost or destroyed.

Amended by L.1994, c. 170, § 5, eff. Dec. 20, 1994; L.1994, c. 182, § 17.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

Source: L.1930, c. 187, §402, p. 859.



**19:31-25. Repealed by L.1941, c. 164, p. 521, § 1**

**Historical and Statutory Notes**

The repealed section was derived from L.1930, c. 187, p. 860, § 403, and provided that the commissioner should certify

lists of registrations and transfers to the superintendent.

**19:31-26. Master index files; card index; entries on; correction**

Unless voter registration information is filed and stored in electronic data processing equipment in accordance with the provisions of subsection a. of section 1 of P.L.1994, c. 170 (C. 19:31-10.1), the commissioner shall make and maintain a card index file showing on separate cards the full name, address, municipality, ward and district, registration number and date of registration of each person registered in his county. This file shall be arranged alphabetically according to names irrespective of municipality, ward, district, registration number, and date of registration. Reasonably sufficient space shall be reserved on each card for the notations to be made thereon as herein provided.

The commissioner shall cause to be made notation on these cards as to each registrant respectively whose registration forms have been transferred from one register to another or to the inactive, death or conviction files concurrently with such transfer. The card with such notations shall show the location of the registration forms of each registrant at all times. All changes of address of the registrant, including those within the same district, shall be noted on these cards concurrently with changes of address on the registration forms.

Amended by L.1994, c. 170, § 6, eff. Dec. 20, 1994; L.1994, c. 182, § 18.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

Source: L.1930, c. 187, §404, p. 860.

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-27, 19:31-28. Repealed by L.1994, c. 182, § 45**

**Historical and Statutory Notes**

Repealed § 19:31-27, relating to a candidate being allowed to inspect registration binders by court order, was derived from:

L.1940, c. 53, § 1.  
L.1953, c. 19, § 46.  
L.1991, c. 91, § 251.

Repealed § 19:31-28, classifying the disobedience of inspection order by commissioner as a misdemeanor, was derived from L.1940, c. 53, § 2.

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-29. Violations of voter registration provisions; remedies available**

a. Any person who believes that he or she has been denied an opportunity to register to vote or to remain a registered voter in violation of the provisions of P.L.1994, c. 182 (C. 19:31-6.11 et al.), may seek relief by providing written notice to the Secretary of State. Such notice shall include the date which the person seeking relief believes the violation to have occurred and as many of the particulars relative to the violation as that person can recount. The notice shall also include the name and address of the person seeking relief and shall be certified by that person's signature.

b. If the violation of the provisions of P.L.1994, c. 182 (C. 19:31-6.11 et al.) has not been investigated or corrected within 90 days after the Secretary of State receives written notice of the violation, or within 20 days after the Secretary of State receives written notice of the violation if the violation occurred within 120 days prior to the day of an election, the aggrieved person may bring a civil action in the appropriate superior court for declaratory or injunctive relief with respect to the violation.

c. If the violation occurred within 30 days prior to the day of an election, the aggrieved person shall not be required to first provide written notice to the Secretary of State, as provided for in subsection a. of this section, but may instead bring a civil action in the appropriate superior court, as provided for in subsection b. of this section.

d. In any civil actions brought under subsections b. or c. of this section, the superior court may allow the prevailing party, other than the United States, reasonable attorney fees, including litigation fees and costs.

L.1994, c. 182, § 42.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

"This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995."

**19:31-30. Rules and regulations**

The Secretary of State shall promulgate, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), such rules and regulations as are necessary to effectuate the purposes of this act.

L.1994, c. 182, § 44.

**Historical and Statutory Notes**

L.1994, c. 182, § 46, approved Dec. 20, 1994, provides:

“This act shall take effect immediately [Dec. 20, 1994] but shall remain inoperative until January 1, 1995.”

## CHAPTER 31A

### SIGNATURE COMPARISON RECORDS; FORM AND USE

#### Section

19:31A-1 to 19:31A-6. Repealed.

19:31A-7. Signature comparison record and duplicate permanent registration and voting form; voter's signature; form of record.

19:31A-8. Comparison of signatures; voting; statements; form of statements; disability certificates; certification of signature comparison record.

19:31A-9. Erroneous record.

19:31A-10. Repeals.

#### Library References

Elections  $\S$  106, 117, 212.

