

# Texas Historical Statutes Project

TEXAS ELECTION CODE 1984



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# Texas Election Code

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WITH TABLE  
AND INDEX

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OCT 4 1984

*As Amended through the  
1983 Regular and First  
Called Sessions of the  
68th Legislature*

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## PREFACE

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This Pamphlet contains the text of the Election Code as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Code was originally enacted by Acts 1951, 52nd Leg., ch. 492.

A Disposition Table is included preceding the Code, thus providing a means of tracing repealed subject matter into the Code.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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## EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

\* No legislation for which the ninety day effective date is applicable.



# DISPOSITION TABLE

Acts 1951, 52nd Leg., ch. 492, enacting the Texas Election Code of 1951, provided in section 2 for the repeal of all laws relating to elections, suffrage and parties, as found in Title 50 of the Revised Civil Statutes of 1925.

This Table shows where the subject matter of the Articles in former Title 50 of the Revised Civil Statutes of 1925 is incorporated in the Texas Election Code.

Former Articles	1951 Election Code Article	West's Election Code Article	Former Articles	1951 Election Code Article	West's Election Code Article
2923	1	1.01	2955b	36	5.04
2924	2	1.02	2956	37	5.05
2925	3	1.03	2956a	38	5.06
2926	4	1.04	2957	39	5.07
2927	5	1.05	2958	40	5.08
2928	6	1.06	2959	41	5.09
2929	7	1.07	2960	42	5.10
2929a	—	—	2960a	—	—
2929a—1	8	1.08	2961	43	5.11
2930	9	2.01	2962	43	5.11
2931	10	2.02	2963	44	5.12
2932	11	2.03	2964	45	5.13
2933	12	2.04	2965	46	5.14
2934	13	2.05	2966	47	5.15
2935	—	—	2967	47	5.15
2936	14	2.06	2968	48	5.16
2937	15	3.01	2968a	49	5.17
2938	16	3.02	2969	—	—
2939	17	3.03	2970	50	5.18
2940	18	3.04	2971	51	5.19
2941	19	3.05	2972	52	5.20
2942	20	3.06	2973	53	5.21
2942a	21	3.07	2974	53	5.21
2943	22	3.08	2975	54	5.22
2944	23	3.09	2976	55	5.23
2945	—	—	2977	56	5.24
2946	24	4.01	2977a	—	—
2947	25	4.02	2978	57	6.01
2948	26	4.03	2978a	58	6.02
2949	27	4.04	2978b	59	6.03
2950	28	4.05	2979	60	6.04
2951	29	4.06	2980	61	6.05
2951a	30	4.07	2981	62	6.06
2952	—	—	2982	63	6.07
2953	31	4.08	2983	63a	6.08
2953a	32	4.09	2984	64	6.09
2954	33	5.01	2985	65	6.10
2955	34	5.02	2986	66	7.01
2955a	35	5.03	2987	67	7.02

## DISPOSITION TABLE

Former Articles	1951 Election Code Article	West's Election Code Article	Former Articles	1951 Election Code Article	West's Election Code Article
2988	68	7.03	3035	121	8.39
2989	69	7.04	3036	122	8.40
2990	70	7.05	3037	123	8.41
2991	71	7.06	3038	124	8.42
2992	72	7.07	3039	125	8.43
2992a	73	7.08	3039a	126	8.44
2993	74	7.09	3040	127	8.45
2994	75	7.10	3040a	128	8.46
2995	76	7.11	3041	129	9.01
2996	77	7.12	—	130	9.02
2997	78	7.13	3042	131	9.03
2997a	79	7.14	3043	132	9.04
2997b	80	7.15	3044	133	9.05
2997c	81	7.16	3045	134	9.06
2997d	82	7.17	3046	135	9.07
2998	83	8.01	3047	136	9.08
2999	84	8.02	3048	137	9.09
3000	85	8.03	3049	138	9.10
3001	86	8.04	3050	139	9.11
3002	87	8.05	3051	140	9.12
3003	88	8.06	3052	141	9.13
3004	89	8.07	3053	142	9.14
3005	90	8.08	3054	143	9.15
3006	91	8.09	3055	144	9.16
3007	92	8.10	3056	145	9.17
3008	93	8.11	3057	146	9.18
3009	94	8.12	3058	147	9.19
3010	95	8.13	3059	148	9.20
3011	96	8.14	3060	149	9.21
3012	97	8.15	3061	150	9.22
3013	98	8.16	3062	151	9.23
3014	99	8.17	3063	152	9.24
3015	100	8.18	3064	153	9.25
3016	101	8.19	3065	154	9.26
3017	102	8.20	3066	155	9.27
3018	103	8.21	3067	156	9.28
3019	104	8.22	3068	157	9.29
3020	19	3.05	3069	158	9.30
3021	105	8.23	3070	159	9.31
3022	106	8.24	3071	160	9.32
3022a	107	8.25	3072	161	9.33
3023	108	8.26	3073	162	9.34
3024	109	8.27	3074	163	9.35
3025	110	8.28	3075	164	9.36
3026	111	8.29	—	165	9.37
3026a	112	8.30	—	166	9.38
3027	113	8.31	3076	167	10.01
3028	114	8.32	3077	168	10.02
3029	115	8.33	3078	168	10.02
3030	116	8.34	3078a	169	10.03
3031	117	8.35	3079	170	11.01
3032	118	8.36	3079A	171	11.02
3033	119	8.37	3079B	172	11.03
3034	120	8.38	3079C	173	11.04

## DISPOSITION TABLE

Former Articles	1951 Election Code Article	West's Election Code Article	Former Articles	1951 Election Code Article	West's Election Code Article
3080	24	4.01	3124	202	13.24
3081	24	4.01	3125	203	13.25
3081	114	8.32	3126	204	13.26
3082	119	8.37	3127	205	13.27
3083	120	8.38	3128	206	13.28
3084	174	11.05	3129	207	13.29
3085	175	11.06	3130	208	13.30
3086	176	12.01	3131	209	13.31
3087	177	12.02	3132	210	13.32
3088	176	12.01	3133	211	13.33
3089	176	12.01	3134	212	13.34
3090	176	12.01	3135	—	—
3091	176	12.01	3136	213	13.35
3092	176	12.01	3137	214	13.36
3093	176	12.01	3138	215	13.37
3094	176	12.01	3139	216	13.38
3095	176	12.01	3140	217	13.39
3096	176	12.01	3141	217a	13.40
3097	32a	4.10	3142	218	13.41
3098	176	12.01	3143	219	13.42
3099	178	12.03	3144	—	—
3100	179	13.01	3145	—	—
3101	180	13.02	3146	220	13.43
3102	181	13.03	3147	208	13.30
3103	182	13.04	3148	208	13.30
3104	183	13.05	3149	—	—
3105	184	13.06	3150	208	13.30
3106	185	13.07	3151	—	—
3107	—	—	3152	208	13.30
3108	186	13.08	3153	208	13.30
—	186a	13.08a	3153a	221	13.44
3109	187	13.09	3154	222	13.45
3109a	188	13.10	3154(a)	212	13.34
3110	189	13.11	3155	223	13.46
3111	190	13.12	3156	224	13.47
3112	190	13.12	3157	225	13.48
3113	190	13.12	3158	226	13.49
3114	191	13.13	3158a	212	13.34
3115	192	13.14	3159	227	13.50
3116	193	13.15	3160	228	13.51
3116a	194	13.16	3161	229	13.52
3116b	194	13.16	3162	230	13.53
3116c	194	13.16	3163	231	13.54
3116d	194	13.16	3164	232	13.55
3116e	194	13.16	3165	233	13.56
3116f	194	13.16	3166	234	13.57
3116g	194	13.16	3167	235	13.58
3117	195	13.17	3167a	236	13.59
3118	196	13.18	3168	237	14.01
3119	197	13.19	3169	238	14.02
3120	198	13.20	3170	239	14.03
3121	199	13.21	3170a	—	—
3122	200	13.22	3170b	—	—
3123	201	13.23	3171	240	14.04

## DISPOSITION TABLE

Former Articles	1951 Election Code Article	West's Election Code Article
—	241	14.05
—	242	14.06
—	243	14.07
3172	244	14.08
3173	245	14.09
—	246	14.10
—	247	14.11
	conflicting acts.	

Former Articles	1951 Election Code Article	West's Election Code Article
—	248	14.12
	(saving clause).	
—	Sec. 2 of ch. 492—repealing clause and effective date.	
—	Sec. 3 of ch. 492—Emer- gency Clause.	

# ELECTION CODE

Chapter	Article
1. Miscellaneous Provisions .....	1.01
2. Time and Place .....	2.01
3. Officers of Election .....	3.01
4. Ordering Elections .....	4.01
5. Suffrage .....	5.01
6. Official Ballot .....	6.01
7. Arrangement and Expenses of Election .....	7.01
8. Conducting Elections and Returns There- of .....	8.01
9. Contesting Elections .....	9.01
10. Constitutional Amendments .....	10.01
11. Presidential Election .....	11.01
12. United States Senators .....	12.01
13. Nominations .....	13.01
14. Limiting Campaign Expenditures .....	14.01
15. Offenses Relating to Elections .....	15.01

## CHAPTER ONE. MISCELLANEOUS PROVISIONS

### Art.

- 1.01. Design of the Code.
- 1.01a. Definitions.
- 1.01-1. Expired.
- 1.02. County Judge Failing to Act.
- 1.03. Secretary of State as Chief Election Officer.
- 1.03a. Tabulation of Unofficial Returns by Secretary of State.
- 1.04. To Certify Death of Officer.
- 1.05. Ineligibility.
- 1.05-1. Repealed.
- 1.06. Ineligibility Bars.
- 1.07. Injunction May Issue.
- 1.08. Repealed.
- 1.08a. Bilingual election materials in English and Spanish.
- 1.08b. Encouragement to Vote of Non-English-Speaking Citizens.
- 1.08b. Verification of Petition Signatures.
- 1.08c. Limitation on Early Filing of Application for Place on Ballot.
- 1.08d. Contracts for Election Services.

### Art. 1.01. Design of the Code

The aim in adopting this Code is to state in plain language the laws governing the nomination and election of officers and of holding other elections, to simplify, clarify and harmonize the existing laws in regard to parties, suffrage, nominations, and elections, and to safeguard the purity of the ballot box against error, fraud, mistake and corruption, to the end that the will of the people shall prevail and that true democracy shall not perish from the Lone Star State. To that end the provisions of this Code shall

apply to all elections and primaries held in this State, except as otherwise provided herein.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 1.]

*Acts 1951, 52nd Leg., ch. 492, enacting the Texas Election Code of 1951, provided in section 2 for the repeal of all laws relating to elections, suffrage and parties, as found in Title 50 of the Revised Civil Statutes of 1925.*

*Article 14.11 of the Election Code of 1951 repealed conflicting laws but preserved from such repeal any Act passed at the Regular Session of the Fifty-second Legislature, 1951. The Acts thus saved from repeal included—*

*Acts 1951, 52nd Leg., ch. 313, § 1, amending Art. 2943 of the Civil Statutes, subsequently repealed by Acts 1963, 58th Leg., ch. 424, § 121(c).*

*Acts 1951, 52nd Leg., ch. 333, § 1, amending Art. 3026a of the Civil Statutes, subsequently repealed by Acts 1963, 58th Leg., ch. 424, § 121(c).*

*Acts 1951, 52nd Leg., ch. 327, § 1, originally incorporated in the Civil Statutes as Art. 3116g but subsequently repealed by Acts 1963, 58th Leg., ch. 424, § 121(c).*

*Article 14.12 of the Election Code of 1951 includes a provision that nothing in the Act shall in anywise alter, amend or repeal Acts 1951, 52nd Leg., p. 71, ch. 44, which added Article 3154(a) to the Civil Statutes, and enacted the provisions originally incorporated in Article 3158a of the Civil Statutes.*

### Art. 1.01a. Definitions

(a) In this code:

(1) "Absentee voting" means the procedure prescribed by Section 37 of this code (Article 5.05, Vernon's Texas Election Code) that allows a voter to vote under certain conditions in an election without the necessity of presenting himself at the precinct polling place on election day.

(2) "Automatic tabulating equipment" or "tabulating equipment" is defined by Subdivision 2(b), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(3) "Ballot" is defined for purposes of voting systems by Section 25, Section 79, of this code (Article 7.14, Vernon's Texas Election Code) and in

Subdivision 2(f), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(4) "Ballot card" is defined by Subdivision 2(d), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(5) "Ballot labels" is defined by Subdivision 2(e), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(6) "Bilingual election materials" means those items required to be printed in English and Spanish by Section 8a of this code (Article 1.08a, Vernon's Texas Election Code) or by the Federal Voting Rights Act of 1965, as amended.<sup>1</sup>

(7) "Campaign treasurer" means the individual designated by a candidate or political committee to be responsible for the administration of contributions and expenditures under Chapter 14 of this code.

(8) "Candidate" is defined for purposes of Chapter 14 of this code by Section 237(A) of this code (Article 14.01, Vernon's Texas Election Code).

(9) "Central counting station" is defined by Subdivision 2(g), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(10) "Certificate of election" means the certificate issued to a person who has received in an election a number of votes sufficient for election to an office.

(11) "Challenge procedure" means the procedure prescribed by Section 91 of this code (Article 8.09, Vernon's Texas Election Code), in which a prospective voter's right to vote is determined when his eligibility to vote is questioned by another person at the polling place.

(12) "Contribution" is defined for purposes of Chapter 14 of this code by Section 237(D) of this code (Article 14.01, Vernon's Texas Election Code).

(13) "Corporation" is defined for purposes of Chapter 14 of this code by Section 237(C) of this code (Article 14.01, Vernon's Texas Election Code).

(14) "County office" is defined for purposes of Chapter 14 of this code by Section 237(J) of this code (Article 14.01, Vernon's Texas Election Code).

(15) "District office" is defined for purposes of Chapter 14 of this code by Section 237(I) of this code (Article 14.01, Vernon's Texas Election Code).

(16) "Election" includes for purposes of this code, except Chapter 14, the meaning prescribed by Section 336 of this code (Article 15.36, Vernon's Texas Election Code). For purposes of Chapter 14 of this code, the term is defined by Section 237(F) of this code (Article 14.01, Vernon's Texas Election Code).

(17) "Election clerk" means a person appointed to assist an election judge in the conduct of an election.

(18) "Election contest" means the procedure prescribed by Chapter 9 of this code for determining the winner of an election.

(19) "Election inspector" means an individual appointed by the secretary of state to observe an election under Section 3 of this code (Article 1.03, Vernon's Texas Election Code).

(20) "Election judge" or "presiding judge" means the official appointed to conduct an election at the election precinct.

(21) "Electronic voting system" is defined by Subdivision 2(a), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(22) "Expenditures" is defined for purposes of Chapter 14 of this code by Section 237(E) of this code (Article 14.01, Vernon's Texas Election Code).

(23) "General election for state and county officers" means the election held on the first Tuesday after the first Monday in November of even-numbered years for officers of the federal, state, and county governments.

(24) "General purpose political committee" is defined for purposes of Chapter 14 of this code by Section 237(Q) of this code (Article 14.01, Vernon's Texas Election Code).

(25) "Ineligible candidate" means a candidate for public office who fails to meet the qualifications for office prescribed by Section 5 of this code (Article 1.05, Vernon's Texas Election Code).

(26) "Joint election" means an election in which two or more political subdivisions have agreed to hold their elections together at common polling places under Section 9c of this code (Article 2.01c, Vernon's Texas Election Code).

(27) "Limited ballot" is defined by Subdivision 1, Section 37c, of this code (Article 5.05c, Vernon's Texas Election Code).

(28) "List of canceled registrations" or "struck list" means the list of voters whose registrations have been canceled under Subdivision 2, Section 46a, of this code (Article 5.14a Vernon's Texas Election Code).

(29) "Measure" is defined for purposes of Chapter 14 of this code by Section 237(M) of this code (Article 14.01, Vernon's Texas Election Code).

(30) "Municipal office" is defined for purposes of Chapter 14 of this code by Section 237(K) of this code (Article 14.01, Vernon's Texas Election Code).

(31) "Notice of election" means the public notice that must be given prior to the conduct of an election.

(32) "Officeholder" is defined for purposes of Chapter 14, of this code by Section 237(B) of this code (Article 14.01, Vernon's Texas Election Code).

(33) "Office of a political subdivision" is defined for purposes of Chapter 14 of this code by Section 237(L) of this code (Article 14.01, Vernon's Texas Election Code).

(34) "Pasters" means paper labels or stickers used to make ballot corrections as provided by Section 60 of this code (Article 6.04, Vernon's Texas Election Code).

(35) "Person" is defined for purposes of Chapter 14 of this code by Section 237(N) of this code (Article 14.01, Vernon's Texas Election Code).

(36) "Place" means the number designation given to offices when two or more offices of the same classification are to be voted on by the voters.

(37) "Political advertising" is defined for purposes of Chapter 14 of this code by Section 237(R) of this code (Article 14.01, Vernon's Texas Election Code).

(38) "Political committee" is defined for purposes of Chapter 14 of this code by Section 237(O) of this code (Article 14.01, Vernon's Texas Election Code).

(39) "Political party" means a voluntary association created for political purposes. It is organized for the purpose of effectuating the will of those who constitute its members, and it has the inherent power of determining its own policies.

(40) "Poll watcher," "watcher," or "supervisor" means a person appointed under Section 19 or 20 of this code (Articles 3.05 and 3.06, Vernon's Texas Election Code) to observe the conduct of an election and to report any irregularities or violations of the law.

(41) "Polling place" means the location designated for the conduct of an election.

(42) "Primary election" is defined by Section 179 of this code (Article 13.01, Vernon's Texas Election Code).

(43) "Protective counter" or "protective numbering counter" is defined by Section 25, Section 79, of this code (Article 7.14, Vernon's Texas Election Code).

(44) "Public counter" or "public numbering counter" is defined by Section 25, Section 79, of this code (Article 7.14, Vernon's Texas Election Code).

(45) "Public office" is defined for purposes of Chapter 14 of this code by Section 237(G) of this code (Article 14.01, Vernon's Texas Election Code).

(46) "Qualified voter" or "qualified elector" means a person who meets all qualifications and requirements for voting as prescribed in Section 34 of this code (Article 5.02, Vernon's Texas Election Code).

(47) "Recount" is the term commonly used in referring to the procedures prescribed by this code for the recounting of paper ballots, the recheck of

voting machine returns, and the recheck or recount of electronically counted ballots.

(48) "Registrar of voters" means the county officer responsible for the registration of voters, keeping of registration records, preparation of lists of registered voters, and other duties incidental to voter registration.

(49) "Residence" is defined by Section 40 of this code (Article 5.08, Vernon's Texas Election Code).

(50) "Returns of election" means a statement prepared by the election judge indicating the total votes polled, the number of votes polled for the candidates, or the votes polled for and against any proposition.

(51) "Special canvassing board" means the body established to count the absentee ballots cast in an election.

(52) "Special election" means an election other than a general or primary election.

(53) "Special election to fill a vacancy" means an election ordered for the sole purpose of filling a vacancy in an office.

(54) "Specific purpose political committee" is defined for purposes of Chapter 14 of this code by Section 237(P) of this code (Article 14.01, Vernon's Texas Election Code).

(55) "State office" is defined for purposes of Chapter 14 of this code by Section 237(H) of this code (Article 14.01, Vernon's Texas Election Code).

(56) "Volunteer deputy registrar" means a volunteer appointed by the registrar of voters as a deputy registrar under Section 52a of this code (Article 5.20a, Vernon's Texas Election Code).

(57) "Voting booth" means an enclosure in which a voter may mark his ballot in secret, the dimensions of which are prescribed by Section 67 of this code (Article 7.02, Vernon's Texas Election Code).

(58) "Voting equipment" is defined by Subdivision 2(c), Section 80, of this code (Article 7.15, Vernon's Texas Election Code).

(59) "Voting machine" means a device on which votes are cast, registered, and totalled by mechanical means.

(60) "Voting year" means the 12-month period beginning March 1 of each year.

(61) "Ward" in reference to a geographical subdivision of a city or town includes every geographical subdivision, by whatever name it is known, from which any members of the municipal governing body are elected by only the voters residing therein.

(62) "Writ of election" means a written statement issued by the county judge that states the date of the election and the offices or propositions to be voted on.

(b) The United States decennial census of date immediately preceding the action in question shall be the basis for determining population under any provision of this code.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 2. Amended by Acts 1967, 60th Leg., p. 1860, ch. 723, § 2, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 1476, ch. 600, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2667, ch. 722, § 1, eff. Aug. 31, 1981.]

142 U.S.C.A. § 1973 et seq.

#### Art. 1.01-1. Expired

This article, derived from Acts 1977, 65th Leg., p. 880, ch. 331, §§ 1 to 7, and relating to the Election Code Revision Commission, expired of its own terms on May 29, 1979.

#### Art. 1.02. County Judge Failing to Act

Whenever, by this title, any duty is devolved upon a county judge, and that office is vacant, or such officer from any cause fails to perform such duty, any two (2) or more of the county commissioners of the county may and shall perform such duty.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 2.]

#### Art. 1.03. Secretary of State as Chief Election Officer

Subd. 1. The Secretary of State shall be the chief election officer of this state, and it shall be his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election laws. In carrying out this responsibility, he shall cause to be prepared and distributed to each county judge, county tax assessor-collector, and county clerk, and to each county chairman of a political party which is required to hold primary elections, detailed and comprehensive written directives and instructions relating to and based upon the election laws as they apply to elections, registration of electors and voting procedures which by law are under the direction and control of each such respective officer. Such directives and instructions shall include sample forms of ballots, papers, documents, records and other materials and supplies required by such election laws. He shall assist and advise all election officers of the state with regard to the application, operation and interpretation of the election laws.

Subd. 2. Not later than the 55th day before each general election for state and county officers, the Secretary of State shall prescribe forms of all blanks necessary under this code and shall furnish same to each county clerk. The Secretary of State shall at the same time certify to each county clerk a list of all the candidates who have been nominated for state and district offices and all other candidates whose names have been certified to the Secretary of State to be placed on the general election ballot.

Subd. 3. Upon petition of fifteen or more resident citizens of any one county to the Secretary of

State, the Secretary of State shall, or may at any time upon his own initiative, appoint inspectors to observe all functions, activities, or procedures conducted pursuant to the election laws of this State. Any such inspectors shall be subject to the direction of and responsible to the Secretary of State and he may terminate any appointment at any time. Any such inspectors may be present at, observe, and take reasonable steps to evidence all activities, functions, and procedures (except for the marking of any ballot by a voter, unless being assisted by an election officer) at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. The Secretary of State or any member of his staff may, upon the initiative of the Secretary of State alone, whether any violation of election laws is suspected or not, be present at, observe, and take reasonable steps to evidence any activities, functions, and procedures at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. Any inspectors appointed under this provision shall report to the Secretary of State any violations of law observed and the Secretary of State may refer the violation to the Attorney General or prosecuting attorney for appropriate action.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 3. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 3; Acts 1967, 60th Leg., p. 1860, ch. 723, § 3, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2074, ch. 681, § 1, eff. June 20, 1975; Acts 1977, 65th Leg., p. 882, ch. 332, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2234, ch. 418, § 1, eff. Aug. 29, 1983.]

#### Art. 1.03a. Tabulation of unofficial returns by secretary of state

Subdivision 1. For each primary election and general election for state and county officers, the secretary of state shall tabulate the unofficial returns as provided by this section, for contested races for nomination or election to a federal or statewide office as listed by Section 61c of this code (Article 6.05c, Vernon's Texas Election Code); the office of state senator; state representative; and member, State Board of Education; and for constitutional amendments, if any. The secretary of state may include other contested races, political party referenda, and any special elections ordered by the governor.

Subdivision 2. (a) Not later than February 1 of each odd-numbered year, the lieutenant governor, speaker of the house of representatives, and secretary of state shall each appoint for a two-year term six persons to serve on an elections advisory task force in connection with the tabulation and reporting of election results under this section. Appointments to the advisory task force shall be made without regard to race, creed, sex, religion, and national origin. Instead of making one of the re-

quired appointments, each appointing officer or his designee may serve on the task force. Each appointing officer shall allocate at least four of his appointments among members of the various media organizations covering elections in this state. The president, or his designee, Texas Association of Broadcasters; president, or his designee, Texas Press Association; president, or his designee, Texas Daily Newspaper Association; and the chief state executive officer, or his designee, of the Associated Press and United Press International, shall also serve on the task force.

(b) The secretary of state shall designate a chairman and vice-chairman from among the media organization membership on the task force. Meetings of the task force shall be held on the call of the chairman.

(c) Not later than the 90th day before each election covered by this section, the secretary of state shall prepare an operations manual that explains the procedures to be used by the secretary in tabulating the returns. The task force shall review the manual and make any recommendations it considers appropriate.

(d) One or more members chosen by the task force shall be present during the tabulation of the returns at each election.

(e) After the election, the task force shall submit a written report to the secretary of state, governor, lieutenant governor, and speaker of the house of representatives evaluating the tabulation process and making any recommendations it considers appropriate.

Subdivision 3. (a) During the tabulation, the secretary of state shall provide a sufficient number of display terminals for media representatives to monitor the tabulation.

(b) The secretary shall provide, if practicable, computer-to-computer direct lines as determined by rules prescribed by the secretary of state for the use of the media.

(c) The secretary shall charge reasonable fees which shall approximate actual costs, to defray the costs of providing media access to the tabulation system. Funds collected under this Act shall be reappropriated to the secretary of state. Any unexpended balance is appropriated for use by the secretary of state during the succeeding fiscal year.

(d) For monitoring the tabulations, the secretary shall provide without charge display terminals to the governor, lieutenant governor, and speaker of the house of representatives in their Capitol offices. The secretary shall also provide printing capability at these locations if printing capability is made available at any location. Members of the working news media may not have access to data from the terminals or printers at these locations.

Subdivision 4. (a) Periodically during the tabulation, the secretary of state shall publish reports covering the various races required to be tabulated under Subdivision 1 of this section to be distributed to the subscribing media. The reports may include:

(1) vote totals for all contested races covered by Subdivision 1 of this section;

(2) vote totals by county for statewide and federal offices;

(3) vote totals for statewide and federal offices in each of the six most populous counties, the total for the next 19 most populous counties, and the total for the remaining 229 counties; and

(4) any other information the secretary of state determines to be relevant.

(b) One copy of the reports published under Paragraph (a)(1) of this subdivision shall be posted periodically for public inspection.

Subdivision 5. (a) After completion of the tabulation, the secretary of state shall publish and distribute final reports for the various races required to be tabulated under Subdivision 1 of this section to the subscribing media. These reports may include:

(1) vote totals for all contested races covered by Subdivision 1 of this section;

(2) vote totals by county for statewide and federal offices;

(3) vote totals for statewide and federal offices in each of the six most populous counties, the total for the next 19 most populous counties, and the total for the remaining 229 counties;

(4) vote totals by county for all races;

(5) vote totals for statewide and federal offices in a minimum of eight regions designated by the secretary of state on the basis of the geographic scope of the electronic media markets; and

(6) any other information the secretary of state determines to be relevant.

(b) The secretary of state shall also publish a report indicating the times the first and last reports of results from each county were received by the secretary.

(c) The secretary of state shall also distribute reports under Subdivision 5(a) of this section to the governor, lieutenant governor, speaker of the house of representatives, and members of the advisory task force. The reports shall also be furnished to other persons on payment of a reasonable charge prescribed by the secretary of state which shall be used to defray the costs of preparing and furnishing the reports.

Subdivision 6. (a) The secretary of state shall provide a backup system for the tabulation of the returns.

(b) The secretary may post for public inspection at 30-minute intervals or whenever they are available any of the reports prepared under this section.

Subdivision 7. (a) This subdivision applies to each election covered by Subdivision 1 of this section in addition to and notwithstanding other provisions of this code.

(b) In precincts using paper ballots, voting machines, or electronic voting systems ballot counters, the copy of the returns required to be delivered to the county clerk shall be delivered not later than two hours, or as soon thereafter as practicable, after the official closing of the polls or after the last person voted at the precinct, whichever is later.

(c) In a precinct using electronic voting system ballots to be counted at a central counting station, the ballots shall be delivered to the station not later than two hours, or as soon thereafter as practicable, after the official closing of the polls or after the last person voted at the precinct, whichever is later. The copy of the returns required to be delivered to the county clerk shall be delivered by the presiding judge of the counting station immediately on completion of the preparation of the returns.

(d) The county clerk shall transmit periodically, by telephone or other electronic means, to the secretary of state the results for the races covered by Subdivision 1 of this section. The results shall be transmitted continuously until complete. Costs of transmission of the results of the races may be paid by the state.

(e) The absentee ballots shall be counted periodically throughout the day by the special canvassing board. The county clerk shall transmit, by telephone or other electronic means, to the secretary of state the complete or partial results of the absentee voting for the races covered by Subdivision 1 of this section at 7 p.m. on election day. If only partial results are available, the results shall be transmitted periodically until complete.

Subdivision 8. The secretary of state shall prescribe by rule any additional procedures necessary to implement this section.

[Acts 1983, 68th Leg., p. 1754, ch. 341, § 1, eff. Aug. 29, 1983.]

#### Art. 1.04. To Certify Death of Officer

When any state or district officer, member of Congress, or member of the Legislature shall die, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the Secretary of State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 4.]

#### Art. 1.05. Ineligibility

Subd. 1. No person shall be eligible to be a candidate for, or to be elected or appointed to, any public elective office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state, is not mentally incompetent as determined by a court, has not been convicted of a felony for which he has not been pardoned or had his full rights of citizenship restored by other official action, and will be 18 years of age or older on the commencement of the term to be filled at the election or on the date of his appointment, and unless he will have resided in this state for a period of 12 months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

Subd. 2. The foregoing requirements do not apply to any office for which the Constitution or statutes of the United States or of this state prescribe the exclusive qualifications for the office or prescribe qualifications in conflict herewith, and in such case the provisions of such other laws control.

Subd. 2a. In the circumstances described in this subdivision, the residence requirements stated herein supersede the six-month precinct residence requirement stated in Subdivision 1 of this section. If the date of an order changing the boundaries of county commissioners precincts or justice of the peace precincts is less than seven months before the applicable date dated in Subdivision 1 of this section, a candidate for a precinct office in a precinct whose boundaries are affected by the order (including any newly created precinct) must have been a resident of the county in which the precinct is

situated for six months next preceding the applicable date stated in Subdivision 1 and must be a resident of the precinct on that date. When a precinct office of an affected precinct is to be filled by an appointment to take effect on or after the date on which the boundary changes become effective but less than seven months after the date of the order making the changes, the appointee must have been a resident of the county for six months next preceding the effective date of the appointment and must be a resident of the precinct on that date.

