

ELECTION LAWS

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This is a digest of State League material on election laws & was prepared to assist unit grps in legislative effort regarding election law changes proposed to 1955 legislature. E. Townscombe
2/55

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To:

Mrs. Jesse R. Core III

1420 El Campo Drive,
Dallas 18, Texas
October 14, 1954

Any bills in connection with the briefing material should be sent, as quickly as possible, to Mrs. Henry Deutsch, 11340 Cox Lane. You should OK each bill in writing and see that the bill is explained.

Dear Lucy: explanation of what it is for.

I hope the enclosed material will be useful.

Since there will be only two copies of "The Texas Poll Tax" in each unit group--one copy with the leader and one with the resource person--review of the booklet in the units poses some problems. Perhaps the most essential and the most interesting parts of the booklet could be presented by means of questions, with the answers indicated by references to pages of the booklet. Questions also could be used with regard to the enclosed material, but in this case I would think the actual answers, condensed from the material, would need to be included. If the question and answer presentation is followed, the first question of all should be one which would arouse interest in discussing the poll tax and which can be answered from the general knowledge of group members before any material has been presented. And this question should be labeled as the question to start the discussion. The second question probably should bring out why the League is studying the poll tax--the action at the state convention, the poll tax as part of our work on election laws revision, and, possibly, as additional background, the fact that about ten years ago abolition of the poll tax was on the state league program....The questions, page references, and answers could be prepared as mimeographed or hectographed material which would supplement the poll tax booklet and also furnish a plan for the unit group discussions.

In the budget allocation for the Election Laws committee there is provision for two pages of mimeographed or hectographed briefing material. Since the poll tax booklets are costing less than was figured, I would think that the allotment of mimeographed, etc., material could be increased to three letter-size or two legal-size pages. I expect 100 copies of the material would be sufficient, and details of distribution either prior to or at the briefing session should be arranged with Iylene Weiss, EM 0321.

In my cover letter to go out with the briefing material to be mailed October 17th by Iylene (which will include "The Texas Poll Tax") I'll mention that supplementary material including, probably, questions for discussion will either be distributed at the briefing session on October 29th or else mailed separately before that time. If you can send the material ahead of the briefing session it would be helpful to both leaders and resource people, but shortness of time may well make it impossible to do so.

The briefing session on Friday, October 29th, will be at 10:00 A. M. in the auditorium (5th floor) of Cokesbury's Book Store. Will you please contact all your committee and ask them to attend. Ten minutes at the briefing session will be allotted to the poll tax, so that you may give further information, hints for unit group discussion etc., and answer questions.

D. Affley

THE POLL TAX CONSTITUTIONAL AMENDMENT IN THE DALLAS MORNING NEWS,JAN. - MARCH, 1901 and OCT. - Nov., 1902

When the 27th Legislature convened in early January, 1901, joint resolutions were introduced in both the House and the Senate making the exhibition of a poll tax receipt a pre-requisite to voting. The resolution proceeded very smoothly through the Senate and was passed by a vote of 22 to 6 less than two weeks after it was introduced.

In the House the Committee on Constitutional Amendments gave the resolution a favorable report. The Dallas Morning News of February 15, 1901, reported the previous day's proceedings in the House as follows:

"The House put in a very active day discussing the proposed constitutional amendment....An amendment which would require payment of all taxes due (before voting) was tabled. Mr. Phillips of Lampasas was interrupted in a vigorous support of the resolution by Dr. Looney of Leon, who wanted to know whether the resolution was intended to increase revenue or to reduce the voting population. Mr. Beaty of Caldwell opposed the resolution. Mr. Murrell of Cooke supported it. Mr. Green of DeWitt supported the resolution, declaring that the school fund had lost \$170,000 through the failure of citizens to pay their poll taxes. An amendment which would require poll tax receipts to be issued separately from receipts for other taxes was tabled. Mr. Marrow said the resolution robbed no citizen of any privileges and rights, but simply required the man who desired to vote to comply with the law by paying his poll tax....

"Mr. Stollenwerck opposed the resolution on the ground that it would encourage corruption in elections. Mr. Terrell of Cherokee offered an amendment changing the ~~time~~ of payment for the tax from February to May. It was tabled. Mr. Kennedy of Limestone tried to get an adjournment but was howled down.... Mr. McFall of Travis offered an amendment striking out the clause requiring the voter to present his poll tax receipt when he seeks to vote. A substitute for the McFall amendment was tabled and the McFall amendment voted down. Mr. Greer of Jefferson offered an amendment making the proposed constitutional amendment self-enacting. This was adopted. The resolution was passed to third reading--ayes 89, noes 13."

The Dallas Morning News of February 22, 1901, reported as follows regarding the final vote in the House:

"The House this morning had quite a lively time over the Senate joint resolution which provides for the submission to the people of a proposed constitutional amendment which makes the payment of poll tax before the first of February preceding an election a pre-requisite to voting. The resolution was amended so as to permit citizens to vote upon making affidavit that they

had paid their poll taxes in the event they shall have lost their tax receipts. The vote was then taken on the final passage of the bill....It became apparent before the roll was finished and the vote announced that every roll was somewhat short of the necessary two-thirds of the membership of the House. Several votes were changed from 'no' to 'aye'....The resolution was adopted and will go back to the Senate for concurrence in the affidavit amendment....

"Three votes were lacking to make the two-thirds required for passage. The Speaker voted aye. Mr. Little of Bexar withdrew his pair with Mr. Russell of Cameron and voted aye. Mr. Calvin of Lamar withdrew his pair with Mr. Seabury of Starr and voted aye....Mr. Mugg of Hood changed his vote from no to aye. Mr. Garner of Uvalde changed his vote from no to aye. Mr. Little, after a verification of the roll, stated that he had made a mistake in breaking his pair and he desired to keep faith with Mr. Russell by withdrawing his vote and putting his pair in force again. Speaker Prince commended him for his decision."

In the March 8, 1901, issue of the Dallas Morning News is the following: "Governor Sayers today (March 7th) sent to the Secretary of State the joint resolution which provides for submission to the people at the next general election the proposed constitutional amendment requiring the payment of a poll tax as a pre-requisite to voting. The approval of the Governor of resolutions submitting constitutional amendments is not necessary."

The above recital of the poll tax amendment in the Legislature should be considered against the background of conditions in Texas at the turn of the century. During the first three months of 1901, Carrie Nation and her saloon-smashing activities in Kansas were frequently on the front page of the Dallas Morning News. These were credited as causing the unprecedentedly large number of liquor traffic control bills which were introduced into state legislatures that year, including the Texas legislature. Other people were imitating Carrie Nation--in Rockwall a woman took ~~ax~~ a hatchet to a saloon and smashed it up pretty completely.The Spindletop gusher came in near Beaumont. At first there was great rejoicing, but as the gusher continued to flow and made a mess of the surrounding area the enthusiasm died down and letters from readers began to appear calling for the gusher to be capped or otherwise choked off....Smallpox was quite common--there were cases in Dallas and Ennis and other Texas localities, and people died from the disease....There were lynchings in Texas and in most of the other states....Texans were still very distrustful of corporations, but at the same time there was a definite beckoning to "foreign" companies to invest in the state....General Frederick Funston captured the rebel, General Aguinaldo, and the backbone of the Philippine insurrection was broken....The Boer War was being fought in Africa, and terms of settlement of the Boxer Rebellion in China were being worked out....Queen Victoria died, and the paper had daily bulletins about her last illness, death, and the accession of Edward VII....Theodore Roosevelt was vice-president

of the U. S., and the News had an editorial criticizing his big-game hunting in Colorado and the action of the Colorado governor in nullifying the closed season on the game Roosevelt wanted.... The 27th Legislature elected Joseph Weldon Bailey to the U. S. Senate--this was before direct election of Senators was instituted.In Indian Territory (now Oklahoma) there was trouble with the Indians....Paving was being laid on Elm Street, and Dallas' newest skyscraper was the 10-story Wilson Bldg.

The appearance and makeup of the Dallas Morning News in 1901 differed greatly from the present. From a third to a half of the front page was devoted to small ads and "business cards". All important articles had many sub-heads in addition to the heads--sometimes eight or nine inches of an article would be devoted to headings. There was minute coverage both of Congress and of the Legislature. Patent medicine ads were many and large. They were mostly of the testimonial type, with scare headings, and at first glance it was often hard to tell them from news stories.

In 1901 there was prosperity almost throughout Texas. On January 13, 1901, the Dallas Morning News reported that an era of good feeling and prosperity was evidenced by the 27th Legislature, in contrast to the conflicts of the previous session. "The 'spiritual democracy' (as exemplified by William Jennings Bryan) has gone. It has been succeeded by what might be called the 'material democracy'". In elaborating on this the News mentioned that the Legislature had invited David B. Hill ("gold-bug" and Eastern railroad head) to speak to it on the subject of politics and that "there had been no conflict over the invitation except a token amendment by the House to ask William Jennings Bryan to speak also." (Bryan was the exponent of silver coinage).

Also in the January 13, 1901, issue of the News appeared an article reporting on the state of mind of the legislators then assembling in Austin and offering some predictions. The headlines and sub-heads were: "Let Texas Alone. This Seems to be the Motto Which Many of the Legislators have Adopted. Minimum of Lawmaking Demanded. Members Who have Heretofore Been Prolific of Bills Say They Have Come This Time Convinced of the Wisdom of Negative Statesmanship. Demand for 'Reform' is no Longer Heard. Influence of Environment on New Lawmakers--the Senate Likely to be Unusually Conservative. 27th Legislature Gives Promise of Making a Splendid Record."

The article under the above heads was as follows: "At this hour in the life of every Legislature for the last fifteen years the members were talking of what should be done in the way of legislating against evils. These evils were of all kinds. The railroads were fastening the grip of tyranny and oppression on the people. The cowman or the nester was threatening the country. Somebody was stealing the childrens' land, or legislation was necessary to bring the 'childrens' land on the market.' It is unnecessary to go into enumeration of the myriad of evils, which in the legislator's mind heretofore needed sharp, severe and quick attention. Now all that is changed. Not one legislator in fifty is carrying around with him any ponderous ideas of reform....

November 20, 1954

One member told me that the greatest applause he received during his campaign was when in a speech to his constituency he stated that if he came to the Legislature he would introduce no bills and would probably vote against every bill introduced except the appropriation bills. He said that the applause came from the same constituency which he represented two years ago and which then demanded that he enter actively into legislation and force a thousand and one reforms in the laws....There will be heat, perhaps, on the discussion of amendments to the Constitution. If it were in the power of the Legislature to enact the purpose of the amendments into laws there might be a disturbance. But after all the only thing will be to consider whether this or that idea should be submitted to the people that they themselves shall engraft it in their organic law. There need be no stand taken by the lawmakers on whether the idea should be adopted into the laws. That the people must decide for themselves, the only question being whether it is worth the while to give the people the opportunity to express themselves."

Apparently the great majority of Texas newspapers were favorable to the constitutional amendment making poll tax payment a pre-requisite to voting. An editorial in the El Paso Herald was quoted as follows in the "State Press" column of the Dallas Morning News for February 23, 1901, just after passage of the proposed amendment by the Legislature. "The Herald does not look upon the voting franchise as a natural right. It is a privilege in the gift of the body politic, and should be strictly guarded for the protection of the community. The Herald advocates a speedy change in the election laws, making the payment of a poll tax necessary at least six months, or preferably a year, prior to an election at which the applicant intends to vote."

general

As the/election of November, 1902, approached, the Dallas Morning News printed editorials favoring the amendment and letters from readers both for and against the amendment. An editorial of October 25, 1902, said: "The contention that the poll tax amendment may deprive farmers of their opportunity to vote is effectually contradicted by the reading of the new provision. A farmer who has to rent land moves to it in the fall or winter and has almost a year at his new home before voting time in November (since he has to reside only six months in a county before voting). It is the professional floater and voting colonist about the towns whom the new provision will cut off....It makes it difficult and decidedly risky to buy the purchasable gangs that have been so easily bought in some of the towns and cities heretofore--(difficult because more money by the amount of the poll tax must be paid and risky because with the gangs bought and paid for several months before election there is no assurance that they will vote as they were paid to do). The gangs waiting near the polls to sell their votes will lose much of their power in Texas politics under the new amendment. Vote for the amendment and thus add materially to the school fund. Vote for the amendment and thus save the ballot box from purchasable gangs who have done so much to disgrace it."

November 20, 1954

Another editorial in the Dallas Morning News for November 2, 1902, said: "To defeat the amendment will be to help the trusts and rings of all kinds to carry elections and to run it over the honest voter". The "State Press" column in the same issue of the paper contained the following: "An editor, with an avowed tendency toward socialism, argues that the amendment should be voted down as a means of controlling the trusts and compelling them to pay taxes. He notes that some of the corporations and rich landowners do not pay enough and that, in order to compel them to do so, the poor man must be left foot-free at the polls. Another editor contends that the amendment must be adopted as a means of controlling the trusts and of bringing the rich to time."

A letter from W. S. Vickrey of Bowie, favoring the poll tax amendment, was published in the Dallas Morning News for October 26, 1902. It said: "I think H. J. Bailey has an erroneous view of taxation in general and the poll tax in particular....there is a floating population....which has little or no regard for law, and their votes are always for sale. No right thinking man will deny that the better classes have a perfect right to protect themselves against such an element, and the only feasible plan is by and through the poll tax. Force them to assist in supporting (paying for) the Government that protects them, or hands off in its management....Capital and labor are mutually dependent and neither can say to the other 'I have no need of you'; both are necessary, but must be placed under proper restrictions and regulations so as to prevent injustice on the part of either. But this much desired and needed condition can be brought about only by an intelligent and patriotic ballot."