WESTLAW Topic No. 144.

C.J.S. Elections  $\S\S$  39, 46, 51, 197.

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**19:31A-1 to 19:31A-6. Repealed by L.1944, c. 230, p. 786,  $\S$  4**

#### Historical and Statutory Notes

Section 19:31A-1, which derived from L.1941, c. 177, p. 552,  $\S$  1, amended by L.1943, c. 219, p. 583,  $\S$  1, related to signature comparison record. For provisions relating to similar subject matter, see  $\S\S$  19:31A-7, 19:31A-8.

Section 19:31A-2, which derived from L.1941, c. 177, p. 554,  $\S$  2, related to signing of comparison record by voter.

For provisions relating to similar subject matter, see  $\S\S$  19:31A-7, 19:31A-8.

Section 19:31A-3, which derived from L.1941, c. 177, p. 554,  $\S$  3, related to the form of the record. For provisions relating to similar subject matter, see  $\S\S$  19:31A-7, 19:31A-8.

Section 19:31A-4, which derived from L.1941, c. 177, p. 556,  $\S$  4, amended by

**19:31A-1 to 19:31A-6  
Repealed**

**ELECTIONS**

L.1943, c. 219, p. 583, § 2, related to the voting procedure. For provisions relating to similar subject matter, see §§ 19:31A-7, 19:31A-8.

Section 19:31A-5, which derived from L.1941, c. 177, p. 557, § 5, related to the procedure when voter is unable to sign.

For provisions relating to similar subject matter, see §§ 19:31A-7, 19:31A-8.

Section 19:31A-6, which derived from L.1941, c. 177, p. 558, § 6, related to the preservation of the record. For provisions relating to similar subject matter, see §§ 19:31A-7, 19:31A-8.

**19:31A-7. Signature comparison record and duplicate permanent registration and voting form; voter's signature; form of record**

The commissioner of registration shall have printed on the back of the duplicate permanent registration and voting form a signature comparison record, which record shall have in the left-hand side one-half inch from the top, a line upon which the voter when registering shall place his signature. Directly underneath this line shall be printed the words "sample signature."

The signature comparison record shall be printed so as to leave a margin one and one-half inches on the left-hand side for the purpose of binding. The remainder of the space shall be ruled to provide a record of registrants' signatures as made for comparison purposes before receiving a ballot at any election. The form shall be sufficient to record signatures for a period of 20 years and shall be subdivided into seven columns.

At the top of the first column at the left-hand side shall appear the word "year." This column shall be approximately three-quarters of an inch wide.

At the top of the second column shall appear the abbreviation for the words "signature compared by." In this column the district election board official shall place his initials certifying that he has compared the signature of the voter placed in third column with the sample signature at the top of the signature comparison record. This column shall be approximately one-half inch in width.

At the top of the third column shall appear the word "primary." Upon the line in this column opposite the particular year the voter shall place his signature when voting in the primary election for the general election in the year as stated in the first column. This column shall be approximately three and one-fourth inches wide.

At the top of the fourth column shall appear the abbreviation of the words "signature compared by." In this column the district election board official shall place his initials certifying that he has compared the signature of voter placed in the fifth column, with the sample signature at the top of the signature comparison record. This column shall be approximately one-half inch in width.

**SIGNATURE COMPARISON RECORDS**

**19:31A-7**

At the top of the fifth column shall appear the word "general." Upon the line in said column opposite the particular year the voter shall place his signature when voting in the general election in the year as stated in the first column. This column shall be approximately three and one-fourth inches wide.

At the top of the sixth column shall appear the abbreviation of the words "signature compared by." In this column the district election board official shall place his initials certifying that he has compared the signature of voter placed in the seventh column, with the sample signature at the top of the signature comparison record. This column shall be approximately one-half inch in width.

At the top of the seventh column shall appear the words "any other election." Upon the line in this column opposite the particular year the voter shall place his signature when voting in any election other than a primary election for a general election or a general election. The signature shall be placed on the line opposite the year stated in the first column which corresponds with the year during which such other election shall be held. This column shall be three and one-fourth inches wide.

At the time the voter registers, in addition to obtaining the signature on the original and duplicate registration forms the commissioner of registration shall also require the registrant to sign the signature comparison record on the back of the duplicate registration form above the line below which are the words "sample signature."