For the purpose of the first paragraph of this subdivision, the date of the order changing the precinct boundaries means the appropriate date defined in this paragraph, as follows:

(1) If the change is made by an order of the commissioners court which is not challenged in a judicial proceeding brought before the applicable date stated in Subdivision 1 of this section, the date of the order means the date on which the commissioners court entered its order setting out the new boundaries.

(2) If the change is made, confirmed, or modified by a judicial decree or if judicial review of an order of the commissioners court is denied before the applicable date stated in Subdivision 1, the date of the order means the date of entry of the decree (including an order denying a motion for new trial, motion for rehearing, or similar motion) finally concluding the legal action establishing or confirming the boundary lines or denying review of the order establishing the lines.

(3) If on the applicable date stated in Subdivision 1 of this section a final decree concluding legal action has not been entered but there is an outstanding judicial decree putting a change in boundaries into effect or refusing to enjoin or to stay enforcement of an order establishing new boundary lines pending final disposition of the action, the date of the order means the date of entry of that decree.

Subd. 3. A home-rule city by charter may prescribe for its elective officers different age and residence requirements from those prescribed in Subdivision 1 of this section, but a charter may not set a minimum age greater than 21 years or a minimum length of residence in the state or city greater than 12 months next preceding the election.

Subd. 4. Except as provided in Section 104 of this code (Article 8.22, Vernon's Texas Election Code), no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate

received the necessary vote for nomination or election.

Subd. 5. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

Subd. 6. In determining whether a person has complied with a durational residency requirement established by Subdivision 1 or under Subdivision 3 of this section for a municipal public office, residency in an area while the area was not a part of the municipality is considered as residency within the municipality if the area is a part of the municipality on the deadline for compliance with the requirement.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 5. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 4; Acts 1967, 60th Leg., p. 1861, ch. 723, § 4, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2080, ch. 682, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1373, ch. 545, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2745, ch. 469, § 1, eff. Aug. 29, 1983.]

**Art. 1.05-1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975**

#### Art. 1.06. Ineligibility Bars

Neither the Secretary of State nor any county judge of this state, nor any other authority authorized to issue certificates, shall issue any certificate of election or appointment to any person elected or appointed to any office in this state, who is ineligible to hold such office under the Constitution of this state or under Section 5 of this code<sup>1</sup> or any other applicable statute.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 6. Amended by Acts 1967, 60th Leg., p. 1862, ch. 723, § 4a, eff. Aug. 28, 1967.]

<sup>1</sup> Article 1.05.

#### Art. 1.07. Injunction May Issue

The district court shall have authority to issue writs of injunction and all other necessary process at the suit of any interested party, or of any voter, to enforce the provisions of the above two sections and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this state and all cases filed hereunder shall have first right of precedence upon appeal.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 7. Amended by Acts 1967, 60th Leg., p. 1862, ch. 723, § 5, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(37), eff. Aug. 31, 1981.]

Art. 1.08. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 5, 121(a), eff. Aug. 23, 1963

**Art. 1.08a. Bilingual Election Materials in English and Spanish**

**Elections and Areas in Which Bilingual Materials are Required**

Subd. 1. (a) In every general, special, or primary election, by whatever authority held, which is held within a county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the federal census specified in Paragraph (b) of this subdivision, the election materials enumerated in Subdivision 3 of this section shall be printed in both English and Spanish for use at the polling place in each election precinct that is not exempt from this requirement under Subdivision 2. In the elections of a political subdivision that includes territory in more than one county, the bilingual materials must be used in each precinct that includes territory lying within a county to which this subdivision applies unless the precinct is exempt under Subdivision 2.

(b) The census used for determining the percentage of persons of Spanish origin or descent is the last preceding federal decennial census for which the enumeration date was more than two years before January 1 of the calendar year in which the election is held.

**Election Precincts Exempt from Requirement**

Subd. 2. (a) An election precinct situated in a county to which Subdivision 1 applies is exempt from the requirement for bilingual election materials if official census information or other information shows that persons of Spanish origin or descent comprise less than five percent of the inhabitants of the precinct. The authority holding the election has the burden of establishing entitlement to the exemption. Unless otherwise ordered by a court of competent jurisdiction, the officer or body responsible for obtaining the supplies for the election is relieved of the duty to furnish bilingual materials for those precincts for which there has been filed with the clerk or secretary of the political subdivision responsible for the expenses of the election, at least 30 days before the date of the election, a certificate executed by the presiding officer of the governing body of the political subdivision and approved by the governing body, identifying the precinct or precincts for which the exemption is claimed, together with an abstract of the official census information or other information relied on to support the exemption and a map or maps showing the precinct boundaries and the boundaries of the census enumeration areas referred to in the abstract. An authenticated copy of the resolution or other document evidencing

the governing body's approval must be filed with the certificate.

(b) A new certificate and new supporting information must be filed following each decennial census. The supporting information must be revised following a change in election precinct boundaries, and a revised certificate must be filed if the certificate on file no longer correctly reflects the exempt precincts.

(c) In the case of a primary election held by a political party, the exempt precincts are those reflected in a certificate executed by the county judge or the secretary of state and filed in the office of the county clerk. The secretary of state is authorized to file a certificate for a county whenever the county judge has not filed a certificate by the 60th day before the date of the primary or whenever the certificate on file does not correctly reflect the exempt precincts.

**Enumeration of Required Bilingual Materials; Preparation of the Materials**

Subd. 3. (a) At each polling place where election materials in English and Spanish are required, the following materials shall be provided in bilingual form:

(1) Instruction cards for the information of voters shall be printed in both English and Spanish, either on separate cards to be posted side by side or on the same card with the Spanish text alongside the English text.

(2) Where voting machines or voting devices are used, a Spanish translation of the instructions for operating the machines or devices shall be posted in the compartment or booth that the voter occupies.

(3) All ballots and ballot labels may be printed with all ballot instructions, office titles, and propositions appearing in both Spanish and English. If the bilingual listing on the face of the ballot is not utilized, then a Spanish translation of the ballot shall be posted in each compartment or booth, and a statement shall be placed on the face of the ballot in Spanish to inform the voter that the Spanish translation is posted in the compartment or booth; and where paper ballots are used and booths are not provided for all voters, copies of the Spanish translation shall also be made available at the table where the voter selects his ballot, and a sign printed in Spanish shall be displayed at the table, informing the voter that he may take a copy of the Spanish translation for his use in preparing his ballot.

(4) All affidavit forms or other forms that voters are required to sign may have a Spanish translation printed beneath the English text or on the reverse side of the printed matter appearing on the form. If this translation is not utilized, then a Spanish translation of the affidavit shall be made available, and a statement shall be placed on the affidavit in

Spanish that a Spanish translation is available upon request.

(b) The secretary of state shall prepare the Spanish translation for all bilingual materials required by Subdivisions 3 and 4 of this section, except ballot forms for local elections. The secretary of state shall prepare the Spanish translation of the ballot propositions for proposed constitutional amendments and other measures submitted by the legislature if the legislature fails to provide a Spanish text. The officer having the duty to make up the ballot for a local election shall prepare the Spanish translation of ballot material if the governing body of the political subdivision fails to provide a Spanish text.

#### Bilingual Materials for Absentee Voting

Subd. 4. In any countywide election, or in any election held in a political subdivision other than a county, in which bilingual election materials are required at any polling place in the county or other political subdivision, the absentee voting materials shall be printed in both English and Spanish. The forms for applying for an absentee ballot, the ballot envelopes and carrier envelopes, and any other instructions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerated in Subdivision 3 which are used in the voting shall be in bilingual form.

#### Optional Use of Bilingual Materials

Subd. 5. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit.

[Acts 1975, 64th Leg., p. 511, ch. 213, § 1, eff. May 16, 1975.]

#### Art. 1.08b. Encouragement to Vote of Non-English-Speaking Citizens

*Text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18*

It is the intent of the legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.

The presiding judge of a voting precinct in which the election materials provided in Section 8a of this code<sup>1</sup> are required to be used shall make reasonable efforts to appoint election clerks who are fluent in both English and Spanish.

[Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, eff. June 20, 1975.]

<sup>1</sup> Article 1.08a.

*For text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, see art. 1.08b, post*

#### Art. 1.08b. Verification of Petition Signatures

*Text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2*

Whenever an application or petition of a candidate or a political party for a place on a ballot, or any other instrument authorized or required by this code, contains more than 1,000 signatures or names which need verification, the officer with whom the instrument is filed (including officers of political parties as well as public officers) may employ any reasonable statistical sampling method in determining whether the instrument contains the required number of names meeting the prescribed qualifications for signers or for names which may be listed thereon. However, in no event may the sample be less than one percent of the total number of names appearing on the instrument.

[Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, eff. Sept. 1, 1975.]

*For text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, see art. 1.08b, ante*

#### Art. 1.08c. Limitation on Early Filing of Application for Place on Ballot

An application to have the name of a candidate, other than a candidate for the office of precinct chairman, placed on the ballot for any election may not be filed earlier than 30 days before the deadline prescribed by this code for filing the application. An application to have the name of a candidate for the office of precinct chairman placed on the ballot for election may not be filed earlier than 90 days before the deadline prescribed by the code for filing the application. An application filed before that day is void. The secretary of state shall not reimburse

county chairmen for any expenses incurred by the early filing of candidates for the office of precinct chairman before the opening of filing for other offices.

[Acts 1979, 66th Leg., p. 1050, ch. 480, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 520, ch. 108, § 1, eff. Aug. 29, 1983.]

#### Art. 1.08d. Contracts for Election Services

Subd. 1. As used in this section "county officer in charge of election duties" means the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator; and "contracting officer" means the county officer in charge of election duties.

Subd. 2. (a) The county officer in charge of election duties may contract with the governing body of any city, school district, water district, or other political subdivision situated wholly or partly within the county to conduct or supervise the conduct of any single election or series of elections to be held by the political subdivision and to perform or supervise the performance of any or all of the functions enumerated in Subdivision 3 of this section in connection with the holding of the election or elections.

(b) The county officer in charge of election duties may contract with the county executive committee of any political party holding primary elections in the county to conduct or supervise the conduct of the party's general primary election or runoff primary election, or both, to be held within the county in an election year. The contract must be approved by the secretary of state before any duties may be performed or any payments may be made under the terms of the contract.

(c) When requested to do so by a political subdivision or political party, the county elections administrator shall enter into a contract to furnish the services requested in accordance with a cost schedule mutually agreed upon by the contracting parties. If a mutual agreement cannot be reached, the secretary of state shall prescribe the agreement, to which both parties are bound, or, in his discretion, the secretary of state may instruct the county elections administrator to decline to enter into a contract with the requesting party. The county clerk in counties not having the office of county elections administrator is not required to enter into a contract with a political subdivision or political party requesting services, but he may do so at his discretion.

Subd. 3. A contract with a political subdivision pursuant to Subdivision 2 of this section may include any or all of the following services, and a contract with a political party may include any or all of such services that pertain to a party primary:

(1) Recommendations on the formation of election precincts and the location of polling places and preparation of the appropriate documents for establishing the precincts and polling places.

(2) Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate officer or body.

(3) Posting or publication of election notices.

(4) Preparation of lists of persons to recommend for appointment as election judge or clerk and the recruiting and training of the judges and clerks.

(5) Procurement and distribution of election supplies, including the preparation, printing, and distribution of ballots.

(6) Assembly and editing of the lists of registered voters to be used in conducting the election, in conformity with the boundaries of the political subdivision and the election precincts established for the election.

(7) Procurement, preparation, and distribution of election equipment and transportation of equipment to and from the polling places.

(8) The conduct of absentee voting, subject to the provisions of Subdivision 4 of this section.

(9) Arrangements for use of polling places on election day.

(10) In an election using electronic voting equipment, arrangements for use of a central counting station and for the personnel and equipment needed at the counting station and assistance in preparation of programs and test materials for tabulation of the ballots.

(11) Supervision of the handling and disposition of election returns, voted ballots, etc., and tabulation of unofficial returns and assistance in preparing the tabulation for the official canvass.

(12) Information services for voters and election officers.

(13) General overall supervision of the elections and advisory services in connection with decisions to be made and actions to be taken by officers of the political subdivision or political party holding the election.

(14) Preparation of submissions on voting changes to be made to the United States Department of Justice under the federal Voting Rights Act of 1965, as amended.<sup>1</sup>

(15) Preparation of data to support exemptions from the requirements for bilingual materials under Section 8a (Article 1.08a) of this code.

Subd. 4. (a) Notwithstanding any other provision of law, the contracting officer or any regular or temporary employee of the contracting officer may be designated as the absentee voting clerk for any political subdivision other than a municipality. The

contracting officer may not replace the city secretary or clerk as the absentee voting clerk for a city election, but a contract may provide that the contracting officer is to supervise the conduct of the absentee voting and/or is to supply personnel to serve as deputy absentee voting clerks for the election.

(b) Notwithstanding any other provision of law, where a contract provides that the contracting officer is to serve as absentee voting clerk or that the contracting officer is to supply personnel to serve as deputy absentee voting clerks, residence within the county of the contracting officer satisfies the residence requirements for the positions filled under the contract.

Subd. 5. Nothing in this section authorizes or permits a change in the officer with whom or the place at which any document or record relating to an election is to be filed, or the place at which any function is to be carried out, or the officers to make the official canvass of the election returns, or the officer to serve as custodian of voted ballots or other election records, except that in elections held by a political subdivision other than a municipality, the contract may provide that the contracting officer will be custodian of the voted ballots as is permitted under Section 111a (Article 8.29a) of this code.

Subd. 6. A contract may provide that the contracting officer will pay the expenses payable to third persons which are incurred for an election or that the authority holding the election will make the payments directly to the claimants. If the contract provides that the authority holding the election is to pay the claimants, the contracting officer becomes the agent of the authority holding the election and he may contract with third persons in the name of the authority with respect to expenses within the scope of his duties. The contracting officer is not liable for the default of the authority holding the election. If the contract provides that the contracting officer is to pay the expenses, the authority holding the election is not liable for defaults of the contracting officer.

Subd. 7. (a) The contracting officer shall file with the county treasurer a copy of each contract for services to be performed under this section and shall file another copy with the county auditor or, in a county not having an auditor, with the county judge as presiding officer of the commissioners court.

(b) Contracts executed pursuant to this section need not be submitted to the commissioners court for approval. All moneys received by the contracting officer under such contracts shall be deposited in the county treasury in a special fund separate from any other funds, and shall be subject to expenditure by the contracting officer to defray the costs of carrying out the contracts without prior

budgeting or appropriation by the commissioners court. However, all claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid. Salaries of personnel regularly employed by the contracting officer shall be paid from funds regularly budgeted and appropriated for that purpose, but salaries and wages paid to persons especially employed to perform duties under a contract and all other expenses directly attributable to the contract which are charged to the contracting officer shall be paid out of the special fund. From time to time, as surplus amounts accumulate in the special fund, the contracting officer may direct the treasurer to transfer the surplus, in specified amounts, to the special fund created by Section 51b (Article 5.19b) of this code.

Subd. 8. Any of the services to be performed by the contracting officer may be performed by deputies or other employees assigned by him to perform the services. In a county which does not have the separate office of county elections administrator, the county clerk may establish an elections division in his office and assign a deputy clerk to oversee the operation of the division and may delegate to the deputy the power to enter into contracts under this section.

[Acts 1977, 65th Leg., p. 1505, ch. 609, § 5, eff. Aug. 29, 1977.]

1 42 U.S.C.A. § 1973 et seq.

## CHAPTER TWO. TIME AND PLACE

### Art.

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### Art. 2.01. Time and Place

A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1964, and every two years thereafter, at such places as may be prescribed by law after notice as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing there-

for. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m.; provided, that in any county having a population of one million or more, according to the last preceding federal census, the polls may be opened one hour earlier at six o'clock a. m. on order of the commissioners court of such county entered in the minutes thereof. The foregoing authority of the commissioners court shall extend to all elections held within the county, by whatever authority the election may be ordered, but the court may exercise this authority with respect to such elections as it deems necessary or desirable without advancing the opening hour for other elections, subject to the requirement that the court's order must apply uniformly to comparable types of elections held on the same day; and the order shall specify the elections to which it applies. The election shall be held for one day only.

All persons who are within the polling place and all persons who are waiting to enter the polling place at seven 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 voting hours. The presiding judge shall take necessary precautions to prevent voting by any person not present and waiting to vote at the time for official closing of the polls. If feasible, all persons waiting to vote at the time for official closing of the polls shall be required to enter the polling place, and the door to the polling place shall be closed and locked, and each such person shall remain inside the polling place until he has voted. If such procedure is not feasible, numbered identification cards or tokens shall be distributed to identify those persons waiting to vote at the time for official closing of the polls.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 9. Amended by Acts 1961, 57th Leg., p. 125, ch. 68, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 6; Acts 1975, 64th Leg., p. 2075, ch. 681, § 2, eff. June 20, 1975.]

#### Art. 2.01a. Other Elections on a Primary Election Day Prohibited

No general or special election of any nature may be held on the same day as a primary election provided for in Section 181 of this code.<sup>1</sup>

[Acts 1969, 61st Leg., p. 2662, ch. 878, § 1, eff. Sept. 1, 1969.]

<sup>1</sup> Article 13.03.

#### Art. 2.01b. Dates for Holding General and Special Elections

(a) Except as provided in Subsections (b) and (e) of this section, every general (regular) or special election held by the state or by any county, city, school district, water district, or any other political subdivision or agency of this state must be held on

one of the following dates: the third Saturday in January, the first Saturday in April, the second Saturday in August, or the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be submitted to the voters in an election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city or town wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a population of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and amendments to the constitution of this state submitted to the voters by the legislature. This requirement does not apply to runoff elections, political subdivisions using the convention method of election, local option elections held under the Alcoholic Beverage Code, elections for bonds and elections for school maintenance taxes, to the biennial party primary elections held to nominate candidates for public office, or to confirmation elections, director elections, and maintenance tax elections, held in conjunction with the creation of political subdivisions provided for by Article XVI, Section 59, of the Texas Constitution, which furnish water or sewer services to household users. An election held on an unauthorized date is void.

(b) When a vacancy in office is to be filled at a special election, the election must be called for a date specified in Subsection (a) unless the governor finds the existence of an emergency that warrants calling the election for an earlier date. If the governor orders an emergency election, the election proclamation shall include a statement that identifies the nature of the emergency. An emergency election ordered by the governor may not be held on a day other than Tuesday or Saturday. When the governing body of a political subdivision wishes to call an emergency special election to fill a vacancy, the governing body shall submit a request to the governor for permission to call the election, and the governor may grant permission if he finds that an emergency exists.

(c) In even-numbered years the only issues which may be included on the ballot of the election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, the election of officers of a home-rule city with a popu-

lation of less than 30,000, according to the last preceding federal census, where such city or town used, prior to 1975, the first Tuesday after the first Monday in November of even-numbered years as the date for the election of its officers, and constitutional amendments submitted to the people by the legislature. The governing body of local political subdivisions shall be allowed to choose for their permanent election day any of the above four election dates. The filing deadline for candidates, the dates for canvassing the returns of the election, the date for commencement of terms of office filled at the election, and any other date incidental to the election shall fall on the date that has the same relationship to the date of the election as provided under the preexisting law. Where by preexisting law the terms of office are set to commence on a specified calendar date and the date of the election is changed by this section, the governing board of the political subdivision shall set the date on which the terms begin until otherwise provided by law. A runoff election, when required, shall be held on a date that provides the same time interval with relation to the main election as provided under the preexisting law.

(d) When under the provisions of Subsection (c) the beginning date for a term of office is changed to fall on an earlier date, the current term on the effective date of this section is shortened accordingly, and the holder of the current term shall surrender the office to his successor on the beginning date of the succeeding term or as soon thereafter as the successor has qualified. When the beginning date is changed to fall on a later date, the incumbent in office at the expiration of the current term as set by preexisting law shall continue to perform the duties of the office, as required by Section 17 of Article XVI of the Texas Constitution, until the successor has qualified for the succeeding term.

(e) When a preexisting law requires that a special election be called within a specified time period after the occurrence of a certain event, the election shall be called for a date authorized in Subsection (a) of this section that falls within that time period; or if there is no authorized date within the period that allows sufficient time to comply with other requirements of law, the election shall be called for the first authorized date after its expiration, except that the election shall be called for some other date within the time period where the constitution requires it.

[Acts 1975, 64th Leg., p. 2295, ch. 715, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 2032, ch. 811, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 503, ch. 234, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 888, ch. 314, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2401, ch. 607, § 1, eff. Aug. 31, 1983; Acts 1983, 68th Leg., p. 322, ch. 71, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1975 Act added art. 2.01c; § 3(a) provided that the Act shall take effect on January 1, 1976; § 3(b) thereof,

providing that the Act shall no longer be in effect after the first Monday after the third Saturday in January, 1978, was repealed by Acts 1977, 65th Leg., p. 2032, ch. 811, § 1.

Section 3 of the 1977 Act provides:

"The provisions of Sections 9b and 9c, Texas Election Code (Articles 2.01b and 2.01c, Vernon's Texas Election Code), enacted by Chapter 715, Acts of the 64th Legislature, 1975, supersede any inconsistent or conflicting provision of any other statute enacted before the regular session of the 65th Legislature, provided, that nothing contained herein shall be construed as superseding the provisions of Subsection (i), Section 130.082, Texas Education Code, as amended. They also supersede any inconsistent or conflicting provision of any other statute enacted at the regular session of the 65th Legislature, regardless of the relative order of passage with respect to this Act, unless the other statute expressly states that its provisions prevail over the provisions of Sections 9b and 9c."

#### Art. 2.01c. Joint Elections of Political Subdivisions

(a) When two or more political subdivisions of this state are holding elections on the same day in all or part of the same territory, the governing bodies of any two or more of the political subdivisions may agree to hold their elections jointly in the election precincts that can be served by common polling places. When any other statute makes a joint election mandatory, a joint election must be held in accordance with the terms of the statute; and if any other political subdivisions are holding elections in any part of the same territory, any or all of them may also join in the agreement for a joint election.

(b) When a joint election is to be held, a resolution reciting the terms of the agreement, including the method for allocating the expenses for the election, shall be adopted by the governing body of each of the participating political subdivisions. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices or propositions to be voted on at that polling place, or for separate ballot forms; provided, however, that no voter shall be given a ballot containing any office or proposition on which the voter is ineligible to vote. One set of election officers may be appointed to conduct the joint election, and any person who is qualified to serve as an election officer in the election of any one of the participating political subdivisions may be appointed to serve in the joint election. Poll lists, tally lists, return forms, and other records for the various elections may be combined in any manner convenient and adequate to record and report the results of each election. Where paper ballots or punchcard ballots are used, one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board, or body designated by law to receive and canvass the returns for each election, or one of such officers, boards, or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where other

records are combined, the officer designated by law to be the custodian of the records for any participating subdivision may be designated in the agreement to be the custodian of the combined records. Where the counted ballots for more than one subdivision are deposited in a single ballot box, the officer designated by law to be the custodian of the voted ballots for any one of the subdivisions may be designated in the agreement to be the custodian.

[Acts 1975, 64th Leg., p. 2297, ch. 715, § 2, eff. Jan. 1, 1976.]

**Art. 2.01d. Joint Elections of Certain Political Subdivisions in Certain Counties**

(a) Political subdivisions with any territory in a county containing a city with a council-manager form of government, which city has a population of 900,000 or more, that hold the general election for their officers on the first Saturday in April in all or part of the same territory within the county shall hold their elections jointly in the election precincts that can be served by common polling places located within the county. Except as otherwise provided by this section, each joint election shall be held in accordance with Section 9c of this code (Article 2.01c, Vernon's Texas Election Code). Two or more political subdivisions required to hold joint elections under this section that are also holding the elections in all or part of the same territory outside the county may hold joint elections in that territory as provided by Section 9c.

(b) Each joint election shall be conducted by the county elections administrator or by the county clerk if the office of administrator does not exist unless the governing bodies of the political subdivisions participating in the election agree unanimously, not later than the 90th day before election day, to appoint an official of one of the subdivisions to conduct the election.

(c) One set of election officers shall conduct the election. The returns shall be made to and the canvass made by the appropriate authority of each participating political subdivision.

(d) If the county elections administrator or county clerk conducts the election, the decisions regarding the conduct of the election required to be made under Section 9c of this code (Article 2.01c; Vernon's Texas Election Code) shall be made by that officer. If another official conducts the election, those decisions shall be made by agreement as provided by Section 9c.

[Acts 1983, 68th Leg., p. 4805, ch. 844, § 1, eff. Aug. 29, 1983.]

**Art. 2.02. Formation of Election Precincts; Consolidation for Certain Elections**

Unless a specific statute provides otherwise, the following rules shall govern the establishment of election precincts and the designation of polling

places for the conduct of the various kinds of elections held within this state.

(a) County-wide elections held at the expense of the county. In general elections for state and county officers, special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), and in all other county-wide elections held at the expense of the county other than elections coming within Subsection (d) of this section, the election precincts shall be the regular election precincts established by the commissioners court pursuant to Section 12 of this code (Article 2.04, Vernon's Texas Election Code). The commissioners court shall designate the polling place for each regular precinct, in accordance with the following procedure. The county officer in charge of election duties (the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator) shall recommend to the commissioners court the location of the polling place for each precinct, and the commissioners court shall designate as the polling place the location so recommended unless good cause exists for rejecting the recommendation.

(b) Municipal elections. The governing body of each incorporated city or town shall establish the election precincts and designate the polling places for elections held by such city or town, in accordance with the provisions of Section 13 of this Code.<sup>1</sup>

(c) Elections held by other political subdivisions. In elections held by other political subdivisions (including but not limited to school districts, junior college districts, districts created pursuant to Article III, Section 52 or Article XVI, Section 59 of the Constitution of Texas, and other similar districts), the governing body of the political subdivision shall establish the election precincts and designate the polling places for elections held by such subdivision.

(d) Elections held by the county, which affect another political subdivision. In any election called by the commissioners court or the county judge in connection with or relating to the creation, organization, reorganization, functioning or existence of a municipality or of a political subdivision described in Paragraph (c) of this section, the authority calling the election shall designate the election precincts and the polling place in each precinct for such election.

(e) Other elections held by the county. In any other special election called by the commissioners court or the county judge which is ordered for only part of the county, the authority calling the election shall designate the election precincts and the polling place in each precinct for such election.

(f) Primary elections. In all primary elections held by political parties for nominating candidates

to be voted on at general and special elections held at the expense of the county, the election precincts shall be the county election precincts established by the commissioners court pursuant to Section 12 of this Code.

(g) In any election for which the election precincts are required to be those formed under the provisions of Section 12 of this code, if in any county there is no local office or proposition to be voted on by the voters of only that county or a part of that county, the authority holding the election may combine any two or more regular election precincts into consolidated precincts for such election in that part of the county having no such local office or proposition to be voted on if it appears that the voters included within each consolidated precinct can be adequately and conveniently served at one polling place; provided, however, that there shall always be at least one consolidated precinct wholly within each commissioners precinct of the county.

(h) All election precincts, by whatever authority established, shall be described by natural or artificial boundaries or survey lines, and shall be designated by name or number. There shall be one polling place, and no more, for each election precinct, and the notice of the election shall state the location of the polling place in each precinct.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 10. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 7; Acts 1967, 60th Leg., p. 1862, ch. 723, § 6, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 1508, ch. 609, § 6, eff. Aug. 29, 1977.]

<sup>1</sup> Article 2.05.

### Art. 2.03. Held in Public Buildings

(a) In all cases where it is practicable to do so, all elections—general, special, or primary—shall be held in some schoolhouse, fire station, or other public building within the limits of the election precinct in which such election is being held. No charge shall be made for the use of such building, except that any additional expense actually incurred by the authorities in charge of the building on account of the holding of the election therein shall be repaid to them by the authority liable for the expenses of holding the election under the existing law. The authority liable for the expenses of the election may demand an itemized statement of the additional expense incurred for use of the building before making its remittance for such expense. If no public building is available, the election may be held in some other building, and any charge for its use shall be paid as an expense of the election.

(b) The commissioners court of any county in this state is authorized to make the necessary expenditure from the permanent improvement fund of the county to construct or purchase a suitable building for holding elections in each precinct formed by the commissioners court for which no other public build-

ing is available. The building shall be made available without cost for the holding of any general, special, or primary election held within territory embracing the location of the building upon the request of the authority conducting the election, except that the county shall be reimbursed for any additional expense actually incurred on account of holding the election therein. If more than one authority requests the use of the building for the same day, the commissioners court shall determine within its discretion which authority shall be permitted to use it if all elections for which its use is requested for the same day cannot be held in the building simultaneously. The commissioners court may permit the building to be used for purposes other than the holding of elections, either with or without charge, when it is not being used for that purpose.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 11. Amended by Acts 1965, 59th Leg., p. 1314, ch. 603, § 1; Acts 1967, 60th Leg., p. 1862, ch. 723, § 6a, eff. Aug. 28, 1967.]

### Art. 2.03a. Accessibility of Polling Places to the Elderly and Physically Handicapped

(a) Each polling place must be accessible to and usable by the elderly and physically handicapped. Each polling place must meet the following standards of accessibility:

(1) the polling place must be on the ground-level floor or be accessible from the ground-level floor by an elevator with doors that provide an opening of at least 30 inches in width;

(2) doors, entrances, and exits used to gain access to or egress from the polling place must have a minimum width of 30 inches;

(3) any curb adjacent to the main entrance to a polling place must have curb cuts or temporary nonslip ramps;

(4) any stairs necessary to enter the polling place must have a handrail and nonslip ramp; and

(5) the polling place may not have a barrier that impedes the path of the physically handicapped to the voting booth.

(b) Subsection (a) of this section does not apply to a polling place that is temporary or that is a private building.

(c) Each authority responsible for designating polling places may only designate sites that meet the standards of accessibility prescribed by Subsection (a) of this section, except that a site not meeting the standards may be designated if:

(1) an acceptable and accessible site that is available for the election does not exist within the precinct; and

(2) it is anticipated that the site can be brought into compliance with the standards by affirmative governmental action.

(d) Not later than January 1, 1986, the commissioners court in each county shall provide a polling place that complies with Subsection (a) of this section in at least 60 percent of the county election precincts. Not later than January 1, 1987, the commissioners court in each county shall provide a polling place that complies with Subsection (a) of this section in at least 85 percent of the county election precincts. Not later than January 1, 1988, the commissioners court shall provide a polling place that complies with Subsection (a) of this section in each county election precinct. The site must be available for use as a polling place on every day that an election may be held within the precinct by any authority that holds elections. The commissioners court may make expenditures from either the general fund or the permanent improvement fund to bring an existing county-owned site into compliance with Subsection (a) of this section.