In a letter to the News, J. W. Riggins, of Waco, opposed the poll tax amendment. He argued that corporations, factories, plantations, etc., would pay the poll tax for their operatives and on election day vote them in the interest of the corporations, factories, etc. He also quoted from the State Federation of Labor, who said that political liberty is threatened by any concentration of the franchise. The Federation spoke of the amendment as a cunning effort of the wealthier classes to defeat the will of the people by disfranchising the poorer classes. The amendment is designed to overthrow the civil and political rights so clearly enunciated in the Declaration of Independence, said the Federation, and they concluded with: "to disfranchise a small part of the people by establishing a franchise tax is but a step in the direction of disfranchising a larger part of the people whenever the ruling class sees fit to increase the tax."

On November 2, 1902, the Dallas Morning News had an item from Waco reporting the speech of the Honorable Waller S. Baker against the poll tax amendment at a voters' mass meeting in the city auditorium. He claimed that the amendment was a Republican measure and had no place, properly, in the policies of the Democratic party. He also said that the moneyed class could continually raise the amount of the poll tax and continue the process of disfranchising citizens indefinitely.

November 20, 1954

Before the general election of 1902 the News carried several articles from South Texas counties detailing the precautions being taken by both Democrats and Republicans to prevent fraudulent voting. (Although there was only the one constitutional amendment --the poll tax--to vote on, all the state offices were to be filled at the election, and both the Democrats and Republicans had tickets in the field). The most common means of fraudulent voting was to import into South Texas counties large bands of Mexican nationals from across the Rio Grande, buy their votes, vote them and then ship them back to Mexico. Northern counties had a similar, though smaller, problem with regard to residents north of the Red River being brought into Texas to vote. These specific problems were in addition to the widespread problem of vote buying which was particularly present in the larger cities and towns.

On November 5, 1902, the Dallas Morning News carried a headline that the poll tax amendment had won by about 3 to 1 in the general election. In Dallas County vote on the amendment was 5,296 for and 1,890 against, with opposition to the amendment centered in the Oak Cliff precincts.

An editorial in the Dallas Morning News on November 8, 1902, quotes the Morehouse, Louisiana, Clarion as reporting "that the poll tax disfranchises the best people there because they forget to pay it." The News quoted this as a warning to Texans and asked for vigilance to see that the recently enacted amendment did not have that effect in Texas.

For: Unit Leaders and Resource Chairmen
R e: Evaluation of Methods of Voter Registration

Background: At our program making sessions of State Convention this year Voter Registration was proposed by Lake Jackson as a separate item and by Austin as part of TCR.... "specific, in the public interest, good public relations, light work load, and timely", they said. Delegates agreed...149 votes for and 11 against, the first time a not-recommended item had been placed on Current Agenda in many years.

During the summer the State Board prepared a Voter Registration Manual for use in the study. This material established the working definition of Voter Registration, the purpose of the study, the schedule re study and action. It further outlines the history of Voter Registration and pertinent facts necessary to a critical study of our Voter Registration in Texas and in other states. Most important, it outlines areas in which we may wish to express our conclusions.

✓ Your local resource committee met twice during the summer. This group represented the following units: Wynnewood, Webb's Chapel, Town North, White Rock, Horseshoe Trail, Lakewood, University Park, North Preston, Kiestwood, Preston Hollow, Walnut Hill, and Kiestwood. These women were particularly interested in the study because they had experienced community interest and concern when selling poll taxes, felt a need for a comparative study of other state's Registration systems, and acknowledged the possibility of Federal action as a spur to our appraisal of Voter Registration in Texas. As recommended by the State Board we read the League publication, The Texas Poll Tax. Some members also reviewed sources of material included in the Manual Bibliography as well as Donald Ogden's "The Poll Tax in the South". The Rhode Island League was contacted for information about their recent experience with signature identification at the elections. A review of the Illinois Registration system suggested that a proper study of our Texas Registration must include the role of political parties.

Procedure: ✓ We shall devote two consecutive unit meetings to this study in the weeks of September 27 and October 11.

✓ In your first unit meeting center your discussion around the purpose of the study, the definition of Voter Registration and the functioning of our present system of Registration, the Poll Tax. The Leader and Resource Chairman should be prepared with the facts in the Manual and The Texas Poll Tax.
✓ You may wish to use the quiz, song, or skit when of if it seems helpful. Try to elicit discussion at the outset of the meeting on the strengths and weaknesses of the Poll Tax and observations from members who have had experience with other systems. Some history of the poll tax will help to correct
✓ misconceptions about the conditions which prompted its association with the vote.

It is hoped that this discussion will formulate areas where further information is desired. You will have available at 15¢ the Voter Registration Manual. Some members may wish to purchase it for study before the second meeting. Remind the group to read the September Texas Voter and bring it with them to the second meeting for reference.

In the second meeting explore the chosen areas further with the help of the Manual. Your discussion should include facts relating to questions 1-11 on the Report Form of the Manual. Reserve at least 15 minutes at the conclusion of the meeting for a summary. Conclusions in the areas of the 11 questions will comprise the summary as well as additional comments.

You will notice that we call this a Report Form. We hope that good discussion group technique will lead effectively to some conclusions in these areas. Try to reflect in your comments the mood of indecision where it exists.

Send this report form to Mrs. G.S. Warren
5014 Waneta

If you have any questions call Mrs. J.F. Difley
Fr. 1-8825

DISCUSSION GUIDE ON THE TEXAS POLL TAX

League History: The League has been interested in the poll tax for several years due to its influence on voting. Abolition of the poll tax as a prerequisite for voting appeared on the State Current Agenda several years ago--about 1945. At the State Convention in Galveston this spring, the delegates agreed that in the field of election laws, we should spend our time (1) reviewing the Sketches, (2) preparing to lobby for the election law revisions voted on at that time, and (3) studying the Texas poll tax.

"The Texas Poll Tax" - A Summary of the League Pamphlet

The hybrid nature of the poll tax makes it one of the least understood and most controversial taxes levied on the people of Texas. It is a capitation tax, a commutation tax and a tax on civic participation, particularly voting.

1. Capitation Tax: The poll, or head, or capitation tax is one of the oldest taxes, dating back to the Greeks and Egyptians. The poll tax was once widely used in the U. S. Today 37 states have constitutional and/or statutory provisions for poll taxes - some mandatory, some directory.

In 1837, during the days of the Republic, the Texas poll tax originated, requiring all free males between the ages of 21 and 55 to pay a tax of \$1.00. In 1871, an act was passed that stipulated that receipts from the tax should be used for support of the free public schools. Ever since then at least a portion has been earmarked for that purpose. Cities with 1,000 or more inhabitants at this time were granted the right to levy a poll tax of one dollar. About 1876, counties were permitted to levy a county poll tax.

By 1882, the present basis was set: a state tax of \$1.50, of which \$1.00 was set and allocated by the Constitution to the school fund and 50¢ was set and allocated by statute to the state general fund, - and maximum county and city poll taxes of 25¢ and \$1.00 respectively.

2. Commutation Tax: In 1891, a new aspect was added to the poll tax when the legislature passed a law making delinquent county poll tax payers liable for road work. Such a delinquent could be required to work three days per year on the county roads, and anyone summoned to do road work could satisfy the summons by payment of \$3.00, one dollar of which went into the school fund, the balance into the county road and bridge fund. Although this remains on the statutes it is rarely, if ever, used, since road construction is now largely mechanized.

3. "Voting Tax": As early as 1876 there was a movement to make the payment of the poll tax a prerequisite for voting. By 1901, this movement was so strong that the legislature passed a proposed constitutional amendment which was adopted the next year by an overwhelming majority of the voters.

Discussion Guide on the Texas Poll Tax - 2

Subject and Exempt: The poll tax, both capitation and voting, is levied on citizens between the ages of 21 and 60. Those exempt from the capitation tax are those under and over the ages specified. The only exemptions to the \$1.00 constitutional poll tax as a voting tax are those on either side of the specified ages or volunteers and draftees in the armed forces during and one year after the termination of U. S. war....The exemptions to the 50¢ statutory poll tax are many, including state militia, insane, blind, deaf or dumb, disabled, and certain Indians.

Payment of the Poll Tax:

Who: There are three general methods of payment: (1) individually by person or mail; (2) either spouse may pay for the other; (3) an agent, duly authorized, under certain conditions may pay, but the poll tax receipt is delivered only to the taxpayer, in person or by mail.

When: Payment of the poll tax as a prerequisite for voting must be made between October 1st and February 1st.

Where: Payment must be made in the county where the taxpayer resided on January 1st of the year of the levy.

Why: In addition to the voting privilege, payment of the tax is also a prerequisite for participation in certain civic activities; serving in party conventions; serving on grand juries; signing certain petitions; and holding certain offices.

Penalties: The usual tax penalty and interest provisions do not apply in the case of the poll tax. The tax is too small to make process against delinquents worthwhile.

Administration and Assessment: Collection of the poll tax simply as a tax requires the services of the state comptroller, county tax collectors, and state and county auditors, and the city tax collectors and treasurers in cities. The relation of the poll tax to the election process adds to this number the county commissioners, election boards, county clerks, precinct election officials, law enforcement officials, county attorneys and the attorney general. The voting aspect increases the problems of poll tax administration of which the county tax collectors are the key figures. They must prepare and safeguard the more important records required by Texas election laws. The decentralization of poll tax administration, thus, is quite evident.

Poll taxes are assessed when paid. The tax is collected only when the person appears voluntarily to pay it.

Revenue: Poll tax payments have increased over the years with the increase in population: \$15,000 in 1846; \$2,081,000 in 1952. Although the revenue increased 138 times, the percentage of poll tax revenue to total state revenue decreased from 23% in 1881 to 0.35% in 1950.

Discussion Guide on the Texas Poll Tax - 3

Pro's and Con's: Those in favor of the poll tax as a prerequisite for voting say: it restricts the voting to the better educated and those having an interest in government; it lessens dishonesty in elections, provides a form of voting registration, adds between \$1,500,000 and \$2,000,000 to state revenue and makes a citizen conscious of contributing to the support of government and, consequently, more interested in how his representatives govern.

Those opposed to the poll tax as a prerequisite for voting contend that: democratic principles are violated by requiring citizens to pay to vote; the tax does not take into consideration ability to pay, is difficult to administer, almost impossible to collect unless paid voluntarily, has contributed to dishonesty and violation, is a poor source of revenue, is popularly thought of as a tax on the privilege of voting and not a tax, as such; and better methods of voter registration could be devised.

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Excerpts from "The Poll Tax: the Case of Texas", by Donald S. Strong,
published in the American Political Science Review, August, 1944.

Voting and the Poll Tax:

"In dealing with election statistics, it is generally more meaningful and accurate to use the returns of the Democratic primary. The use of general election figures to estimate the effect of the poll tax in the South is often highly misleading....

"Repeal of the poll tax in Louisiana occurred in 1934. Before repeal the participation in the Democratic senatorial primary was 37% and 41% (of the potential white electorate) in 1930 and 1932, respectively. In 1936, the first primary after repeal, the participation (of the potential white electorate) was 65.7%--an increase of between half and two-thirds. In the primary race for governor, the increase from 51% to 66% is somewhat less dramatic. However, a one-quarter increase in participation is significant....

"The story relative to Florida, where the poll tax was repealed in 1937, is similar. In the 1934 senatorial primary, the participation (of the potential white electorate) was 31%; in 1938 and 1940 (after repeal) the figure was 51% for both years. In the governor's race in 1932 and 1936, the participation was ~~4~~ 43% and 44%, respectively. After repeal in 1937, the figure jumped to 54.8%.

"Our findings concerning Louisiana and Florida are, then, that poll tax repeal has been followed by increase in Democratic primary participation ranging from one-quarter to two-thirds.



Discussion Guide on the Texas Poll Tax - 4

"Another method of estimating the disfranchising effect of the poll tax is to compare voting participation in Kentucky and Tennessee. Kentucky has never had a poll tax; Tennessee enacted one in 1890. Beginning with that date, Tennessee's voting participation declined sharply; in the last quarter century, it has fallen to half that of Kentucky. At no time in the 20th century, has a majority of the Tennessee electorate voted; yet throughout this period Kentucky has always had a majority vote.

"When comparing two states to estimate poll tax disfranchisement, one encounters the hazards of factors other than the poll tax causing the differing rates of voting participation. However, Kentucky and Tennessee are strikingly alike in most important respects....

"If it is not possible to compute exactly how many Texans the poll tax disfranchises, the foregoing statistics at least give considerable insight into the disfranchising effect of the tax. They show clearly that the poll tax does keep people from voting, and they make possible an intelligent estimate of the number of persons thus disfranchised. We may reasonably assume that repeal of the Texas poll tax (as a voting prerequisite) would be followed by increases in voting participation similar to those in Louisiana and Florida--that is, an increase of one-quarter to two-thirds over the usual rate of participation."

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QUESTIONS

1. What is the poll tax?
2. How do you feel that it affects voting in Texas? (See above for Dr. Strong's opinion)
3. Do you think the tax is a commendable part of the Texas election procedure?

Note: The above questions could be asked at the beginning of discussion of the poll tax; the following, which are more specific, could be asked after the pamphlet, "The Texas Poll Tax", has been summarized.

1. What are the three uses of the poll tax in Texas?
2. Who is exempt from the 50¢ portion of the tax? What is the League's stand on the exemption of these groups? (See "League Stand on Election Law Issues", April, 1954, of which each unit is supposed to have three copies.)
3. How is the poll tax assessed?
4. When is the poll tax to be paid as a requisite for voting?

October 31, 1954

Discussion Guide on the Texas Poll Tax - 5

5. Roughly, what per cent of the population of Texas obtains poll tax receipts? (1930--19.1%; 1940--19.6%; 1950--20.1%)
6. Is the percentage larger or smaller in counties with large minority groups? (Poll tax payments generally fluctuate directly, but not proportionately, with the economic well being of an area.)
7. Does the poll tax pay for itself? (Yes, the poll tax has always exhibited the tax characteristic of rendering more revenue than the cost of its administration.)

I M P O R T A N T

Unit Leaders and Election Laws Resource People: The booklet, "The Texas Poll Tax", ends with this paragraph:

"The next step in the consideration of the poll tax is either (1) a study of methods to strengthen its administrative weaknesses, or (2) a study of the various methods of registration as well as methods of collecting poll taxes not connected with the voting process. Then a substitute system could be formulated and recommended."