The signature comparison record shall be in substantially the following form:

YEAR	SIGNATURE COMPARISON RECORD					
	SAMPLE SIGNATURE					
	SIG.COMP.	PRIMARY	SIG.COMP.	GENERAL	SIG.COMP.	ANY OTHER ELECTIONS
	BY		BY		BY	
1941						
1942						
1943						
1944						
1945						
1946						
1947						
1948						
1949						
1950						
1951						
1952						

L.1944, c. 230, p. 773, § 1. Amended by L.1972, c. 82, § 2, eff. July 5, 1972; L.1981, c. 434, § 7; L.1982, c. 118, § 7, eff. Aug. 25, 1982.

### Historical and Statutory Notes

**Source:** L.1941, c. 177, p. 552, §§ 1 to 6, amended by L.1943, c. 219, p. 583, §§ 1, 2.

Effective date of L.1981, c. 434, and continuance in use of permanent registration form, see Historical Note under § 18A:14-50.

**Title of Act:**

An Act concerning elections, supplementing Title 19, repealing §§ 19:15-7,

19:15-13, 19:15-14, 19:15-15, 19:15-16, 19:15-35 and 19:15-36, of the Revised Statutes and repealing "An act concerning elections, and supplementing Title 19 of the Revised Statutes," approved June third, one thousand nine hundred and forty-one (P.L.1941, c. 177). L.1944, c. 230, p. 773.

### Library References

Elections ⇄212.

WESTLAW Topic No. 144.

C.J.S. Elections § 197.

### 19:31A-8. Comparison of signatures; voting; statements; form of statements; disability certificates; certification of signature comparison record

Every person qualified to vote in any election shall at any time after the opening of the polls be at liberty to enter the polling place or room and claim his right to vote at such election in his proper district, and he shall claim such right in person before the district board in the district. The board shall permit no person to vote whose name does not appear in the signature copy register of its election district. Each voter in claiming the right to vote shall first give his full name and address to the member of the district board having charge of the duplicate permanent registration binder and voting record and the signature comparison record. Such clerk shall thereupon locate the permanent registration form and voting record and signature comparison record of the voter and shall require the voter to thereupon sign his name in the proper space on his signature comparison record if the voter has previously signed his name on the line marked sample signature. If the voter has not so signed the member of the district board shall require the voter to sign the line marked sample signature and compare the sample signature with the signature made by such person at the time he registered and if satisfied that they were made by one and the same person he shall then permit the voter to sign his name in the proper space on the signature comparison record. The voter shall sign his name without assistance using black ink in the proper column on the signature comparison record. Such signature being completed on the signature comparison record the member of the board having charge of the duplicate permanent registration binder shall audibly and publicly announce the name of the claimant and if the member of the board

has ascertained from the duplicate permanent registration binder that the claimant is registered as a qualified voter and upon comparison the member of the board is satisfied that the signature of the claimant and the sample signature on the signature copy register has been made by one and the same person, the member of the board who compared the signature of the voter shall place his initials in the proper column on the signature comparison record signifying that he has made such comparison and is satisfied that the signature of the claimant and sample signature has been made by one and the same person; whereupon the voter shall be eligible to receive a ballot unless it be shown to the satisfaction of a majority of the members of the district board that he is not entitled to vote in the district or has otherwise become disqualified.

In addition to signing the signature comparison record and after the comparison of the signature with the signature in the register, a person offering to vote at a primary election for the general election shall announce his name and the party primary in which he wishes to vote.

After a person has voted, the member of the district board having charge of the signature copy register shall place the number of the person's ballot in the proper column on the record of voting form of such person, which number shall constitute a record that the person has voted. In the case of a primary election for the general election such member of the district board shall also place in the proper column on the record of voting form the first three letters of the name of the political party whose primary ballot such person has voted.

No person shall be required to sign the signature comparison record as a means of identification if he shall have been unable to write his name when he registered, or if, having been able to write his name when registered, he subsequently shall have lost his sight or lost the hand with which he was accustomed to write or shall by reason of disease or accident be unable to write his name when he applies to vote, but each such person who alleges his inability to sign his name on the signature comparison record shall establish his identity as follows: one of the members of the district board shall read the same list of questions to the voter as were required upon registration, such questions shall be provided at each election by the commissioner of registration and are to be known as "identification statements for election day." The member of the board shall write the answers of the voter upon the identification statement. These statements shall be inserted in the front of the duplicate registry binders, at each election, and shall be numbered serially from one to twenty.