(e) The governing body of each political subdivision that holds elections shall cooperate with the commissioners court in its respective county in implementing this section and is subject to the same deadlines for compliance as prescribed by Subsection (d) of this section. If the authority holding an election rejects a county-designated polling place that is available and chooses to use a different site of its own designation, it must provide a polling place that complies with Subsection (a) of this section at its own expense. A political party that is holding a primary election may not reject an available county-designated polling place without the prior consent of the secretary of state.

[Acts 1983, 68th Leg., p. 2022, ch. 366, § 1, eff. Aug. 29, 1983.]

#### Art. 2.04. County Election Precincts Formed by Commissioners Court

Subd. 1. Each county shall be divided into convenient election precincts by the Commissioners Court of the county, each of which precincts shall be differently numbered and described by natural or artificial boundaries or survey lines by an order entered upon the minutes of the Court. At any July or August term, the Court may make such changes in the election precincts as they deem proper, by such order entered upon the minutes of the Court. When such an order is entered, they shall immediately thereafter publish in some newspaper in the county for three consecutive weeks a notice of the entry of such order, giving a brief description in general terms of the changes made, without the necessity of including in such notice the field notes or other detailed description of the precinct boundaries. If there be no newspaper in the county, then a copy of such order shall be posted in some public

place in each election precinct in the county which is affected by the order.

Subd. 2. Subject to the provisions of Subdivision 7(a) of this Section, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in counties of less than 100,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 100 but not less than 50 voters; and provided further, that in counties of less than 50,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 50 voters upon the petition of 25 or more registered voters within the county. In precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code (Article 7.14 or Article 7.15, Vernon's Texas Election Code), the maximum number of voters shall be 3000, except that in counties of less than 175,000 population the maximum number of voters shall be 5000.

Subd. 3. In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct unless there are more than two thousand registered voters residing in the ward. In such cities and towns, no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed within the city or town, and the finding of the Commissioners Court shall be conclusive. If on September 15 of any year there exists any election precinct in the county which does not comply with the requirements of this paragraph, the Commissioners Court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Subdivision 1 of this Section.

Subd. 4. In cities, towns and villages of less than ten thousand inhabitants, election precincts may be formed without regard to the wards or the corporate limits of the city, town or village.

Subd. 5. Except as provided by Subdivision 7(c) of this Section, changes in election precincts shall not become operative in the holding of elections until the beginning of the following voting year. The Commissioners Court shall cause to be made out and delivered to the voter registrar before the first day of each September a certified copy of such last order for the year following; provided, how-

ever, that any order entered during the month of September, as provided in Subdivisions 2 and 3 of this Section, shall be delivered to the voter registrar forthwith.

Subd. 6. (a) This subdivision applies only to counties having a population of 500,000 or more, according to the last preceding federal census.

(b) If a change in the boundary of one or more county election precincts will be considered at a meeting of the Commissioners Court, not later than seven days before the day of the meeting, the Commissioners Court shall give written notice to each county chairman of a political party and to the affected precinct chairmen and presiding precinct election judges of the proposed change, identifying the precincts to be considered and the date, place, and hour of the meeting.

(c) Not later than seven days after entry of an order changing the boundary of one or more county election precincts, the Commissioners Court shall give written notice to the persons specified in Subsection (b) of this subdivision that the change has been made.

(d) Notice required by this subdivision may be delivered by regular first-class mail or by any other method. Notice delivered by mail is considered delivered when deposited in the mail. Notice delivered by mail must be addressed to the most recent address appearing on the records of the county clerk or Commissioners Court.

(e) The Commissioners Court shall maintain a record containing a copy of each notice given under this subdivision and the date of its delivery. The record may be destroyed or discarded at any time after one year following the date of delivery of the notice.

(f) Failure to deliver notice as required by this subdivision nullifies the boundary change as to which notice was required.

Subd. 7. (a) A county election precinct may not contain territory from more than one of the following territorial units:

- (1) commissioners precinct;
- (2) justice precinct;
- (3) congressional district;
- (4) state representative district;
- (5) state senatorial district; or
- (6) ward in a city or town with a population of 10,000 or more.

(b) Except as provided by Paragraph (d) of this subdivision, the Commissioners Court may order a change in a boundary of a county election precinct at any time if the change is necessary to give effect to a redistricting of territorial units specified by Paragraph (a) of this subdivision. The order shall

be published as provided by Subdivision 1 of this Section and delivered to the voter registrar promptly after its adoption.

(c) For an election precinct boundary change ordered pursuant to Paragraph (b) of this subdivision, the Commissioners Court may order an earlier effective date than that prescribed by Subdivision 5 of this Section if:

(1) an election for an officer of the redistricted territorial unit is, or may be scheduled, to be held before the effective date prescribed by Subdivision 5 of this Section and the territorial unit contains the election precinct as changed; and

(2) the voter registrar will have sufficient time to correct the voter registration records before the effective date.

(d) The Commissioners Court shall order the changes in county election precinct boundaries that are necessary to give effect to a redistricting done pursuant to Article III, Section 28, of the Texas Constitution not later than November 30 of the year in which the redistricting is done. The order shall be published as provided by Subdivision 1 of this Section and delivered to the voter registrar promptly after its adoption.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 12. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 7; Acts 1965, 59th Leg., p. 1552, ch. 678, § 1, eff. June 18, 1965; Acts 1967, 60th Leg., p. 1863, ch. 723, § 7, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1408, ch. 542, § 4, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 265, ch. 112, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1476, ch. 600, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1138, ch. 545, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2241, ch. 536, § 1, eff. June 12, 1981; Acts 1983, 68th Leg., p. 4871, ch. 860, § 1, eff. Aug. 29, 1983.]

#### Art. 2.04a. County Election Precinct Maps Furnished to Secretary of State

Subd. 1. Between September 1, 1981, and January 1, 1982, each county clerk in the State shall furnish to the Secretary of State a map of his county showing the boundaries of the county commissioner precincts and the county election precincts as they exist under the most recent orders of the County Commissioners Court. The map may be in multiple sections. It shall show roads, streets, streams, city boundaries, and other natural or artificial landmarks which are used as boundary lines for the county commissioner precincts and the county election precincts, in sufficient detail and with sufficient designation by number, name, or other means of identification to depict the precinct boundaries in an accurate and understandable manner.

Subd. 2. When the Commissioners Court makes any changes in the county commissioner precincts or the county election precincts by order entered on or after September 1, 1981, within four months

after the entry of the order the county clerk shall furnish to the Secretary of State a map depicting the changes in the manner described in Subdivision 1 of this section.

Subd. 3. The Secretary of State shall file and preserve as a public record each map received under the provisions of this section for a period of 10 years from the date on which it is filed, after which time it may be transferred to the records management division of the State Library for further retention for a period of 20 years. At the expiration of 30 years from the date of filing by the Secretary of State, the State Librarian may dispose of the maps in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

[Acts 1971, 62nd Leg., p. 46, ch. 24, § 1, eff. March 18, 1971. Amended by Acts 1981, 67th Leg., p. 2661, ch. 717, art. 1, § 1, eff. Aug. 31, 1981.]

Article 2 of the 1981 amendatory act, amending an Election Code as enacted by S.B. 610, 67th Legislature, Regular Session, 1981, and adding art. 2350q to the Revised Civil Statutes of Texas, 1925, was effective only if S.B. 610 became law, which it did not.

#### Art. 2.05. Election Precincts for Municipal Elections

The election precincts for municipal elections and the location of the polling place in each precinct shall be designated by the governing body of the municipality. The governing body may combine two or more county election precincts into one municipal precinct, but shall not include parts of one county precinct in more than one municipal precinct. The certified list of qualified voters for all county election precincts in which voters reside who are to vote at a polling place designated by the governing body shall be used at such polling place. In all cities and towns in which the number of voters at the last general municipal election does not exceed four hundred in number, only one polling place shall be opened at any municipal election; and all officers of such cities and towns to be elected shall be voted for at such polling place.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 13. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 7.]

#### Art. 2.06. Where to Vote

Except as permitted in Sections 48a and 50a of this code,<sup>1</sup> all voters shall vote in the election precinct in which they reside.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 14. Amended by Acts 1971, 62nd Leg., p. 2509, ch. 827, § 1, eff. Aug. 30, 1971.]

<sup>1</sup> Articles 5.16a and 5.18a.

#### Art. 2.06a. Municipal and School District Election Dates

In counties where voting machines or electronic voting systems are used, all municipal and school district elections in which candidates are running

for office, including without limitation, elections in home-rule cities and independent, municipal, and county school districts, otherwise scheduled to be held within 14 days of the date on which a proposed amendment or amendments to the Constitution of Texas are to be submitted to a vote of the electorate, may be held on the same date as the constitutional amendment election if the governing body of the municipality or the school district so provides. If the governing body changes the date of the elections as authorized by this Act, it may set the date of any second or runoff primary which may be necessary for any date not earlier than the 14th day after the first election and not later than the latest date which would have been permissible if the date of the first election had not been changed. This Act shall make no change in the term of office or commencement thereof in any election affected hereby.

[Acts 1975, 64th Leg., p. 2108, ch. 688, § 1, eff. Sept. 1, 1975.]

#### Art. 2.06-1. Expired

This article, editorially classified and relating to municipal and school district election dates for 1973 elections only, was derived from Acts 1973, 63rd Leg., p. 1083, ch. 418.

### CHAPTER THREE. OFFICERS OF ELECTION

#### Art.

- 3.01. Appointment of Election Officers.
- 3.02. Duties and Working Hours of Clerks.
- 3.03. Qualifications of Judges, Clerks and Watchers.
- 3.04. Disqualifications.
- 3.05. Appointment of Watchers.
- 3.06. Watchers at Elections on Questions or Propositions.
- 3.07. Service, Duties, and Privileges of Watchers.
- 3.08. Pay of Judges and Clerks.
- 3.09. Precinct Judges Notified.
- 3.09a. School of Instruction for Election Officers.
- 3.09b. Training of Election Officers.

#### Art. 3.01. Appointment of Election Officers

(a) For county elections. The commissioners court at its July term shall appoint from among the citizens of each election precinct one qualified voter as presiding judge of elections held at the expense of the county in that precinct and one qualified voter as alternate presiding judge, each of whom shall continue to act until his successor is appointed. Whenever a vacancy arises in either of such offices, the commissioners court may fill the vacancy at any regular or special term of court. All orders appointing judges and alternates shall be entered of record. Each presiding judge shall appoint two voters, who are eligible for appointment, to serve as election clerks, and shall appoint for each election as many additional clerks as he deems necessary for the proper conduct of the election, not to exceed the maximum number authorized by the commissioners court. The commissioners court shall fix the maxi-

maximum number of clerks that may be appointed for each precinct, and may fix different maximums depending on the type of election. The clerks shall be selected from different political parties, when practicable. The chairman of the county executive committee of each of the two parties whose candidate for Governor received the most votes statewide in the last prior gubernatorial general election may submit a list of not less than two eligible nominees who are members of that party to each election judge at least 30 days prior to the date of a general election or 10 days prior to the date of a special election. If any such list is submitted to him, the election judge shall appoint at least one clerk from each list submitted. For the purpose of this section, the term "members of that party" means persons who affiliated with the party in the manner prescribed in Section 179a of this code. (Article 13.01a, Vernon's Texas Election Code) during the last preceding set of primary elections and conventions.

(a-1) List of recommended appointees for judges of county precincts. Prior to the time at which the commissioners court makes its appointment of election judges pursuant to Subsection (a) of this section, the county officer in charge of election duties as defined by Section 8d of this code<sup>1</sup> shall select a presiding judge and an alternate presiding judge for each county election precinct to recommend for appointment to those offices and shall present a list of his selections to the commissioners court. The court shall give due consideration to these recommendations in making its appointments. This procedure shall also be followed whenever a vacancy is to be filled in the office of presiding judge or alternate presiding judge.

(b) For municipal elections. If a city charter provides the method for appointing election officers for elections held by the city, its provisions shall control, but there shall be at least three election officers at each polling place. Unless a different method is prescribed by the city charter, the mayor, or if he fails to do so, then the governing body of the municipality, shall appoint for each municipal election precinct a presiding judge and an alternate presiding judge for elections held by such municipality and shall fix the maximum number of clerks which may be appointed to serve in each precinct, which shall be not less than two, and the presiding judge for each precinct shall appoint two clerks, and as many additional clerks within the authorized limit as he deems necessary for the proper conduct of the election. In any city in which political parties nominate candidates for municipal offices, the election officers shall be selected from different political parties when practicable.

(c) For elections held by other political subdivisions. In any election held by a political subdivision other than a city or a county, the statutes pertaining to the particular type of election shall govern

the appointment of election officers if such statutes provide for their appointment. In the absence of such provisions, the governing body of the subdivision shall appoint a presiding judge and an alternate presiding judge for each election precinct of the subdivision and shall fix the maximum number of clerks which may be appointed to serve in each precinct, which shall be not less than two; and the presiding judge for each precinct shall appoint two clerks and as many additional clerks within the authorized limit as he deems necessary for the proper conduct of the election.

(d) For primary elections. The primary elections of a political party shall be conducted in each precinct by a presiding judge, to be appointed by the chairman of the county executive committee of the party, with the assistance and approval of a majority of the members of the county executive committee. The presiding judge shall select two clerks to assist in conducting the election; and additional clerks may be appointed under such rules as may be made by the county executive committee. An alternate presiding judge shall be appointed for each precinct in like manner as the presiding judge.

(e) Alternate judge to preside. Whenever the regularly appointed presiding judge is unable to serve at an election, the alternate presiding judge shall serve as the presiding judge for that election. In any election conducted by the regularly appointed presiding judge, he shall appoint the alternate presiding judge as one of the clerks to serve at such election.

(f) Appointment of election officers for certain elections ordered by county officers. The election judges appointed under Paragraph (a) of this Section shall hold all elections ordered by the Governor or by the County Judge, county Commissioners Court, or other county authority, which are required to be held in the regular county election precincts established pursuant to Section 12 of this Code.<sup>2</sup> In any election ordered by the Commissioners Court, the County Judge, the county board of school trustees, or other county authority, which are not required to be held in the regular county election precincts or for which other election precincts may be designated under the provisions of Section 10 of this Code, the statutes pertaining to the particular type of election shall govern the appointment of election officers if such statutes provide for their appointment. In the absence of such provisions, the authority calling the election shall appoint a presiding judge and an alternate presiding judge for each election precinct and shall fix the maximum number of clerks which may be appointed to serve in each precinct, which shall not be less than two; and the presiding judge for each precinct shall appoint two clerks and as many additional clerks within the

authorized limit as he deems necessary for the proper conduct of the election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 15. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 8; Acts 1965, 59th Leg., p. 1552, ch. 678, § 2, eff. June 18, 1965; Acts 1967, 60th Leg., p. 1863, ch. 723, § 8, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 2, eff. Sept. 1, 1969; Acts 1977, 65th Leg., p. 1508, ch. 609, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 2, eff. Aug. 29, 1977.]

<sup>1</sup> Article 1.08d.

<sup>2</sup> Article 2.04.

#### Art. 3.02. Duties and Working Hours of Clerks

(a) In all elections, general, special, or primary, the presiding judge shall be in charge of the management of the polling place and the conduct of the election. He shall designate the working hours and assign the duties to be performed by the clerks. Clerks may be assigned to work for different lengths of time and to begin work at different hours during the day while the polls are open or during the time necessary for counting the ballots after the polls are closed. Clerks who begin work at any time before closing of the polls shall remain on duty without leaving the polling place while the polls are open, except for such periods of absence for meals and other necessary reasons as may be permitted by the presiding judge.

(b) One or more clerks shall be assigned to assist in checking the names of voters on the list of registered voters and performing such other duties as are necessary in receiving the voters and supervising the deposit of the voted ballots. At every election there shall be kept a poll list in the number of copies required by law on which an election officer shall enter the name of each voter at the time he votes. In lieu of a poll list, the signature roster, together with any other forms, may be combined with the list of registered voters in the format prescribed by the secretary of state.

(c) In elections where paper ballots are used, the ballots shall be counted by one or more sets of counting officers, each set to consist of one judge or clerk who shall read the ballots, and one or more clerks who shall enter the votes on tally lists prepared for the election. As a safeguard in the accuracy of the tallying, the votes shall be entered on three original tally lists, and during the progress of the counting the lists shall be compared and errors and discrepancies shall be corrected, and at the close of the counting the tally clerks shall certify officially to the correctness of the lists.

(d) The clerks may be assigned to perform such other duties as the presiding judge directs.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 16. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 8; Acts 1977, 65th Leg., p. 590, ch. 209, § 1, eff. Aug. 29, 1977.]

#### Art. 3.03. Qualifications of Judges, Clerks and Watchers

(a) All judges of any general, special, or primary election shall be qualified voters of the election precinct in which they are named to serve. Unless otherwise provided in a statute pertaining to the specific type of election being held, in any general, special, or primary election all clerks and watchers shall be qualified voters of the county if the election is countywide, and shall be qualified voters of the city or other political subdivision in which the election is held if less than countywide, but it shall not be necessary that they reside within the election precinct in which they are named to serve.

(b) No person shall serve as a judge or a clerk in any general, special, or primary election who is employed by any candidate whose name appears on the ballot in that election either for a public office or for the party office of county chairman, or who is related to such candidate within the second degree either by affinity or consanguinity. Within the meaning of this section, a governmental employee is employed by the officer or officers who head the department or agency in which he is employed.

(c) No watcher shall be an employee or employer of any election judge or clerk in the election precinct in which he is named to serve or related to any such election officer within the second degree either by affinity or consanguinity.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 17. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 9; Acts 1967, 60th Leg., p. 1864, ch. 723, § 9, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 966, ch. 363, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1652, ch. 649, § 1, eff. Aug. 29, 1977.]

#### Art. 3.04. Disqualifications

Subd. 1. Except as otherwise provided herein, no one who holds an office of profit or trust under the United States or this state, or any city or town in this state, or within 30 days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for public office, or who is not a qualified voter, shall act as judge, clerk, or watcher of any election, general, special, or primary. The holding of a nonlucrative office does not disqualify a person to act as a judge, clerk, or watcher in any election other than an election held by a county, city, school district, or other political subdivision of which he is an officer. The holding of a lucrative office, except notary public, disqualifies the holder to act as a clerk or watcher in any election held by a county, city, school district, or other political subdivision of which he is an officer or in a primary election at which nominations for offices of that political subdivision are to be made, but does not disqualify him to serve in any other election. As used in this subdivision, the term "officer of a county" includes only

those officers who serve a county or one of its precincts in its capacity as a political subdivision.

Subd. 2. The offices referred to in Subdivision 1 of this section do not include offices of a political party, and no one shall be disqualified to act as judge, clerk, or watcher at an election by reason of his holding or being a candidate for the office of county chairman or precinct chairman or other office of a political party.

Subd. 3. No one shall act as chairman or as member of any district, county, or city executive committee of a political party who is not a qualified voter, or who is an officeholder or a candidate for nomination to or election to any office that would appear on a general election ballot.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 18. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 9; Acts 1969, 61st Leg., p. 2662, ch. 878, § 3, eff. Sept. 1, 1969; Acts 1977, 65th Leg., p. 966, ch. 363, § 2, eff. Aug. 29, 1977.]

#### Art. 3.05. Appointment of Watchers

(a) By political parties. The chairman of the county executive committee for each political party that has a nominee or nominees on the official ballot at any general or special election, or, if the chairman failed to act, any three members of such committee, may appoint one watcher for each election precinct by delivering to the watcher, prior to the day of the election, a written certificate of his appointment setting forth the name of the person appointed and the number of the precinct where such watcher is to serve. The certificate shall bear the signature of the chairman or committee members making the appointment together with the signature of the appointee.

(b) By candidates. Any candidate whose name appears on the official ballot of any general, special, or primary election for any public office may appoint two watchers for each election precinct and place of absentee voting in which the name of such candidate appears on the ballot, by delivering to each such watcher appointed by him, a certificate of his appointment setting forth the name of the person appointed and the number of the precinct where such watcher is to serve. The certificate shall be signed personally by the candidate making the appointment and shall also bear the signature of the appointee. The assistant campaign manager of any candidate for state or district office, designated in accordance with Section 238 of this Code,<sup>1</sup> may act on behalf of the candidate he represents in the appointment of watchers in the county for which he has been named assistant campaign manager, and certificates executed by him shall bear his signature as agent for the candidate, in lieu of the candidate's signature.

(c) By voters. In any general, special, or primary election, the qualified voters in an election precinct may appoint two watchers for that precinct on

behalf of any announced candidate who does not appoint or join in the appointment of a watcher or watchers for such precinct under the provisions of Paragraph (b) of this section, by delivering to each watcher appointed by them, prior to the day of the election, a certificate of appointment setting forth the name of the person appointed, the number of the precinct where such watcher is to serve, and the name of the candidate on whose behalf the appointment is made. The certificate shall be signed by fifty qualified voters or five per cent of the qualified voters of the precinct as determined by the number of voters appearing on the list of qualified voters, whichever is the lesser number, and shall also bear the signature of the appointee; and the candidate, or his assistant campaign manager for the county in which the precinct is located if he be a candidate for a state or district office, shall endorse thereon a signed statement that the appointment is made with his consent. To every voter who signs such certificate shall be administered an oath, which shall be reduced to writing and attached to or made a part of the certificate, that the signer is a qualified voter at the election and in the precinct for which the appointment is made. One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 19. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 10; Acts 1973, 63rd Leg., p. 1111, ch. 423, § 13, eff. June 11, 1973.]

<sup>1</sup> Article 14.02.

#### Art. 3.06. Watchers at Elections on Questions or Propositions

Whenever any question or proposition is to be voted on at any election in this state, voters favoring the proposition may procure the appointment of two watchers, and voters opposing the proposition may procure the appointment of two watchers, for each election precinct in which the proposition is to be voted on, by complying with the procedure set forth in this section. A petition signed by fifty qualified voters or five per cent of the qualified voters of the precinct as determined by the number of voters appearing on the list of qualified voters, whichever is the lesser number, shall state whether the signers favor or oppose adoption of the proposition, and shall state the name and address of the person or persons whom they wish to be appointed. To every voter who signs the petition shall be administered an oath, which shall be reduced to writing and attached to or made a part of the petition, that the signer is a qualified voter at the election and in the precinct for which the appointment is requested. One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered.

In state-wide elections, and in all elections ordered by the commissioners court or the county

judge, the petition shall be presented to the county judge. In municipal elections, it shall be presented to the mayor, and in all other elections it shall be presented to the presiding officer of the board or body ordering the election. The petition shall be presented to the proper officer not later than the third day prior to election day. If the officer to whom the petition is presented finds that it complies with the foregoing requirements, that the signers of the petition are good-faith representatives of the side of the issue which they purport to represent, and that the person or persons whose appointment is requested are qualified to serve as watchers, he shall issue a certificate of appointment to each of the persons whose appointment is requested, setting forth the name of the person appointed and the number of the precinct where such watcher is to serve. The certificate shall bear the signature of the appointing officer together with the signature of the appointee.

Not more than two watchers representing the same side of a question or proposition shall be appointed in a precinct. If more than one petition is filed by voters representing the same side of the issue, preference shall be given in accordance with the order of filing.

The provisions of this section shall not apply to referendum propositions submitted at party primary elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 20. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 10.]

#### Art. 3.07. Service, Duties, and Privileges of Watchers

(a) Each watcher shall be present at the polling place on election day when the polls are opened, and shall remain on duty without leaving the polling place until the polls are closed, except for such periods of absence for meals or other necessary reasons as may be permitted by the presiding judge. If the presiding judge permits the clerks to leave the polling place for meals or other necessary reasons during the time the polls are open, he must accord the same privilege to watchers. If the presiding judge adopts a general rule for the clerks and watchers which would prevent a watcher who is a resident of some other election precinct from leaving the polling place in order to vote in the precinct of which he is a resident, the presiding judge nevertheless must permit such watcher to leave the polling place, at some time within the first two hours after the polls open, for a sufficient length of time to enable him to vote in the precinct in which he resides. A watcher who leaves the polling place without proper authorization while the polls are open shall not be permitted to resume service. A watcher who leaves the polling place after the polls are closed shall be permitted to resume his service

at any time thereafter until the election officers have completed their duties.

(b) On election day, the watcher shall present his certificate of appointment to the presiding judge of the precinct where he is to serve, and the presiding judge shall require the watcher to countersign the certificate to make certain he is the identical person referred to in the certificate. The presiding judge shall preserve the certificate and deliver it with other records of the election to the officer who has custody of the voted ballots, to be preserved by him for the length of time provided by law for preservation of the voted ballots.

(c) Before commencing his services, each watcher shall take an oath to be administered by the presiding judge, that he will mention and note any errors he may see in testing the voters, or counting the votes, or making out the returns, that he will well and truly discharge his duties as watcher impartially, and will report in writing all violations of the law and unrectified irregularities that he may observe to the authority which canvasses the returns of the election, and, if he deems it desirable, to the next grand jury.

(d) Each watcher appointed in accordance with this code shall be permitted, but not required, to sit conveniently near the judges or clerks so that he can observe the conduct of the election, including but not limited to the reading of the ballots, the tallying and counting of the votes, the making out of the returns, the locking of the ballot boxes, their custody and safe return. He shall also be permitted to be present when assistance is given by any election judge in the marking of the ballot of any voter not able to mark his own ballot, to see that the ballot is marked in accordance with the wishes of the voter, but he must remain silent except in cases of irregularity or violation of the law. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. The watcher shall call the attention of officers holding the election to any fraud, irregularity or mistake, illegal voting attempted, or other failure to comply with the laws governing such election at the time it occurs, if practicable and if he has knowledge thereof at the time, and such complaint shall be reduced to writing and a copy delivered to the election judge. Preventing a poll watcher from observing any activity including, but not limited to, the tallying of ballots at any polling place, place of canvass, or central counting station shall constitute a Class A misdemeanor.

(e) No watcher shall give any advice of any kind to any voter, or hold any conversation or discussion with any voter, or communicate with or signal to

any voter in any manner, or interfere with any voter in any manner whatsoever.

(f) In addition to the foregoing duties and privileges, each watcher serving at an election where voting machines are used shall also have the duties and privileges of watchers as set forth in Section 79 of this code.<sup>1</sup>

(g) Watchers appointed to observe absentee voting may be appointed in the same manner as watchers appointed to serve at regular polling places, and may serve at such hours as they desire.

(h) The authority holding the election shall not pay for the services of watchers, but they may be paid by the interest they represent.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 21. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 10; Acts 1967, 60th Leg., p. 1865, ch. 723, § 10, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2076, ch. 681, § 3, eff. June 20, 1975.]

<sup>1</sup> Article 7.14.

#### Art. 3.08. Pay of Judges and Clerks

(a) In all elections, general, special, or primary, by whatever authority conducted, the rate of pay for judges and clerks of the election shall be determined by the appropriate authority, but shall not exceed \$5 per hour for each judge or clerk. No judge or clerk shall be paid for more than one hour of work before the polls open. In precincts where voting machines are used, no judge or clerk shall be paid for any period of time subsequent to two hours after the official time for closing the polls or subsequent to two hours after voting is concluded by all voters offering themselves for voting during regular voting hours, whichever is the later. The judge who delivers the returns of election may be paid an amount not to exceed \$25 for that service; provided, also, he shall make returns of ballots, ballot boxes, and election supplies not used when he makes returns of the election.

(b) In elections held at the expense of a county, the rate of pay shall be determined by the commissioners court of the county where such services are rendered. In elections held at the expense of a city, school district, or other political subdivision, the governing body of the city, district or political subdivision shall determine the rate. In primary elections, the rate shall be determined by the county executive committee of the party conducting the primary election.

(c) The compensation of judges and clerks of general and special elections shall be paid by the authority responsible for the expenses of the election, upon presentation of claims for such services approved in the manner required for other claims against its funds. In a joint election, the total pay for the judges and clerks may not exceed the maximum specified in Subsection (a) of this section. However, if the election judge delivers the returns

of election and the election supplies to different locations for the different election authorities, he shall be paid by each election authority for each delivery the amount specified in Subsection (a) of this section.

(d) The provisions of this section shall control over all other statutes relating to pay of election judges and clerks in any type of election whatsoever, and all other statutes are hereby repealed to the extent of any conflict with this section.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 22. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 11; Acts 1965, 59th Leg., p. 1552, ch. 678, § 3, eff. June 18, 1963; Acts 1967, 60th Leg., p. 1886, ch. 723, § 11, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1509, ch. 453, § 1, eff. June 10, 1969; Acts 1969, 61st Leg., p. 1564, ch. 473; § 1, eff. June 10, 1969; Acts 1977, 65th Leg., p. 1374, ch. 546, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1137, ch. 544, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 914, ch. 330, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4545, ch. 752, § 1, eff. Aug. 29, 1983.]

Sections 2 and 3 of the 1981 amendatory act, amending an Election Code as enacted by S.B. 610, 67th Legislature, Regular Session, 1981, were effective only if S.B. 610 became law, which it did not.

#### Art. 3.09. Precinct Judges Notified

Precinct judges for all general elections shall be delivered copies of the order of the Commissioners Court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such delivery shall be made by the clerk of said court by United States mail or by personal delivery not later than 20 days after the date of entry of the order.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 23. Amended by Acts 1979, 66th Leg., p. 494, ch. 225, § 1, eff. Aug. 27, 1979.]

#### Art. 3.09a. School of Instruction for Election Officers

(a) Prior to each general election, or at such other time or times as may be deemed desirable, the county clerk of each county of the state is authorized to conduct, with the approval of the county judge, a school or schools of instruction for the election judges and clerks appointed to serve in elections held by the county; and upon direction by the commissioners court, the county clerk shall be required to conduct such school. Persons appointed to serve as watchers at the election and any other interested members of the public shall also be permitted to attend the school. When such a school is held, the county clerk shall notify each presiding judge of the time and place at which it will be held, and it shall be the duty of the presiding judge to give like notice to those persons who will serve as clerks at the election in his precinct. The county clerk shall also notify the county chairman of each political party in the county, so that the county

chairman may have an opportunity to notify persons who will serve as watchers for the party.

(b) Upon request, the Secretary of State and the Attorney General are authorized to cooperate with the county clerk in furnishing the clerk with any informational or instructional material which they are able to supply, for use in conducting the school.