Please ascertain the opinion of your unit group with regard to alternatives (1) and (2) above and report it either to: Mrs. Wilburn McDonald, Jr., 4312 Junius, Apt. #12, or on your regular unit leaders' report form to Mrs. Wm. R. Chappell, 6614 Meadow Rd.

#2 ///

#2 ✓ / //

#1 /



**The
TEXAS
POLL TAX**



**League of Women Voters
of Texas**



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“—a non-partisan organization which
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through informed and active partici-
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The TEXAS POLL TAX



**League of Women Voters
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Waco, Texas

August, 1955
Price: Ten Cents



passage of this act, there was widespread evasion of the tax. Granting cities with 1,000 or more inhabitants the right to levy a poll tax of one dollar was another significant development of this period.

As early as 1876 there was a movement to make the payment of the poll tax a prerequisite for voting. There was a marked difference of opinion on this point at the Constitution Convention. The proponents being in the minority, the 1876 Constitution specified that a poll tax of \$1.00 should be collected for the purpose of education and omitted the voting requirement. In the same year the Legislature levied a state poll tax of \$2.00, the highest in Texas history.

Soon afterwards counties were permitted to levy a county poll tax—\$1.00, originally, later reduced to 25 cents. Cities already had this privilege. By 1882 the present basis was set: a state tax of \$1.50, of which \$1.00 was set and allocated by the Constitution to the school fund and 50c was set and allocated by statute to the state general fund—and maximum county and city poll taxes of 25c and \$1.00, respectively.

In 1891 a new aspect was added to the poll tax when the Legislature passed a law making delinquent county poll tax payers liable for road work. Such a delinquent could be required to work three days per year on the county roads, and anyone summoned to do road work could satisfy the summons by payment of \$3.00, one dollar of which went into the school fund, the balance into the county road and bridge fund.

In 1902 a third aspect was added to the poll tax. The movement, so strongly evidenced in 1876 to make the payment of the poll tax a voting requirement, continued to expand. By 1901, its strength was so great that the Legislature passed a proposed constitutional amendment which was adopted the next year by an overwhelming majority—200,650 For; 107,748 Against.

The reasons behind the demand for poll tax payment as a prerequisite for voting seem to have been three-fold: (1) the desire to purify the ballot and prevent "vote buying" and other fraudulent election practices; (2) the desire to disfranchise the Negro; and (3) the desire to disfranchise the members of the Populist Party, composed chiefly of struggling farmers and laborers whose views were considered radical.

There have been no movements since 1902 to abolish the poll tax as a tax, but dissatisfaction with the payment of the poll tax as a prerequisite for voting continued to exist and to grow. Repeal was attempted again and again. Finally, in 1949, the Legislature passed a proposed amendment which was submitted to the voters of Texas the same

year. The vote was: For abolition, 133,550; Against, 172,284. Despite this defeat, dissatisfaction, disagreement and dissension still prevail. Abolition of the poll tax as a voting requirement is still a political issue.

Nature Of The Poll Tax

The hybrid nature of the poll tax makes it one of the least understood and most controversial taxes levied on the people of Texas. It is, as we have seen, a capitation tax, a commutation tax and a tax on civic participation, particularly voting. Persons subject to the tax and those exempt from it are not uniform; there is wide variation in the three categories. Administration, which is relatively simple under the first heading, becomes highly complex under the third. One problem common to all phases is that of evasion.

Subject To The Poll Tax

The poll tax, as a capitation tax, is levied on inhabitants of the state between the ages of 21 and 60 years of age. The poll tax, as a commutation tax payable in lieu of road work, is levied on able-bodied males within these age limits. The poll tax, as a voting tax, is levied on citizens between the ages of 21 and 60.

Exempt From The Poll Tax

Those exempt from the capitation tax are those residents of the state under and over the ages specified. Those exempt from the commutation tax are children, female adults and those male adults physically incapable of heavy road work. Those exempt from the "voting" poll tax are many and varied due to the fact that there are two parts to the tax: the constitutional tax of \$1.00 and the additional statutory poll tax of 50 cents.

The only exemptees to the \$1.00 constitutional poll tax are those on either side of the age limitations.

The exemptions to the 50c statutory poll tax are more numerous. They were granted by the Legislature to those outside the 21-60 age brackets, to members of the state militia, to persons insane, blind, deaf or dumb, those who have lost a hand or foot, those permanently disabled, all disabled veterans of foreign wars whose disability is 40 per cent or more, and to certain Indians. Indians subject to other taxes are liable for the full poll tax. "Indians not taxed" is generally interpreted as meaning Indians who have not severed their tribal connections and are living on Federal reservations. Such Indians are exempt from the 50c statutory tax.

Obsolete Aspect

The provision making the poll tax a commutation tax remains on the statutes, but is rarely, if ever, utilized.

To all intent and purposes, it is dead, since road construction is largely mechanized and no longer depends solely on common labor.

This leaves two aspects of the poll tax to be considered—two aspects so different that they confuse the ordinary person liable for the tax and confound those charged with its administration.

Administration Personnel

The varied aspects of the poll tax multiply the problems of administering it and involve persons and agencies who

usually have little, if anything, to do with taxation and who have only incidental contact with each other. Collection of the poll tax simply as a tax requires the services of the State Comptroller, county tax collectors, and state and county auditors,—and the city tax collectors and treasurers where city poll taxes are levied. The relation of the poll tax to the election process adds to this number the county commissioners, election boards, county clerks, precinct election officials, law enforcement officials, county attorneys and the Attorney General. And, as a first step in "get-out-the-vote" campaigns, various public and private organizations and individuals promote and often assist in tax collection. The decentralization of poll tax administration is quite evident.

Increased Administrative Duties

The voting aspect increases a hundredfold the problems of poll tax administration of which the county tax collectors are the key figures.

They must prepare and safeguard the more important records required by Texas election laws: (1) special tax receipt forms containing all the information necessary for the registration of voters; (2) greater duplication (carbon copies) of poll tax receipts; (3) separate receipt forms for citizens and alien poll tax payers; (4) special notations on the receipts showing payment of the \$1.00 constitutional tax and reason for exemption of the statutory tax; (5) certificates of exemption for reason of age or length of residence, which are unnecessary except as voting requirements; (6) separate lists of citizen poll tax payers, exemptees and alien poll tax payers, the first two arranged in alphabetical order for each voting precinct; (7) supplemental poll lists for each precinct showing deletions and additions as citizens die, or move into and out of precincts, or become qualified as "exemption voters;" and (8) bound books containing duplicate copies of poll tax receipts and exemption certificates.

Assessment Collection

State and county poll taxes are assessed and collected by the county tax assessor-collectors. (Cities must administer their own.)

At one time they were assessed along with ad valorem taxes on real and personal property, but this method was discarded since it reached only the property owners. Separate assessment was established in 1947 in this unique way: **poll taxes are assessed when paid.** No poll tax rolls are made, no poll tax notices are sent, no delinquent poll tax suits are filed, no penalties are levied for failure to pay the poll tax. There are no aggressive collection procedures; the tax is collected only when the person appears **voluntarily** to pay it.

Payment —Who?

To facilitate payment of poll taxes and receipt of exemption certificates, alternate methods have been added

from time to time. There are at present three general methods: (1) the individual may make payment, personally or by mail; (2) either spouse may pay for the other, personally or by mail; and (3) an agent, duly authorized in writing, may personally pay for another under certain conditions. In the latter case, the poll tax receipt or exemption certificate is delivered only to the taxpayer, in person or by mail—not to the agent.

—When?

Payment of the poll tax as a prerequisite for voting must be made between Octo-

ber 1st and February 1st. Receipts for late payments must be stamped "Holder not entitled to vote." Alien poll tax receipts are printed with the word "Alien" in bold type and are issued from separate books.

—Where?

Payment of the poll tax must be made in the county where the taxpayer resided, or had

his domicile, on January 1st of the year of the levy. Paying in any other county is purely voluntary—a gift which does not satisfy the statutory requirements.

—Why?

In addition to the voting privilege attached to the payment of the poll tax or exemption therefrom, there are a few added attractions.

Payment of the tax is also a prerequisite for participation in certain civic activities: attending and voting in political party precinct conventions; serving as a delegate to county, state and national political conventions; serving on grand juries; signing certain petitions; and holding certain offices.

Penalties

In tax administration, penalties are usually designed to assure maximum collection, but since its alignment with the ballot, penalties for violations of poll tax laws are more concerned with insuring honest elections than with obtaining revenue. The usual tax penalty (for failure to pay taxes on time) and interest (during period of delinquency) provisions do not apply in the case of the poll tax.

Statute still permits the placing of delinquent poll taxes on delinquent property rolls, but it is highly improbable that any collector would proceed against a taxpayer for this small amount if other state and county real and personal property taxes were paid. This method is so limited in scope and so inoperative that it has fallen into wholesale disuse.

Unlike several other states, Texas statutes contain no cumulative provisions requiring the potential voter, office holder or civic worker, to have paid poll taxes for which he was liable in previous years as well as that for which he is currently liable.

The voting requirement of the poll tax acts as the strongest incentive to payment and enforcement. Should this feature be discontinued and present enforcement policies followed, poll tax delinquency might conceivably approach 100 per cent.

Delinquency

The tax is too small to make process against delinquents worthwhile. Consequently, the chronic poll tax administrative problem is delinquency or evasion. Since payments are on practically a voluntary basis, they are made as interest in election increases and decreases. This produces four-year cyclical fluctuations: in presidential election years payments are highest with a marked decline the next year, and increase during the interim election year, followed by another decline. Special interest in municipal, district and bond elections spurs payment in some of the "off" years.

It is generally agreed that the poll tax is one of the most widely avoided of all taxes which purport to be revenue raisers. However, payment of the tax in proportion to population has increased slightly in the last two decades as the chart belows shows.

Year	Receipts Issued	Population	Receipts Issued as % of Pop.
1930	1,116,432	5,824,715	19.1
1940	1,259,787	6,414,824	19.6
1950	1,552,945	7,711,194	20.1

As a general rule, poll tax payments tend to decline percentagewise as population increases, but

a large number of Texas counties deviate from the general pattern. The racial composition of the population also exerts its influence; counties with large Negro and Latin-American populations usually have a low proportion of poll tax payments. However, poll tax payments generally fluctuate directly, but not proportionately, with the economic well-being of an area.

It would be reasonable to presume that few alien poll taxes are paid since payment does not entitle the alien payee to vote. Actually, the percentage of alien payments is higher than would be expected. In 1948, for example, more than 2,700 aliens paid the poll tax, slightly more than 2 per cent of the number residing in Texas. No absolutely valid explanation can be given for these payments.

Revenue

Since its inception the poll tax has always exhibited the tax characteristic of rendering more revenue than the cost of its administration. Poll tax payments have increased over the years with the increase in population: \$15,000 in 1846; \$2,081,000 in 1952. Although the revenue increased 138 times, the percentage of poll tax revenue to total state revenue decreased from 23 per cent in 1881 to 0.38 per cent in 1952. However negligible the percentage, two million dollars is appreciable revenue, and increase, though slight, remains steady.

Tax or Fee?

The complexity of the Texas poll tax makes it difficult to determine whether it is a tax or a fee since it exhibits the characteristics of both.

These are its chief tax characteristics. (1) it is mandatory upon every person residing in the state—within certain age brackets; (2) it renders substantially more revenue than administrative costs; (3) it is due and payable during the same period as real and personal property taxes; (4) it is payable to the county tax collector or his deputies as are other state and county taxes; (5) it may be paid after the January 31st deadline; and (6) its revenue is of benefit to all of the people of the state.

In these ways, the poll tax exhibits fee characteristics: (1) it is a charge for the privilege of voting since it is a voting requirement and as such must be paid before February 1st; (2) it is a voluntary fee since there is no penalty for failure to pay; (3) place of payment, length of residence, location of domicile and subsequent notation of transfer of residence are specified for voting, not tax, purposes; (4) lists of poll tax payers and ex-emptees constitute registration or election rolls;

(5) the fee is set without regard to "ability to pay," an essential tax factor; and (6) "assessment when paid" constitutes no assessment, the lack of which basic tax characteristic signifies its fee nature.

Pros & Cons

Abolition of the poll tax as a voting prerequisite continues to be a political issue.

To the few still living who opposed the voting requirement provision when it was instituted in 1902 and those who voted to abolish it in 1949, there have undoubtedly been added many from among the recent influx of citizens from other states where poll tax payment is not a prerequisite for voting and civic participation. Whether the balance of power lies with the proponents or opponents of the voting poll tax is a debatable and very interesting question.

Those who favor the payment of the poll tax as a prerequisite for voting argue that:

1. The poll tax would not be paid unless it carried with it the right of franchise, and a poll tax is desirable because (a) every person should bear a portion of governmental expenses, since all persons benefit from governmental activities, and (b) it provides a direct tax on those who do not ordinarily pay direct taxes and thus establishes a close pecuniary relationship between the individual and the state which is not attainable through indirect taxation.
2. It keeps the politically immature and indifferent from voting on candidates and issues about which they know little or nothing.
3. It purifies the election process by obviating the possibility of "vote selling" on election day.
4. It provides a form of voting registration, a portion of the yield (to the counties) being used to defray the costs of maintaining the registration system.
5. It adds between \$1,500,000 and \$2,000,000 to state revenue each year which, were the voting aspect removed, would not be collected.

Those opposed to the payment of the poll tax as a prerequisite for voting contend that:

1. The democratic principles of our country are violated by any process whose purpose was originally and whose operation still economically continues to disfranchise any citizen in our state. The voting requirement is used as an incentive to pay what is essentially a poor tax. The poll tax violates the basic principle of taxation and is regressive in that it does not take

into consideration ability to pay. It is a difficult tax to administer, almost impossible to collect. All of this tends to break down civic morality, since it opens an easy path to direct and conscious violation of the law.