Each statement shall contain the same questions as the voter was required to answer upon registration. The questions answered upon registration shall not be turned to or inspected until the answers to the questions shall have been written on election day by the member of the board.

At the end of each list of questions shall be printed the following statement: "I certify that I have read to the above named voter each of the foregoing questions and that I have duly recorded his answers as above to each of said questions"; and the member of the board who has made the above record shall sign his name to such certificate and date the same, and note the time of day of making such record. If the answers to the questions asked of the voter on election day agree with the answers given by him to the same questions at the time he registered, he shall then be eligible to receive a ballot. Any person who shall permit or attempt to furnish the answers on behalf of the voter shall be guilty of a misdemeanor. The commissioner of registration shall furnish sufficient identification statements for each election district in each county. The statements shall be printed on sheets approximately ten by sixteen inches and shall contain a margin of approximately two inches for binding and shall be inserted in the front of the duplicate registry binders each election and shall be in substantially the following form:

IDENTIFICATION STATEMENT FOR ELECTION DAY						19
Affidavit Number	Name of Voter	What is, or was your father's full name?	What is, or was your mother's full name?	Are you Married or Single?	Where Did You Actually Reside Prior to Taking Up Your Present Residence? State Floor and Character Premises.	I Certify that I Have Read to the Elector Each of the Foregoing Questions and That I Have Truly Recorded His Answer to Each of the said Questions
1A						Signature of Member of the Board of Registry and Election.
2A						Signature of Member of the Board of Registry and Election.
3A						Signature of Member of the Board of Registry and Election.
4A						Signature of Member of the Board of Registry and Election.
5A						Signature of Member of the Board of Registry and Election.

## SIGNATURE COMPARISON RECORDS

19:31A-8

Affidavit Number	Name of Voter	What is, or was your father's full name?	What is, or was your mother's full name?	Are you Married or Single?	Where Did You Actually Reside Prior to Taking Up Your Present Residence? State Floor and Character Premises.	I Certify that I Have Read to the Elector Each of the Foregoing Questions and That I Have Truly Recorded His Answer to Each of the said Questions
6A						Signature of Member of the Board of Registry and Election.
7A						Signature of Member of the Board of Registry and Election.
8A						Signature of Member of the Board of Registry and Election.
9A						Signature of Member of the Board of Registry and Election.
10A						Signature of Member of the Board of Registry and Election.
11A						Signature of Member of the Board of Registry and Election.
12A						Signature of Member of the Board of Registry and Election.
13A						Signature of Member of the Board of Registry and Election.
14A						Signature of Member of the Board of Registry and Election.
15A						Signature of Member of the Board of Registry and Election.
16A						Signature of Member of the Board of Registry and Election.
17A						Signature of Member of the Board of Registry and Election.

Affidavit Number	Name of Voter	What is, or was your father's full name?	What is, or was your mother's full name?	Are you Married or Single?	Where Did You Actually Reside Prior to Taking Up Your Present Residence? State Floor and Character Premises.	I Certify that I Have Read to the Elector Each of the Foregoing Questions and That I Have Truly Recorded His Answer to Each of the said Questions
18A						Signature of Member of the Board of Registry and Election.
19A						Signature of Member of the Board of Registry and Election.

At any election any person who declares under oath and establishes to the satisfaction of a majority of all the members of the district board, that by reason of an inability to read or write, blindness or other physical disability he is unable to mark his ballot without assistance, shall have the assistance of two members of the board, who shall not be members of the same political party, to be assigned by the board, in preparing his ballot. Such members shall retire with such voter to the booth and assist him in the preparation of his ballot and folding the same. The member acting as clerk of the district board shall make an entry on a disability certificate for assistance, which entry shall be in the form of an oath and be inserted in the front of the duplicate registry binders each election.

In every instance when such oath was administered to a voter as herein provided, it shall state briefly what facts were sworn to and the names of the members of the board who aided such voter. Any members of the district board shall be eligible to witness the preparation of the ballot of any such voter, but no other person shall be allowed to assist him in marking his ballot or to witness the marking of the same. No member of the board shall reveal the name of any person for whom such voter has voted or anything that took place while he was being assisted.