(c) The provisions of this section are cumulative of the provision in Section 79 of this code<sup>1</sup> which requires a school of instruction to be held for election officers before each election at which voting machines are to be used, and nothing in this section shall be construed to alter or amend Section 79 of this code.<sup>1</sup>

[Acts 1967, 60th Leg., p. 1866, ch. 723, § 12, eff. Aug. 28, 1967.]

<sup>1</sup> Article 7.14.

#### Art. 3.09b. Training of Election Officers

Subd. 1. The governing body of each county, city, or other political subdivision which holds elections and the county executive committee of a political party which holds primary elections may require that persons appointed to serve as judge or alternate judge in its elections be trained in election law and procedure prior to their appointment or prior to their service and may adopt minimum standards for the amount of training that the person must receive to be eligible for service. The governing body of a political subdivision may appropriate funds to pay its judges and alternate judges for attending training schools at an hourly rate not to exceed the maximum amount that may be paid for their service as judge or clerk and to pay the costs for conducting the schools, including payment for the services of instructors. With the approval of the secretary of state, the county executive committee of a political party may make like payments for the training of judges and alternate judges to serve in its primary elections, to be allowed as authorized expenditures for the conduct of the elections.

Subd. 2. A political party or a political subdivision may conduct its own schools of instruction or other training programs, either independently or in conjunction with other entities. Beginning on March 1, 1979, the county executive committee of a political party or the governing body of a political subdivision other than a county may also contract with the county officer in charge of election duties for the training of its election officers, as authorized in Section 8d of this code.<sup>1</sup>

[Acts 1977, 65th Leg., p. 1509, ch. 609, § 8, eff. Aug. 29, 1977.]

<sup>1</sup> Article 1.08d.

### CHAPTER FOUR. ORDERING ELECTIONS

Art.

4.01. Proclamation by Governor.

Art.

4.02. Order by County Judge.

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4.10. Vacancy; Application to Get on Ballot.

4.11. Special Elections for United States Representative.

4.12. Special Elections for Members of the Legislature.

#### Art. 4.01. Proclamation by Governor

Notice shall be given to the people of all elections for State and district officers, electors for President and Vice-president of the United States, members of Congress, and members of the Legislature. Such notices shall be by proclamation by the Governor ordering the election, not less than thirty-five (35) days before the election, issued and mailed to the several county judges.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 24. Amended by Acts 1981, 67th Leg., p. 544, ch. 225, § 1, eff. Aug. 31, 1981.]

#### Art. 4.02. Order by County Judge

The county judge, or if his office is vacant or if he fails to act, then two (2) of the county commissioners, shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the day of election, the office or offices to be filled by the election or the question to be voted on, or both, as the case may be.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 25.]

#### Art. 4.03. Writs of Election

Not less than 15 days before any general or special election, the county judge shall mail or deliver a copy of the writ of election to the presiding judge of each election precinct in which the election is ordered to be held, and shall notify him in writing of his duty to hold the election in that precinct and of the location of the polling place and the hours during which the polls shall be kept open.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 26. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 4, eff. Sept. 1, 1969.]

#### Art. 4.04. Failure to Order

A failure from any cause, on the part of the Governor, or the county judge or commissioners court, or of both, to order or give notice of any general election shall not invalidate the same if otherwise legal and regular.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 27.]

**Art. 4.05. Notice of Election**

Subd. 1. The county judge shall cause notice of each general or special election ordered by him or by the commissioners court to be given in at least one of the following manners: (1) by posting a notice of the election in each precinct in which the election is to be held at least 20 days before the election; or (2) by publishing the notice at least one time, not more than 25 days nor less than 10 days before the election, in at least one daily newspaper published in the county (in the political subdivision or territory in which the election is to be held if the election is less than countywide), or if there is no daily newspaper published therein, then in a weekly newspaper published therein; or (3) if there are one or more newspapers published in the county, by issuing the notice in the form of a news release sent to each newspaper published in the county, not more than 25 days nor less than 10 days before the election.

In all cases, a copy of the notice shall also be filed with the county clerk and another copy shall be posted on a bulletin board in the office of the county clerk, at least 20 days before the election. As used herein, the term "newspaper" has the meaning defined in Section 1, Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 28a, Vernon's Texas Civil Statutes).

Subd. 2. The notice of each general or special election shall state the nature and date of the election, the hours during which the polls will be open, and the location of the polling place or places. A notice given in the first manner listed in Subdivision 1 of this section shall state the location of the polling place in the precinct where the notice is posted; all other notices shall state the location of the polling places in all the precincts in which the election is to be held. The notice of a special election shall also state the office or offices to be filled, or the question or questions to be voted on; provided, however, that in the case of an election on proposed constitutional amendments, publication of which amendments is required by Article XVII, Texas Constitution, the notice required by this section need not state the propositions which are to appear on the ballot.

Subd. 3. Notwithstanding the foregoing provisions of this section, where the manner of giving notice for a local option, stock law, bond or tax election, or any other special election is specially provided for by the laws of this state, the notices of election shall be given in compliance with the laws governing each respective election.

Subd. 4. Where notice is given in the first manner listed in Subdivision 1 of this section, the sheriff or a constable shall post the notice and shall make a return on a copy of the notice, showing how and when he executed the notice. Where notice is given in the second manner, the county judge shall file

with the county clerk a copy of the notice as published, together with the name of the newspaper or newspapers and the date or dates of publication. Where notice is given in the third manner, the county judge shall file with the county clerk a copy of the news release together with a list of the newspapers to which it was sent and the date of mailing.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 28. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 5, eff. Sept. 1, 1969.]

**Art. 4.06. Municipal Elections**

In all city, town and village elections, the mayor, or if he fails to do so, then the governing body shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and judges and clerks shall each be selected from different political parties when practicable.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 29.]

**Art. 4.07. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 4.08. In Case of a Tie**

(a) At any election, general or special, if there be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the Constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office, which shall be held not less than twenty nor more than thirty days after the canvass of the election which is declared void. Except as otherwise provided in this section, notice of such other election shall be given and the election shall be held in the same manner as the general or special election in which the tie vote occurred. At such election, only the names of the tying candidates shall be printed on the ballot, and any write-in votes cast for any other person shall be void and shall not be counted for any purpose.

(b) If the tying candidates agree in writing, filed with the returning officer, upon a different method of deciding which of them shall be declared elected, the decision shall be made in that manner and the new election not ordered.

(c) The provisions of this section shall not apply: (1) to any general or special election at which a majority vote is required for election, and for which a runoff election is required when no candidate receives a majority of the votes at the first election, or (2) to any general or special election for which

resolution of a tie vote is governed by some other law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 31. Amended by Acts 1967, 60th Leg., p. 1867, ch. 723, § 13, eff. Aug. 28, 1967.]

**Art. 4.09. Special Elections to Fill Vacancies in Public Offices**

Sec. 1. Where special elections are authorized by this Act, the officer authorized by law to order elections shall make such order, fixing the time of the election not less than twenty (20) nor more than ninety (90) days after the first public notice of such order.

Sec. 2. Election to fill unexpired term. Where vacancies which are to be filled by election occur in a civil office, an election shall immediately be ordered to fill the unexpired term.

Sec. 3. Election to unexpired term and to fill term succeeding unexpired term. Where an officer, holding an office the vacancy of which is to be filled by election, is re-elected to a term of office succeeding that of which he is the incumbent, and where, after the re-election of said officer, by reasons of the death or resignation of the officer or otherwise, there is no person legally entitled to fill the office for the unexpired term or to fill the office for the succeeding term to which the former officer was elected to succeed himself, an election shall be immediately ordered to elect a person to fill the unexpired term in said office and to elect a person to fill the term of office succeeding the unexpired term.

Sec. 4. Election on resignation of incumbent of unexpired term. When the incumbent of an office, the vacancy of which is to be filled by election, tenders to the officer authorized by law to receive same a written resignation effective at a future date, an election shall be ordered immediately after acceptance of the resignation to elect a successor to the incumbent to fill the term of office unexpired from and after the effective date of the resignation.

Sec. 5. Election on resignation of officer-elect. When an officer-elect to an office a vacancy in which must be filled by election, tenders to the officer authorized by law to receive the resignation of an incumbent of the office to which said officer-elect was elected, a declaration in writing of his intention not to qualify for the office to which he was elected, an election shall be ordered immediately upon receipt of said written declaration to elect a successor to the incumbent of the office.

Sec. 6. Election on death of officer-elect. When the officer-elect to an office which must be filled by election dies or becomes ineligible to qualify for the office to which he was elected, the proper officer shall immediately order an election to elect a successor to the incumbent of the office.

Sec. 7. Governor may accept resignations. Where no officer is otherwise authorized by law to receive and accept the resignation of an officer, the Governor is hereby designated as the officer to do so, and he is hereby empowered and authorized to receive and accept the resignation of all such officers.

Sec. 8. Repealed by Acts 1981, 67th Leg., p. 3149, ch. 827, § 18, eff. Aug. 31, 1981.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 32. Amended by Acts 1981, 67th Leg., p. 3149, ch. 827, § 18, eff. Aug. 31, 1981.]

**Art. 4.10. Vacancy; Application to Get on Ballot**

Subd. 1. (a) Any person desiring his name to appear upon the official ballot at any special election held for the purpose of filling a vacancy, when no party primary has been held, may do so by presenting his application to the proper authority. Such application shall set forth:

- (1) The name of the office sought;
- (2) His occupation, his postoffice address, and the county of his residence;
- (3) His age, place of birth, kind of citizenship, and length of residence in the county and state.

(b) In any special election for a statewide or district office which is regularly filled at the general election for state and county officers, the application shall also set forth the candidate's political party affiliation or shall state that the candidate is not affiliated with any political party.

Subd. 2. Such application must be filed not later than 5 p. m. of the 31st day before any such special election, and shall not be considered filed unless it has actually been received by the officer with whom it is to be filed.

Subd. 3. (a) The application must be filed with the Secretary of State in the case of a statewide or district special election. It must be accompanied with a fee of \$1,000 for a statewide office, including without limitation the office of United States Senator, a fee of \$500 for the district office of United States Representative, a fee of \$400 for the district office of State Senator, and a fee of \$200 for the district office of State Representative; or, in lieu of the filing fee, the application must be accompanied with a petition signed by at least 5,000 registered voters of the state in the case of a statewide office, and by at least 500 registered voters of the district in the case of a district office. A petition must show the address, voter registration number, and date of signing for each signer. No person may sign the petition of more than one candidate for the same office, and if a person signs the petition of more than one candidate, the signature is void as to all such petitions. A petition may be in multiple parts. To each part, which may consist of one or more sheets, there must be attached the affidavit of

some registered voter, giving his address and voter registration number, and stating that each signature appearing in that part of the petition was affixed in the presence of the affiant and that to the best knowledge and belief of the affiant each signature is genuine and each person signing was a registered voter at the time of signing. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters. Fees received under this subdivision shall be deposited in the general revenue fund of the state.

(b) Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state, or of the district in the case of a district vacancy, directing that the name of the applicant be printed on the official ballot.

(c) The party affiliation of the candidate shall be printed on the official ballot following the name of the candidate. If the candidate has stated in his application that he is not affiliated with any political party, the word "Independent" shall be printed on the ballot following the candidate's name. In other respects, the ballot shall be printed as indicated in Section 61 of this code (Article 6.05, Vernon's Texas Election Code) for a special election in which no party nomination has been made.

Subd. 4. The application must be filed with the city secretary or clerk in the case of a municipal special election. A home-rule city by charter may require that the application be accompanied with a reasonable filing fee or a petition of voters in lieu of the filing fee.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 32a. Amended by Acts 1961, 57th Leg., p. 976, ch. 424, § 1; Acts 1969, 61st Leg., p. 2662, ch. 878, § 6, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 356, ch. 151, § 1, eff. Sept. 1, 1975.]

#### Art. 4.11. Special Elections for United States Representative

Subd. 1. In any special election called to fill a vacancy in the office of United States representative in any congressional district of the state, a majority vote of the electors participating in the election shall be necessary for election. In the event no candidate receives a majority of the votes cast at the first election, the Governor shall, within five days after the results of the election are officially declared, call a second election to be held on a specified day which shall be not less than thirty nor more than forty days after the date of the proclamation or order calling the election. In the second special election the candidates shall be limited to the participants in the first election who received the largest and next largest number of votes at the first election.

Subd. 2. In any special election called to fill a vacancy in the office of United States representa-

tive in any congressional district of the state, the filing fee shall be five hundred dollars.

Subd. 3. Whenever there shall be held a special election in any congressional district in this state for the election of United States representative, the commissioners court of each county in such district shall meet within three days after such election is held and canvass the returns thereof.

Subd. 4. When a special election shall have been held for United States representative in any district, the county judge of each county in which such election was held shall, within twenty-four hours after the commissioners court opens the returns and canvasses the result, as provided in Subdivision 3 of this section, make out duplicate returns of the election, one of which he shall immediately transmit to the seat of government of the state, sealed in an envelope, directed to the Secretary of State, and endorsed "Election Returns for \_\_\_\_\_ County, for United States Representative, District \_\_\_\_\_" (filling the first blank with the name of the county and the other blank with the number of the district for which the election was held); and the other of such returns shall be deposited in the office of the county clerk of the county where such election was held. Not later than the seventh day after the election, the day of the election excluded, the Secretary of State, in the presence of the Governor and the citizen appointed under Section 120 of this code,<sup>1</sup> shall open and canvass the returns of the election and declare the results thereof. If any person received a majority of the votes cast at the election, the Governor shall immediately make out, sign and deliver a certificate of election to such person for the unexpired term of the office for which he was a candidate. In the event no candidate received a majority of the votes cast at the election, the Governor shall call a second election as provided in Subdivision 1 of this section; and the Secretary of State shall within five days after the results of the first election are officially declared, certify to the county clerk of each county in the district the names of the two candidates who are eligible to participate in the second election and the clerks shall make up the ballot for election according to the certificate. The results of the second election shall be canvassed and the results declared in the same manner as herein provided for the first election, and the Governor shall issue to the candidate who receives the largest number of votes in the second election a certificate of election to the unexpired term of the office for which he was a candidate.

Subd. 5. The provisions of this section shall not apply to special elections for the office of congressman-at-large called and held in accordance with Section 177 of this code.<sup>2</sup>

Subd. 6. All special elections called for the purpose of filling vacancies in the offices to which this

section applies shall be conducted according to existing law as supplemented by this section, but if there is a conflict between this section and the existing law, the provisions of this section shall prevail.

[Acts 1961, 57th Leg., 2nd C.S., p. 512, ch. 2, § 1. Amended by Acts 1967, 60th Leg., p. 1867, ch. 723, § 14, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.38.

<sup>2</sup> Article 12.02.

#### Art. 4.12. Special Elections for Members of the Legislature

Subd. 1. Whenever there is a special election in any representative or senatorial district in this state for the election of any member of the Legislature, a majority vote of the electors participating in the election shall be necessary for election. If no candidate receives a majority of the votes cast at the first election, the Governor shall, within five days after the results of the election are officially declared, call a second election to be held not less than fifteen nor more than twenty-five days after the date of the proclamation or order calling the election. In the second special election the candidates shall be limited to the participants in the first election who received the largest and next largest number of votes at the first election.

Subd. 2. Whenever there is a special election in any representative or senatorial district in this state for the election of any member of the Legislature, the commissioners court of each county in the district shall meet within three days after the election is held and canvass the returns. The county judge of each county in which the election was held shall, within twenty-four hours after the commissioners court canvasses the result, make out duplicate returns of the election, one of which he shall immediately transmit to the seat of government of the state, sealed in an envelope, directed to the Secretary of State, and endorsed "Election Returns for \_\_\_\_\_ County, for \_\_\_\_\_" (filling the first blank with the name of the county and the other blank with the name of the office for which the election was held); and the other of the returns shall be deposited in the office of the county clerk where the election was held.

Subd. 3. Not later than the seventh day after the election, the day of the election excluded, the Secretary of State in the presence of the Governor and the citizen appointed under Section 120 of this code<sup>1</sup> shall canvass the returns of the election and declare the results. If one person has received a majority of the votes cast at the election, the Secretary of State shall immediately make out, sign, and deliver a certificate of election to him for the unexpired term of the office for which he was a candidate. If no candidate has received a majority of the votes cast at the election, the Governor shall call a second election as provided in Subdivision 1 of this

section; and the Secretary of State shall within five days after the results of the first election are officially declared, certify to the county clerk of each county in the district the names of the two candidates who are eligible to participate in the second election, and the clerks shall make up the ballot for election according to the certificate. Notice of the second election shall be given in the manner provided by law but ten days notice shall be sufficient, and the county judge shall, not later than ten days prior to the election, notify each presiding judge of his duty to hold the election. The returns of the second election shall be canvassed and the results declared in the same manner as provided for the first election; and the Secretary of State shall issue to the candidate who receives the largest number of votes in the second election a certificate of election to the unexpired term of the office for which he was a candidate.

Subd. 4. Notwithstanding any other provision of this code, whenever a vacancy occurs in the office of state representative or state senator in any representative or senatorial district in this state during a regular session of the Legislature and more than twenty-five days before the final date permitted by law for the continuation of the session, or within a period of sixty days prior to the convening of any session of the Legislature, the time intervals specified in this subdivision shall control the election. The proclamation of the Governor ordering the election shall be issued and mailed to the appropriate county judge or judges not less than twenty-one days before the election. If the election is called for a date less than thirty-five days after the date of the order, the application of any person desiring his name to appear on the official ballot at the election must be filed not later than five days after the date of the order, which shall state the deadline for filing applications. If a second election is necessary, it shall be called for a date not less than seven nor more than twenty-five days after the date of the order calling the election. If the first election is called for a date less than thirty days after the date of the election order, fifteen days notice of the election and fifteen days notification to the presiding judges shall be sufficient for that election. In a runoff election, six days notice and notification shall be sufficient. If ballots for absentee voting in either election cannot be made available by the twentieth day preceding the date of the election, absentee voting shall begin as soon after the twentieth day as the ballots are available, and in all events must begin not later than the third day after the date of the Secretary of State's certification of the names of the candidates to be placed on the ballot or after the date of the order calling the election, whichever is the later, if such third day is less than twenty days prior to the election. Except as modified herein, the election shall be held in accordance

with provisions regulating other special elections for the Legislature.

Subd. 5. All special elections called for the purpose of filling vacancies in the offices to which this section applies shall be conducted according to existing law as supplemented by this section, but if there is a conflict between this section and the existing law, the provisions of this section shall prevail.

[Acts 1965, 59th Leg., p. 777, ch. 368, § 1. Amended by Acts 1967, 60th Leg., p. 1868, ch. 723, § 14a, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.38.

#### CHAPTER FIVE. SUFFRAGE

##### Art.

- 5.01. Classes of Persons Not Qualified to Vote.
- 5.02. Qualification and Requirements for Voting.
- 5.02a. Repealed.
- 5.02b. Expired.
- 5.03, 504. Repealed.
- 5.05. Absentee Voting.
- 5.05a. Repealed.
- 5.05b. Voting by Former Residents of State in Presidential Elections.
- 5.05c. Voting Limited Ballot After Removal to Another County.
- 5.05d. General Provisions on Voting by Persons Lacking Full Voting Rights.
- 5.06, 5.07. Repealed.
- 5.08. Rules for Determining Residence.
- 5.09. Repealed.
- 5.09a. Registrar of Voters.
- 5.09b. County Clerk as Registrar.
- 5.09c. Office Hours of County Clerk and Tax Assessor on Election Day.
- 5.10. Repealed.
- 5.10a. Persons Entitled to Register.
- 5.11. Repealed.
- 5.11a. Expired.
- 5.11a-1. Expired.
- 5.11b. Registration for First Voting Year.
- 5.11b-1, 5.11c. Expired.
- 5.12 to 5.13. Repealed.
- 5.13a. Mode of Applying for Registration; Period for Which Registration is Effective.
- 5.13b. Information on Application.
- 5.13c. Voter Registration Application Forms in Spanish.
- 5.14. Repealed.
- 5.14a. Registration Certificate Forms; Issuance of Certificates; Information Required on Certificate.
- 5.15. Repealed.
- 5.15a. Registration Files.
- 5.15b. Service Program of Secretary of State; Copies of Master State Voter File.
- 5.16. Repealed.
- 5.16a. Correction of Errors on Certificates; Lost Certificates.
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- 5.17. Repealed.
- 5.17a. Challenge of Registration; Appeal.
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- 5.18a. Change of Residence; Cancellation or Transfer of Registration.
- 5.18b. Repealed.
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##### Art.

- 5.18d. Change of Name.
- 5.19. Repealed.
- 5.19a. List of Registered Voters.
- 5.19b. Reimbursement of County by State.
- 5.20. Repealed.
- 5.20a. Deputy Registrars.
- 5.20b. Distribution of Application Forms at Graduation Exercises.
- 5.21. Repealed.
- 5.21a. Statement of Registrations.
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- 5.22a. Penalty for False Registration.
- 5.22b to 5.23. Repealed.
- 5.23a. Construction of Other Laws.
- 5.24. Repealed.
- 5.24a. County Elections Administrator.
- 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator.
- 5.24c. Transfer of county clerk's election duties to county tax assessor-collector.

##### Art. 5.01. Classes of Persons Not Qualified to Vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under 18 years of age.
2. Persons who are mentally incompetent as determined by a final judgment of a court.
3. Persons while incarcerated, on parole, mandatory supervision, or probation as a result of a felony conviction.
4. Persons who have been convicted of a felony, for a period ending on the fifth anniversary of the date on which the person:

(A) received a certificate of discharge by the Board of Pardons and Paroles; or

(B) completed a period of probation ordered by a court

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 33. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 12; Acts 1975, 64th Leg., p. 2082, ch. 682, § 3, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 4628, ch. 792, § 1, eff. Aug. 29, 1983.]

##### Art. 5.02. Qualification and Requirements for Voting

(a) Every person subject to none of the foregoing disqualifications who is a citizen of the United States and a resident of this state and is eighteen years of age or older, and who has complied with the registration requirements of this code, is a qualified voter. No person may vote in an election held by a county, municipality, or other political subdivision unless he is a resident of the subdivision on the day of the election; and, except, as expressly permitted by some other provision of this code or another statute of this state, no person may vote in an election precinct other than the one in which he resides. The provisions of this section, as modified by Section 35 of this code (Article 5.03, Vernon's Texas Election Code), apply to all elections, including general, special, and primary elections, whether

held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.

(b) All citizens of this state who are otherwise qualified by law to vote at any election of this state or any district, county, municipality, or other political subdivision, shall be entitled and allowed to vote at all such elections. The Secretary of State shall, by directive, implement the policies stated herein throughout the elective procedures and policies by or under authority of this state. Enforcement of any directive of the Secretary of State pursuant to this section may be by injunction obtained by the Attorney General.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 34. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 13; Acts 1965, 59th Leg., p. 760, ch. 354, § 1; Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 1; Acts 1967, 60th Leg., p. 936, ch. 414, § 1, eff. Feb. 1, 1968; Acts 1975, 64th Leg., p. 2076, ch. 681, § 4, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2082, ch. 682, § 4, eff. Sept. 1, 1975.]

**Art. 5.02a. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.02b. Expired**

Former art. 5.02b, derived from Acts 1966, 59th Leg., 1st C.S., p. 11, ch. 1, § 7(a), expired on February 1, 1967, under the provisions of § 7(b) of the 1966 Act.

**Arts. 5.03, 5.04. Repealed by Acts 1981, 67th Leg., p. 2990, ch. 786, § 1, eff. Aug. 31, 1981**

**Art. 5.05. Absentee Voting**

**Who May Vote Absentee**

Subd. 1. (a) Any qualified voter of this state who expects to be absent from the county of his residence on the day of the election, or who will be 65 years of age or older on the day of the election, or who because of sickness, physical disability, confinement in jail, or religious belief cannot appear at the polling place in the election precinct of his residence on the day of the election, or who expects to serve as an election clerk or as a poll watcher on election day in an election precinct other than the precinct of his residence, or who participates in the administration of the election by reason of his or her employment, may nevertheless cause his vote to be cast at any election held in this state by compliance with the applicable method herein provided for absentee voting. If a voter's religious belief prohibits him from voting during any part of the time during which the polls are open on the day of the election, he shall nevertheless be entitled to vote absentee even though the prohibition does not operate throughout the entire time that the polls are open. A voter who is confined in jail is entitled to vote absentee if at the time of applying for an absentee ballot he is: (1) serving a misdemeanor sentence which extends through election day; (2)

being held for trial after a denial of bail; (3) being held without bail pending the appeal of a felony conviction; or (4) being held for trial or pending an appeal on a bailable charge but he expects not to have been released on bail by the date of the election.

(b) Absentee voting shall be conducted by two methods: (1) voting by personal appearance at the clerk's office, and (2) voting by mail. All voters coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. Where the ground for voting absentee is confinement in jail, it is not mandatory that the voter be allowed to make a personal appearance, but the officer in charge of the jail, in his discretion is authorized to make the necessary arrangements to permit the voter to vote by personal appearance.

(c) The following persons, and no other, may vote by mail:

(i) Qualified voters who will be 65 years of age or older on the day of the election, or who because of sickness or physical disability, or because of religious beliefs, cannot appear at the polling place on the day of the election. The application for an absentee ballot shall be made not more than sixty days before the day of the election. It must be mailed to the clerk, and the clerk shall preserve the envelope in which it is received. If the application is delivered to the clerk by any method other than by mailing it to him, the ballot shall be void and shall not be counted. The voter shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent residence address or the address at which he is temporarily living. If the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any address other than one of the foregoing, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(ii) Qualified voters who, before the beginning of the period for absentee voting, make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours for the entire period of absentee voting. The voter must state in his application that he expects to be absent from the county of his residence on election day and during the clerk's regular office hours for the entire period for absentee voting. The application shall be made not more than sixty days before the day of the election, and may be mailed to the clerk or delivered to him by the voter in person, but the clerk shall not furnish a ballot to the voter by any method other than by mailing it to him. Applications made under

this paragraph may be mailed either from within or without the county of the voter's residence, but in every case the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the carrier envelope in which the ballot is returned to the clerk is postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iii) Qualified voters who, after the beginning of the period for absentee voting, apply for an absentee ballot on the ground of expected absence from the county and who are absent from such county at the time of applying for an absentee ballot and expect to be absent from such county during the clerk's regular office hours for the remainder of the period for absentee voting. The voter must state in his application that he is absent from the county at the time of making the application and expects to be absent on election day and during the clerk's regular office hours for the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such voter unless the envelope in which the application is received is postmarked from a point outside the county, and the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iv) Qualified voters who are confined in jail under one of the circumstances listed in the first paragraph of this subdivision. The application for an absentee ballot shall be made not more than twenty days before the day of the election. It must be enclosed in an envelope and either mailed to the clerk or delivered to him by the jailer or one of his deputies or assistants, who shall place his signature on the envelope at the time of its delivery. The clerk shall preserve the envelope in which the application is received. If the application is delivered to the clerk by any method other than as expressly authorized herein, the ballot shall be void and shall not be counted. The clerk shall mail the ballot to the voter in care of the jail where he is confined; and if the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any other address, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(d) An application for an absentee ballot to be voted by mail shall state the applicant's permanent address and the address to which the absentee ballot is to be mailed to the applicant, and shall also

state the address to which his voter registration certificate is to be mailed back to him.

**Elections to Which Applicable; Officer to  
Conduct Absentee Voting**

Subd. 1a. (1) General provisions. Absentee voting shall be conducted in all elections, general, special, or primary, and in each election it shall be conducted by the officer designated or appointed in accordance with the applicable provision of this subdivision. In every election, the absentee voting shall be conducted under the same rules and in the same manner provided in this Section for absentee voting conducted by the County Clerk, and all references in other subdivisions of this Section to the County Clerk shall be deemed to mean the appropriate officer for conducting the absentee voting in that election unless the context requires a different construction.

(2) County-wide elections held at the expense of the county. In general elections for State and County officers, in special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), in all other county-wide elections held at the expense of the county, and in any other elections held at the expense of the county where a specific statute expressly requires it, the absentee voting shall be conducted by the County Clerk.

(3) Elections less than county-wide which are ordered by county authority. In elections less than county-wide which are ordered by the county Commissioners Court, the County Judge, the county board of school trustees, or other county authority, the authority calling the election shall appoint a clerk for absentee voting and shall designate the place for conducting the absentee voting. If the election is held at the expense of the county, the absentee voting clerk may be either the County Clerk or any qualified voter of the county. If the county clerk is appointed, the place for conducting the absentee voting by mail shall be at the office of the clerk, but the place for absentee voting by personal appearance may be either at the office of the clerk, regardless of whether it is situated within the territory covered by the election, or may be at some other public place which shall be within the boundaries of the territory covered by the election. If the expenses of the election are not paid out of county funds, the person appointed to conduct the absentee voting shall be a qualified voter of the county, and the place designated for conducting the absentee voting, both by mail and by personal appearance, shall be within the boundaries of the territory covered by the election. The County Clerk may delegate to one or more of his deputies any duty devolving upon him under this subdivision. Where some person other than the County Clerk is appointed, the authority calling the election may

also appoint such number of deputy clerks, who shall be qualified voters of the county, as it deems necessary to assist in the conduct of the absentee voting. In any election ordered by county authority, or by any other authority, which election involves the creation, organization, reorganization, functioning or existence of one or more municipalities or other political subdivisions, only one clerk for absentee voting shall be appointed if only one political subdivision is affected by the election; but where more than one political subdivision is affected, the authority calling the election may appoint more than one clerk for absentee voting, and if more than one is appointed, the authority shall designate the political subdivision or subdivisions to be served by each clerk and the location at which he is to serve. No territory shall be served by more than one clerk.

(4) Municipal elections. In all elections held by a city or town, the absentee voting shall be conducted by the city secretary or city clerk.

(5) Primary elections. In primary elections held by political parties for nominating candidates to be voted on at general and special elections held at the expense of the county, the absentee voting shall be conducted by the County Clerk. In primary elections for nominating candidates for city offices, the absentee voting shall be conducted by the city secretary or city clerk.

(6) Elections held by other political subdivisions. In elections held by any school district, conservation district, or other defined district or political subdivision authorized to hold elections in this State, the absentee voting shall be conducted by a clerk for absentee voting, to be appointed by the governing board or other authority of the political subdivision empowered to call the election, which may also appoint such number of deputy clerks as it deems necessary to assist in the conduct of the absentee voting. Each clerk or deputy clerk shall be a qualified voter in the subdivision; provided, however, that if the election affects more than one political subdivision, residence anywhere within the territory covered by the election shall be sufficient. Persons in the employment of the political subdivision shall be eligible for appointment if otherwise qualified.