2. Rather than "purify the elections," the poll tax as a prerequisite for voting has contributed to election irregularities and violations.
3. Other and better means of registration could easily be devised.
4. Since the poll tax accounts for less than half of one per cent of total state revenue, it is not now of paramount importance that the voting requirement be retained to insure its payment.
5. It is popularly thought of as a tax on the privilege of voting and, as such, bitterly resented. Despite the fact that "poll" is an old English word meaning "head", "POLL TAX" is associated by many with the word "poll" meaning a place to vote; hence, a tax on voting. This well-instilled feeling has generally erased all memory or thought of it as essentially a tax. Widespread use of the expressions, "Buy a poll tax," "Sell a poll tax," and "Take a poll tax," exemplify complete disassociation with the tax idea.

Conclusion

The present poll tax is so interwoven with the election process that abolition of it as a prerequisite for voting would entail not only a constitutional amendment but almost a complete revision of the Code. Such abolition would necessitate prompt, almost simultaneous, adjustment of the entire election procedure.

Before attempting to formulate a substitute system, consideration should be given the following: (1) a study of methods to strengthen the administrative weakness of the present system, (2) a study of methods of collecting poll taxes not connected with the voting process, and (3) a study of the various methods of registration.

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JUDGE'S SIGNATURE ON BALLOTS

LAW The law says that not "until the morning of the election and at the polling place" shall the presiding judge open the package of official ballots (Sec. 84), fix his signature on the back of each ballot, check all the ballots to see that they are properly numbered, remove any mutilated or unnumbered ballots, thoroughly disarrange and mix the ballots so that they are no longer in any arithmetic sequence and then place the ballots face down on the table (Sec. 93). Also, that the presiding judge may, under certain circumstances, be appointed from among the voters present when the poll opens (Sec. 86), that the counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted (Sec. 103) and that "in the absence of a showing of fraud, the mere failure of a presiding judge to sign the ballot shall not make any such ballot illegal (Sec. 103).

PRACTICE Although the number of ballots furnished each polling place has been reduced to 1.1 ballots for each name on the poll list (Sec. 64), the duties imposed on the presiding judge are almost impossible to perform in the time allotted. In order to comply with one provision of the law, others are violated. These are some of the practices employed:

1. Before election day, presiding judge opens package, signs his full name on back of all ballots and then shuffles them.
2. On election day and at the polling place, presiding judge opens package, signs initials on back of all ballots and mixes them.
3. On election day and at polling place, presiding judge opens package, removes a few ballots, signs full name on back and (usually) mixes them. Repeats process as more ballots are needed.
4. On election day and at polling place, presiding judge opens package, shuffles ballots (sometimes) and signs each ballot as it is used.

COURT DECISIONS Court decisions vary. Here are a few: that the judge's signature is mandatory; that he cannot delegate another to write his name even in his presence; that unsigned ballots are illegal; that judge's signature is required in school trustee elections (and various others); that judge's signature is not required on ballots in elections for consolidation of common school districts (and various others); that the judge's initials on ballot constitute substantial compliance with the requirement that he write his "signature"; and that it is the duty of the voter to see that the presiding judge has placed his name on the back of the ballot before voter attempts to use ballot in casting his vote.

SUGGESTED CHANGES In an effort, perhaps, to make the law more practical and to reconcile the contradictions in various sections of the Code, the State Bar of Texas Committee made a recommendation which is incorporated in the "Package Bill" (HB 256-Hull). A paragraph would be added to Sec. 93 requiring the judge's signature on the back of each ballot, the "judge signing either his name or his initials", or the ballots being "stamped with a facsimile of (the) signature of the presiding judge or by another election official under his direction. Where the stamp is used, the presiding judge shall take the necessary precaution to see that the stamp is properly safeguarded at all times so that no unauthorized use may be made of it." - There is no recommendation nor provision for deleting the contradictory clause in Sec. 103.

EXTENSION OF POLL TAX DEADLINE

HISTORY The poll tax was levied in Texas as early as 1845 on "every white male of this Republic between the ages of 21 and 50", the purpose of the tax being to relieve the property owners of the full expense of state government. The original tax of 50¢ was increased to \$1.00 and then to \$2.00 when the present Constitution was adopted in 1876 and was levied on every male resident of the State and was payable between the 1st day of October and the 1st day of the February following. Real and personal property taxes were and are payable at the same time.

In 1902, a year before the Terrell Election Law was passed, the Constitution was amended making the payment of the poll tax, or the exemption thereof, a prerequisite for voting. In 1919 when suffrage was extended to women, the word "male" was removed, leaving the imposition of the poll tax on every resident in the State. (It is interesting to note that foreigners who had declared their intention to become citizens were permitted to vote between 1876 and 1921).

LAW The State Constitution, at Art. VII, Sec. 3, requires every inhabitant of the State, between the ages of 21 and 60 years, to pay a poll tax of \$1.00, and, at Art. VI, Sec. 2, requires the payment of the poll tax before the 1st day of February as a prerequisite for voting - the several classes of citizens prohibited from voting are listed under Sec. 1.

The Election Code, at Sec. 41, states that the poll tax shall be collected from every person between the ages of 21 and 60 years who resided in this State on the 1st day of January preceding its levy and that it shall be paid "any time between the 1st day of October and 1st day of February".

Before the 1st day of April, the county tax collector is required to furnish lists of poll tax paying voters and those receiving certificates of exemption. At the same time he shall furnish lists of "Alien Poll Tax Payers". Each set of lists shall be prepared in alphabetical order according to precincts. (Sec. 54)

PRACTICE The payment of the poll tax, or exemption certificate therefor, entitles the otherwise qualified citizen to vote at all elections held between February 1st and January 31st following. Where water districts exist in the State, elections of trustees are held on the 1st Tuesday after the 1st Monday in January. Often bond and annexation elections are "squeezed into the last days of January in an off year to take advantage of the greater number of qualified voters in the even years in which primary and general elections are held.

The designation of April 1st as the deadline for furnishing poll lists and lists of alien poll tax payers was undoubtedly set in preparation for the common and independent school trustee elections held throughout the State on the 1st Saturday in April, or vice versa. Many city commissioner or councilman elections are also held in April.

SUGGESTED CHANGE A Joint Resolution has been introduced to amend Art. VI, Sec. 2, of the Constitution by extending the time for paying poll taxes to the 1st day of June. If the Resolution passes, the constitutional amendment will be submitted to the voters of Texas at an election to be held the 1st Tuesday after the 1st Monday in November, 1954.

YOUR OPINION What do you think? How will this effect water districts, city and school elections? Will the excitement of candidate announcements and early campaign maneuvers encourage more citizens to qualify as voters? Will the removal of all semblance to a regular tax and transfer of stress to the "pay to vote" idea hasten the abolition of the poll tax in Texas?

QUALIFIED VOTERS AT BOND ELECTIONS

CONSTITUTION On November 8, 1932, the Texas Constitution was amended by adding Sec. 3a to Art. VI which reads "When an election is held... for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the ... political subdivision ... where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote ... in the election precinct of their residence."

ELECTION CODE Article 35 of the Election Code defines the qualifications of bond election voters in exactly the same words. Article 36 requires the "tax collector of the district to furnish the election judges a certified list of the owners of taxable property in said district... said list of property owners shall determine the qualification of electors to participate in said election."

INTERPRETATION Although the language of this constitutional amendment must be presumed to have been carefully selected and words must be interpreted as people generally understand them, many and varied are the decisions handed down by the courts. Here, briefly, are a few:

The Order calling the election must be specific and submit the proposition only to the electors owning taxable property. Real or personal property is considered "duly rendered" when the owner has "given account of and submitted it for taxation in due, fit and becoming manner." Taxable property may appear on the tax rolls regardless of the manner or form through which rendition is made. Property need not be rendered by its owner, but may be rendered by an agent, or simply placed on the tax rolls by the tax assessor. After the time fixed for renditions, the owner may qualify as a voter by rendering his property. Regardless of whether the husband or the wife renders the community property, both are entitled to vote. The size and value of the property is immaterial in determining the owner's qualification to vote. It is not essential that property tax actually be paid, but the voter must be liable for the taxes to be assessed. The purpose of this constitutional provision is to restrict and limit the power and authority of non-property owners and nontaxpaying citizens to pile tax burdens and obligations upon citizens who own and hold property and pay taxes. Neither statute nor city charter can impose additional qualifications. The failure of the tax assessor-collector to furnish election judges certified lists of property owners does not invalidate an election. The votes of persons permitted by election judges to vote at bond elections are presumed to be legal and burden is on persons contesting such elections to show them to be illegal.

PRACTICE It is not the common practice in Texas to furnish certified lists of property owners to the judges of bond elections; the "Unrendered Rolls" are neither required nor their use contemplated. Generally, the election judge is supplied with affidavit of ownership forms which strangers to the judges are required to sign before being permitted to vote; those known by the judges to own property are not required to sign. Few tax assessors check these affidavits either to confirm the owners of property or for the purpose of later investigating and adding names to their property owner lists. Many electors are told that ownership of an automobile, or even a watch, qualifies them as voters in a bond election.

YOUR OPINION No change has been proposed in the Constitution nor in these laws. However, many bond elections have already been called and others soon may be, so your chairman considers it wise to consider this subject now. What do you think?

PROLONGING THE ELECTION DAY

LAW In all elections, general, special or primary, the polls shall be open from 7 o'clock A.M. to 7 o'clock P.M., in all counties having a population of 100,000 or more according to the last Federal Census and in all other counties the polls shall be opened at 8 o'clock A.M. and remain open until 7 o'clock P.M. The election shall be held for one day only. (Sec. 9)

No reference is made in the Election Code to the manner of opening and closing the polling places, nor to the method of dealing with the electors waiting to vote when the time for closing arrives.

PRACTICE Many election judges make formal announcement of the opening of the polls by going to the door and declaring, "I now proclaim the opening of the poll at Precinct NO. ____". At 7 o'clock P.M. the judge's announcement that the polling place has closed is followed by the closing of the door. Usually those inside the doorway are permitted to remain and vote; those outside are turned away. Sometimes the whole line is permitted to vote without any check or provision being made to exclude the late comers.

SUGGESTED CHANGES Evidently with the primary, general and other highly interesting elections in mind, the following alterations in the law have been suggested:

- (1) The change proposed by the State Bar of Texas Committee, incorporated in HB 622, retains the 7 P.M. closing time, but adds a paragraph to this section reading: "All persons who are within the polling place and all persons who are waiting to enter the polling place at 7 o'clock P.M. shall be allowed an opportunity to present themselves for voting in the same manner as if they had appeared and offered themselves for voting during regular hours."
- (2) The change proposed to that portion of the Bill by the House Committee on Privileges, Suffrage and Elections delays the closing hour to 8 o'clock P.M. in all counties and strikes out the paragraph regarding the voters waiting in line.

YOUR OPINION ① Do you think the additional hour will prevent the formation of a line of electors who always wait until the very last minute to vote? ② Do you think the additional expense, \$1.00 to each election official in each precinct, is warranted? ③ Do you think the added hour of boredom in conducting "slow" elections will increase the existing difficulty of securing election officials? ④ How do you think the electors waiting in line to vote can be properly segregated from those arriving after 7 o'clock P.M.? ⑤ Which change do you prefer, or do you have a better solution?

① Latecomers will still arrive late.

② No

③ No

④ Close for 5 min. & have Judge or watchman sign

⑤ Poll Tax card -

⑥ Close at 7:00

MARKING BALLOTS

LAW The Election Code provides that on every official ballot where officers are to be elected or nominated there shall be printed just above the names of the candidates this instruction note: "You may vote for the candidate of your choice by placing an X in the square beside the name or you may vote ... by scratching or marking out all other names in that race. (Sec. 61 & 187)

When a voter desires to vote a "straight" ticket in general elections, he shall run a distinct line through all other tickets on the official ballot; when he desires to vote a mixed or "split" ticket, he shall run a line through the names of all candidates he desires to vote against leaving free and unmarked the names of those he wishes to vote for and/or writing the names of his candidates in the proper blank spaces provided for that purpose. Or, he may place an X or plus sign or any clear mark in the square beside the name of his candidate. (Sec. 62)

Where constitutional amendments, propositions or other issues are to be voted, the square is not used. The instruction note reads: "Scratch or mark out one statement so that the one remaining shall indicate the way you wish to vote." (Sec. 63)

No longer is the counting judge required to take the ballots out "one by one" and then to read and distinctly announce the name of each candidate voted for. (Sec. 101)

PRACTICE Sometimes the anxious voter, given 2 methods of marking his ballot, makes doubly sure by using both methods and all variations under the square method. Very frequently the confused counting judge throws out such ballots as "mutilated". Where the scratch method alone is used, a wavering line going up or down results in no vote (all names having been touched by the line), or a vote counted for another candidate than the one intended. Where the scratch is required on propositions and an X or other mark permitted in the square beside the names of candidates, the befuddled voter either fails to vote on the proposition or marks with an X and runs the risk of losing his vote. In general elections, the elector voting a straight ticket has frequently failed to pass his line through every name on the undesired party ticket and his vote has not been counted by the too exacting judge, or it has become an issue in a contested election case; in voting a split ticket, failure to scratch out the name of every candidate except the one desired has resulted in no vote since no elector may vote for more than one candidate for each office. (Sec. 61 & 103)

The time consumed and difficulty on the part of the counting judge in determining the "intent" of the voter under the scratch system has been increased by the combined use of both methods. The change permitting the counting judge to examine more than one ballot at a time was made for the purpose of speeding up the count, but it was based on state-wide use of the X method. Under actual conditions, the combination of the scratch-X methods makes multiple count of ballots either impossible or inaccurate.

SUGGESTED CHANGES The State Bar of Texas Committee recommended that only one method be used and that that one method be used for voting on candidates as well as on propositions.