Such voter, if blind, disabled, or unable to read or write, may, in lieu of the assistance of the board as above provided, have assistance of some person of his own selection in preparing his ballot. Such person shall retire with such voter to the booth and assist him in the preparation of his ballot and folding the same. The name and address of such person shall be recorded as above. In such case, no other person than the one so selected by the voter shall be allowed to assist such voter in marking his ballot or witness the marking of the same. No person so selected shall reveal the name of any person for

whom such voter has voted or anything that took place while he was being assisted.

The disability certificates shall be numbered serially one to twenty. The commissioner of registration shall furnish sufficient disability certificates for assistance for each election district in his county. The disability certificates for assistance shall be printed on sheets approximately ten by sixteen inches and shall contain a margin of approximately two inches for binding and shall be in substantially the following form:

DISABILITY CERTIFICATES FOR ASSISTANCE

1 To ..... No .....
(Name of Voter.) (Voter's No.)
Do you solemnly swear (or affirm) that you are

(physical disability.)
(\*Blindness)
and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.
Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

2 To ..... No .....
(Name of Voter.) (Voter's No.)
Do you solemnly swear (or affirm) that you are

(physical disability.)
(\*Blindness)
and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.
Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

3 To ..... No .....
(Name of Voter.) (Voter's No.)
Do you solemnly swear (or affirm) that you are

(physical disability.)
(\*Blindness)
and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.
Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

4 To ..... No .....
(Name of Voter.) (Voter's No.)
Do you solemnly swear (or affirm) that you are

(physical disability.)
(\*Blindness)
and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.

Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

5 To No (Name of Voter.) (Voter's No.)

Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.

Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

6 To No (Name of Voter.) (Voter's No.)

Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.

Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

7 To No

(Name of Voter.) (Voter's No.) Do you solemnly swear (or affirm) that you are

(physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.

Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

8 To No (Name of Voter.) (Voter's No.)

Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath.

Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter.

Address of voter assisting blind voter.

9 To No (Name of Voter.) (Voter's No.)

Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath. Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter. Address of voter assisting blind voter.

10 To (Name of Voter.) No (Voter's No.) Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath. Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter. Address of voter assisting blind voter.

11 To (Name of Voter.) No (Voter's No.) Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath. Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter. Address of voter assisting blind voter.

12 To (Name of Voter.) No (Voter's No.) Do you solemnly swear (or affirm) that you are (physical disability.)

(\*Blindness) and that by reason thereof, you are unable to enter and remain in a booth, or prepare your ballot therein for voting at this election, without assistance; so help me God.

Name of member of Board of Registry and Election taking oath. Must be signed by 2 members of Board of Registry and Election not of same political party assisting voter.

Name of voter assisting blind voter. Address of voter assisting blind voter.

The commissioner of registration in each county shall furnish sufficient certificates of signature comparison records for each election district in his county to be filled in and signed at the close of the polls by the members of the district board. A blank space shall also be provided for on the certificate for the signatures of the members of the election board. Under said certificate there shall also be printed the word "Remarks" together with a number of blank lines. The commissioner shall insert one of such certificates in the front of the signature copy register in each election district in the county. At primary elections the certificate shall be in substantially the following form:

PRIMARY ELECTION

CERTIFICATION OF SIGNATURE COMPARISON RECORD

The undersigned constituting the district board of election in the County of ..... in the ..... (City, Town, Township, Borough or Village) ..... Ward ..... District hereby certify that (.....) (Figures) is the correct total of the number of names of voters who actually signed the signature comparison records and voted in the DEMOCRATIC PRIMARY ELECTION held on the ..... day of ..... 194....

And hereby certify that (.....) (Figures) is the correct total of the number of names of voters who actually signed the signature comparison records and voted in the REPUBLICAN PRIMARY ELECTION held on the ..... day of ....., 194.... DISTRICT ..... Judge ..... Clerk. BOARD OF ..... Inspector ..... Clerk. ELECTION

Remarks: .....

At all other elections the certificates shall be in substantially the following form:

CERTIFICATION OF SIGNATURE COMPARISON RECORD

The undersigned constituting the district board of election in the County of ..... in the ..... (City, Town, Township, Borough or Village) ..... Ward ..... District hereby certify that (.....) (Figures) is the correct total of the number of names of voters who actually signed the signature comparison records and voted in the ..... (General, Special or other Election as the case may be) election held on the ..... day of ....., 194.... DISTRICT ..... Judge ..... Clerk. BOARD OF ..... Inspector ..... Clerk. ELECTION

Remarks: .....  
.....