(7) Places and hours for absentee voting. Where the absentee voting is conducted at the regular office of the County Clerk or city secretary or city clerk, the provisions of Subdivision 3 of this Section relating to the days and hours for voting, as modified by Subdivision 3d, shall apply. Where the voting is conducted at some other place, either by the County Clerk or by a clerk specially appointed for that purpose, the authority calling the election shall designate the hours during which the clerk for absentee voting shall keep his office open, which for the purposes of this Section shall constitute the clerk's regular working hours, and shall require

that the office remain open for at least eight hours on each day for absentee voting which is not a Saturday, a Sunday, or an official State holiday. Except in elections for which absentee voting is required by law to be conducted by the County Clerk or city secretary or city clerk, the place or places and hours for absentee voting shall be stated in the order calling the election and in the election notice, which shall also state the clerk's mailing address to which ballot applications and ballots voted by mail may be sent.

(8) Compensation of clerk for absentee voting. Neither the County Clerk nor the city secretary or city clerk shall receive any additional compensation for performing the duties devolving upon him under this Section, but additional deputies necessitated thereby may be appointed and compensated under the General Law pertaining to appointment of deputies. Except as herein required or expressly authorized, the County Clerk shall not conduct absentee voting in any election. In all elections where some person other than the County Clerk or city secretary or city clerk conducts the absentee voting, the authority calling the election shall fix the compensation of such person and his deputies, if any, which shall be paid out of the same fund as other expenses of the election are paid. Employees of the authority calling the election or employees of any political subdivision of the State which is affected by the election, with the permission of its governing board, may be appointed to serve as clerk or deputy clerk for absentee voting without additional compensation.

#### Application for Ballot

Subd. 2. (a) The secretary of state shall prescribe the official form or forms for an application for an absentee ballot to be voted by personal appearance and of an application for a ballot to be voted by mail. Each clerk for absentee voting shall obtain and keep on hand a supply of the official application forms to furnish to voters who request them. The secretary of state shall keep on hand a supply of the official application forms for voting by mail and shall furnish the forms in reasonable quantities to individuals and organizations requesting them for use in furnishing the forms to voters who wish to vote absentee by mail. A voter desiring to vote absentee shall make written application for an official ballot to the absentee voting clerk for the election in which the voter wishes to vote, which application shall be signed by the applicant or by a witness in the manner provided by Subdivision 2, Section 45a, of this code (Article 5.13a, Vernon's Texas Election Code), for signing an application for voter registration except that the application may not be signed by an agent for the applicant. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application by mail, it shall also state the addi-

tional information required by Subdivision 1 of this section. An applicant is not required to use the official application form to apply for an absentee ballot. An application not made on the official form is referred to in this section as an "informal application."

(b) The application shall state the voter's voter registration certificate number or, in case the voter does not have his certificate in his possession at the time of making the application, to indicate whether the certificate has been lost or mislaid, has been left at the voter's home (where he is applying from a temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Before furnishing a ballot to a voter, the clerk shall verify the voter's registration certificate number, or in case the number is not stated on the application, the clerk shall enter it from the list of registered voters. If the ground of application is sickness or physical disability by reason of which the voter cannot appear at the polling place on election day, a certificate of the applicant certifying to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that because of sickness or physical disability I will be unable to appear at the polling place for an election to be held on the \_\_\_\_ day of \_\_\_\_, 19\_\_.

Witness my hand at \_\_\_\_\_, Texas, this \_\_\_\_ day of \_\_\_\_, 19\_\_.

(Signature of Applicant)

The officially prescribed certificate form shall include a statement to the following effect: "I understand that giving false information in this certificate is a crime."

(c) Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability.

(d) A voter who gives false information in his application for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code). Printed application forms furnished to voters by the county clerk shall contain the following statement immediately preceding the space for the voter's signature: "I certify that the information given in this application is true, and I understand that the giving of false information in the application is a crime." An informal application need not contain the statement, but a voter who gives false information is subject to the criminal penalty regardless of whether the statement appears on the application.

(e) In any single election, a person, other than the absentee voting clerk or a deputy absentee voting clerk, may not sign applications as a witness for more than one applicant. However, a person may sign more than one application as a witness if the second and subsequent applicants are related to the witness as parent, grandparent, spouse, child, brother, or sister. An application signed by a witness must contain, in addition to the witness' signature, the witness' full name in printed form, residence address, and relationship to the applicant, if any. The validity of an application is not affected by a violation of this paragraph.

(f) A person, other than the absentee voting clerk or a deputy absentee voting clerk, who witnesses an application in violation of Paragraph (e) of this subdivision commits a Class B misdemeanor. The official application form shall contain a statement informing persons attesting applications as witnesses of this offense.

#### Absentee Voting by Members of the Armed Forces, Etc.

Subd. 2a. (a) Notwithstanding any provision of Subdivision 1 or Subdivision 2 of this section, any qualified voter within any of the following categories shall be entitled to vote absentee by mail upon making an application by mail for an absentee ballot on an official federal post card application for absentee ballot, and no further statement of his eligibility to vote absentee by mail shall be required of him, provided the application is mailed from outside the county and the ballot is to be mailed to an address outside the county or to an address in the United States for forwarding or delivery to the voter at a location outside the United States:

(1) a member of the armed forces of the United States while in the active service, his spouse and dependents;

(2) a member of the merchant marine of the United States, his spouse and dependents; and

(3) a citizen of the United States domiciled in this state but temporarily living outside the territorial limits of the United States and the District of Columbia.

(a-1) A ballot voted under this subdivision may be returned to the absentee voting clerk by mail, common or contract carrier, or courier. The validity of the ballot is not affected by the absence of the balloting materials of a postmark or other evidence indicating that the ballot was returned from a location outside the county.

(b) Application for an absentee ballot made on a federal post card application form by a voter coming within either of the categories listed in Paragraph (a) of this subdivision shall not be subject to the provisions of Paragraph (ii) of Subdivision 1 of this section which requires that the application be made

not more than 60 days before the day of the election; and an application received at any time within either the calendar year or the voting year during which the election is held shall be accepted. The voter may apply on one application form for a ballot for more than one election. Every application for a primary election ballot shall be treated as an application for both the first primary election and the second primary election of the political party indicated on the application. If the application does not indicate the election or elections for which application is made, the clerk shall treat it as an application for each general election for which he will conduct the absentee voting during that calendar year, and in the case of an application made to a county clerk, he shall also treat it as an application for both the first and the second primary election of the political party indicated if a party preference is indicated on the application.

(c) The applicant need not be registered as a voter, and, if registered, he need not accompany his application with his voter registration certificate or an affidavit of its loss. Before mailing a ballot in response to an application, the clerk shall ascertain whether the applicant's name is listed on the current list of registered voters for the precinct of his residence, and if it is not so listed, the application shall also be treated as an application for registration for all elections for which the applicant is applying for an absentee ballot.

(d) If the applicant is not currently registered through the registrar of voters, the clerk shall examine the information on the federal post card application, and if it shows that the applicant possesses the qualifications for voting at that election in the precinct of his residence, the clerk shall enter his name on a list headed "Absentee voters registering by FPCA for the \_\_\_\_\_ election held on \_\_\_\_\_" and shall also enter thereon the voter's local permanent address and election precinct number, the address to which the ballot is mailed, and the date on which it is mailed. The list shall be made up in duplicate and shall be kept up from day to day. After the election is held, one copy shall be filed as a record of the clerk's office if the clerk conducting the absentee voting is a county clerk or a city secretary or city clerk, and as a record of the authority which appointed the clerk for absentee voting in other instances, to be preserved for a period of two years, after which it may be destroyed. The other copy shall be placed with the records of the election which are delivered into the custody of the officer designated in Paragraph (a)(2) of Section 111b of this code (Article 8.29b, Vernon's Texas Election Code), to be subject to the same regulations as those records.

(e) The clerk shall mail a ballot and the other balloting supplies to each voter in an envelope endorsed "Official Election Balloting Material—via

Air Mail" or similar language, with the words "Free of U.S. Postage, Including Air Mail" printed in a box in the upper right corner of the envelope, in conformity with the specifications contained in the Federal Voting Assistance Act of 1955, as amended.<sup>1</sup> The carrier envelope included in the balloting supplies mailed to the voter shall be similarly endorsed. The secretary of state shall prescribe forms and furnish instructions for the preparation of envelopes to comply with these provisions.

(f) The names of regularly registered voters who apply for absentee ballots on federal post card application forms shall be included on the lists of absentee voters which the clerk sends to the presiding judges of the election, but the names of absentee voters who register under this subdivision shall not be sent to the presiding judges.

(g) Words and phrases used in this subdivision shall be construed to have meanings in harmony with the Federal Voting Assistance Act of 1955, as amended.

<sup>1</sup> 50 U.S.C.A. § 1451 et seq.

#### Ballots for Absentee Voting

Subd. 2b. Before the beginning of the period for absentee voting, the authority charged with the duty of furnishing the supplies for the election shall furnish to the clerk a supply of official ballots for use in absentee voting. Before mailing or delivering a ballot to a voter, the clerk shall cause his signature to be placed on the back of the ballot. The absentee ballots may be signed by the clerk in his own handwriting, or they may be stamped with a facsimile of his signature by the clerk or by a deputy under his direction. Where a stamp is used, the clerk 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.

Subd. 2c. Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

Subd. 2d. Repealed by Acts 1981, 67th Leg., p. 854, ch. 301, § 2, eff. Aug. 31, 1981.

#### Period for Voting by Personal Appearance

Subd. 3. (a) The period for absentee voting by personal appearance shall begin on the twentieth day and shall continue through the fourth day preceding the date of the election; provided, however, that when the twentieth day falls on a day which is not a regular working day for the clerk's office, the absentee voting by personal appearance shall begin on the next succeeding regular working day. Except as authorized in Subdivision 3d of this section, the clerk shall not permit anyone to vote absentee by personal appearance on any day which is not a regular working day for the clerk's office, and under no circumstances shall he permit anyone to vote absentee by personal appearance at any time when his office is not open to the public.

(b) At any time within the period for absentee voting, a voter who is eligible to vote absentee may do so by making his personal appearance before the county clerk of the county of his residence at the office of the clerk and delivering to such clerk his application aforesaid.

(c) Watchers, as provided for in Sections 19, 20, and 21 of this Code,<sup>1</sup> may be appointed to observe the conduct of absentee voting in the clerk's office. An appointing authority may appoint different watchers to serve on different days of the absentee voting period. The certificate of appointment need not designate the specific dates on which each watcher will serve, and all of them may be appointed for the entire period, but the total number of watchers appointed by the same authority under Section 19, or appointed upon the same petition under Section 20, shall not exceed seven, of which number not more than two shall be on duty at the same time.

<sup>1</sup> Articles 3.05, 3.06 and 3.07.

#### Voting by Personal Appearance in County-wide Elections

Subd. 3a. (a) In a county-wide election, or in an election less than county-wide where the authority holding the election has provided that absentee voting by personal appearance shall be conducted on a voting machine or that absentee paper ballots shall be counted by a special canvassing board, upon receipt of an application for an absentee ballot to be voted by personal appearance, if the clerk is satisfied as to the right of the applicant to vote, the clerk shall place a notation on the list of registered voters showing that the particular person has voted absentee and shall enter the voter's name on a poll list of absentee voters. The application shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots.

(b) In the conduct of absentee voting under this subdivision, the clerk shall possess the same power as a presiding judge with respect to examination and acceptance of a voter. If the right of an applicant to vote is challenged, the procedure prescribed in Section 91 of this Code (Article 8.09, Vernon's Texas Election Code) shall be followed.

(c) Where paper ballots are used for absentee voting, after a voter has been accepted, the clerk shall furnish the voter with an official ballot which has been prepared in accordance with law for use in such election. The voter shall then and there, in the office of the clerk, mark his ballot and detach and sign the ballot stub, and shall deposit the ballot in a ballot box and the stub in a stub box in the manner provided in Section 97 of this Code (Article 8.15, Vernon's Texas Election Code). The ballots shall be deposited in a ballot box locked with two locks, the keys of one of which shall be kept during the period for absentee voting by the sheriff and the keys of

the other by the county clerk. The stubs shall be deposited in a stub box prepared in accordance with Section 97 of this Code (Article 8.15, Vernon's Texas Election Code).

(d) Where a voting machine is used for absentee voting by personal appearance, after a voter has been accepted, he shall then be permitted to cast his ballot on the voting machine. Returns of absentee votes cast on a voting machine shall be made under the appropriate provision of Section 79 of this Code (Article 7.14, Vernon's Texas Election Code).

#### Voting by Personal Appearance in Election Less Than County-wide

Subd. 3b. (a) In an election less than county-wide in which absentee paper ballots are to be sent to the regular polling places for counting, upon receipt of an application for an absentee ballot to be voted by personal appearance, the clerk shall thereupon furnish to the voter the following absentee voting supplies:

(1) One official ballot which has been prepared in accordance with law for use in such election.

(2) One ballot envelope, which shall be a plain envelope, without any markings except the words "Ballot Envelope" printed on the face thereof, followed by the instructions contained in this subdivision and Subdivision 4 for marking the ballot, for placing it in the carrier envelope, and for returning a ballot to be voted by mail, together with a statement of the deadline for delivery of the marked ballot to the clerk's office in that election and a statement of the substance of Subdivision 15 of this section and of Sections 330 and 330a of this code (Articles 15.30 and 15.30a, Vernon's Texas Election Code) relating to assistance to a voter in preparing his ballot. The textual material may be continued onto the reverse side of the envelope if necessary. The secretary of state shall prescribe the wording of the textual material.

(3) One carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post-office address of the absentee voting clerk, upon the other side there shall appear spaces for showing the nature and date of the election and the number or name of the election precinct in which the voter resides (which the clerk shall fill in before he furnishes the supplies to the voter), and a certificate in substantially the following form:

I certify that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person and that I did not use any memorandum or device to aid me in the marking of the ballot.

(Signature of voter)

By: \_\_\_\_\_  
(Signature of person who assisted voter. See Ballot Envelope for restrictions and penalties.)

\_\_\_\_\_  
(Residence address of person rendering the assistance)

Kinship to voter, if related:  
\_\_\_\_\_

If the voter has received assistance in marking the ballot, the person rendering the assistance shall print the name of the voter in the space for the voter's signature and shall fill in the remaining spaces in the certificate.

(b) The voter shall then and there, in the office of the clerk, mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope, and deliver the carrier envelope to the clerk.

**Voting on Election Day by Disabled Voter in Voting Machine Counties**

Subd. 3c. The provisions of this subdivision shall apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, and shall apply only to voters residing in election precincts in which voting at the regular polling place on election day is being conducted by use of a voting machine or machines. Under these stated conditions, a voter may vote as herein provided if he is ill or disabled and thus cannot, without injury to his health or without personal assistance, cast his vote in the regular manner. A voter complying with these requirements may be voted in an ambulance or other conveyance at the entrance to the place in which absentee voting by mail was conducted for the election, between the hours of 8:00 a.m. and 2:00 p.m. on the day of the election, by the clerk who conducted the absentee voting for the election, using an absentee-by-mail ballot. Poll watchers appointed to observe absentee voting for the election shall be entitled to be present at the voting. Except as otherwise provided in this subdivision, the voting procedure shall be the same as for absentee voting by personal appearance in the clerk's office under the provisions of Subdivision 3b of this Section.

The application to vote under the provisions of this subdivision shall be in the form of an affidavit substantially as follows:

**"AFFIDAVIT FOR VOTING AT ABSENTEE VOTING PLACE ON ELECTION DAY**

"I, the undersigned, do solemnly swear that:

- (a) My name is \_\_\_\_\_
- (b) My home address is \_\_\_\_\_
- (c) I am a voter in Precinct \_\_\_\_\_
- (d) My current voter registration certificate number is \_\_\_\_\_

(e) I am ill or disabled and thus cannot, without injury to my health or without personal assistance, cast my vote in the regular manner, and I have not previously voted in the election being held today.

Date \_\_\_\_\_  
(Signature of voter)

(Jurat of officer administering the oath.)"

The voter shall not be required to fill out the affidavit on the carrier envelope. The clerk shall place the application and the carrier envelope containing the voted ballot into a jacket envelope and shall deliver the jacket envelope to the special canvassing board for counting absentee ballots. Thereafter, the ballot shall be handled in the same manner as an absentee ballot voted by mail, with such modifications as are necessary to fit the circumstances.

**Voting Absentee in Person on Last Saturday and Sunday of the Absentee Voting Period before an Election**

Subd. 3d. Notwithstanding anything to the contrary written elsewhere in this Code, absentee voting in person may be conducted in the office of the County Clerk or city secretary or clerk between 2:00 p. m. and 8:00 p. m. on the last Saturday, Sunday, or Saturday and Sunday of the absentee voting period before any general, special, or primary election for which such officer is required to conduct the absentee voting under the provisions of Paragraph (2), (4), or (5) of Subdivision 1a of this Section. The officer conducting the absentee voting shall have the authority to decide whether to keep his office open during any or all of the hours herein permitted; provided, however, that if he keeps his office open during any of these hours, he shall give notice of such hours during which voting will be conducted by posting a notice at each entrance to his office at least ten days before said Saturday or Sunday.

The foregoing provisions of this subdivision shall not apply to any elections other than those stated in the first paragraph. However, nothing in this subdivision or in Subdivision 1a or Subdivision 3 of this Code shall prevent the authority calling any other type of election from requiring the clerk appointed to conduct the absentee voting to keep his office open during the hours stated in the first paragraph of this subdivision.

**Absentee Voting by Sick or Disabled Voter after  
Close of Regular Period**

Subd. 3e. (a) The provisions of this subdivision apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board. In such an election, a voter who because of sickness or physical disability originating on or after the fifth day preceding election day will be unable to attend the polling place on election day may vote absentee under the procedure outlined in this subdivision. The voter shall make a written request signed by him, or signed by a witness at the voter's direction if the voter is unable to sign his name, and presented to the absentee voting clerk at his office, that the clerk send him a ballot by the person who presents the request to the clerk. The voter may select any person 18 years of age or older who shall not be employed by nor related within the third degree of consanguinity or affinity to any person whose name appears on the ballot, to act as his representative in presenting the request or delivering the marked ballot back to the clerk. No person may serve as the representative to present the request for a ballot or to deliver the marked ballot back to the clerk for more than one absentee voter in any election held under the provision of the Texas Election Code as amended. The voter's request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place originated after the fifth day preceding the day of the election. The request must be accompanied by a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner in substantially the following form:

"This is to certify that I have personal knowledge of the physical condition of \_\_\_\_\_; that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and that the inability to attend the polling place originated after the fifth day preceding the day of the election.

Witness my hand at \_\_\_\_\_, Texas, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Signature of practitioner)"

The request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place arose on or

after the fifth day preceding the day of the election. The request must be accompanied by the voter's voter registration certificate or his signed statement (either separately or included in the signed request) that the certificate has been lost or mislaid, has been left at the voter's home (when he is applying from a hospital or other temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Upon receiving a request that complies with the foregoing conditions at any time after the close of business on the fourth day preceding election day and before 12 noon on election day, the clerk shall deliver to the voter's representative the balloting materials used for voting absentee by mail, but before doing so he shall record the representative's name and address on the request and shall require the representative to place his signature alongside his name.

(b) The clerk shall add to the list of absentee voters described in Subdivision 11 of this section the name of each voter to whom an absentee ballot is sent under this subdivision, with a notation that the ballot was sent to the voter through a representative, but the clerk is not required to include the names of these voters on the precinct lists of absentee voters sent to the presiding election judges.

(c) After receiving the balloting materials, the voter shall follow the procedure prescribed in Subdivision 4 of this section for voting absentee by mail, except that the marked ballot shall be hand-delivered to the clerk by the voter's representative instead of being mailed to the clerk. The ballot must be delivered to the clerk by the deadline for receiving ballots voted by mail. It must be delivered by the person who delivered the request to the clerk. Upon receiving the marked ballot, the clerk shall make a notation on the carrier envelope of the name and address of the person who delivered it and shall require the person to place his signature alongside his name on the envelope. The clerk shall then follow the same procedure as for a ballot received by mail. He shall return the voter's registration certificate to him by mailing it to his permanent address.

(d) A voter who gives false information in his request for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code).

**Voting Absentee Because of Death in  
Immediate Family**

Subd. 3f. (a) This subdivision applies only to countywide elections and to elections less than countywide when the absentee ballots are to be counted by a special canvassing board.

(b) A voter may vote absentee under this subdivision if the voter will be absent from the county of

residence on election day because of the death of a person related to the voter within the first degree by consanguinity or affinity that occurs after the fifth day before election day.

(c) The voter may vote in the absentee voting clerk's office, during regular office hours, after the expiration of the regular period for absentee voting by personal appearance by submitting to the clerk an affidavit stating the date of the death, the relationship of the voter to the decedent, and that the voter will be absent from the county on election day because of the death. The secretary of state shall prescribe the form of the affidavit.

#### Voting by Mail

Subd. 4. (a) The period for absentee voting by mail shall begin on the twentieth day preceding the date of the election. An application for an absentee ballot to be voted by mail must be received in the clerk's office not later than the close of business on the fourth day preceding election day. In county-wide elections and in elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, the marked ballot must be received in the clerk's office before the official time of closing of the polls on the day of the election. In all other elections which are less than county-wide, the marked ballot must be received in the clerk's office before ten o'clock a. m. on the second day preceding election day. The ballot may be marked by the voter at any time after he receives it.

(b) On the twentieth day preceding election day, or as soon thereafter as possible, the clerk shall mail an official ballot, ballot envelope, and carrier envelope, as described in Subdivision 3b of this section, to each voter who has theretofore made application for a ballot in compliance with this section. On applications which are received between the twentieth day and the fourth day preceding election day, the clerk shall forthwith mail the absentee voting supplies to the voter.

(c) The voter shall mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot, and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope. The carrier envelope shall then be mailed, postage prepaid, to the county clerk.

(d) Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

#### Period for Absentee Voting in Special Run-off Elections Held for Members of the Legislature

Subd. 4a. Notwithstanding the provisions of Subdivisions 3 and 4 of this Article, absentee voting in special run-off election held for the election of

Members of the Legislature begins on the 10th day preceding the date of the election, and the period for absentee voting by mail in such election begins not later than the 10th day preceding the date of the election. Ballots to be voted by mail may be mailed to voters and may be marked and mailed back to the clerk before the 10th day, if the ballots are available before that date. In all other respects the procedure for absentee voting in the special run-off election is the same as in other elections.

#### Period for Absentee Voting in Second Primary

Subd. 4b. Notwithstanding the provisions of Subdivisions 3 and 4 of this Section, the period for absentee voting by personal appearance in each second (runoff) primary election held under the provisions of Section 181 of this Code<sup>1</sup> shall begin on the tenth day preceding the date of the election, and the period for absentee voting by mail in such election shall begin not later than the tenth day preceding the date of the election. Ballots to be voted by mail may be mailed to voters and may be marked and mailed back to the clerk before the tenth day, if the ballots are available before that date. In all other respects the procedure for absentee voting in the second primary shall be the same as in other elections.

<sup>1</sup> Article 13.03.

#### Period for Absentee Voting in Certain Other Elections

Subd. 4c. Whenever any election is lawfully called for a date which does not permit the full period for absentee voting, the voting shall begin as soon as possible after the ballots become available, provided, however, that the voting shall begin not later than the tenth day before the election.

#### Voting Upon Return to County after Applying for Absentee Ballot by Mail

Subd. 4d. If a voter to whom an absentee ballot has been mailed returns to the county of his residence before receiving or returning the ballot and will be present in the county on the day of the election, he may vote on election day at the regular polling place in the precinct of his residence after notifying the clerk in writing to void his application for an absentee ballot. Upon receiving the notification, the clerk shall remove his name from the list of absentee voters. If the voter will not be present in the county on the day of the election, he may vote an absentee ballot by personal appearance in the clerk's office at any time during the period for absentee voting by personal appearance after notifying the clerk to void his application for an absentee ballot by mail. The clerk shall make the necessary notations on his records to insure that the absentee ballot mailed to the voter will not be counted if it is returned to his office.

**Period for Mailing Ballot to Voter Outside the United States, etc.**

Subd. 4e. Notwithstanding the provisions of Subdivision 4 of this section, the clerk shall mail a ballot to an absentee voter as soon as possible after the ballots become available, but not earlier than 45 days before the election, if the ballot is to be mailed to one of the following: (1) an address outside the United States; (2) an address in the United States for forwarding to the voter at a location outside the United States; (3) an Army Post Office (APO) or a Fleet Post Office (FPO) address; or (4) an address in the United States for delivery or forwarding to a member of the merchant marine. If, after an absentee ballot is mailed to a voter, any change is made in the official ballot due to the death of a candidate or for any other reason except to correct an error, the clerk shall not mail another ballot to the voter, and the votes cast for that office on ballots mailed before the change is made shall not be counted.

**Defective, Mutilated, and Unused Ballots**

Subd. 4f. The absentee voting clerk shall handle and account for defectively printed, defaced, and mutilated ballots and other unused ballots in the same manner as prescribed by this code for unused ballots in regular voting on election day.

**Delivery of Ballots to Election Judges; Late Ballots**

Subd. 5. Upon receipt of a ballot sealed in a carrier envelope, including those ballots which have been marked in the clerk's office and those which have been returned by mail, the clerk shall keep the same unopened and shall deliver it to the proper canvassing board or election judge as hereinafter provided. Prior to delivering the carrier envelope the clerk shall enclose the same together with the voter's application and accompanying papers, including the envelope in which any application by mail was received, in a larger jacket envelope.

Ballots not received back by the clerk before the deadline for returning ballots as stated in Subdivision 4 shall not be delivered to the judges and shall not be voted. The unopened carrier envelopes containing late ballots and the corresponding applications shall remain in the custody of the clerk for the period during which a contest of the election may be filed, and shall then be destroyed if no contest arose.

**Counting of Ballots in Countywide Elections**

Subd. 6. (a) In all countywide elections, and in elections less than countywide where the authority holding the election has provided that absentee paper ballots shall be counted by a special canvassing board, on the day of the election the ballot box and stub box used for absentee voting by personal appearance, the keys to the ballot box, the jacket

envelopes containing the ballots voted by mail and accompanying papers, the poll list for absentee voting on which the clerk has entered the names of persons voting by personal appearance, and the list of registered voters used by the county clerk, shall be delivered to a special canvassing board consisting of a presiding judge and two or more election clerks appointed in the same manner as provided for appointment of the election officers for regular polling places at that election. The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened and not later than the hour specified in Subdivision 4 of this section as the deadline for returning the marked ballots to the clerk's office. If delivered before the deadline, the clerk shall deliver in like manner to the board, immediately following the deadline, all ballots received by mail before the deadline which have not previously been delivered to the board.

(b) This special canvassing board shall open the jacket envelopes, announce the voter's name, and ascertain in each case if he is qualified to vote at that election and if he has complied with all applicable provisions of this section to entitle his ballot to be cast. On ballots voted by mail, the board shall compare the signatures on the application and the carrier envelope, and in case the board finds that the signatures correspond, that the application and the certificate on the carrier envelope are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list (on which voters voting by mail shall be listed separately from those who have voted by personal appearance) and shall open the carrier envelope so as not to deface the certificate thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application, and accompanying papers shall be replaced in the jacket envelope and returned to the county clerk at the same time the voted ballots are returned, and shall be preserved for the length of time provided by law for the preservation of the voted ballots.

(c) If the ballot be challenged by an election officer, watcher, or other person, the grounds of challenge shall be heard and decided according to law, including the consideration of any affidavits submitted in support of or against such challenge. If the ballot be not admitted, there shall be endorsed on the face of the carrier envelope and the jacket envelope the word "rejected." The carrier envelopes containing rejected ballots shall be enclosed, securely sealed, in an envelope on which the words "rejected absentee ballots" have been written, together with a statement of the nature and date of the election, signed by the presiding judge, and shall be returned and preserved in the same manner as

provided for return and preservation of official ballots voted at the election. The corresponding jacket envelopes containing the applications and accompanying papers shall also be returned to the clerk, and preserved for the length of time provided by law for preservation of the voted ballots.

(d) At such time as the presiding judge shall direct, the election officers whose duty it is to count the ballots shall open the absentee ballot box, remove the ballots from the sealed ballot envelopes, and proceed to count and make out returns of all ballots cast absentee, including the ballots voted by personal appearance, in the same way as is done at a regular polling place. The ballot envelopes for the ballots voted by mail may be discarded or destroyed.

(e) The special canvassing board, watchers, and all others connected with the conduct of absentee voting shall be subject to the provisions of Section 105 of this code<sup>1</sup> with respect to revealing information as to the results of the election.

(f) The special canvassing board shall possess the same qualifications, be subject to the same laws and penalties, and be paid the same wage as regular election judges; provided, however, that each member may be paid an amount not to exceed the compensation payable for ten hours of work if the time spent by the board in performing its duties is less than ten hours. Watchers may be appointed as for regular polling places.

(g) After the absentee ballots are counted, the ballot box containing the voted ballots and the returns and other records of the election shall be delivered to the proper officers as provided by law for regular polling places.

<sup>1</sup> Article 8.23.

#### Counting of Ballots in Elections Less than County-Wide

Subd. 7. In all elections which are less than county-wide, the authority holding the election may provide, by proper resolution, that the absentee ballots shall be counted by a special canvassing board, in which event the procedure set out in Subdivision 6 of this section shall be followed. If the authority holding the election does not so provide, the clerk shall keep the carrier envelopes received by him until the second day prior to the election and shall then mail or deliver them as provided in Subdivision 8 of this section, and the ballots shall be counted as provided in Subdivision 9.

#### Delivery of Ballots in Elections Less than County-Wide

Subd. 8. Upon the second day prior to the election, the clerk shall enclose each carrier envelope received by him before ten o'clock a. m. of that day, together with the voter's application and accompanying papers, in a larger jacket envelope, which

shall be securely sealed and endorsed with the name and official title of such clerk, and the words "This envelope contains an absentee ballot and must be opened only at the polls on election day," and the clerk shall forthwith mail same, or deliver it in person, to the presiding judge of the election in the precinct of the voter's residence.

#### Opening of Ballots in Elections Less than County-Wide

Subd. 9. On the day of such election the absentee votes cast in elections less than county-wide shall be opened by the election judges of the precinct holding said election in accordance with the provisions set out in Subdivision 6 above. Except as herein provided wherever applicable the provision set out in this Code for the regulation and carrying on of State-wide elections shall apply to elections less than county-wide.

#### Deceased Voter

Subd. 10. Whenever it shall be made to appear to the canvassing board that any elector whose ballot has been marked and forwarded as hereinbefore provided, has since died, then the ballot of such deceased voter shall not be counted; provided however, the casting of the ballot of a deceased voter shall not invalidate the election.