YOUR OPINION Do you prefer one method for both candidates and propositions? Do you think the psychological factors of voting for (square method) and voting against (scratch method) should be considered in determining which method? Since many habits of a lifetime have already been broken during the two years that the square method has been permitted, do you wish to continue this method which insures speed in voting and speed and accuracy in counting? If you prefer the square method, do you think the voter, presumably literate, might be restricted to use of a check mark, or a plus sign, or an X in the square to further facilitate the count? Or do you prefer to scratch?

PARTIAL EXEMPTION FROM PAYMENT OF POLL TAX

CONSTITUTION The State Constitution, at Article VII, Section 3, requires every inhabitant of the State, between the ages of 21 and 60 years, to pay a poll tax of \$1.00. At Article VI, Section 2, it requires the payment of the poll tax before the 1st day of February as a prerequisite for voting.

ELECTION CODE The Election Code, Section 41, states "Indians not taxed, persons insane, blind, deaf or dumb, those who have lost a hand or foot, those permanently disabled, and all disabled veterans of foreign wars where such disability is 40% or more, excepted." However, in 1944, the Attorney General rendered an opinion (upheld by the Court of Civil Appeals in 1949) stating that statutes in so far as they purport to exempt certain classes of persons therein named from the payment of the \$1.00 constitutional poll tax or to make those classes of persons qualified voters without the payment of any poll tax, are unconstitutional. (No. 6236)

GENERAL STATUTES The General Statutes, Article 5840, state "All officers and enlisted men of the active militia of this State shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the purpose of the public schools." Article 5841 states "To entitle any ... band of the active militia of this State to exemption from the payment of poll taxes ... the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command."

SUMMARY Therefore, citizens, otherwise qualified, who are blind, deaf or dumb, those who have lost a hand or foot, those permanently disabled, all disabled veterans of foreign wars whose disability is 40% or more and the members of the active militia of this State, are not fully exempt from the payment of the poll tax nor do they receive exemption certificates. Instead, each is required to pay the constitutional poll tax of \$1.00 and should not be permitted to vote unless he holds a receipt showing payment of this portion of the tax. In the upper right hand corner of the poll tax receipt the reason for the partial exemption is written, "Blind", "Deaf", "One Hand", "One Foot", "Totally Disabled", "Veteran - 40% Disability", or "Texas Defense Guard - Company No. ____", as the case may be.

YOUR OPINION The Constitutional poll tax of \$1.00 cannot be removed without a constitutional amendment. If you are satisfied that the 75¢ or 50¢ (depending upon whether or not the county charges the 25¢ permitted by statute) reduction or exemption is justified in the case of these electors, do you think the Election Code should state this clearly?

NEITHER POLL TAX RECEIPT NOR EXEMPTION CERTIFICATE REQUIRED

CONSTITUTION On August 25, 1945, the State Constitution was amended by adding Section 2a to Article VI, which reads in part: "Nothing in this Constitution shall be construed to require any person, who at the time of the holding of an election ... or who, within 18 months immediately prior to the time of holding any such election was a member of the armed forces of the United States or of the Armed Force Reserve of the United States, or of any branch or component part of such armed forces or Armed Force Reserve, or of the United States Maritime Service or of the United States Merchant Marine, and who is otherwise a qualified voter ... to pay a poll tax or to hold a receipt for any poll tax assessed against him, as a condition precedent to his right to vote in any election ... during the time the United States is engaged in fighting a war, or within one year after the close of the calendar year in which said war is terminated..."

ELECTION CODE There is no provision in the Election Code to cover this situation other than a reference, below Section 32, to this Section 2a, Article VI, Constitution of Texas.

PRACTICE As a result, confusion reigns. Under the Constitution, no poll tax need be paid, nor receipt therefor given. Under the Election Code, no exemption certificate may be issued. In general practice, an elector of this kind is required to present neither a poll tax receipt nor an exemption certificate in order to be allowed to vote; he merely presents satisfactory evidence that he is still or within 18 months was in the services. For example, a person who has been discharged within the preceding 18 months might present his certificate of discharge as evidence of his having been in military service during that period. The authority for this, no doubt, is the opinion of the Attorney General rendered in 1945 to the effect that it was unnecessary for members of the Armed Forces to appear on poll tax lists; such a person need only present satisfactory proof that he comes within the exception. (No. 6955)

SUGGESTED CHANGE The State Bar of Texas Committee recommended that a Section 42a be added to the Code to clarify the voting of such persons. The section would be a repetition of the Constitutional provision, but would add after the words "assessed against him" the words "or to obtain an exemption certificate of any kind", and, at the end, the sentence "Where a person claiming the benefit of these provisions offers to vote, the election official shall require him to submit an affidavit of his qualifications and eligibility to vote..." This change was incorporated in HB 622.

YOUR OPINION What do you think? Do you want this or a similar clarifying section added to the Election Code?

STUFFING BALLOT BOXES

Too often we citizens of Texas disregard the details of the Election Law Code and blame "corrupt election officials" for all the violations, big and little, which take place at the polls. These "technicalities" which we disdain are important; before any one of them was added to the Code, it was carefully considered and agreed upon as a measure to prevent an existing evil practice. If all the "technicalities" were observed and enforced, honest elections with accurate returns would be held in Texas - except, possibly, in a few areas where machine control and corrupt practices might still exist. There are unscrupulous, corrupt or criminal elements in almost every community, so, if we want honest elections, the voters must learn and obey the election laws, and election officials of sterner stuff must be chosen - officials who know the law and enforce it, - officials who are not negligent, lazy and lax. Too many violations have been perpetrated under the eyes of the honest, well-meaning and jovial judge. These are a few of the methods used:

JUDGE'S SIGNATURE When the judge is not careful in signing each ballot (Sec. 93), in observing that only signed ballots are placed in the ballot box (Sec. 97), and in examining every ballot, during the count, to make sure it is properly signed (Sec. 103), illegal ballots can be "stuffed" in the box. A citizen, receiving a signed ballot and pretending to mark it, could place a blank piece of white paper, of equal weight and dimensions, in the box and walk away with a signed Official Ballot to be marked at "machine headquarters"; a second voter casts this ballot and brings back to headquarters another Official Ballot; and so on until the polls close. The process could be stopped in the beginning if the unsigned blank were noted before it reached the box. The blank discovered during the count indicates foul play afoot, but there is no way to determine which of the ballots are legal and which illegal. "Official Ballots" have been prepared by unscrupulous printers, but the presence and counting of many unsigned ballots presupposes either complete negligence or utter corruption of the election officials. (There have been a few cases where election officials were suspected of destroying all the legally cast ballots and substituting ballots marked by the officials themselves. This, of course, presumes complete corruption of all election officials and we are concerned here only with honest officials who "permit" violations through ignorance, indifference and carelessness).

NAMES ON POLL LIST Although a challenged elector may be allowed to vote if vouched for by a well known resident of the precinct (Sec. 92), the judge who permits any citizen to vote whose name is not on the poll list opens the door to all sorts of abuse:

- (a) The citizen who has moved from one precinct to another without transferring could vote in his former precinct where his name appears on the poll list and again in his present precinct where he is known to reside.
- (b) The citizen living close to the borderline of precincts, especially in rural areas, could present himself and be allowed to vote at both precincts.

- (c) The citizen who has not paid his poll tax and the citizen over 60 years of age who has not obtained an exemption certificate although he lives in a city of 10,000 inhabitants or more, could be permitted to vote.

Unless the provisional precaution stated below is taken or a contested election case is contemplated and poll lists and voting lists examined and compared, these violations would not be discovered and penalties levied. The penalty for voting more than once is a fine of from \$100 and \$500 (Art. 241); that for voting illegally is a penitentiary sentence of from 2 to 5 years.

STAMPING RECEIPT When a judge fails to stamp or write on the back of each poll tax receipt or exemption certificate the words:
OR CERTIFICATE "Voted on ____ day of ____, A.D. 19__" (Sec. 93), multiple voting, as above described, could go unnoticed. However, when he is careful in stamping each receipt and certificate and in examining each to see that it has not already been stamped, attempts at multiple voting are more easily detected.

ABSENTEE VOTING When the judge fails to note on the poll list the names of electors who have voted or made application to vote absentee (Sec. 37, 9), the elector could easily appear in person and vote a second time. This offense, if detected, is subject to a fine of not more than \$1000 (Sec. 37, 11). "Graveyard" absentee voting is also possible when applications can be made by mail. Particularly is this true when "applicants" live in rural areas where exemption certificates are not required, or under the old system of permanent exemption certificates, or under the present system permitting "agents" to pay poll taxes and secure exemption certificates.

NATURAL DISGUISE A multiple voting practice for which election officials can in no way be blamed is that made possible by the "disguise" in which some people walk. The face of the casual man or woman in working clothes is seldom scrutinized, nor is that of the elector of a different color in a community with a large foreign element. Instances are known of such citizens with pockets full of poll tax receipts going from one precinct to another, voting successfully under different names in each.

CONCLUSION. These are political facts of life. Discuss them, absorb them and keep them well in mind when you make future election law decisions. Remember, though, that the majority of people, voters and officials alike, are honest; these "horror tales" represent the exceptions. Remember, too, that there is an underworld element in every midst of which we must be ever aware lest it grow and flourish and nullify the results of the honest elections held in other localities. So let us observe and encourage the enforcement of the "details", the "technicalities", the "red tape" of election laws.

EXEMPTION CERTIFICATES

LAW Exemptions in General

As a prerequisite for voting, the State Constitution (Art. VI, Sec. 2) and the Election Code (Sec. 41 & 42) require the payment of the poll tax by every citizen between the ages of 21 and 60 years of age who resided in the State on the 1st day of January preceding the levy. This year, 1953, citizens exempt from the tax and entitled to Exemption Certificates, free of charge, are those who moved into Texas after January 1, 1952; those who became 21 years of age after January 1, 1952; and those who became 60 years of age before January 1, 1952; and none of these shall vote who does not possess a current Exemption Certificate.

Overagers. Such Exemption Certificates based on overage are required only of citizens residing in cities of 10,000 or more inhabitants and must be obtained annually before the 1st day of February. (Sec. 48) No specific provision is made to permit the Overager who moves from the smaller to the larger city to vote until the following February 1st; nor is there any provision made to remove the names of persons who die during the period.

New Residents & Underagers

The citizen residing in any part of Texas who is not subject to the payment of the poll tax by reason of nonresidence or nonage may obtain an Exemption Certificate at any time not later than 30 days before any election at which he wishes to vote. However, he will not be allowed to vote unless he has obtained a certificate of exemption and has fulfilled the residence or age requirement. At the same time as other supplies are furnished precinct election judges, the Tax Collector shall furnish supplemental lists of voters having thus qualified since poll lists were previously prepared. (Sec. 49)

SUGGESTED CHANGES

Many changes were suggested in these laws by the State Bar of Texas Committee and by Senate and House Committees and Members:

Statewide Certification

Those wishing to retain the current law requiring Exemption Certificates based on overage of only those exempt citizens living in cities of 10,000 or more inhabitants argue that in smaller communities every inhabitant is well known and the election judges have no difficulty in identifying those entitled to exemption. Those wishing to change the law to require Exemption Certificates of every exempt person in Texas point out that this would restore the franchise to those moving from smaller to larger cities and, in addition, would furnish a complete list of current qualified voters and thus prevent "graveyard" voting via the Absentee Ballot method.

Clarifying Changes

No basic changes have been suggested regarding Exemption Certificates for New Residents and 21ers; those recommended by the State Bar Committee and included in the bill before the 53rd Legislature would merely clarify the law and assist election judges. One would provide for the notation on the certificate of the date when the voter will have fulfilled the requirement of residence or age. The other would clearly show the requirement of a second certificate where the exemption runs for 2 years.

Certificates by Mail. Husband-Wife Authority

The New Resident and the Underager are entitled, at most, to 2 Exemption Certificates (which situation is covered by the clarifying suggestion above), so the other changes proposed would apply chiefly to persons overage. Those wishing to change back to Permanent Certificates argue that it is impossible for many elderly people to appear and personally obtain their certificates. Those wishing to retain Annual Certificates argue that the elderly person who can present himself at the polls can as easily present himself before a tax collector or deputy. However, for the benefit of those who are really unable to do this and to legalize existing practices, they propose an added section permitting applications for Exemption Certificates by mail and authorizing the husband to make the necessary sworn statement and receive the certificate for the wife, and vice versa.

Annual vs Permanent Certificates

In reverting to the old system of Permanent Exemption Certificates, the advocates provide for the recorder of death certificates to notify the Tax Collector of each death so that he may strike the name of the deceased from the poll list. Those wishing to retain Annual Exemption Certificates point out that even with this provision, the permanent exemption system is not practical, many deaths are not recorded, especially in rural areas, and heavy "graveyard" voting would still be possible. (In recent years several Leagues in other states have spent many hours checking permanent registration lists and deleting thousands of "dead heads" from each list).

YOUR

After considering Sketch No. 8, "Stuffing Ballot Boxes", and the information set forth above, what is your decision? Do you favor State-

OPINION

wide Certification? Do you approve of the Clarifying Changes proposed? Shall we authorize Applications for Certificates by Mail and Husband-Wife Authority and keep Annual Exemption Certificates? Or shall we revert to the old system?



SUPERVISORS

LAW Supervisors at any general, special or primary election must be qualified voters of the precinct in which they serve (Sec. 17). No one may serve who (a) holds an office of profit or trust under the U.S., this state, or any city in this state, except a Notary Public; or (b) within 30 days has resigned or been dismissed from such office; or (c) is a candidate for office; or (d) has not paid his poll tax nor obtained his exemption certificate (Sec. 18).