After each election the commissioner of registration shall remove from the binders the identification statements, the disability certificates for assistance, and certifications of signature comparison records and shall preserve them in his office in a suitable place for a period of two years.

L.1944, c. 230, p. 777, § 2. Amended by L.1985, c. 20, § 1, eff. Jan. 25, 1985; L.1996, c. 120, § 6, eff. Oct. 31, 1996.

## Introductory Statement

Senate, No. 1782—L.1985, c. 20

This bill permits voters who are unable to read or write to receive assistance when voting. The bill encourages illiterate persons to take part in the electoral process and amends New Jersey law to conform to the tenor of federal law pursuant to 42 USCA 1973aa-6.

## Historical and Statutory Notes

Source: L.1941, c. 177, p. 552, §§ 1 to 6, amended by L.1943, c. 219, p. 583, §§ 1, 2.

## Library References

## Texts and Treatises

26 Am Jur 2d, Elections §283 et seq.

## United States Code Annotated

Voting assistance for blind, disabled or illiterate persons, see 42 USCA § 1973aa-6.

## Notes of Decisions

## Affidavits 2

## Comparison of signatures 1

## Defective ballot 3

## 1. Comparison of signatures

The failure of election officers in charge of election districts to perform a directory duty, such as comparing signatures, cannot invalidate result of election. *Petition of Clee*, 119 N.J.L. 310, 196 A. 476 (1938).

This section makes it a duty of the board of registry and election to see that some one member compares the signatures in the poll books with the registry book before accepting the ballot, and if they do that, and are innocently misled by the one who is to make the comparisons, they will not be guilty of violating their duty, but the members of such board cannot stand by with knowledge that such comparisons are not being made and proceed without violating the law. *State v. Ungar*, 94 N.J.L. 495, 111 A. 37 (1920).

## 2. Affidavits

Violation of this section, requiring that affidavits be taken by election officers of voters to whom assistance was rendered, was evidence of malconduct, fraud, and corruption sufficient to challenge result of primary election, notwithstanding evidence that it was common practice not to take affidavits. *In re Stoebling*, 16 N.J. Misc. 34, 196 A. 423 (1938).

## 3. Defective ballot

"Emergency" ballot in election to fill seats on township committee should have been counted, despite errors by election officials in not having current year page for voter's signature in permanent registration book and permitting use of emergency ballot, and in authorizing emergency ballot and handling it; it was not voter's fault that she did not sign either the signature copy register or the voting authority and that no ballot representing her votes was ever found. *In re General Election of November 5, 1991 for Office of Tp. Committee of Tp. of Maplewood, Essex County*, 255 N.J.Super. 690, 605 A.2d 1164 (L.1992).

## 19:31A-9. Erroneous record

When any legal voter shall apply to the district board in the district in which he resides and shall find that his name upon the signature



comparison record is marked as having voted, the district board shall not permit such persons to vote. Application may be made by the registrant to the commissioner and upon due proof to the commissioner or his duly authorized clerk that such registered voter has not voted in such election the commissioner shall issue a certificate directed to the district board authorizing the district board to permit such person to vote.

The commissioner shall immediately following such election cause the members of the district board in such district to appear before him and unless such district board can explain to the satisfaction of the commissioner why such registrant's form was marked as voted the commissioner shall advise the county board that such district board or any member thereof has failed in the performance of its duty and the member or members of such board who have so failed in their duty shall be ineligible for appointment as members of any district board thereafter.

L.1944, c. 230, p. 786, § 3.

**19:31A-10. Repeals**

Sections 19:15-7, 19:15-13, 19:15-14, 19:15-15, 19:15-16, 19:15-35 and 19:15-36 of the Revised Statutes and "An act concerning elections and supplementing Title 19 of the Revised Statutes," approved June third, one thousand nine hundred and forty-one (P.L.1941, c. 177),<sup>1</sup> are repealed.

L.1944, c. 230, p. 786, § 4.

<sup>1</sup> N.J.S.A. §§ 19:31A-1 to 19:31A-6.

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