#### Records of Absentee Voters; Inspection of Applications, etc.

Subd. 11. (a) The county clerk and each other clerk for absentee voting designated in accordance with Subdivision 1a of this section shall maintain in his main office a complete record, in card-index or list form, of persons who have voted absentee by personal appearance and of persons to whom absentee ballots have been sent by mail (or, if authorized by some provision of law, have been sent by some other method of transmission). The record shall contain the voter's name, address, precinct of residence, voter registration number, a notation of whether the voter voted by personal appearance or was furnished a ballot to be returned by mail (or by other means of transmission, if authorized), and the date on which the voter voted, if by personal appearance, or on which the ballot was transmitted to the voter. The record shall be kept up from day to day.

(b) On or before the day preceding election day, the clerk for absentee voting shall deliver to each presiding election judge, in person or by mail, a list containing the name, address, and voter registration number of each resident of the precinct in which the judge serves, who has voted absentee by personal appearance or has been furnished an absentee ballot to be returned by mail. Before the hour for opening the polls on election day, the presiding judge shall cause the notation "absentee voter" to be placed by the name of each such voter on the list of

registered voters to be used in accepting voters for voting at the polling place.

(c) The clerk's records of absentee voters and the applications for absentee ballots and accompanying papers shall be open to public inspection during the clerk's regular office hours, but under such reasonable rules and regulations as the clerk may adopt to safeguard the records and papers and to economize his own time. The clerk may require a person to present proof of identity before permitting him to inspect the records. The clerk must accept a current Texas voter registration certificate, Texas driver's license, or Department of Public Safety personal identification certificate as sufficient proof of identity.

#### Deputies Acting for County Clerk

Subd. 12. Any of the duties by this Section [this article] committed to the county clerk may be performed at the county clerk's office by one (1) or more deputies specially designated in writing by the county clerk to act in connection with the election stated in the appointment.

#### Applicability of Penal Code to County Clerks, Etc.

Subd. 13. The county clerks, their deputies and officers acting under this Section shall be considered as judges or officers of election within the scope of Articles 215 to 231, inclusive, of the Penal Code of Texas, and all amendments hereto,<sup>1</sup> and be punishable as in said Articles respectively, provided in the case of judges or officers of election.

<sup>1</sup> Transferred; see, now, art. 15.21 et seq. of this Code.

#### Branch Offices for Absentee Voting by Personal Appearance

Subd. 14 (a) Absentee voting by personal appearance shall be conducted at each branch office of the county clerk which is regularly maintained for the performance of general clerical duties, during the full period of time for which absentee voting by personal appearance is conducted at the main office.

(b) Upon authorization of the commissioners court in elections in which the county clerk conducts the absentee voting, and upon authorization of the governing body of the political subdivision holding the election in all other elections, the clerk for absentee voting shall maintain such temporary branch offices for conducting absentee voting by personal appearance as the governing body authorizes, and shall station one or more deputies at each branch office to conduct the voting. A branch office which is established in a city having more than 4,000 inhabitants who reside within the county or other political subdivision for which the absentee voting is conducted shall be kept open during the full period for absentee voting by personal appearance and during the regular working hours for the clerk at his main office. A schedule of the days and

hours during which any branch office outside a city of more than 4,000 inhabitants will be open shall be prepared by the clerk and approved by the governing body. Not later than the 10th day before the beginning of the absentee voting period, the clerk shall make up and post in his main office a full schedule of the approved locations of all branch offices and the days and hours on which each office will be open, and shall make copies of the schedule available to all interested persons from that date forward until the close of the absentee voting period. Vehicles such as trucks, house trailers, campers, and other suitable movable structures may be used as temporary branch offices.

(c) Any voter eligible to vote absentee by personal appearance in the main office of the clerk may vote in any branch office. The deputy clerk in charge of absentee voting at each branch office shall transmit to the clerk at the close of each day of absentee voting the names of all persons who have voted absentee in the branch office on that day, together with other necessary information as provided in Subdivision 11, for inclusion in the record of absentee voters maintained in the main office. During the period for absentee voting by personal appearance, the applications and ballots of persons who have voted absentee may be retained in the branch office or may be delivered to the main office from time to time, but all applications and ballots shall be delivered to the main office not later than one o'clock p. m. on the third day prior to election day. Except as otherwise provided in this subdivision, the voting in a branch office shall be subject to the same regulations as the voting in the main office.

#### Branch Offices for Absentee Voting by Personal Appearance in Counties Having a Population of More Than 2,000,000

Subd. 14a. (a) On the order of the Commissioners Court of a county having a population of more than 2,000,000, the county clerk of such county shall conduct absentee voting by personal appearance at one or more suitable locations in one or more justice precincts containing territory covered by an election in which the county clerk is the officer for conducting the absentee voting. The Commissioners Court shall designate the affected justice precincts and the locations for absentee voting in the order. The number of locations in each justice precinct may not exceed the number of justices of the peace elected in that precinct. This subdivision does not apply to elections in which the absentee voting is conducted by any officer other than the county clerk. Notwithstanding the provisions of Subdivision 14 of this section, if suboffices are established under this Subdivision 14-a, the county clerk shall not conduct absentee voting at any location other than his main office and the suboffices authorized by this subdivision. Such voting in each election suboffice shall be

for the full period of time, and for the same hours, for which absentee voting is conducted at the main office.

(b) Any voter who is eligible to vote absentee by personal appearance in the main office of the county clerk shall be eligible to vote absentee by personal appearance either in the main office of the county clerk or in the election suboffice of the county clerk in the justice precinct in which is located the election precinct of the voter's residence.

(c) The list of voters who vote absentee in each election suboffice each day shall be available for inspection the next day both in the election suboffice in which the voter voted and in the main office, with the list of each election suboffice being maintained in the main office separate and apart from the lists of the other election suboffices. Each such list of voters shall be compiled in accordance with statutory requirements.

(d) All applications and all records of persons who have voted absentee both in all election suboffices and in the main office each day shall be available for public inspection the next day in the main office.

(e) Except as otherwise provided herein, the voting in each election suboffice shall be subject to the same statutes, rules, and regulations as the voting in the main office.

#### Assistance to Voter; Use of English Language

Subd. 15. (a) No assistance shall be given a voter in marking his absentee ballot except where the voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him physically unable to write or to see or to operate the voting equipment. If a voter who is voting by personal appearance is entitled to assistance, he may be assisted by the clerk or a deputy clerk or by any qualified voter of the political subdivision in which the election is held, selected by the voter, subject to the restriction stated in Section 330a of this code.<sup>1</sup> When a person other than the clerk or a deputy clerk assists a voter who is voting by personal appearance, the clerk or a deputy shall make a notation on the voter's ballot application of the name and address of the person rendering the assistance and also of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister. Subdivision 4 of Section 95 of this code (Article 8.13, Vernon's Texas Election Code) applies to absentee voting by personal appearance. If a voter who is voting by mail is entitled to assistance, he may be assisted by any person 18 years of age or older, selected by the voter, subject to the restriction stated in Section 330a of this code. A person assisting a voter shall not suggest, by word or sign or gesture, how the voter shall vote, and shall confine the assistance to answering the voter's questions, to stating the prop-

ositions to be voted on, and to naming the candidates and the political parties to which they belong, and the person shall prepare the ballot as the voter directs. Where any assistance is rendered in marking an absentee ballot other than as allowed in this subdivision, the ballot shall not be counted but shall be void for all purposes.

(b) In absentee voting by personal appearance at the clerk's office, any voter unable to speak or understand the English language may communicate with the clerk in some other language, and if the clerk is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the county. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the clerk: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by the clerk and each question, answer, or statement addressed to the clerk by the voter." When any language other than the English language is used either by the voter or by the clerk, any watcher present shall be entitled to request and receive a translation into the English language of anything spoken in some other language.

<sup>1</sup> Article 15.30a.

Subd. 16. Renumbered subdivision 4b by Acts 1965, 59th Leg., p. 1552, ch. 678, § 9, eff. June 18, 1965.

#### Records Available for Determining Precinct Representation in County Conventions

Subd. 17. The county clerk shall preserve on file in his office for a period of two years a copy of the precinct lists of absentee voters and persons voting a limited ballot under Section 37c of this code (Article 5.05c, Vernon's Texas Election Code) prepared in accordance with Subdivision 11 of this section and Section 37d of this code (Article 5.05d, Vernon's Texas Election Code), for each biennial general election for state and county officers. Those records are available for the purpose of computing the number of delegates to which each election precinct is entitled in the county convention of a political party whose conventions are governed by Section 212 of this code (Article 13.34, Vernon's Texas Election Code).

#### Electioneering Near Absentee Voting Place

Subd. 18. During the hours that the clerk's office is open while absentee voting is in progress, the clerk shall prevent electioneering within the room or designated place where the absentee voting is being conducted and in any corridor of the same building, within thirty feet of the entrance to such room or place. During the period for absentee voting, he

shall keep posted at the entrance to such room or place a sign on which shall be printed in large letters the words, "Place for Absentee Voting," and he shall keep posted in each corridor at a distance of thirty feet from the entrance a distance marker on which shall be printed in large letters the words, "Distance marker for absentee voting. No electioneering between this point and the entrance to the place for absentee voting." Any person who electioneers within the room or place for absentee voting or in any corridor within thirty feet of the entrance, during the period for absentee voting and while the clerk's office is open, shall be fined not exceeding five hundred dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 37. Amended by Acts 1957, 55th Leg., p. 100, ch. 49, § 1; Acts 1959, 56th Leg., p. 1055, ch. 483, §§ 1, 2; Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 14 to 18; Acts 1965, 59th Leg., p. 777, ch. 368, § 3; Acts 1965, 59th Leg., p. 1552, ch. 678, §§ 5 to 9; Acts 1967, 60th Leg., p. 937, ch. 414, § 2, eff. June 12, 1967; Acts 1967, 60th Leg., pp. 1871 to 1874, ch. 723, §§ 16 to 19, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 202, ch. 82, §§ 1 to 3, eff. Sept. 1, 1969; Acts 1969, 61st Leg., p. 2662, ch. 878, §§ 9 to 11, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1382, ch. 368, § 1, eff. May 26, 1971; Acts 1971, 62nd Leg., p. 2525, ch. 827, § 19; Acts 1973, 63rd Leg., p. 94, ch. 54, § 1, eff. Aug. 27, 1973; Acts 1973, 63rd Leg., p. 761, ch. 335, § 1, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 2084, ch. 682, §§ 6 to 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 86, ch. 43, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 376, ch. 186, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 660, ch. 247, § 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1682, ch. 665, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1687, ch. 668, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 109, ch. 68, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 167, ch. 91, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 602, ch. 278, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 867, ch. 392, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1169, ch. 568, § 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 2059, ch. 806, §§ 1, 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 597, ch. 237, § 137, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 749, ch. 281, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 854, ch. 301, §§ 1, 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3146, ch. 827, § 11, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3323, ch. 871, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 443, ch. 91, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4203, ch. 668, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4607, ch. 782, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4757, ch. 835, § 1, eff. Aug. 29, 1983.]

Addition of subd. 4f to this article by Acts 1979, 66th Leg., p. 173, ch. 95, § 1, eff. Aug. 27, 1979, was repealed by Acts 1979, 66th Leg., p. 602, ch. 278, § 3, eff. Aug. 27, 1979.

**Art. 5.05a. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975**

**Art. 5.05b. Voting by Former Residents of State in Presidential Elections**

**Former Residents Eligible to Vote**

Subd. 1. A former resident of this state who has become a legal resident of another state of the

United States or of the District of Columbia may vote for presidential and vice presidential electors in the county of his former residence if:

(1) on the day of the election he will not have resided in the state of his present residence for a period of 30 days and will not be eligible to vote in that state, and

(2) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code (Article 5.02, Vernon's Texas Election Code), except the requirement of residence, and

(3) at the time of his removal he was registered as a voter in this state, and

(4) he complies with the provisions of this section.

**Application for Presidential Ballot**

Subd. 2. (a) A person eligible to vote under the provisions of this section may vote either by personal appearance or by mail. The voter shall make a written, signed application to the county clerk of the county of his former residence for a ballot permitting him to vote for president and vice president only, on a form to be prescribed by the secretary of state and furnished by the county clerk.

**Procedure for Voting by Mail**

Subd. 3. When a voter desires to vote a ballot by mail, the procedure for absentee voting by mail in a countywide election shall be followed insofar as it can be made applicable and is not inconsistent with this section. The clerk shall mail the voter a ballot from which the clerk has stricken all offices and propositions other than the offices of president and vice president, together with a ballot envelope and a carrier envelope containing such markings and instructions as the secretary of state prescribes. When the election officer checks the voter's name on the list of registered voters and enters his name on the poll list, the officer shall add a notation that the voter is voting under this section, in the presidential race only. The ballots cast under this section shall be counted and return made thereof along with and on the same forms as the other absentee ballots.

**Procedure for Voting by Personal Appearance**

Subd. 4. A voter may vote by personal appearance at the clerk's office at any time that the office is open to the public, beginning on the 20th day preceding the election and ending on the day of the election. When the voter appears in person, the clerk shall furnish him with a ballot, ballot envelope, and carrier envelope prepared in accordance with Subdivision 3 of this section, and the ballot shall be processed and counted along with the absentee ballots voted by mail.

**Cancellation of Registration**

Subd. 5. When the registrar receives a list of registered voters containing a notation that a voter has voted under this section, he shall cancel the registration if it is still in the active file in his records.

[Acts 1967, 60th Leg., p. 1874, ch. 723, § 20, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 2089, ch. 682, § 12, eff. Sept. 1, 1975.]

**Art. 5.05c. Voting Limited Ballot After Removal to Another County****Definition of Limited Ballot**

Subd. 1. The term "limited ballot" is used to mean a ballot listing only the offices and propositions on which a voter is entitled to vote under the procedure outlined in this section during a period not exceeding 90 days after his removal from one county to another county within the state. The term includes the ballot for any election at which the voter is entitled to vote, even though at some special or runoff elections the ballot may be identical with the full ballot for that election. For the purposes of this section, the day of arrival in the county of new residence is counted as the first day after removal.

**Who is Eligible to Vote a Limited Ballot**

Subd. 2. (a) Where a registered voter moves from one county to another county in the state, during the first 90 days after the removal he is entitled to vote, under the procedure outlined in this section, on all offices, questions, or propositions to be voted on by the electors throughout the state, if on the day of the election (1) he would have been eligible to vote in the county of his former residence except for the removal, and (2) a registration in the county of new residence has not become effective. He may also vote on all district offices for any district of which he was a resident before the removal and continues to be a resident after the removal. The term "district office" refers to the district offices which are regularly filled at the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). After a new registration in the county of new residence becomes effective, he must thereafter vote under the normal procedures for voters registered in that county. In no event may he vote under the procedure outlined in this section after 90 days following the removal.

(b) Voting rights and registration requirements in other elections after removal from one county to another are governed by Subdivision 3 of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code).

**Application for Limited Ballot; Procedure for Voting**

Subd. 3. A person who is entitled to vote a limited ballot, as described in Subdivision 2 of this section, shall be permitted to vote upon making a written, signed application for a limited ballot to the county clerk of the county of his residence at the time of the election, upon an official application form to be prescribed by the Secretary of State and furnished by the county clerk. The voter shall state in his application that he was registered in the county of his former residence at the time of his removal, and he shall accompany his application with his voter registration certificate from that county or shall state in his application that the certificate has been lost or misplaced. The procedure for voting a limited ballot shall be similar to the procedure for absentee voting. If the voter meets the requirements of Section 37 of this code (Article 5.05, Vernon's Texas Election Code) for voting an absentee ballot by mail, he shall be permitted to vote the limited ballot by mail under the procedure for absentee voting by mail upon submitting both an application for a limited ballot and an application for an absentee ballot. Otherwise, he shall vote by personal appearance during the period for absentee voting by personal appearance and under the procedure for voting by personal appearance in countywide elections insofar as it can be made applicable and is not inconsistent with this section. Ballots cast under this section shall be counted and return made thereof along with and on the same forms as the absentee ballots.

**Ballot Form**

Subd. 4. When paper ballots are used, the voter shall be furnished a regular official ballot for the election, from which all offices and propositions on which the voter is not entitled to vote have been stricken; and when a voting machine is used, all offices and propositions on which the voter is not entitled to vote shall be locked out before the voter is permitted to cast his ballot. When absentee voting by personal appearance is being conducted on a voting machine, the clerk may permit persons voting under this section by personal appearance to cast their ballots on the voting machine or he may furnish them with paper ballots, at his option.

**Record of District Offices Voted On**

Subd. 5. The Secretary of State shall furnish to each county clerk the necessary information on the composition of the various districts to enable the clerk to determine whether a person entitled to vote a limited ballot for statewide offices is also entitled to vote for any district offices. The clerk shall note on each voter's application a list of all district offices for which he is permitted to vote.

[Acts 1967, 60th Leg., p. 1878, ch. 723, § 20, eff. Aug. 28, 1967. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 12, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 750, ch. 296, § 14, eff. Nov. 5, 1975.]

**Art. 5.05d. General Provisions on Voting by Persons Lacking Full Voting Rights**

**Record of Applicants**

Subd. 1. The county clerk shall maintain in his office, for public inspection, a complete record of persons who have applied for a ballot under Section 37b or 37c of this code (Article 5.05b or 5.05c, Vernon's Texas Election Code), stating thereon the applicant's name, address, precinct of residence, the section of this code under which the application was made, and the date on which the ballot was delivered or mailed, which record shall be kept up from day to day. The record is subject to the same regulations as the record of absentee voters under Subdivision 11 of Section 37 of this code (Article 5.05, Vernon's Texas Election Code). The names of persons voting under Section 37c shall be included on the precinct lists of absentee voters which the clerk furnishes to the presiding judges of the election, as provided in Subdivision 11 of Section 37, with a notation by each name to indicate that the voter received a limited ballot under Section 37c.

**Preservation of Applications; Inspection**

Subd. 2. Applications and accompanying papers received pursuant to Sections 37b and 37c of this code (Articles 5.05b and 5.05c, Vernon's Texas Election Code) shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots and shall be open to public inspection under the same rules as apply to applications for absentee ballots.

[Acts 1967, 60th Leg., p. 1879, ch. 723, § 20, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 2090, ch. 682, § 13, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1684, ch. 665, § 5, eff. Aug. 29, 1977.]

**Art. 5.06. Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977**

**Art. 5.07. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975**

**Art. 5.08. Rules for Determining Residence**

(a) As used in this code, the word "residence" means domicile; i. e., one's home and fixed place of habitation to which he intends to return after any temporary absence.

(b) For the purpose of voting, residence shall be determined in accordance with the common law rules as enunciated by the courts of this state and the following statutory rules; but in case of a conflict, the statutory rules shall control.

(c) A person shall not be considered to have lost his residence by leaving his home to go to another place for temporary purposes only.

(d) A person shall not be considered to have gained a residence in any place to which he has

come for temporary purposes only, without the intention of making such place his home.

(e) The residence of a single person, or of a married person permanently separated from his or her spouse, is considered to be where such person usually sleeps at night, but if it be a temporary establishment, or for a transient purpose, it shall not be so considered.

(f) For a married man not permanently separated from his wife, the place where his family lives shall be considered his residence, but if it be a temporary establishment for his family, or for transient purposes, it shall not be so considered.

(g) If a married man has his family living in one place and he does business in another, the former shall be considered his residence, but when a man has taken up his abode at any place with the intention of remaining there and making it his home, and his family refuses to reside with him, then such place shall be considered his residence.

(h) The residence of a married woman not permanently separated from her husband is considered to be the place where her husband has his residence, but a married woman not living in a household with her husband may establish a separate voting residence from that of her husband.

(i) The residence of one who is an officer or employee of the government of this state or of the United States shall be construed to be where his home was before he became such officer or employee unless he has become a bona fide resident of the place where he is in government service or of some other place. For the purpose of this section, teachers and other professional personnel employed in the public free school system of this state shall be considered to be employees of the government of this state.

(j) No person in the military service of the United States shall acquire a residence in this state while he is living on a military post in quarters which he is required to occupy. A person in military service who is permitted to choose his place of abode shall not be considered to have acquired a residence merely in consequence of his presence at the place where he lives while performing his military duties; and such person shall not be considered to have acquired a residence unless he intends to remain there and to make that place his home indefinitely, both during the remainder of his military service whenever military duties do not require his presence elsewhere, and after his military service is terminated.

(k) The residence of a student in a school, college, or university shall be construed to be where his home was before he became such student unless he has become a bona fide resident of the place where he is living while attending school or of some other place. A student shall not be considered to have

acquired a residence at the place where he lives while attending school unless he intends to remain there and to make that place his home indefinitely after he ceases to be a student.

(l) The residence of an inmate of a public eleemosynary institution shall be construed to be where his home was before he became such inmate unless he has become a bona fide resident of the place where the institution is located or of some other place. No person who is an inmate of a prison or who is an involuntary inmate of any hospital or other eleemosynary institution shall acquire a residence, while he is an inmate, at the place where the institution is located.

(m) Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 40. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 19; Acts 1967, 60th Leg., p. 1879, ch. 723, § 21, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2528, ch. 827, § 25, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

**Art. 5.09. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.09a. Registrar of Voters**

Subd. 1. Unless the county commissioners court makes a different designation as authorized in Section 41b or Section 56a of this code, the county tax assessor-collector of each county in this State is the registrar of voters in that county.

Subd. 2. The registrar of voters shall be responsible for the registration of voters, the keeping of records, the preparation of lists of registered voters, and such other duties incident to voter registration as are placed upon him by law. Any of the duties of the registrar, except the hearing of appeals on denial of registration and the hearing of challenges of registration, may be performed through a deputy or deputies. The registrar shall not make any charge against a voter for performing any duty incident to voter registration unless expressly authorized by law to do so. The registrar is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this code connected with his official duties. The registration records, the applications for registration, and the duplicate registration certificates on file in the registrar's office shall be open for public inspection at all times when the office is open.

Subd. 3. The expenses of the registrar in excess of the reimbursements received from the state under Section 51b of this code (Article 5.19b, Vernon's Texas Election Code) shall be borne by the county.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1977, 65th Leg., p. 1497, ch. 609, § 1, eff. Aug. 29, 1977.]

**Art. 5.09b. County Clerk as Registrar**

Subdivision 1. The commissioners court of any county in this state may designate the county clerk to be the registrar of voters for that county, by order recorded in its minutes, if the county clerk and the county tax assessor-collector agree to the designation. The order shall state the date on which the transfer of registration duties to the county clerk becomes effective. The commissioners court may rescind the order at any time after two years have elapsed from the date of its adoption, by a rescission order recorded in its minutes, to become effective on a date stated in the order. Thereafter, the duties of the registrar of voters shall be performed by the county tax assessor-collector unless the commissioners court establishes the office of county elections administrator and transfers the duties to that officer, as authorized in Section 56a of this code (Article 5.24a, Vernon's Texas Election Code). Within three days after the entry of an order transferring registration duties to the county clerk or after the entry of an order rescinding an order of transfer, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

Subdivision 2. In a county where the commissioners court has designated the county clerk to serve as the registrar of voters, all references to the county tax assessor-collector in Sections 3, 12, 64, 199, 301, 321, and 335 of this code (Articles 1.03, 2.04, 6.09, 13.21, 15.01, 15.25, and 15.35, Vernon's Texas Election Code), and in any other statutes pertaining to voter registration, mean the county clerk.

Subdivision 3. Where the county clerk is the registrar of voters, the amount appropriated by the commissioners court for the registration duties of the registrar shall not be less than the amount previously appropriated to the county tax assessor-collector for the registration duties formerly performed by him, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Subdivision 4. The secretary of state shall prepare advisory budgetary guidelines for the establishment and operation of a division of elections in the county clerk's office for administering the consolidated election duties of the clerk as provided in this section and for the establishment and operation of the separate office of county elections administrator as provided in Section 56a of this code. In preparing the guidelines the secretary of state shall consider and accommodate the differing needs of counties and their differing capabilities for financing the administration of the consolidated duties.

[Acts 1977, 65th Leg., p. 1498, ch. 609, § 2, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 4738, ch. 829, § 1, eff. Aug. 29, 1983.]

**Art. 5.09c. Office Hours of County Clerk and Tax Assessor on Election Day**

Notwithstanding the designation of an election day as a legal holiday on which public offices may be closed, during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot:

(1) the office of the county clerk shall remain open for the purpose of performing the clerk's duties in connection with administration of the election in counties where no county elections administrator has been appointed and where the clerk's duties have not been transferred to the county tax assessor-collector under Section 56c of this code;<sup>1</sup> and

(2) the office of tax assessor-collector shall remain open for voter registration purposes in counties where the tax assessor-collector serves as registrar of voters and shall remain open for the performance of duties in connection with administration of the election in counties where a transfer of duties has occurred under Section 56c of this code.

[Acts 1979, 66th Leg., p. 495, ch. 226, § 1, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 4740, ch. 829, § 3, eff. Aug. 29, 1983.]

<sup>1</sup> Article 5.24c.

**Art. 5.10. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.10a. Persons Entitled to Register**

A person is entitled to register as a voter in the precinct in which he has his legal residence (i. e., domicile), as defined in Section 40 of this code (Article 5.08, Vernon's Texas Election Code), if:

(1) on the date of applying for registration he is a citizen of the United States and is subject to none of the disqualifications, other than nonage, stated in Section 33 of this code (Article 5.01, Vernon's Texas Election Code); and

(2) within 60 days after applying for registration he will be 18 years of age or older.

However, no person may vote at any election unless he fulfills all the qualifications of an elector for that election.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1971, 62nd Leg., p. 2509, ch. 827, § 2, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. May 27, 1975.]

**Art. 5.11. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.11a. Expired**

This article, as amended by Acts 1971, 62nd Leg., p. 2509, ch. 827, § 3 and Acts 1975, 64th Leg., p. 751, ch. 296, § 2, provided for an initial registration period for permanent registration to begin on November 5, 1975 and continue through January 31, 1976. Subdi-

vision 2 of this article provided: "This section expires on March 2, 1976."

See, now, art. 5.13a.

**Art. 5.11a-1. Expired**

This article, enacted by Acts 1967, 60th Leg., p. 1, ch. 1, § 1, provided for registration for run-off elections held during February, 1967.

**Art. 5.11b. Registration for First Voting Year**

(1) Subject to the exception stated in subsection (2) of this Section, the registration certificate form to be used for registering persons to vote during the first voting year beginning on the first day of February immediately following the effective date of this Section shall be the certificate form prescribed in Section 46a of this Code,<sup>1</sup> except that the heading shall be "Voter Registration Certificate for the Period Beginning February 1, 19\_\_\_, and Ending February \_\_, 19\_\_\_" (the proper dates to be filled in).

(2) If this Section becomes effective by virtue of a proclamation of the Governor issued subsequent to June 30, 1966, resulting from court invalidation of the requirement for payment of the poll tax as a condition for voting, the registration certificate form to be used for registering persons to vote during the voting year beginning on the first day of February immediately following the effective date of this Section shall be the poll tax receipt form prescribed by Section 46 of this Code<sup>2</sup> or the exemption certificate form prescribed by Section 48 of this Code.<sup>3</sup> The poll tax receipt form shall be used for persons subject to payment of the tax, and the exemption certificate form shall be used for persons exempt from its payment; provided, however, that a registration shall not be rendered invalid by use of the form not prescribed for the particular registrant. If at the time of registering the registrant pays the poll tax levied against him, the poll tax receipt form shall serve both as a receipt for payment and as a record of registration. If a poll tax is not collected from the registrant, the registrar shall issue a receipt on which the words "Poll tax not paid" have been stamped, written or printed. The original of the poll tax receipt or exemption certificate shall be issued to the registrant to identify him in voting, and the duplicate shall be retained by the registrar as his record of the registration.

All persons who were issued poll tax receipts or exemption certificates prior to the effective date of this Section, for use in voting during the ensuing voting year, and whose names would have been placed on either the regular list of qualified voters or the list of voters qualified to vote in federal elections only, if Sections 34a and 54 of this Code<sup>4</sup> had not been repealed, shall be deemed to have registered in accordance with the requirements of this registration law, and the registrar shall include the names of such persons on the list of registered voters for the voting year beginning on the first day

of February immediately following the effective date of this registration law.

(3) This Section shall apply only to elections held during the first voting year under this registration law, and shall expire on the first day of March following the close of that voting year.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2.]

<sup>1</sup> Article 5.14a.

<sup>2</sup> Article 5.14.

<sup>3</sup> Article 5.16.

<sup>4</sup> Articles 5.02a, 5.22.

#### Art. 5.11b-1. Expired

This article, enacted by Acts 1967, 60th Leg., p. 938, ch. 414, § 3, provided for supplemental registration for 1967 voting year by persons over 60 years of age, and expired on Mar. 1, 1968 by its own terms.

#### Art. 5.11c. Expired

This article, enacted by Acts 1971, 62nd Leg., p. 2, ch. 2, § 1, provided for supplemental registration for 1971 voting year to begin on the first day of February, 1971, and end on the last day of February, 1971.

#### Art. 5.12. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Arts. 5.12a, 5.12b. Repealed by Acts 1971, 62nd Leg., p. 2526, ch. 827, § 21, eff. Aug. 30, 1971

#### Art. 5.13. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.13a. Mode of Applying for Registration; Period for Which Registration is Effective

Subd. 1. Registration shall be conducted at all times the registrar's office is open for business. A person may apply for registration in person or by mail. Each applicant shall submit to the registrar of the county in which he resides a written application which supplies all the information required by Section 45b of this code (Article 5.13b, Vernon's Texas Election Code). The Secretary of State shall prescribe the application form. The application for registration by mail shall be in the form of a business reply postcard, or other suitable form, with postage to be paid by the state. The Secretary of State shall make necessary arrangements with the United States Postal Service for obtaining a permit for use of the business reply mail form, or other suitable form, and for payment of the postal charges through warrants issued by the comptroller of public accounts. The Secretary of State shall be authorized to use any form or system made available by the United States Postal Service if such other form or system will be less costly than business reply, and he shall be authorized to implement any procedures necessary to accommodate such other form or system. The applications shall be available to individuals, organizations, businesses, and politi-

cal subdivisions in reasonable quantities. No fee shall ever be charged for voter registration applications. The Secretary of State may prescribe one or more forms for use in counties using electronic data processing methods for issuing voter registration certificates and a different form for use in counties not using those methods, but the registrar in each county shall accept any application made upon any form prescribed by the Secretary of State which supplies all the necessary information for registration. In addition to other requirements, the application form shall contain the following statement: "I understand that the giving of false information to procure the registration of a voter is a felony." It shall also contain a space for recording the number of the voter's registration certificate.