Supervisors are obtained in 3 ways: (1) The chairman or any 3 members of the county executive committee for each party that has candidates on the official ballot may, not less than 5 days before the general election, appoint one supervisor for each voting precinct; compensation being determined and paid by the committee (Sec. 19). (2) Any 5 or 1/5 of the candidates, whichever is less, may agree in writing upon 2 supervisors on or prior to the day preceding any general, special or primary election; compensation being paid by the candidates making the appointment (Sec. 183 & 239, ss "f"). (3) 40 qualified voters of any precinct or 5% of the total, whichever is less, may, not less than 5 days before any general, special or primary election, petition the chairman or any 3 members of the county executive committee to select a supervisor for each election precinct; compensation being furnished by the citizens petitioning (Sec. 21). Supervisors at municipal (Sec. 29) and constitutional amendment (Sec. 167) elections are selected as in general elections; see Sec. 50 for municipal election supervisors in cities over 400,000. Supervisors usually serve at the precinct polling places, but they may be assigned to observe absentee voting in person (Sec. 37, ss 3), or the "absentee voting box" counted by the Special Canvassing Board (Sec. 37, ss 6).

However chosen, the supervisor presents a written certificate of his nomination to the presiding judge and takes the oath, administered by the judge, that he will mention and note any errors he may see in testing or counting the votes or making out the returns, and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities he may observe to the proper authorities and, if he deems it desirable, to the next grand jury. The supervisor's duties are observing the conduct of the election including aid to voters, counting the votes, making the returns, locking and sealing ballot boxes, their custody and safe return. At the time that it occurs he may call the official's attention to any mistakes, irregularities, violations or fraud - illegal voting attempted, legal voting prevented (Sec. 19), or improper aid to voter (Sec. 95). Penalty for failure to perform duties properly is the same as that for other election officials (Art. 231a of the Penal Code).

(The several deficiencies and inconsistencies noticeable above in Sections 20 and 21 are the result of amending the statutes by inserting words and phrases without deleting the contradictory matter).

CHANGING
CONDITIONS

Heretofore it was the general feeling that supervisors were necessary to identify electors presenting themselves at the precinct polling places. Although annual exemption certificates, where they are required, and up to date poll lists have removed the need for that service, many people feel that supervisors are still required - for another purpose entirely - to check the election officials who through ignorance or intent permit or commit violations of the election code. And since personal recognition of the voters is no longer required, they argue, neither is the stipulation that supervisors be residents of the precinct. Willing and competent supervisors are usually difficult to find. Some would solve this problem by permitting a resident who has neither paid his poll tax nor obtained his exemption certificate to serve as supervisor, to which solution this objection is promptly voiced, "The indifference to duties of citizenship (is) inferable from failure to pay poll tax." (Gayle v. Alexander, Civ. App., 75 S.X.2d 706). Others would permit office holders to serve, and the same judge would reply that these are not "free from influence, embarrassment or interest arising from office holding." Still others contend that extending the residential area to that of the county would facilitate such selection and at the same time break up "precinct machine operations." The time limit poses another problem; sometimes suspicions are not aroused until after the deadline has passed for naming supervisors. The changes in the Code, recently proposed, confirm these trends of thought.

SUGGESTED
CHANGES

In the main, the 53rd Legislature, as far as it went, concurred with the recommendations of the State Bar of Texas Committee which would clarify the law and make the following changes:

1. Supervisors must be qualified voters of the county. (Sec. 17)
2. Supervisors may be appointed by the chairman or any 3 members of the county executive committee as late as the day preceding the general election. (Sec. 19)
3. Supervisor's oath would be changed to require reporting of unrectified violations only. (Sec. 19)
4. Supervisors may, not must, observe aid to voter. (Sec. 19)
5. Supervisors, not to exceed 2 in each precinct, may be selected by 5 or 1/5 of the candidates. (The Legislature went further here and favored any candidate appointing and certifying a supervisor in each precinct). (Sec. 20)
6. No time limit on supervisor selected and certified by 40 qualified voters or 5% of the precinct total; attached to the certificate would be oaths that each signer is a qualified voter of the precinct. (Sec. 21)

YOUR
OPINION

Are you satisfied with the present law? If not, consider which of the changes above you favor, or others that you may prefer.

Return to Mrs. E. A. Rendall
849 E. Elizabeth
Brownsville, Texas

Date _____

OPINION OF THE LEAGUE OF WOMEN VOTERS OF _____

ON ELECTION LAW SKETCH NO. 12

SUPERVISORS

For your greater convenience a questionnaire is set up below for indicating the opinion of your League. In each case, the present provision, marked with an asterisk, is listed first.

RESIDENCE OF SUPERVISOR

Confined to precinct * ()
Extended to county ()

APPOINTMENT DEADLINE

(a) By chairman or 3 members of the county executive committee

5 days before election * ()
Day before election ()

(b) By voters - 5 days before election * ()
Any time, even after election has started ()

NUMBER OF CANDIDATES APPOINTING SUPERVISORS

5 or 1/5 of total needed to request appointment of
2 supervisors at each precinct * ()

Any candidate may appoint a supervisor for each precinct ()

SELECTION OF VOTERS' SUPERVISORS

By county executive committee * ()
By voters themselves

OATH - Report all violations attempted * ()
Report only unrectified violations ()

AID TO VOTER - Must observe * () May observe ()

SIGNED _____

TITLE _____



Election Laws - 13

ELECTION CLERKS

LAW QUALIFICATIONS Judges and clerks of election must be qualified voters of the precincts in which they are named to serve. No person may serve who (1) is employed by any candidate for a lucrative office whose name appears on the ballot, or (2) is related to any candidate within the 3rd degree either by blood or marriage (Sec. 17), or (3) holds an office of profit or trust under the U.S., Texas, or any Texas city, except a Notary Public, or (4) within 30 days resigned or was dismissed from such office, or (5) is a candidate for office, or (6) has not paid his poll tax nor obtained his exemption certificate (Sec. 18). However, precinct committeeman or chairman may serve as judge or clerk of an election of which he is a candidate for reelection (Sec. 17).

Appointments For general and special elections, the Commissioners Court at the February term appoints 2 judges from each precinct of less than 100 voters (Sec. 15) and 4 judges from each precinct of more than 100 voters (Sec. 16). If practical, judges are chosen from different parties; one of them is designated presiding judge. In small precincts, the presiding judge appoints 2 clerks, in larger precincts 4 clerks and as many more as the Commissioners Court authorizes. In special elections, however, only 2 judges and 2 clerks are authorized (Sec. 16). - In primary elections, the county executive committee selects the presiding judge from each precinct and he selects an associate judge and a clerk; additional clerks are appointed under rules laid down by the committee (Sec. 183). - The authority calling a municipal or other local election selects all election officials (Sec. 29).

Pay The pay of judges and clerks of general and special elections is determined by the Commissioners Court, in primary elections by the county executive committee and in local elections by the authorities calling them, but it shall not exceed \$10.00 a day, 10 working hours constituting a day, nor \$1.00 per hour overtime. The judge receives an extra \$2.00 for immediate delivery of election returns if he also delivers all supplies (Sec. 22). Counting and tabulation must be completed within 24 hours after closing of the polls (Sec. 112 & 201). Judges and clerks conducting 2 elections simultaneously receive no extra pay; the judge, however, receives \$2.00 for delivering the returns of each election (Op. Atty. Gen. 1951, No. 1367). It is assumed that all election officials must be present when the poll opens (Sec. 83), although the count and tally do not begin until 1 hour after voting has begun (Sec. 101).

Duties The presiding judge assigns to each clerk his duties - to check the poll list of qualified voters, to write the name of each person voting, to keep the tally list of votes counted, to record the defaced or mutilated ballots, or to perform such other duties as directed (Sec. 15 & 16). All election officials take an oath (Sec. 83); violation of any kind constitutes a misdemeanor, conviction of which carries a fine up to \$1000, or imprisonment up to 1 year, or both (Art. 231a of the Penal Code).

and fatigue account for many inaccuracies. Interest and willingness to serve, efficiency, accuracy and speed would result if shorter working hours were permitted under the law.

SUGGESTED Legislators, lawyers and laymen offer a variety of solutions CHANGES which add up to these:

1. Change residence requirements to that of the county so that the judges only need be residents of the precinct (Sec. 17). (Purpose - to overcome difficulty of obtaining sufficient capable clerks who are residents of the precinct).
2. Permit clerks to serve who are employees of candidates for a lucrative office whose names appear on the ballot (Sec. 17). (Purpose - same as above. This suggestion of the lawyers was voted down by the legislators).
3. Give presiding judge power to appoint as many other judges and clerks as he deems necessary, but additional officials not authorized by the authority shall not receive pay for their services (Sec. 15 & 16). Such volunteer, unpaid workers must meet same qualification requirements (Sec. 22). (Purpose - to meet emergencies where voting is heavy or where complexity of the ballot requires longer time in counting).
4. Give presiding judge authority to designate the working hours of all judges and clerks, but those appointed by or pursuant to authorization shall be permitted to work at least 10 hours. Those desiring to work less than that time shall be paid for time actually worked at a rate not to exceed \$1.00 per hour (Sec. 22). (Purpose - to increase efficiency and accuracy and willingness to serve. No judge nor clerk need wait around until his duties begin. On this shift basis officials would not tire and make mistakes; extra workers would come in when they are most needed).
5. Permit oath to be taken at any time of day. As each official checks in he would take oath before discharging any duty (Sec. 83). (Purpose - to legalize above).
6. Eliminate triplicate originals (Sec. 111 & 202) and the copy placed in the ballot box (Sec. 114 & 201) and permit 1 original and 3 "accurate and legible carbon copies" of the poll lists, tally lists and returns (new Sec. 83a). (Purpose - to eliminate need for several clerks at each task when voting is fast and heavy).
7. Permit counting of ballots by 1 or more teams; a judge to read off votes from the ballots with a judge or clerk to observe the reading and a clerk to note votes on tally list with a judge or clerk to observe the tallying (new Sec. 83a). (Purpose - to reduce number of officials and increase accuracy).

YOUR This problem is not of such direct concern to people in voting
OPINION machine areas where fewer clerks are required and their exact
number is specified in the law, where duties are lighter and
less nerve wracking and where the working time is shorter, 14 hours at
most. However, in statewide elections the accuracy of the count and
tabulation of paper ballots is of vital concern to all - as is that of
the expense of elections. So let us all consider. - Are you satisfied
with the present law? If not, please list by number the changes above
you would wish adopted, or set forth even better solutions that may occur
to you.

1. Permit clerks to serve who are employees of candidates for a legislative office whose names appear on the ballot (Sec. 17). (Purpose - same as above. This suggestion of the lawyers was voted down by the legislature.)
2. Give presiding judge power to appoint as many other judges and clerks as he deems necessary, but additional officials are restricted by the authority shall not receive pay for their services (Sec. 15 & 16). (Purpose - unpaid workers must meet same qualification regarding mental (Sec. 22). (Purpose - to meet emergencies where voting is heavy or where complexity of the ballot requires longer time in counting.)
3. Give presiding judge authority to designate the working hours of all judges and clerks, but those appointed by or pursuant to authorization shall be permitted to work at least 10 hours. Those desiring to work less than that time shall be paid for time actually worked at a rate not to exceed \$1.00 per hour (Sec. 22). (Purpose - to increase efficiency and economy and willingness to serve. No judge nor clerk need wait around until his duties begin. On this shift basis officials would not tire and make mistakes; extra workers would come in when they are most needed.)
4. Permit oath to be taken at any time of day. As each official checks in he would take oath before discharging any duty (Sec. 23). (Purpose - to legalize above.)
5. Eliminate triplicate originals (Sec. 111 & 202) and the copy placed in the ballot box (Sec. 111 & 201) and permit 1 original and 1 "duplicate and legal carbon copies" of the poll list, tally lists and returns (new Sec. 88a). (Purpose - to eliminate need for several clerks at each booth when voting is fast and heavy.)
6. Permit counting of ballots by 1 or more teams; a judge to read off votes from the ballots with a judge or clerk to observe the tallying and a clerk to note votes on tally list with a judge or clerk to observe the tallying (new Sec. 88a). (Purpose - to reduce number of officials and increase accuracy.)

ELECTION EXPENSES

PART I. ELECTIONS IN GENERAL

L A W

RESPONSIBILITY FOR PAYMENT The responsibility for the payment of the cost of any election lies with the authority charged with calling and/or conducting the election. The expense of city, school, district or other local election is paid by the respective city, school, district or other governing body. The cost of primary elections (which will be discussed separately in Part II) is paid by the candidates of that election through the party's county executive committee. The expense of all other county-wide and various less-than-county-wide elections are paid by the county after approval is given by the Commissioners Court (Sec. 77). These county-wide elections include general elections and such special elections as those required to fill vacancies in the U.S. Senate, or state senate, or to determine the location of county seats, or county bond elections (Sec. 32). The county is also responsible for the expense of such less-than-county-wide special elections as those to determine the creation of junior college districts, the consolidation of common and independent school districts and the incorporation of new towns (Sec. 16).

PERMANENT FIXTURES & SUPPLIES Many of the fixtures or supplies necessary to holding an election are permanent in nature and their purchase requires only an initial or capital outlay. When voting machines have been adopted by the Commissioners Court in any Texas county and are used at elections which are held at the expense of some authority other than the county, the law (Sec. 79, ss 6) states that such machines shall be leased to the authority holding the election at a lease price per machine for each election day not to exceed 10% of the original cost of the machine. (However, the rental is usually set at \$20 or \$25 per machine per day). In cities of 10,000 or more inhabitants, voting booths shall be furnished (Sec. 66) in a proportion of 1 booth for every 70 electors qualified to vote in that precinct at the last general election (Sec. 67); the courts hold that this provision is directory, not mandatory. Whether provided with voting booths or not, each polling place shall be provided with a guard rail (Sec. 67). Four ballot boxes (Sec. 70) and 1 stub box complete the list of equipment which can be used again and again. All of these, voting machines or voting booths, guard rail, ballot boxes and stub box shall be so arranged as to be within sight of electors and judges and still ensure the voter secrecy in preparing his ballot (Sec. 67 and Sec. 79, ss 12).

PUBLICATION FEES Although the law only requires the county judge to publish notice of a general or any special election by posting notice of election at each precinct within 20 days before the election (Sec. 28), many county judges publish the orders of nearly all elections in the newspaper with the largest circulation in the county, the legality of which practice being subject to question. The

orders calling for city, school and other local elections are often published in newspapers, as are the lists of polling places at primary elections. Orders changing precinct boundaries must be published in a county newspaper for 3 consecutive weeks (Sec. 12).

ABSENTEE VOTING Where the county clerk is required to conduct absentee voting in elections which are not held at the expense of the county (Sec. 37, ss 7 & 8), the authority holding the election must pay the expense incident to absentee voting, such as stationery and postage expenses, but there is no provision for compensation or reimbursement for the time of the clerks and his deputies.

NUMBER OF POLLING PLACES Each county is divided into election precincts which can only be changed by the Commissioners Court at the July or August term of court (Sec. 12). In general and primary elections, a polling place must be established in each election precinct. The same is true of special elections ordered by the Commissioners Court - a polling place in every election precinct involved (1945 Atty. Gen. Op. No. 0-6674). In municipal elections the governing body may provide one or more polling places but must furnish each presiding judge with poll lists of all the election precincts included in such polling place (Sec. 10); however, many home rule city charters require as many polling places as there are election precincts enclosed within the city boundaries. School and junior college district elections may also be held in as few as one or more convenient polling places.

RENTAL OF POLLING PLACE Where practical, general, special or primary elections shall be held in some school house, fire station, or other public place within the limits of the election precinct. No charge shall be made for use of the building except additional expenses actually incurred in the holding of the election (Sec. 11).

ELECTION SUPPLIES Each voting precinct shall be furnished a certified and supplemental list of the qualified voters in that precinct, commonly called a "poll list". "Although required to deliver certified lists of qualified voters to various election boards for other elections, the county tax assessor-collector may not charge a fee for this service in any election other than a primary" (1939 Atty. Gen. Op. No. 743; 9 VCS 282); in primary elections the collector shall be permitted to charge not more than \$5.00 for the certified lists of all the voters in the county, arranged by precincts (Sec. 199).

Sufficient ballots, printed on white paper of such thickness as to prevent marks being seen through the paper (Sec. 61), are required to supply the needs for absentee voting and allow each precinct at least as many official ballots plus 10% as there are qualified voters in the precinct (Sec. 64). A suitable number of sample ballots may be printed on yellow paper for any election or primary (Sec. 61). Paper ballots are required even in voting machine areas where absentee "voting in person" is conducted on voting machines (Sec. 79, ss 7), these are needed for the electors "voting by mail".

Other election supplies comprise absentee voting supplies (applications, affidavits, and ballot and carrier envelopes), tally sheets, affidavits, wooden or rubber stamps, instruction cards, loitering signs, envel-

opes, sealing wax, pencils and so forth.

PAY OF JUDGES AND CLERKS Judges and clerks may be paid no more than \$10.00 per working day of 10 hours and \$1.00 per hour thereafter, the judge being allowed \$2.00 extra for delivery of returns and all supplies (Sec. 22). The authorities charged with holding elections in voting machine areas may name in each precinct a presiding judge and 3 clerks where 1 machine is used, 4 clerks where 2 machines are used, and other clerks at the rate of 1 for every 2 additional machines; since no official shall be paid more than the pro-rata for 2 hours over time after the polls are closed (Sec. 79, ss 24), the maximum fee in such areas would be \$14.00. Where paper ballots are used, the time allowed for counting and tallying is limited to 24 hours after the polls close (Sec. 112 & 201), so the maximum fee here would be \$36.00. Only in special elections are the number of judges and clerks in all precincts limited, two of each being permitted (Sec. 16); in precincts with less than 100 voters, the number is likewise specifically limited to 2 of each (Sec. 15).

OBSERVATIONS

There are, as you see, a number of expenses basic and essential to all elections, but it is obvious that the other expenses are proportionate to the number of polling places. In the case of elections held under the authority of the Commissioners Court, it is mandatory that these be equal to and the same as the election precincts into which the counties are divided. The law permitting election precincts in which there are less than 100 voters was passed in the horse and buggy and dirt road era. Whether this law should be amended setting a higher minimum of voters in each precinct is not a proper matter for consideration and decision under this election law study since it involves a state wide survey which should include the spread of population, condition of roads, location of available and suitable voting places and so forth. There are, however, a few matters which we should consider.

SUGGESTED CHANGES In this list of election expenses, there are several instances of discrimination and injustice. Easy to detect also are places where economies could be effected. From the State Bar of Texas Committee and the 53rd Legislature we obtain these suggestions:

Publication Fees To require publication of notice of the entry (only) of the order creating new precincts (Sec. 12). This would greatly reduce the present high publication costs and still alert the interested persons to the change and direct them to the minutes of the court on record with the county clerk for field notes and full description.

Absentee Voting There are 2 suggestions for absentee voting fees to cover cost of voting, counting and tallying: (a) 15¢ to be paid by the elector voting by mail and (b) 50¢ to be paid by any absentee voter. However, there is no specified division of these fees and no provision for reimbursement to the county for the time of the county clerk and his deputies in conducting absentee voting at elections not under the authority of the Commissioners Court (Sec. 37).

Pay of Judges & Clerks These changes, discussed at length in Sketch #13 on Election Clerks, would reduce expenses by permitting additional judges and clerks, part time workers, payment for actual hours of employment, and volunteer, unpaid workers. (Sec. 22).

YOUR OPINION Do you wish to reduce the expenses of elections by adopting any of these suggestions? Do you have other suggestions of greater merit?

all supplies (Sec. 22). The authorities in voting machine areas may name in each precinct a presiding judge and clerk whose I machine is used, 4 clerks where 2 machines are used, and other clerks at the rate of 1 for every 2 additional machines; same no of- ficial shall be paid more than the pro-rate for 2 hours over time after the polls are closed (Sec. 23, as 2A), the maximum fee in such areas would be \$14.00. Where paper ballots are used, the time allowed for counting and tallying is limited to 24 hours after the polls close (Sec. 112 & 201), so the maximum fee here would be \$36.00. Only in special elections are the number of judges and clerks in all precincts limited, two of each being permitted (Sec. 16); in precincts with less than 100 voters, the number is likewise specially limited to 2 of each (Sec. 15).

RESERVATIONS

There are, as you see, a number of expense items and essential to all elections, but it is obvious that the other expenses are proportionate to the number of polling places. In the case of elections held under the authority of the Commissioners Court, it is mandatory that these be equal to and the same as the election precincts into which the counties are divided. The law permitting election precincts in which there are less than 100 voters was passed in the horse and buggy and dirt road era. Whether this law should be amended setting a higher minimum of voters in each precinct is not a proper matter for consideration and action under this election law study since it involves a state wide survey which should include the spread of population, condition of roads, location of available and suitable voting places and so forth. There are, however, a few matters which we should consider.

SUGGESTED CHANGES In this list of election expenses, there are several instances of duplication and injustice. Easy to detect also are places where omissions could be effected. From the State Bar of Texas Committee and the 2nd Legislature we obtain these suggestions:

Publication Fees To require publication of notice of the entry (only) of the order creating new precincts (Sec. 12). This would greatly reduce the present high publication costs and will also in- terested persons to the change and direct them to the minutes of the court on record with the county clerk for field notes and full description.

Absentee Voting There are 2 suggestions for absentee voting fees to cover cost of voting, counting and tallying: (a) 15¢ to be paid by the elector voting by mail and (b) 50¢ to be paid by any absentee voter. However, there is no specified division of these fees and no provision for reimbursement to the county for the time of the county clerk and his help- ties in conducting absentee voting at elections not under the authority of the Commissioners Court (Sec. 27).

Pay of Judges & Clerks These changes, discussed at length in Sketch #13 on Election Clerks, would reduce expenses by per- mitting additional judges and clerks, part time workers, payment for actual hours of employment, and volunteers, unpaid workers. (Sec. 22).

December 1953

Election Laws - 15

ELECTION EXPENSES

PART II. PRIMARIES IN PARTICULAR

L A W

DEFINITION & HISTORY "The term 'primary election'...means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted on at a general or special election, or to nominate the county executive officers of a party" 'Sec. 179). Prior to 1906 all nominations were made in convention. In that year a cumbersome twofold popular primary-convention system was used; in 1908, the first straight popular primary was held; in 1918, the law providing for 1st and 2nd primaries became effective.

NOMINATIONS BY PETITION The names of non-partisan and independent candidates are never printed on primary ballots. Instead, they are submitted by petition to the Secretary of State (Sec. 227), to the county judge, or to the mayor of a city (Sec. 230), depending upon the nature of the office. The number of required petitioners varies with the several classes of offices; in the case of a city election, however, the sworn application of the candidate is sufficient. Oaths of qualification of citizens signing the petition are required (Sec. 228), as well as the written consent of the candidate (Sec. 229). The names of such candidates are printed on the official ballot in the column for independent candidates.

NOMINATION BY CONVENTION OR PRIMARY Parties without state organization (Sec. 231) and those whose party's candidate for governor polled between 10,000 and 200,000 votes at the last preceding general election (Sec. 57, 180 & 222) are given the option of nominating candidates at conventions or in primaries. The former, however, may only nominate candidates for office for the area in which they are organized. The State Committee of the latter class of political party shall meet on the 2nd Tuesday in May to decide and by resolution declare whether they will nominate state, district and county officers by convention, or primary elections and shall certify their decision to the Secretary of State (Sec. 223). The names of such candidates are printed on the official ballot in separate columns each headed by the name of the party.

NOMINATION BY PRIMARY

Candidates of the political party which casts 200,000 or more votes "for governor" at the last general election must be nominated in primary elections by the qualified voters of such party (Sec. 57 & 180). Only twice since 1906 has any party other than the Democratic Party been compelled to hold primary elections. In 1926 and again in 1934 Republican primaries were held. In 1944, the Republican candidate for governor received 100,287 votes and a Republican primary would have been mandatory in 1946 had not the Legislature in 1945 raised the bracket limit from 100,000 to 200,000. The Republican candidate for governor in 1952 polled approximately 468,000 votes, so the 3rd Republican primary must be held in 1954 unless the 53rd Legislature at a special session lifts the bracket limit again.

NOMINATION BY MAJORITY

The candidate receiving a majority (50% plus 1) of the votes cast at the primary election is declared the party's nominee for that office (Sec. 185). If no candidate receives a majority of the votes, the names of the 2 highest candidates shall be placed on the ballot for the 2nd or run-off primary election. Should a tie result from the 2nd primary, the "executive committee shall provide for the casting of lots...and the candidate...successful by lot shall be certified as the nominee" (Sec. 204).

RUN-OFF ELECTIONS

The county executive committee must have ballots printed and hold 2nd primary elections in every precinct in the county even though congressional and state candidates are the only ones whose names appear on the ballot, there being no necessity for a run-off for district, county and precinct positions (Sec. 185). Such elections are usually held, but there is nothing in this section to compel the committee to hold the 2nd primary.

CANDIDATES MUST PAY EXPENSES OF PRIMARY

The expense of primary elections, including all those listed and considered in Part I as requirements for general and special elections as well as the cost of certified poll lists without which "no primary election shall be legal" (Sec. 199), are paid by the candidates themselves (Sec. 186). The assessments to be levied against candidates for state wide offices are definitely specified: Candidates for the U. S. Senate, for Congressman-at-large, or for any state office shall pay to the chairman of the State Executive Committee 5% of 1 year's salary (Sec. 193).

Costs of holding the primaries in each county are paid by assessments against candidates for district, county and precinct offices. Before assessing these candidates, the county executive committee must meet and carefully estimate the total cost of the primary elections and apportion the total in a just and equitable manner among the various candidates giving "due consideration to the importance, emoluments and terms of office" (Sec. 186). Candidates for state senator and representative are assessed according to the population of the county, - the maximum set by

law being from \$1.00 per county of 5,000 inhabitants up to \$100.00 per county of more than 200,000 inhabitants (Sec. 194).

If application has not been filed by the 1st Monday in May (Sec. 190) and assessment paid by the Saturday before the 4th Monday in June (Sec. 186), the name of the candidate will not be printed on the primary ballot. A write-in candidate, one of the two leaders in the 1st primary, may have his name placed on the run-off ballot, and he may be assessed a reasonable fee to defray his share of the expenses of the two primary elections (1940 Atty. Gen. Op. No. 0-2576).

The moneys so collected constitute a trust fund and may be expended to cover proper primary election expenses only; after which, any surplus remaining shall be returned to the donors in proportion to the contribution of each (Smith v. Parker, 119 S.W. 2d 609 - Tex. Civ. App. 1938).

OBSERVATIONS

Since nomination in the Democratic Party primary has been tantamount to election to state, district, county and precinct offices in Texas, the conduct of the primary is as carefully and minutely regulated by state law as is that of the general election. Returns show that even in most "presidential years" the number of citizens participating in primary elections greatly exceeds those voting in general elections, thus making the expense of primary elections proportionately higher than that of general elections. Yet the law provides that the expense of general elections shall be borne by the state and counties while that of the "real" election, the primary elections, is borne by the candidates themselves.

In many states, primary elections are held under the authority of the state and county, and all parties of certain specified voting or registered strength are required to participate in the primaries whose expense is apportioned between state and county governments. In 1916 the Texas Supreme Court held in Waples v. Marrast, 184 S.W. 180, followed by Atty. Gen. Op. No. S-41, dated May 16, 1953, that political parties are voluntary associations and not governmental instrumentalities. As such, Sec. 3, Art. VIII of the Texas Constitution (providing that taxes shall be levied and collected for public purposes only) and Sec. 52, Art. III (prohibiting the granting of public money in aid of, or to, any individual, association or corporation) would render unconstitutional any presently adopted statute requiring the county to pay the cost of primary elections.

Until January 1, 1952, the assessments specified for candidates for the U. S. Senate, Congressman-at-large, State Senator, Repre-

sentative and other state offices were ridiculously low - little more than token payments. The new law tended to equalize the assessments, but the division is still far from "just and equitable" - the candidates for district, county and precinct offices still carry the main financial burden of the primaries. The formula for assessment is determined by each county executive committee: with increasing costs of supplies, paper, printing of ballots, and pay of judges and clerks (doubled since 1951), the assessments are constantly raised. In one county in 1950, the assessment was set at 1 month's salary, divided among the candidates for that office; in 1952, it was 10% of 1 year's salary.