Subd. 2. The application shall be signed by the applicant or his agent. However, if the person making the application is unable to sign his name either because of physical disability or illiteracy, he shall affix his mark, if able to do so, which shall be attested by a witness, whose signature and address shall be shown on the application. If a person making the application is physically unable to make a mark, the witness shall so state on the application.

Subd. 3. The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant, and may receive the registration certificate. However, none of these persons may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subdivision may act as agent for a person in applying for registration. Except as permitted in this subdivision, a person who wilfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a Class B misdemeanor.

Subd. 4. A registration becomes effective on the 30th day after the date on which the registrar receives the application or on the day that the registrant attains the age of 18 years (the day before his 18th birthday), whichever is later. An application by mail is deemed to have been received by the registrar on the date it is placed in the United States mail. The postmark is prima facie evidence of that date. Every registration of a voter shall continue in effect until cancelled under some provision of this code.

Subd. 5. Any person who applies for registration of any person, or who signs an application purporting to be the application for registration of any person, either real or fictitious, other than the person making the application or affixing the signature, or someone for whom he may lawfully act as agent, or someone who is unable to sign and who

requests him to sign for such other person, is guilty of a felony of the third degree.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 14, eff. Sept. 1, 1969; Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 1; Acts 1971, 62nd Leg., p. 2510, ch. 827, § 4, eff. Aug. 27, 1971; Acts 1975, 64th Leg., p. 751, ch. 296, § 3, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1215, ch. 468, § 3, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 959, ch. 226, § 1, eff. Aug. 29, 1983.]

#### Art. 5.13b. Information on Application

##### Required Information

Subd. 1. An application form for voter registration shall provide that the following required information be furnished by the applicant:

(1) The applicant's first name, middle name (if any), and surname. If the applicant is a married woman using her husband's surname, she shall furnish her first name, maiden name, and husband's surname.

(2) The applicant's sex.

(3) The month, day, and year of the applicant's birth, and city or county and state, or foreign country, where the applicant was born.

(4) A statement that the applicant is a citizen of the United States.

(5) If a naturalized citizen, the court of naturalization, or its location.

(6) A statement that the applicant is a resident of the county.

(7) If the applicant is currently registered in another county or if the applicant was registered in the previous two-year certificate period in any county in the state and has not received a registration certificate for the current two-year certificate period, the name of that county and the applicant's residence address as shown on such registration certificate.

(8) The registrant's complete current permanent residence address (including apartment number, if any); or, if none, a concise description of the location of the registrant's residence.

(9) The address to which the registration certificate is to be mailed, but only if mail cannot be delivered to the registrant's permanent residence.

(10) If the application is made by an agent, a statement of the agent's relationship to the applicant.

##### Optional Information

Subd. 2. The application form shall contain a space for showing the election precinct in which the applicant resides, but an application is not deficient for failure to list the number or name of the precinct or for listing an incorrect number or name

where the applicant's correct permanent residence address is given. It shall also contain a space for the applicant's social security number and telephone number, but an application is not deficient for failure to list these numbers. However, should it be made possible for the state to require that a registrant provide his social security number when applying for a registration certificate, the providing of such a number by all those applicants who possess such a number may be made mandatory by directive of the Secretary of State in the exercise of his authority pursuant to the provisions of Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code). The registrar shall not transcribe, copy, or record any telephone number furnished on an application for registration.

[Acts 1967, 60th Leg., p. 939, ch. 414, § 5, eff. June 12, 1967. Amended by Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 2; Acts 1971, 62nd Leg., p. 2511, ch. 827, § 5, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 752, ch. 296, § 4, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 8, eff. Aug. 29, 1977.]

#### Art. 5.13c. Voter Registration Forms in Spanish

The secretary of state shall prescribe a voter registration application form that is printed in Spanish. In each county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the last preceding federal decennial census, the registrar shall keep a supply of these, and shall keep a notice in Spanish posted at the place in his office where voter registration is conducted, stating that application forms in Spanish are available. Registrars in other counties may also use this form if they wish to do so. Every registrar in the state is required to accept and process applications that are tendered to him on the bilingual form, in the same manner as other applications.

[Acts 1975, 64th Leg., p. 513, ch. 213, § 2, eff. May 16, 1975.]

#### Art. 5.14. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.14a. Registration Certificate Forms; Issuance of Certificates; Information Required on Certificate

##### Registration Certificate Forms

Subd. 1. (a) The form for a voter registration certificate shall be prescribed by the Secretary of State. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing certificates and a different form for use in counties not using those methods. A certificate form prescribed by the Secretary of State shall be valid for use only during a two-year period, such two-year period to begin on March 1 of even-numbered years, unless rescinded by the Secretary of State.

(b) The registration certificates for each county may be numbered or labeled in any manner which will enable the registrar to efficiently and accurately maintain the voter registration rolls. However, the Secretary of State may establish a standardized numbering or labeling system and require its adoption by the various counties.

#### Issuance of Certificates

Subd. 2. (a) When a properly executed application is received by the registrar, he shall make out an initial registration certificate in duplicate and shall mail the original copy to the voter at his regular mailing address, or if none, at his permanent residence address, in time for him to receive it before his registration becomes effective. The registrar may also deliver the original copy to the voter personally, or to an agent making the application under Section 45a of this code (Article 5.13a, Vernon's Texas Election Code). The duplicate copy shall be retained by the registrar. At the time he prepares the initial registration certificate, the registrar shall enter the certificate number in an appropriate space on the voter's application for registration.

(b) Between January 1 and January 15 of each even-numbered year, the registrar shall prepare and mail to each registered voter in the county as of the preceding December 31 a registration certificate for use during the succeeding two voting years. The certificate shall be mailed to the permanent residence address shown on the voter's registration application; or, if provided, the mailing address. It shall not be sent in the same envelope as the voter's tax statement. Attached to or made a part of the registration certificate shall be adequate space for the voter to insert any change of information other than that printed on the certificate. If the voter has noted such changes, the notice shall be signed and affirmed by the voter and returned to the registrar for correction of the records and issuance of a corrected certificate to the voter.

The registration certificate or envelope containing the certificate shall be marked with a direction to the postal authorities not to forward it to any other address and to return it to the registrar if the addressee is no longer at that address. In the event the certificate is returned, the registrar shall prepare a list of all returned registration certificates showing the name, address, birth date, and registration number of the person to whom the certificate was issued. The list shall be kept in the registrar's office and shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alterations, mutilation, or removal. The registrar shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so

ordering such list. Any money collected pursuant to this subdivision shall be accounted for as official fees of office.

In the event that a person believes that his registration certificate has been returned solely because of postal service error, address reclassification, or clerical error on the part of the registrar of voters, he may present to the registrar of voters a sworn statement challenging such return. Upon receiving such statement, the registrar shall give notice to the person whose registration certificate has been returned of a hearing to be held on the third working day after receipt of such statement. However, if the person whose registration certificate was returned is present in the registrar's office, the registrar may hold the hearing at that time with the person's consent. At the hearing, the registrar may consider such information relating to the challenge as may be presented. If no information controverting the sworn statement of the person claiming to have an erroneously returned registration certificate is introduced, such person's name shall be reinstated on the list of registered voters. If controverting information is introduced, the registrar of voters shall consider the information, including the sworn statement of the person whose name was allegedly erroneously placed on the list of returned voter registration certificates, and if satisfied that the sworn statement of the person whose registration certificate has been returned is true, he shall reinstate the person's name on the list of registered voters. If the registrar refuses to reinstate such person, the person may appeal from the decision of the registrar to a district court of the county within 30 days after the registrar's decision, and the decision of the district court shall be final.

*Text of (b), fourth paragraph, as amended by Acts 1981, 67th Leg., p. 2242, ch. 536, § 2*

Prior to the succeeding February 15, the registrar shall send to the Secretary of State a list of all the persons, along with all corresponding information available and required by the Secretary of State, whose registration certificates were cancelled as a result of the provisions of this section. Such list shall be in computer readable form. The Secretary of State shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Funds collected by the Secretary of State pursuant to this subdivision shall be used by the Secretary of State to defray any expenses incurred in the preparation of such list.

*Text of (b), fourth paragraph, as amended by Acts 1981, 67th Leg., p. 2478, ch. 644, § 1*

Prior to the succeeding March 8, the registrar shall send to the Secretary of State a list of all the persons, along with all corresponding information

available and required by the Secretary of State, whose registration certificates were returned under the provisions of this section. Such list shall be in computer readable form. The Secretary of State shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Funds collected by the Secretary of State pursuant to this subdivision shall be used by the Secretary of State to defray any expenses incurred in the preparation of such list.

Any person who uses information obtained under this subdivision for any purpose other than informing voters about candidates for public offices or public issues or for voter registration purposes is guilty of a Class A misdemeanor.

(c) Each voter whose registration becomes effective after December 31 of an odd-numbered year but before the following March 1 shall be issued an initial certificate valid for the remainder of that voting year and a certificate valid for use during the two-year period beginning the following March 1.

(d) A registrar of voters who knowingly issues, mails, or delivers a registration certificate to a person other than the applicant therefor or his lawful agent as provided in Section 45a of this code (Article 5.13a, Vernon's Texas Election Code), is guilty of a felony of the third degree.

(e) Any person whose registration certificate is returned under the provision of this section shall be required to complete an affidavit of residence on or before August 15, or the registration shall be cancelled on that date. The secretary of state shall prescribe the forms for the document required by this section. A person whose registration is cancelled under this paragraph must reregister in the same manner as an initial registrant. If a person believes that his registration has been cancelled solely because of a return due to postal service error, address reclassification, or clerical error on the part of the registrar, he may seek reinstatement on the list of registered voters in the manner prescribed by Paragraph (b) of this subdivision for reinstatement of a person whose registration certificate was returned due to error.

(f) On or before September 15 of each even-numbered year, each voter registrar shall send to the secretary of state a list of all persons who were on the list of returned voter registration certificates showing the status of each person's registration after August 15. The list shall be in computer readable form and shall contain the information required by the secretary of state.

#### Information Required on Certificate

Subd. 3. (a) Each certificate shall show the voter's name, permanent residence address, mailing address if any, sex, election precinct number, and if an initial certificate, the effective date of the registration. It shall contain a blank space for political party affiliation of the voter, to be completed as provided in Section 179a, of this code (Article 13.01a, Vernon's Texas Election Code). It shall not show the voter's telephone number or social security number. The certificate shall have a place for the voter's signature, and shall contain or be accompanied by a written instruction to the voter that the certificate is to be signed by the voter personally immediately upon receipt, if the voter is able to sign his name. Each certificate shall clearly indicate the two-year period for which it is issued, and shall contain a statement that the voter shall receive a new certificate every two years so long as such voter does not become disqualified under some provision of the election laws. Each certificate shall contain a statement giving notice that voting by use of the certificate by any person other than the person in whose name the certificate is issued is a felony. Voting by use of certificate which has been issued to another is hereby expressly made a felony of the third degree.

(b) Each certificate may contain a notice to the voter to correct and return the certificate to the registrar in case any of the information thereon changes or is incorrect. It may be accompanied by a more detailed explanation of the registrant's rights and duties under this code, including, but not limited to: a statement that his registration is permanent unless cancelled under some provision of the election laws; the procedure by which he will receive a new certificate every two years; the need to reregister if he moves to another county; the period during which he may vote a limited ballot after removal from the county; the need to notify the registrar to transfer his registration if he moves to a new precinct within the county; the period during which he may vote in his old precinct after removal to another precinct within the county; his right to vote without a certificate; and the procedure for obtaining a replacement for a lost certificate.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1971, 62nd Leg., p. 2512, ch. 827, § 6, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1213, ch. 468, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1671, ch. 698, § 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2242, ch. 536, § 2, eff. June 12, 1981; Acts 1981, 67th Leg., p. 2478, ch. 644, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 3183, ch. 544, § 3, eff. June 19, 1983.]

**Art. 5.15. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

#### Art. 5.15a. Registration Files

Subd. 1. (a) The applications on which registration certificates are issued shall be filed in an active

application file and shall remain in that file as long as the registration continues in effect. The active application file shall be maintained in alphabetical order by voter name for the entire county, except that if the registrar regularly obtains a list of registrants in that order through use of electronic data processing equipment, he may keep the file in numerical order by certificate number.

(b) The registrar shall also maintain an inactive application file. The registrar shall place in alphabetical order into this file all applications which are rejected. He shall also transfer to a separate inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of rejection or cancellation, after which it may be destroyed.

Subd. 2. (a) After the registrar adds a voter's name to the list of registered voters from the duplicate registration certificate, he shall file the duplicate in an active duplicate registration certificate file. An active file shall be maintained in numerical order for the entire county.

(b) When a registration is cancelled, the registrar shall enter the date of and reason for cancellation on the duplicate certificate and shall transfer it to an inactive file arranged numerically for each voting year. The duplicate shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

(c) The duplicate registration certificate files may be maintained as information stored in electronic data processing equipment. If so maintained, a duplicate certificate may be discarded after the appropriate information is transferred to the electronic data processing record.

Subd. 3. Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, and the duplicate registration certificates shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 3; Acts 1971, 62nd Leg., p. 2513, ch. 827, § 7, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 6, eff. Nov. 5, 1975; Acts 1981, 67th Leg., p. 913, ch. 329, § 1, eff. Aug. 31, 1981.]

#### Art. 5.15b. Service Program of Secretary of State; Copies of Master State Voter File

Subd. 1. The secretary of state is hereby authorized to provide a service program to assist registrars in efficiently maintaining accurate and current lists of registered voters. Such service program shall provide for, but is not limited to:

(a) obtaining initial lists of registered voters and other necessary information from the registrars of voters in order to create master files of such information;

(b) obtaining periodic information from registrars and from any other available sources for the following purposes:

(1) to maintain the master files,

(2) to aid in the determination of the proper status of persons on the lists of registered voters,

(3) to aid in the determination of the proper registration information to be associated with each registrant;

(c) conducting the various procedures necessary or proper for the implementation of the service program by utilization of automatic data processing equipment or by other means;

(d) furnishing information which may be useful to the registrars in the performance of their duties;

(e) contracting with political subdivisions of this state to provide such other services as are necessary to the performance of the duties of election officials. Fees collected through such contracts shall be retained by the secretary of state to defray expenses of the service program.

Subd. 2. Implementation of this program shall be by directive of the secretary of state. The secretary of state shall make a full report to the legislature which convenes in January of 1977 of all steps taken to implement this program. He shall include in his report a description of any difficulties encountered and his recommendations, if any, for corrective legislation.

Subd. 3. (a) Each March 1 and September 1 the secretary of state shall prepare a copy of the master state voter file on magnetic tape, which shall include each voter's county, voting precinct number, name, permanent residence address, mailing address if any, sex, year of birth, and registration number. It shall not include any voter's social security number or telephone number. The secretary of state shall furnish a copy of this tape to any person requesting it. Each person requesting a copy shall submit an affidavit that the information obtained will be used only for the purpose of informing voters about candidates for public office or about public issues, and will not be used to advertise or promote commercial products or services

The secretary of state shall provide the copy within 15 days of the date on which he receives the request. He shall exact a uniform charge against each person to whom he furnishes a copy of the tape. The charge shall not be greater than an amount deemed sufficient to reasonably reimburse the secretary of state for his actual expense in furnishing the copy, and in any event shall not exceed five cents per hundred names furnished.

(b) Each voter registrar shall deliver to the secretary of state a list of new voter registrations, cancelled voter registrations, or any changes in registrations which have occurred since the submission of the previous report not later than the 90th day before the date of the general primary election and the date of the general election for state and county officers. Each set of lists must be current as of the 90th day before the appropriate election day. The lists shall be provided in the form requested by the secretary of state and shall be used to update the master voter file.

Subd. 4. Any person who uses information obtained under Subdivision 3 of this section for any purpose other than informing voters about candidates for public office or about public issues is guilty of a Class A misdemeanor.

[Acts 1975, 64th Leg., p. 750, ch. 296, § 7, eff. May 27, 1975. Amended by Acts 1983, 68th Leg., p. 3182, ch. 544, § 1, eff. June 19, 1983.]

Sections 17 and 18 of the 1975 Act provide:

"Sec. 17. The secretary of state is hereby authorized to utilize any funds previously appropriated for the biennium ending August 31, 1975, for the purpose of publication of constitutional amendment explanatory statements, but which have not and will not be expended for that purpose, in connection with the implementation of the service program described in Section 7 of this Act.

"Sec. 18. Sections 1, 7, and 17 of this Act take effect immediately upon passage or as soon thereafter as permitted by law. All other sections preceding this section take effect on November 5, 1975."

**Art. 5.16. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.16a. Correction of Errors on Certificates; Lost Certificates**

#### Correction of Error

Subd. 1. When after issuance of a registration certificate it is discovered that an error has been made in filling out the blanks on the certificate through mistake of the registrar or through mistake of the voter in supplying the information, the voter may present the certificate to the registrar for correction and the registrar shall issue a corrected certificate and correct the information on the registration records on file in his office.

#### Error in Election Precinct

Subd. 2. Except as permitted in Section 50a of this code,<sup>1</sup> no person is entitled to vote in a precinct

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of which he is not a resident and an election officer shall not knowingly permit a voter to do so. However, where a voter is erroneously registered in a precinct in which he does not reside and the election officer permits him to vote without knowing of the erroneous registration, in an election contest a ballot cast in that precinct shall be given effect as to any offices or propositions on which the voter would have been entitled to vote in the precinct in which he resides unless it is proved that the voter intentionally gave false information to procure his registration in the wrong precinct, in which event the ballot is void for all purposes.

If an error in the election precinct has not been corrected at the time the voter offers to vote, he may vote in the precinct of his residence, if otherwise qualified, by making and leaving with the presiding judge an affidavit, in any form authorized by the secretary of state, that he is or has been during the previous 90 days a resident of the precinct and is voting only one ballot in this election and that the error was not intentional.

#### Name Omitted From List of Registered Voters

Subd. 3. Where a voter's name is not shown on the precinct list of registered voters but the voter presents his registration certificate showing him to be registered in that precinct, the election officers shall permit him to vote and shall add his name, address, and registration certificate number to the list.

#### Returned Voter Registration Certificate

Subd. 3a. For elections held between March 1 and no later than August 15 in even-numbered years, where a voter's name is not shown on the precinct list of registered voters but does appear on the precinct list of returned voter registration certificates, the election officer shall permit such voter to cast a ballot, provided such voter submits a completed affidavit that he still resides within the county for county administered and primary elections and, if applicable, within the municipality or other political subdivision if administered by such authority. A voter who resides in a different county from that in which he is registered may not vote under this procedure. In the event the runoff primary election occurs within 29 days after the date of the general primary, the voter may vote at the election under the procedure outlined in this subdivision, except that the voter shall inform the presiding judge that he voted under this procedure at a previous election, and the presiding judge shall note that fact on the affidavit. When the registrar receives such an affidavit, he shall attach it to the affidavit previously received.

All affidavits required by this subdivision shall contain the content and be in the form prescribed by the Secretary of State. Each affidavit must contain

the voter's full name, current voter registration certificate number, and complete residence address, including street number, apartment number, state, and zip code. If the voter does not have a street address, he must give a concise description of the location of his residence so that the registrar of voters can identify the residence location in a specific voting precinct. An affidavit that does not include the above information is void.

A ballot of a voter cast in willful disregard of this subdivision is invalid.

#### Challenge of Voter

Subd. 4. Where a voter who does not present his registration certificate to the election officers claims to be registered in the precinct where he offers to vote, or claims to be erroneously registered in some other precinct, the presiding judge, if not satisfied as to his right to vote, may refuse to accept him unless he complies with the provisions of this code relative to challenge of a voter at the polling place. Where a voter claiming to be registered in the precinct is accepted, the presiding judge shall add the voter's name and address to the list of registered voters, with the notation that he voted on an affidavit of a lost certificate.

#### Correction of Registration Records

Subd. 5. Within 10 days after the election, the officer to whom the list of registered voters is returned shall notify the registrar of any additions which the election officers made to the list of registered voters and deliver to the registrar each affidavit of residence submitted at the election. Within the same period, the officer to whom the affidavit of erroneous election precinct is returned shall notify the registrar of the names and other information contained on the affidavits used in the election. The registrar shall take the necessary steps to verify and correct the registration records, including deleting from the list of returned registration certificates the name of each voter who voted after submitting an affidavit of residence and delivering a corrected registration certificate to each voter. To ensure the accuracy of the registration certificates, the registrar may order a recall of the original registration certificates for correction where necessary. If the registrar finds that a person who voted is not registered, he shall report the matter to the prosecuting attorney.

#### Replacement of Lost Certificate

Subd. 6. (a) If a voter to whom a registration certificate has been issued presents to the registrar his signed statement that the certificate has been lost or destroyed, the registrar shall issue to the voter a replacement certificate as a single-copy document, showing the same registration number and the same information as shown on the original certificate. The registrar shall make a notation on

the face of the certificate showing it to be a replacement. He shall attach the statement to the voter's application.

A person who states in a request for a replacement certificate that his registration certificate has been lost or destroyed, knowing the statement to be false, is guilty of a Class A misdemeanor.

(b) A replacement certificate issued after October 31 in an odd-numbered year shall be valid for use during the two-year period beginning on the following March 1. But it shall bear a notation that it may be used beginning on the date of issuance, except that a corrected replacement certificate shall be dated for use beginning on the 30th day following receipt by the registrar of the voter's old certificate or statement of loss.

#### Voting on Affidavit of Lost Certificate

Subd. 7. Notwithstanding Subdivision 6 of this section, a voter whose registration certificate has been lost or destroyed may vote without obtaining a replacement, upon making and leaving with the election officers an affidavit of loss as provided elsewhere in this code.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1971, 62nd Leg., p. 2514, ch. 827, § 8, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 8, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1216, ch. 468, § 5, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1672, ch. 698, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2480, ch. 644, § 2, eff. Aug. 31, 1981.]

<sup>1</sup> Article 5.18a.

#### Art. 5.16b. Abolition of Precinct or Alteration of Boundary

In the event the precinct in which a registered voter resides is abolished or has its boundary altered, the registrar shall change the voter's registration records to show him to be registered in the proper precinct and shall mail a notice of the change to each voter affected, instructing him to make the change on his registration certificate. If the registrar is unable to determine the proper precinct of a voter from the information on the application, he shall mail a request to the voter for such additional information as will enable him to determine the proper precinct, and until the information is received he shall not place the voter's name on the list of registered voters for any precinct.

[Acts 1971, 62nd Leg., p. 2515, ch. 827, § 9, eff. Aug. 30, 1971.]

#### Art. 5.17. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.17a. Challenge of Registration; Appeal

(1) Challenge of applicant. Any person applying for registration may be challenged by the registrar or deputy taking his application or by any regis-

tered voter of the county. If after hearing and considering the challenge the officer taking the application is satisfied as to the applicant's entitlement to registration, he shall register the applicant, but if not so satisfied, he shall refuse to register the applicant. If refusal has been by a deputy registrar, the applicant may appeal to the registrar, who shall decide the challenge within seven days. When the registrar refuses to register an applicant, the applicant may appeal from the decision of the registrar to a district court of the county within thirty days after the registrar's decision, and the decision of the district court shall be final.

(2) Challenge of registered voter. Any registered voter shall have the right to challenge the registration of any other registered voter in his county by filing with the registrar of voters a sworn statement setting out the grounds for such challenge. The registrar shall give notice to the person whose registration has been challenged, and a hearing shall be held and a ruling made thereon. Either party to the controversy may appeal from the decision of the registrar to a district court of the county of registration within thirty days after the registrar's decision, and the decision of the district court shall be final. A challenged voter may continue to vote until a final decision is made canceling his registration.

(3) Jurisdiction of district court; trial of appeal. The district courts of this State shall have jurisdiction to hear and determine appeals from decisions of the registrar refusing an application for registration and from decisions of the registrar either canceling or refusing to cancel a registration. The trial in the district court shall be de novo.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(38), eff. Aug. 31, 1981.]

**Art. 5.18. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

**Art. 5.18a. Change of Residence; Cancellation or Transfer of Registration**

**Change of Residence Within Precinct**

Subd. 1. A registered voter who changes his place of residence within the election precinct shall give written notice to the registrar of the change of address and obtain a corrected certificate as provided in Subdivision 1 of Section 48a of this code (Article 5.16a, Vernon's Texas Election Code).

**Change of Residence to Another Precinct Within County**

Subd. 2. A registered voter who changes his residence to another election precinct within the county may vote a full ballot in the precinct of his former residence, if otherwise qualified, during the first 90 days after the removal, but not thereafter,

in any election in which there is listed on the ballot any office or proposition on which he is eligible to vote at his new residence.

If he obtains a transfer of his registration to the precinct of his new residence during the 90-day period, he may vote only in the precinct of his new residence after the 29th day following the transfer. He may not vote in the precinct of his new residence before the 30th day following the transfer.

To obtain a transfer of his registration, the voter shall present the registrar with a written, signed request that his registration be transferred to the precinct of his new residence. Upon receiving a request for transfer, the registrar shall make the necessary changes on the registration records in his office and shall issue a new corrected registration certificate to the voter. He shall attach the request to the registrant's original application.

**Change of Residence to Another County**

Subd. 3. (a) A registered voter who moves from one county to another within the State must reregister in the county of his new residence in the same manner as an initial registrant. However, during the first 90 days after removal the voter may vote a limited ballot, as provided in Section 37c of this code (Article 5.05c, Vernon's Texas Election Code), if a reregistration in the county of new residence has not become effective.

(b) Where a registered voter who resides in a municipality or other political subdivision which is situated in more than one county moves from one county to another within the political subdivision, if the election precincts of the political subdivision are so constituted that the voter lives in the same precinct, he may continue to vote on the registration in the county of former residence at elections held by that political subdivision so long as that registration continues in effect. If he resides in a different precinct, during the first 90 days after the removal he may continue to vote in the precinct of his former residence at elections held by the political subdivision, on the registration in the county of former residence, if a reregistration in the county of new residence has not become effective.

**Notification to Registrar in County of Former Residence**

Subd. 4. When the registrar receives an application for registration of a voter who is registered in some other county, he shall notify the registrar of that county, giving him the voter's name, former registration certificate number if known, and former residence address. Upon receipt of notice, the registrar of the county wherein the voter was formerly registered shall cancel the registration in that county. When the registrar receives an application for registration of a voter who was registered in the previous two-year certificate period in any county

and has not received a current registration certificate, he shall notify the registrar of that county, if different from the registrar's county, giving him the voter's name, former residence address, birth date, and social security number if available, and may also include a copy of the voter's signature. Upon receipt of such notice, the registrar of the county wherein the voter was formerly registered shall remove the voter from the list of cancelled voter registration certificates of the appropriate election precinct. If the voter's name is on a list of cancelled voter registration certificates in the county wherein he is attempting to register, the registrar of such county shall cause the voter's name to be removed from the appropriate precinct list. The name of any person shall not be removed from the list of cancelled voter registration certificates until such registration is effective.

Subd. 5. (a) The registrar may utilize any means available to determine whether a registered voter's current legal residence may be other than that indicated as the voter's legal residence on the registration records.

(b) Upon receiving information indicating that a registrant has a residence other than that shown on the registrant's registration records, or that indicates the existence of any grounds of disqualification other than death, the registrar shall send a notice to such person by forwardable mail at the permanent residence address or, if provided, the mailing address on the registrant's registration application and any new address of the registrant, if known, requesting a verification of the registrant's current residence address, or other relevant information which would be determinative of the registrant's right to retain his current registered status, and providing information of the necessity for the registrant to amend the registration records subsequent to a change in legal residence or to provide information establishing his right to retain his current registered status. The notice shall state that the registrant's registration will be cancelled if the registrar does not receive an appropriate reply within 60 days from the date on which the notice is mailed. If the registrant replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is timely received, the registrar shall cancel the registration. Notice of such cancellation shall be sent to the registrant at the new address, if it is known; otherwise it shall be sent to the residence or mailing address on the registration records. If the notice mailed to the permanent residence address on the registrant's application is returned to the registrar with no forwarding address information available, the registrar shall cancel the registration.

(c) In the event the registrar cancels a voter's registration pursuant to Paragraph (b) of this subdivision, such voter may, within 10 days after the date

of cancellation by the registrar, request, in writing, a hearing before the registrar. The registrar, upon notice to the voter, shall conduct a hearing within five days of receipt of the request from the voter, or at any later time upon the consent of the voter. The registrar shall then determine whether to cancel the registration. The voter may appeal from a decision to cancel his registration to a district court of the county of registration within 29 days after the registrar's decision, and the decision of the district court shall be final. A voter who appeals a cancellation of his registration under the provisions of this paragraph may continue to vote until a final decision is made cancelling his registration.

Subd. 6. The Secretary of State shall prescribe forms for the various documents required by this section. However, the registrar may also accept and use forms other than those prescribed by the Secretary of State.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 15, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2516, ch. 827, § 10, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 10, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 9, eff. Aug. 29, 1977.]

**Art. 5.18b. Repealed by Acts 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975**

**Art. 5.18c. Cancellation of Registration upon Death or Judicial Determination of Disqualification**

Subd. 1. Not later than the 10th day of each month, each local registrar of deaths in this State shall furnish to the registrar of voters of the county of residence of the decedent an abstract of the death certificate of each decedent over the minimum voting age who was a resident of this State at the time of his death. The abstract shall show the name, age, sex, place of residence, and date and place of death of the decedent. Upon receipt of an abstract, the registrar of voters shall determine if the decedent was a registered voter and, if so, shall cancel his registration.

Subd. 2. Not later than the 10th day of each month, the clerk of each county court or probate court in this State shall furnish to the registrar of voters of the county of residence of the person so adjudged, an abstract of each final judgment adjudging a person over the minimum voting age and resident within this State to be mentally incompetent or to be mentally competent. The abstract shall show the person's name and permanent address and any other available information which will assist in identifying the person in the voter registration files. Upon receipt of an abstract of an adjudgment of mental incompetence, the registrar shall determine if the person is a registered voter and, if so, shall cancel his registration. Upon receipt of an abstract of an adjudgment of mental competence,

the registrar shall examine the extant cancelled registration files to ascertain whether the person was previously registered and whether his registration would still be current except for the cancellation upon his being adjudged incompetent, and if so, the registrar shall reinstate the registration.

Subd. 3. Not later than the 10th day of each month, the clerk of each court having jurisdiction of the trial of felony crimes shall furnish to the registrar an abstract of each unappealed conviction for a felony crime and of each final conviction in appealed cases. The registrar shall determine if the person convicted is a registered voter and, if so, shall cancel his registration.