Not only does the amount of the filing fee or assessment discourage, or prevent, many worthy and capable citizens from running for office on the Democratic ticket, it also deters minor parties from striving to achieve major party status and thus make Texas a two-party state. As you have seen above, Sections 57 and 180 were amended in 1945, lifting the bracket limit from 100,000 to 200,000 thus permitting the Republican party to retain the option privilege of nomination by convention. As a result of the 1952 election, efforts were made to lift the bracket to 500,000. These failed in the regular session, but may be attempted again at a special session of the 53rd Legislature. The chief reason for this move, of course, is the terrific expense to the candidates of the primary elections.

A reduction of 50% to the candidates of each party could be effected if a change were made in Section 182 which provides that the places of holding primary elections of political parties shall not be within 100 yards of the place at which such elections or conventions are held by a different political party. The State Bar of Texas Committee recommended and the 53rd Legislature approved, as far as it went, a new Section 182a, providing for "consolidated primaries" in voting machine counties, but no such consolidation was suggested in paper ballot counties. The argument usually given to such a proposal is that there would be no way to prevent electors from voting in both primaries. Some states overcome this obstacle by using separate ballots, the voter asks for or takes the ballot of the party of his choice which is easily distinguished by the difference in color; in other states, ballots similar to our general election ballot are used and any "split ballot" is thrown out as illegal. We already have a statute which, by adding 2 words, could cover this. Section 226 states that "no person shall be allowed to participate in any such convention (or primary) who has participated in the convention or primary of any other party held on the same day." Article 240 of the Penal Code would need no change whatever; it states "Whoever votes or offers to vote at a primary election or convention of a political party, having voted at a primary election or convention of any other party on the same day, shall be fined not less than \$100 nor more than \$500."

SUGGESTED Many of the suggested changes are corrective or clarifying
CHANGES in nature, others are more radical:

1. Specific requirement that the 2nd primary be held in every precinct in every county with penalty not to exceed \$300 (New Sec. 186a)
2. Specific requirement that any surplus over and above expense of primary election be apportioned and refunded to candidates, and that an itemized statement of election expenses be furnished every candidate (New Sec. 186a)
3. Specific filing fee of \$250 for candidates for Lt. Governor (Sec. 193)
4. Clarify deadline for filing and payment of filing fee by candidates for state offices (Sec. 193)
5. Raise minor party bracket limit to 500,000 (Sec. 57, 180 & 222).
6. Lower minor party bracket limit to 100,000 (Sec. 57, 180 & 222).
7. Permit consolidated primaries in voting machine areas (New Sec. 182a)
8. Permit consolidated primaries in all areas (Sec. 182).
9. Amend Constitution to remove impediment to county payment of primary election expenses (Sec. 3, Art. VIII and Sec. 52, Art. III).

YOUR This is a very grave matter. Consider it long and carefully
OPINION before you attempt to make your decision.

December, 1953

Election Law - 16

THE SECRET BALLOT

Many people of Texas, especially new comers to the State, view with alarm the paper ballot now in use; they cannot reconcile the voter's signature on the stub with the promised secrecy of the ballot. Let us see if such persons are justified in their feelings which often are strong enough to result in their refusing to vote or to qualify themselves as voters. Let us see how "open" our ballot is under the present law.

LAW In an effort "to detect and punish fraud and preserve the purity of the ballot box," the Texas Constitution, Article VI, Section 4, commands the Legislature to "provide for numbering the tickets." So official ballots are numbered consecutively beginning with No. 1 in each county, each ballot with a separate number, each stub bearing the identical number of the ballot (Secs. 57, 61 & 187).

After signing and checking all ballots, the judge is instructed to "thoroughly disarrange and mix the ballots" so that they no longer are in consecutive numbered sequence or in any sequence of arithmetic or geometric progression and then place the ballots face down in a stack or stacks from which each voter shall be allowed to take his own ballot without the number being known to or written down in any manner by the election judge" (Sec. 93 - Emphasis ours, now and hereafter). The election judge shall write at the time of voting the name of each voter (Secs. 15 & 16), but "shall not make any record of his ballot number" (Sec. 93), nor any note that would make possible the identification of any ballot, nor unfold or examine the face of a ballot if received from a voter (Sec. 102).

The ballot, which bears no real mark of identification other than the number and judge's signature, is marked by the voter and folded so as to conceal the number and marking and so as to expose the judge's signature on the back. The voter shall "then deposit the ballot in the proper ballot box" (Sec. 97) which is securely made of metal or wood, provided with a top, hinges, key or keys, and an opening at the top just large enough to receive a ballot (Sec. 71).

Ballot Boxes Nos. 1 and 2 are used alternately by the receiving and the counting judges. Ballots are removed from first one and then the other of these two boxes by the counting judges and clerks and the counted ballots are placed in box No. 3, "which shall remain locked and in view until the counting is finished, when said box shall be returned with the other boxes, locked and sealed, to the county clerk" and the keys delivered to the sheriff (Secs. 71, 101, 114 & 201), "who shall keep the same for 30 days" (Secs. 71 & 201).

The county clerk is given the duty of preserving safely the ballot boxes and their contents for a period of 6 months; if no contest has arisen during that period (Sec. 114), the clerk, "without examination of

any ballot (Sec. 206), shall destroy the contents of said ballot boxes by burning (Sec. 114), - the county judge assists the clerk in burning primary election ballots (Sec. 206). If another election is held prior to the time the ballot boxes may be legally emptied, new ballot boxes must be procured (1947 Atty. Gen. Op. No. V-257).

After election officials have made return, ballot boxes cannot be opened, nor can ballots be used as evidence except in case of "contest", or in investigation of criminal violations of the election code. One exception to this is made in the case of box No. 4 which contains mutilated, defaced and defectively printed ballots (Sec. 84) and those ballots not voted; this box may be opened and the ballots counted by the Commissioners Court, or other authority, to ensure that all ballots are accounted for (Sec. 100).

Prior to the delivery of the stub box to the polling place, it is sealed by the district clerk "by placing a short ribbon through the hasp on the box and securing the ends of said ribbon with 2 gummed seals which shall be sealed together by affixing thereto the seal of the court, so as to make it impossible to open the box without breaking the seals; the district clerk further shall prepare in triplicate a certificate showing the number of the box, the date..and nature of the election." One copy of the certificate is placed in the box before sealing, another is attached to the outside and the third retained in the clerk's files. (Sec. 97)

The detachable stub is printed with the number of the ballot, the date and designation of the election, and the words "Note: Voter's signature to be affixed on reverse side" (Secs. 61 & 187). "Without disclosing to anyone the number of his stub," the voter signs it (initials held legal in some courts) and deposits it himself in the stub box before depositing his ballot (Sec. 97).

At the same time that election returns are filed and ballot boxes delivered, the stub boxes are returned to the district clerk whose duty it is to keep the still sealed boxes safe and secure for at least 60 days after election (unless contents involve an election contest) at which time the stubs are destroyed by fire under the direction of the district judge and in the presence of the county judge and district clerk (Sec. 97). The stub boxes may be opened only upon order of the district court or a grand jury investigation (Secs. 97, 130 & 165).

Further regulations to safeguard the purity and secrecy of the ballot provide that the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officials and persons outside the guard rails (Sec. 68); that supervisors, if any, shall remain in view of ballot boxes until counting is concluded (Secs. 19 & 20); that, from the time the poll opens until the official returns are signed, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges (Sec. 99); and that bystanders shall be excluded (Sec. 99). The same precautions must be taken in conducting primary elections (Sec. 200).

The district court has "original and exclusive jurisdiction of all contests of election" (Sec. 129 & 208), and such contests have precedence

over all other cases (Secs. 135 & 163). An election can only be contested for some statutory reason showing it was not properly ordered, or fairly conducted, or that illegal votes were cast, or some other matter impeaching fairness of result (McCall v. Lewis, Civ. App., 263 S.W. 325). For the contestant to prevail, he must allege and prove irregularities in election or that contestant received majority of legal votes cast, and that, on account of illegal votes for opposing party announced result was erroneous (Moore v. Pittman, Civ., App., 208 S.W. 873). If, upon trial, any votes are found to be illegal or fraudulent, they shall be subtracted from the poll of the candidate credited with them (Sec. 142).

At this point in the trial, when and only when sufficient illegal and fraudulent votes have been proven which could, by their number, change the result of the election, the stub box containing identification of the individual ballots is ordered opened by the district judge, so that the illegal votes can be segregated and subtracted. But where it is impossible to separate improperly marked ballots from the others, the entire vote of the precinct must be eliminated (State ex rel. Lukovich v. Johnston, 235 S.W. 2d 932).

CONSIDERATION The purpose of the signature on the stub is now apparent; it is the means of identifying and throwing out the illegal ballots without having to eliminate all the votes in that precinct. Granting the merit of the purpose, there are a number of questions we might ask as to the scope and effectiveness of the method, the wisdom of the process and the possible means of further protection.

1. Is the signature required on the stub of absentee ballots?

Yes, wherever paper ballots are used in absentee voting, the voter must affix his signature on the back of the stub (Secs. 37, 38 & 79, ss. 7). Moreover the citizen casting his absentee ballot in person must also write his address and precinct number on the back of the ballot itself (Sec. 37, ss. 3).

2. Can ballots cast on voting machines be identified, segregated and subtracted?

Since voting machines are, in effect, adding machines, individual votes cannot be identified. However, after the casting of a fraudulent or illegal ballot has been established by final adjudication before a court of competent jurisdiction, the voter who cast such ballot "shall be compelled and required to disclose the names of the...candidates for whom he cast such ballot" (Sec. 79 ss. 23). Such vote would then be subtracted from the total.

3. Could not paper ballots be identified, segregated and subtracted in the same way?

There is already a somewhat similar provision which states: "In case the ballots or ballot have been illegally destroyed before the time allowed by law for their destruction, a person in a court of law may

testify as to how he voted in any primary or election in this State" (Sec. 166).

4. How much reliance can be placed on such testimony?

That is a question for the student of human nature to answer. With absolutely no means of proof, many might doubt the testimony of the person whose guilt of voting illegally had already been established; others might give credence to testimony in a court of law where to "swear and/or testify falsely shall be deemed guilty of the offense of perjury, and shall be subject to the penalties provided for such offense" (Sec. 79, ss. 23).

5. If false testimony were given, with no evidence to disprove it, what effect would that have on the election returns?

The "smart" witness would testify that he had voted against his candidate; the vote would be subtracted from the other candidate's total thus increasing the lead of the witness' candidate.

6. If it is impossible to guarantee the identification of ballots cast on voting machines, is it fair and just to endanger the secrecy of the paper ballots to ensure their identification?

That is a question for this group to decide. In doing so, consideration should be given the fact that the majority of Texas votes are cast on paper ballots. Removal of the means of identification, segregation and subtraction of illegal ballots from the greater part of Texas voting could change the election results and fail to reflect the wishes of the legal voters.

7. Is fraudulent and illegal voting so prevalent in Texas that we are warranted in endangering the secrecy of the paper ballot?

Seldom is an election contest case filed in Texas, and many are filed each year, without listing fraudulent and illegal voting among the reasons for the contest. If penalties were levied on all those of established guilt so that such illegal practices were discouraged, gradually reduced and finally eliminated, one might figure the risk well run. (See Penal Code, Articles 232 to 243, inclusive, for penalties for illegal voting).

8. Was the paper ballot more secret before stubs were inaugurated requiring the voter's signature on the back?

In those bygone days, the numbered ballots (Art. 2978) were stacked (Art. 2999) and the judge "delivered" to each voter one official ballot (Art. 3005). After marking his ballot, the voter folded it and returned it to the "numbering judge" whose duty it was to "number the ballot, writing on the blank side the number opposite the voter's name on the voting list" (Art. 3012). A quick look at the voting list could easily identify the "open ballot."

9. Does the present system ensure absolute secrecy of the ballot?

If every letter of the law regarding the signed stub were observed and enforced, the system would seem to be foolproof. However, we must always take into account human frailties - and the corrupt and criminal elements constantly striving to find ways to get around the law.

10. Is there anything the voter can do to ensure the greater secrecy of his own ballot?

For the greater protection of all the voters in his precinct, the individual voter can request, insist and demand that

- a. The ballots be shuffled.
- b. The shuffled ballots be placed face down on the table.

Whether or not this is accomplished, he can protect his own ballot by

- c. Refusing the ballot proffered by the judge.
- d. Selecting his own ballot.
- e. Taking it from the center of the stack. (If he takes the second ballot in the stack, he disrupts any prepared sequence for his protection and that of those who follow).
- f. If the ballots are face up, making a quick motion so that the number may not be read.
- g. Folding ballot and stub with numbers inside.
- h. Reporting any gross violation to the supervisor, if any, the election authority and/or the next grand jury.

11. Have any changes been suggested for the improvement of these laws?

The State Bar of Texas Committee made no recommendations involving any radical changes, nor was any legislation introduced in the 53rd Legislature, but there is one lay suggestion regarding the method of counting votes. The Election Code requires that "one hour after voting has begun...the receiving judge shall deliver box No. 1 to the counting judges...and until the ballots in box No. 1 have been counted, the receiving judge shall receive and deposit ballots in box No. 2" (Sec. 101). There is no provision regulating subsequent procedure. After complying with the regulation above, counting judges have been known to remove ballots from the receiving box immediately following their deposit. To prevent this, it is suggested that the receiving box be turned over to the counting judges only after 25 or more votes have been deposited therein.

YOUR Do you think the majority of the ballots should be capable of identification when it becomes necessary to separate the fraudulent votes from the legal votes? Do you think the present method for identification is good? If not, can you propose a better method? Do you think the present provisions for secrecy are adequate? If not, what changes or additions would you suggest? Do you think the possible risk of having your ballot identified is worth the greater and surer risk of having it thrown out along with other legal votes cast in your precinct if illegal voting there has been proven?