Subd. 4. The reports required under Subdivisions 1, 2, and 3 of this section apply to deaths occurring, judgments of mental competency or incompetency entered, and felony convictions returned on and after October 1, 1972. The Secretary of State shall prescribe the forms for the abstracts required by Subdivisions 1, 2, and 3 of this section. The registrar of voters shall keep a supply of the forms on hand and upon request shall furnish blank forms to the officers in his county who are required to use them.

Subd. 5. Upon receipt of a certified copy of a final judgment in an election contest proceeding adjudging a registrant not to be a qualified voter, the registrar shall cancel his registration.

Subd. 6. Whenever a registration is cancelled under Subdivision 2, 3, or 5 of this section, the registrar shall immediately mail a notice of the cancellation to the registrant at the permanent address shown on his registration record and also at the temporary address if one is shown. If subsequent to the cancellation of a registration under any provision of this section it is ascertained that the registration should not have been cancelled, the registrar shall reinstate it.

[Acts 1971, 62nd Leg., p. 2518, ch. 827, § 11, eff. Aug. 30, 1971.]

#### Art. 5.18d. Change of Name

Subd. 1. A registered voter who changes his name through marriage or judgment of a court shall present his registration certificate to the registrar, with a signed request that his name be changed on the registration records. The registrar shall make the necessary changes on his records and issue a corrected certificate to the voter under his new name. The registrar shall attach the request to the registrant's original application.

Subd. 2. If otherwise qualified, a voter whose name is changed is eligible to vote under the new name at any election held more than 29 days after the request for change of name was received by the registrar. He may vote under the former name at any election held within 29 days after the day the

request was received by the registrar, upon making an affidavit that his certificate of registration under the former name has been surrendered to the registrar. The voter shall sign the form for the affidavit of a lost certificate, and the election officer shall add a notation in explanation of the circumstances.

[Acts 1971, 62nd Leg., p. 2518, ch. 827, § 11, eff. Aug. 30, 1971. Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 11, eff. Nov. 5, 1975; Acts 1979, 66th Leg., p. 581, ch. 270, § 1, eff. Aug. 27, 1979.]

**Art. 5.19. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967**

#### Art. 5.19a. List of Registered Voters

(1) The registrar shall prepare for each election precinct of the county a certified list of registered voters who are registered as of the 30th day prior to the first election in each voting year. In preparing the list of registered voters for an election occurring during the period March 1 through August 15 of an even-numbered year, the registrar of voters may not include on the list of registered voters the name of any voter whose voter registration certificate was returned to the registrar of voters after the mailout required by Subdivision 2(b), Section 46a, Texas Election Code, as amended (Article 5.14a, Vernon's Texas Election Code), unless such voter has filed the affidavit required by Subdivision 2(e), Section 46a, Texas Election Code, as amended (Article 5.14a, Vernon's Texas Election Code), more than 29 days before the date of such election. Each precinct list shall be arranged alphabetically by the names of the voters and showing each voter's name, residence address, sex, date of birth and registration number. The Secretary of State may prescribe the content and format of the precinct list. The registrar shall deliver to each board, executive committee, or other authority having the duty of furnishing supplies for any general, special, or primary election to be held within the county during the voting year for which the list is prepared, one set of such lists for all precincts in the county if any election which may be held by such authority is countywide, and one set of such lists for all precincts wholly or partially within the boundaries of the particular political subdivision if all elections which may be held by such authority are less than countywide. The registrar shall also furnish to each such authority an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list. In the event the prescribed combination form in accordance with Section 16 of this code<sup>1</sup> has been furnished, before the first day of absentee voting in any subsequent election held by the authority during that voting year, the registrar shall furnish to the authority in either the prescribed combination form or simple list form, another copy of the original list and an updated supplemental list of the

voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list, except that in the case of a runoff election the registrar may furnish a copy of the supplemental list prepared for the preceding election and a supplemental list of the voters who will have been registered for 29 days on the day of the runoff election and whose names do not appear on the original list or the supplemental list prepared for the preceding election instead of preparing a single updated supplemental list for that election. In every instance, instead of preparing a supplemental list or lists, the registrar may prepare a revised original list consolidating into it the names of the voters that would have been included on the supplemental list or lists. With each supplemental list or revised original list the registrar shall also furnish a list of persons whose registration information has been changed or corrected or whose registration has been cancelled or transferred to another precinct since preparation of the last set of lists. The authority shall furnish to the presiding judge in each precinct the original and supplemental lists of voters in his precinct at the time it furnishes other election supplies. Prior to the opening of the polls, the presiding judge shall strike from the registration list the names of persons whose registration has been cancelled or transferred to another precinct, and shall correct the list for persons whose registration information has been changed or corrected.

Before the first day of March in each even-numbered year and whenever appropriate thereafter, the registrar shall attach to each list herein required an alphabetical corresponding certified list of all the persons whose registration certificates were returned, pursuant to the provisions of Section 46a of this code, and such list shall remain attached to the election precinct list for four months thereafter. The precinct lists may be combined with the corresponding lists of returned registration certificates in accordance with the form and content prescribed by the Secretary of State.

(2) In addition to the lists to be furnished under Subsection (1) of this section, the registrar shall furnish without charge to each clerk having the duty of conducting absentee voting in any election the appropriate lists for use in the conduct of absentee voting for the election. He shall also maintain in his office for a period of three years one set of the original lists and one set of the supplemental lists prepared for each county-wide election, which shall be public records available for public inspection at all times that his office is open.

(3) No charge shall be made for lists furnished for use in elections held at the expense of the county or any city or other political subdivision. For each set of original and supplemental lists

which the registrar is required to furnish to the executive committee of a political party for use in its primary elections, the registrar shall be permitted to charge not more than Five Dollars (\$5), to be paid by the party or the chairman so ordering the lists, which charge shall be in full for both the original lists and the supplemental lists. The registrar shall also furnish to the county executive committee of each political party, for any year in which such party is holding precinct conventions, one set of the original and supplemental lists for use in qualifying persons to participate in such conventions, for which the registrar shall be permitted to charge not more than Five Dollars (\$5).

(4) In addition to the copies of the lists of registered voters which the registrar is required to furnish under Subsections (1), (2), and (3) of this section, he shall furnish a copy to any person requesting it, for which he shall make a reasonable charge. In any county where the voter registration lists are recorded on magnetic tape, the registrar shall furnish a copy of the tape to any person requesting it, for which he shall make a reasonable charge. The registrar shall exact a uniform charge against all persons to whom he furnishes copies of the lists other than the copies which he is required to furnish under Subsections (1), (2), and (3) of this section, and he shall exact a uniform charge against all persons to whom he furnishes copies of the tape. The charge shall not be greater than an amount deemed sufficient to reasonably reimburse the registrar for his actual expense in furnishing the copy. Costs incurred in registering the voters or in making up the certified lists from which the copy is taken shall not be included in the charge. All money collected under this section shall be accounted for as official fees of office.

(5) Where the lists of registered voters for a county are prepared by a computer service company or other private business entity under a contract with the county, one of the terms of the contract shall be that the company will supply copies of the lists to the registrar in the number ordered, and also copies of the tape in the number ordered where the lists are made up on magnetic tape, within 15 days from the date on which the company receives the order or from the date on which the company completes the preparation of the lists, whichever is the later.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1969, 61st Leg., 2nd C.S., p. 161, ch. 48, § 4; Acts 1971, 62nd Leg., pp. 48, 49, ch. 25, § 1, eff. March 18, 1971; Acts 1971, 62nd Leg., p. 2521, ch. 827, § 12, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 12, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1214, ch. 468, §§ 2, 12, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1509, ch. 609, § 9, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1672, ch. 698, § 4, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2481, ch. 644, § 3, eff. Aug. 31, 1981.]

<sup>1</sup> Article 3.02.

Section 12 of Acts 1977, 65th Leg., p. 1218, ch. 468, repealed § 3 of House Bill No. 1788 [ch. 209] of the 65th Legislature, Regular Session, 1977, which amended subsec. (1) of this article.

#### Art. 5.19b. Reimbursement of County by State

Subd. 1. Before April 1 of each year, the registrar shall submit to the Comptroller of Public Accounts a certified statement of the total number of new registrants, together with the total number of registration certificates which were cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), during the 12-month period ending February 1 of the year in which the statement is submitted. Before April 1 of each even-numbered year, the registrar shall include, in addition to the above statement, a certified statement of the total number of registered voters shown on the precinct registration lists as of March 1 of that year.

Subd. 2. Before June 1 of the year in which the statement is submitted, the Comptroller shall issue a warrant to each county in the aggregate of the following amounts:

(1) 40 cents multiplied by the total number of new registrants, and

(2) 40 cents multiplied by the number of voter registration certificates cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), as shown by the certified statement required by Subdivision 1 of this section, and

(3) when the total number of registered voters is supplied in accordance with Subdivision 1 of this section, 40 cents multiplied by the difference between the total number of registered voters and the total number of new registrants under this Act during the two 12-month periods prior to the statement in each county. However, before issuing a warrant the Comptroller may require additional proof to substantiate the certified statement.

Subd. 3. The Secretary of State shall determine whether the registrar has complied with the provisions of Section 46a of this code (Article 5.14a, Vernon's Texas Election Code) and with Paragraph (b), Subdivision 3, Section 47b, of this code (Article 5.15b, Vernon's Texas Election Code), and then shall notify the comptroller. The comptroller shall not issue the warrant provided for in Subdivision 2 of this section until notified by the Secretary of State that the registrar is in compliance.

Subd. 4. The disbursements prescribed by this section shall be made from the general revenue fund as provided by legislative appropriations. All money received by a county under this section shall be deposited in the county treasury in a special fund to be used for defraying expenses of the registrar's office in the registration of voters. None of the money shall be deemed to be fees of office or be

retained by the registrar as fees in counties where the registrar is compensated on a fee basis.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1971, 62nd Leg., p. 2522, ch. 827, § 13, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 13, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1218, ch. 468, § 10, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 3183, ch. 544, § 2, eff. June 19, 1983.]

#### Art. 5.20. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.20a. Deputy Registrars

Subd. 1. The registrar may have such number of duly authorized and sworn deputies as he deems necessary to assist in the registration of voters. However, no deputy may be paid for his services except with the approval of the Commissioners Court. An unpaid deputy shall not be required to give a bond in connection with his services.

Subd. 2. It is the intent of the Legislature that the registrar shall establish a sufficient number of registration places throughout the county, and outside the county courthouse, for the convenience of persons desiring to register, to the end that registration may be maintained at a high level.

Subd. 3. Where the performance of the services is not contrary to some other provision of law, the head of any department of the State government, with the approval of the governing board where one exists, any county officer, and the head of any department of a city, town, or village, with the approval of the municipal governing board, may permit any of the officers and employees under his control to become deputy registrars of voters and to register persons on any premises and facilities under his control during the regular working hours of the deputized officer or employee.

Subd. 4. It is also the intent of the Legislature that the registrar, in order to promote and encourage voter registrations, shall enlist the support and cooperation of interested citizens and organizations, and shall deputize as registrars qualified citizens in such a way as to cover most effectively every section of the county. The persons so deputized shall be permitted to register voters anywhere within the county and to secure registrations at the places of residence of the persons to be registered, and the registrar shall not deny deputy registrars the right to register voters in accordance with this authorization.

Subd. 5. No voter registrar shall refuse to deputize any person to register voters because of sex, race, creed, color, or national origin or ancestry. No bona fide resident of the county shall be excluded from serving as deputy by the registrar.

Subd. 6. (a) Each principal or a person designated by the principal of a public high school shall

serve as a deputy voter registrar for the county in which the school or institution is located.

(b) A person serving as a deputy voter registrar under this Act may only distribute voter registration applications to and accept voter registration applications from students and employees of the school or institution.

(c) During the final month of each school semester, a person serving as a deputy voter registrar under this Act shall distribute an officially prescribed voter registration form to each high school student who has or will turn 18 years of age during that semester. The form shall be accompanied by a notice informing the student or employee that he or she may submit the application in person or by mail to the voter registrar of the county in which the registrant resides or in person to the person serving as a deputy voter registrar under this Act for delivery to the voter registrar of the county in which the registrant resides.

(d) The secretary of state shall issue the instructions necessary to implement this Act.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1971, 62nd Leg., p. 2522, ch. 827, § 14, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 2079, ch. 681, § 79, eff. June 20, 1975; Acts 1983, 68th Leg., p. 4532, ch. 745, § 1, eff. Aug. 29, 1983.]

#### Art. 5.20b. Distribution of Application Forms at Graduation Exercises

The principal of each public or private high school in this state may have distributed at the school's graduation exercises, or at any assembly or function in which the graduating class participates, to each graduating student an officially prescribed voter registration application form. The principal may procure the forms from the voter registrar serving the county in which the school is located.

[Acts 1981, 67th Leg., p. 2386, ch. 597, § 1, eff. Aug. 31, 1981.]

#### Art. 5.21. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.21a. Statement of Registrations

On or before March 5 of each year, the registrar shall make a statement to the secretary of state of the number of registered voters in each precinct as shown by the list of registered voters on March 1, and the secretary of state shall file the statement as a record of his office. The registrar shall also file a copy of the statement as a record of his office.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2. Amended by Acts 1971, 62nd Leg., p. 2523, ch. 827, § 15, eff. Aug. 30, 1971; Acts 1977, 65th Leg., p. 1509, ch. 609, § 10, eff. Aug. 29, 1977.]

#### Art. 5.22. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.22a. Penalty for False Registration

Any person who wilfully makes any false statement to procure his registration as a voter or the registration of any person for whom he acts, as agent, or gives any false information in connection with such registration, shall be guilty of a felony and upon conviction shall be punished by confinement in the state penitentiary not less than one nor more than three years.

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 2.]

#### Arts. 5.22b, 5.22c. Repealed by Acts 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

#### Art. 5.23. Repealed by Acts 1971, 62nd Leg., p. 2526, ch. 827, § 21, eff. March 1, 1972

#### Art. 5.23a. Construction of Other Laws

Whenever, under any provision of this code or of any other statute of this state heretofore enacted, a person is required to have paid a poll tax or secured an exemption certificate as a qualification for any purpose, such statute shall be construed to require that the person be registered as a voter in accordance with the provisions of this code. All references to a poll tax receipt or an exemption certificate in both civil and criminal statutes, including those contained in the Penal Code, shall be construed to mean a voter registration certificate, unless the context clearly requires otherwise, and all references to the list of qualified voters shall be construed to mean the list of registered voters as provided for in Section 51a of this code.<sup>1</sup>

[Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 3. Amended by Acts 1967, 60th Leg., p. 940, ch. 414, § 8, eff. June 12, 1967.]

<sup>1</sup> Article 5.19a.

#### Art. 5.24. Repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4, eff. Feb. 1, 1967

#### Art. 5.24a. County Elections Administrator

##### Creation of Position

Subd. 1. In any county in this state, the commissioners court by order recorded in its minutes may establish the position of county elections administrator of the county, who shall perform the duties and functions specified in Subdivision 3 of this section. The order of the commissioners court shall state the date on which the creation of the position of administrator becomes effective. The order may provide for placing the administrator-designate on the county payroll at a date not more than 90 days before the effective date for creation of the position so that he may make suitable plans for assuming his duties on the effective date. Within three days after the

entry of the order, the county clerk shall send a copy of the order to each member of the county elections commission and to the secretary of state and the comptroller of public accounts.

**Appointment of Administrator; County  
Elections Commission**

Subd. 2. (a) Composition of the commission. Where the position of county elections administrator is created in a county, the position shall be filled by appointment of the county elections commission of the county, which shall consist of the following members: the county judge of the county as chairman of the commission; the county clerk of the county as vice-chairman of the commission; the tax assessor-collector of the county as clerk of the commission; and the chairman of the county executive committee of each political party whose nominees at the last general election for state and county officers were nominated by primary election. In any county in which the offices of sheriff and tax assessor-collector are combined, the sheriff shall hold the position specified for the tax assessor-collector. In any county in which a party which nominates by primary election does not have a county organization, the membership of the commission is reduced accordingly. A majority of the total membership of the commission constitutes a quorum. The affirmative vote of a majority of the total membership of the commission is necessary for the selection of an administrator. Each member of the commission who is present at a meeting, including the presiding officer, is entitled to vote. Each appointment made by the commission shall be evidenced by a written resolution or order signed by the number of members necessary to make the appointment, and the resolution or order shall be filed as a public record in the office of the county clerk. Within three days after the filing, the county clerk shall forward a copy of the resolution or order to the secretary of state.

(b) Meetings of the commission. Meetings of the commission shall be called by the chairman. If the chairman fails to call a meeting within 10 days after the entry of the order creating the position of county elections administrator or within 10 days after a vacancy arises in the position, the vice-chairman shall call the meeting. The person who calls a meeting shall set the time and place for the meeting and shall give written notice of the time and place to each other member at least three days in advance of the meeting date.

(c) Qualifications for administrator. (1) The person appointed as administrator must be a resident of this state but need not be a resident of the county at the time of his appointment; but after he assumes the position, he must maintain his residence in the county during his employment.

(2) He must be a registered voter at his place of residence.

(3) He may not be a candidate for public office, as defined by Chapter 14 of this code, while employed as county elections administrator. Filing for candidacy constitutes an automatic resignation from the position of county elections administrator effective at the time of filing.

(4) He may not actively support or contribute to any candidate for public office, any officeholder, or any political party while employed as county elections administrator. Violation of this provision is a Class A misdemeanor and conviction produces automatic termination of employment. A person so convicted is ineligible for appointment as county elections administrator in any county in the state.

(d) Time of appointment. The county elections commission may make the initial appointment of an administrator at any time after the entry of the commissioners court's order creating the position, regardless of the length of time remaining between the date of the appointment and the effective date of the creation of the position, and it may make an appointment to fill an anticipated vacancy arising from a resignation to take effect at a future date at any time after the resignation is accepted.

**Duties of Administrator**

Subd. 3. (a) Registration of voters. On the effective date of an order entered pursuant to Subdivision 1 of this section, or as soon thereafter as an administrator has been appointed and has qualified, the county elections administrator shall assume and thereafter perform all the duties and functions to be performed by the registrar of voters, pursuant to Section 41a of this code (Article 5.09a, Vernon's Texas Election Code).

(b) Conduct of elections. In addition to the duties and functions specified in paragraph (a) of this subdivision, the administrator shall perform all the duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the conduct of elections, as more fully defined in Section 56b of this code (Article 5.24b, Vernon's Texas Election Code).

**Salary of Administrator; Office Staff;  
Operating Expenses**

Subd. 4. Where the position of county elections administrator is created, the commissioners court shall fix his salary, and shall also fix the number, grade, and salaries of paid deputies, assistants, and other persons that he may employ. However, the administrator may appoint unpaid deputies to assist in voter registration, as authorized in Section 52a of this code (Article 5.20a, Vernon's Texas Election Code), without the approval of the commissioners court. The salary of the administrator shall not

exceed the salary paid to the county clerk of that county, and the salaries paid to his employees shall not exceed the salaries paid to the employees of the county clerk in comparable positions. The commissioners court may allow such automobile expense as it deems necessary to the administrator and to any of his employees in the performance of their official duties. The commissioners court shall make provision for furnishing the administrator with suitable office space and with the necessary equipment and operating expenses for the proper conduct of his office. The amount appropriated by the commissioners court for the administrator's office shall not be less than the amounts previously appropriated to the county clerk and the county tax assessor-collector for the duties formerly required of them but now assigned to the administrator, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

#### Termination of Employment

Subd. 5. The employment of the county elections administrator may be terminated at any time for good and sufficient cause on the four-fifths vote of the county elections commission and approval of that action by a majority vote of the commissioners court.

#### Bond of Administrator and Deputies

Subd. 6. Before entering into the duties of his position, the county elections administrator shall give an official bond in an amount to be fixed by the commissioners court, made payable to the county judge and approved by the commissioners court, conditioned for the faithful performance of the duties of his position. Either the commissioners court or the administrator may require his deputies to give a similar bond in an amount not exceeding the amount of the administrator's bond.

#### Seal of Administrator

Subd. 7. The administrator shall provide himself with an official seal, on which shall be inscribed a star with five points surrounded by the words "County Elections Administrator, \_\_\_\_\_ County, Texas" (the blank to be filled in with the name of the county), for use in certifying documents which are required to be impressed with the seal of the certifying officer.

#### Transfer of Records

Subd. 8. As soon as practicable after the effective date of the order creating the position of county elections administrator, the officer formerly serving as the registrar of voters shall transfer to the administrator all records and papers pertaining to voter registration, and the county clerk shall transfer to him all voting equipment and supplies of which the clerk has custody and all records and

papers in his possession which pertain to an uncompleted election. The commissioners court shall determine which records of prior elections are to be transferred to the administrator and which are to remain in the county clerk's office.

#### Abolishment of Position

Subd. 9. The commissioners court may abolish the position of county elections administrator at any time. If the position is abolished, voter registration duties thereafter shall be performed by the county tax assessor-collector and the other duties shall be performed by the county clerk unless a transfer of duties and functions occurs under Section 41b<sup>1</sup> or 56c<sup>2</sup> of this code, in which case the appropriate officer shall perform the designated duties and functions. Within three days after the entry of an order abolishing the position of county elections administrator, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

<sup>1</sup> Article 5.09b.

<sup>2</sup> Article 5.24c.

#### Office Hours on Election Day

Subd. 10. The office of the county elections administrator shall remain open during the hours the polls are open on the day of any general election, primary election, or runoff primary election in which a statewide office appears on the ballot.

#### Reference to Office

Subd. 11. Any reference in the law to the appointive office of county elections administrator means the position of county elections administrator as provided by this section.

#### Transition

Subd. 12. A person serving as county elections administrator on the effective date of this Act continues to serve in that position as though he had been employed under the law as amended by this Act.

[Acts 1977, 65th Leg., p. 1499, ch. 609, § 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 495, ch. 226, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4741, ch. 829, § 4, eff. Aug. 29, 1983.]

Section 11 of the 1977 Act provided:

"Sections 3 and 4 of this Act take effect 90 days after the adjournment of the regular session of the 65th Legislature for the purpose of authorizing the creation of the office of county elections administrator and the promulgation of rules with respect to the duties transferred to the administrator, but an appointment to that office or a transfer of duties to the administrator may not become effective before March 1, 1979."

**Art. 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator**

Subd. 1. (a) Where the office of county elections administrator is created, in addition to performing the duties of the registrar of voters, the administrator shall perform all duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the calling or holding of elections, the preparation of ballots, the preparation and furnishing of election equipment and supplies, the conduct of voting, the canvass of election returns, the custody of voted ballots and other election records, the filing of instruments relating to primary elections, conventions, or other affairs of political parties, and the filing of instruments under Chapter 14 of this code (the Political Funds Reporting and Disclosure Act of 1975).

(b) The enumeration in paragraph (a) of this subdivision states the general guidelines for determining what duties and functions are to be transferred from the county clerk to the administrator. In order to eliminate possible uncertainties in several types of situations, the rules stated in Subdivision 2 of this section establish the division of duties in the specific areas covered by those rules.

(c) The guidelines and rules stated in this section apply in the construction of statutes enacted or amended after the enactment of this section as well as to those previously enacted, unless the statute expressly states that the county clerk is to perform the function in counties having the office of administrator as well as in other counties.

Subd. 2. (a) This subdivision states rules for the division of duties between the county clerk and the county elections administrator in a county which has the office of administrator.

(b) With respect to every meeting of the commissioners court, including meetings at which the only business to be conducted pertains to election matters, the county clerk shall continue to perform all duties regularly performed by that officer in giving notice of meetings of the commissioners court and making up the agenda for the meetings, in attending the meetings and making a record of the proceedings and preparing and maintaining the minutes of the court, and in filing and preserving copies of the court's orders. The administrator shall cooperate with the county clerk in supplying the information on election matters which are to be brought before the court, and he shall attend or be represented at the meetings of the court at which such matters are to be considered. The county clerk shall furnish to the administrator a copy of each order of the court which pertains to or affects any election, and the administrator shall maintain in his office a file of all such orders, in addition to the record maintained by the county clerk.

(c) Every reference in this code to the county clerk or the clerk of the commissioners court which relates to the performance of any function or the receipt or filing of any instrument by that officer is to be construed as referring to the administrator, except for Subsection (3) of Section 208 of this code (Article 13.30), relating to service of process on the county clerk in a contest of a primary election under certain circumstances. References to the clerk of the county court are not to be construed as referring to the administrator.

(d) Certificates and supporting documents filed under Subdivision 2, Section 8a (Article 1.08a) of this code for the exemption of election precincts from requirements for bilingual materials in primary elections and in elections held at the expense of the county are to be filed in the office of the administrator.

(e) When any statute, including Section 28 (Article 4.05) of this code, provides for the filing or posting of an election notice in the office of the county clerk, the notice shall be filed or posted in the office of the administrator. When a statute provides for the filing of proof of posting, publication, or issuance of an election notice in the office of the county clerk, it shall be filed in the office of the administrator.

(f) Under the supervision of the county election board, the administrator shall make the record of blank ballots furnished for an election which is required by Section 64 (Article 6.09) of this code and shall file the record in his office, in lieu of recordation in the minutes of the commissioners court.

(g) The administrator shall have custody of and be responsible for maintaining the book for recording in detail the results of elections, as provided in Section 116 (Article 8.34) of this code.

(h) When a statute provides that the return of an election notice is to be recorded in the minutes of the commissioners court, in lieu of that procedure the return shall be filed in the office of the administrator.

(i) When a statute provides that an order declaring the outcome of an election on a question or proposition is to be filed in the office of the county clerk, the order shall be filed both in the office of the county clerk and in the office of the administrator.

(j) When a statute provides for the calling of an election on a question or proposition by the commissioners court or the county judge upon the presentation or filing of a petition therefor, the administrator shall perform, in addition to the duties and functions directly relating to the holding of the election, all duties and functions which the statute places, on the county clerk or the clerk of the commissioners court, either expressly or by implication, in connection with the filing of the petition and

the determination of its sufficiency, and any other preliminary matters which precede the entry of the order calling the election.

(k) The application for issuance of a petition seeking a local option election on the sale of alcoholic beverages and the signed petition for the election shall be filed with the administrator; and the administrator shall perform all duties relating to the election which are placed upon the county clerk or the clerk of the commissioners court through and including the canvass of the returns, the posting of the order declaring the result of the election where required, and certification of the results to the proper authorities. A copy of the order declaring the result of the election shall be entered of record in the office of the county clerk and a copy shall also be filed in the office of the administrator.

(l) When a statute prescribing the procedure for creation of a special district provides for the calling of an election as a step in completing the creation, in addition to performing the duties directly related to the holding of such an election after it is called, the administrator shall also perform all acts which otherwise would be performed by the county clerk in connection with all preliminary matters leading up to the entry of the order on whether the election will be called, including but not limited to the presentation or filing of the petition for creation of the district, the holding of any hearing on the proposal, the filing of any report or other document that is a step in the procedure, and the taking of an appeal from the order on whether the election is to be called. When the holding of an election is not one of the steps in the creation, the county clerk shall continue to perform all duties placed by statute upon that officer in connection with the creation of a district, including duties relating to a petition for its creation.

(m) The county clerk is the proper officer to receive and post copies of proposed constitutional amendments under Article XVII, Section 1, of the Texas Constitution. However, the secretary of state shall send an information copy of each proposed amendment to the administrator also.

Subd. 3. (a) In keeping with the general guidelines and the specific statutory rules stated in Subdivisions 1 and 2 of this section, the secretary of state shall promulgate rules, as necessary, classifying the various statutes according to which of the two offices of county clerk or county elections administrator is to perform the duties and functions prescribed therein. The secretary of state's classification has the force of law unless or until the legislature enacts a statute expressly providing for a different assignment of that specific function.

(b) The secretary of state may initiate the promulgation of a rule on his own motion, and he may promulgate rules at any time after this section becomes law, regardless of whether the office of

administrator has yet been created in any county. Whenever the county clerk or the administrator in any county in which the office of administrator has been created is uncertain as to which officer should perform a function under a statute for which the secretary of state has not made a classification, the officer shall request the secretary of state to promulgate a rule classifying that function, and the secretary of state shall comply with the request as expeditiously as possible.

(c) In addition to other notice of a proposed rule or of an adopted rule which is required by law, the secretary of state shall mail a copy of each rule proposed under this section to the county clerk and the county elections administrator in each county having the office of administrator within five days after notice of the proposal is published in the Texas Register and shall mail a copy of each adopted rule to those officers within five days after the certified copy of the rule is filed in the secretary of state's office. However, failure to mail the notice to these officers does not invalidate any actions taken or rules adopted.

(d) Upon receiving notification of the creation of the office of administrator in a county, the secretary of state shall mail to the county clerk a complete set of the rules previously promulgated under this section; and upon receiving notification of the appointment of the administrator, the secretary of state shall mail a complete set of rules to the administrator.

(e) Notwithstanding any other provision of law, the secretary of state may adopt an emergency rule under the emergency provisions of the Administrative Procedure and Texas Register Act<sup>1</sup> whenever a determination of the classification of a function is needed in a shorter time than that provided by normal procedures. The prior notice requirements prescribed in paragraph (c) of this subdivision do not apply to the promulgation of an emergency rule; however, notification of the adoption of an emergency rule is to be given in accordance with those provisions.

Subd. 4. (a) When an instrument which should be filed with the county elections administrator is mailed to the county clerk, or vice versa, the officer receiving the instrument shall make a notation thereon of the time of its receipt and shall promptly deliver it to the proper officer. If the statute does not specify that the instrument is to be filed with the administrator in a county which has that office, the misdirection does not prejudice the timeliness of the filing where time of mailing or time of receipt is material, and timeliness is determined by the time of mailing or the time of receipt by the officer to whom the instrument is addressed.

(b) When an instrument which should be filed with the county elections administrator is tendered in person to the county clerk, or vice versa, the

officer to whom the instrument is tendered shall direct the person making the tender to take it to the proper office.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, where a statute specifies that an instrument is to be filed with the county clerk, without specifying that it is to be filed with a county elections administrator in a county which has that office, but the place of filing is changed to the office of the administrator by virtue of this section, if the county clerk accepts and files the instrument, the filing has the same legal effect as if the instrument had been filed with the administrator.

(d) Where a statute specifies that an action is to be taken by the county clerk, without specifying that it is to be taken by the county elections administrator in a county which has that office, but the officer to act is changed to the administrator by virtue of this section, action taken by the county clerk without objection from the administrator has the same legal effect as action taken by the administrator.

Subd. 5. Statutes prescribing criminal penalties against the county clerk or his deputies or other employees for acts or omissions relating to duties which are transferred to the county elections administrator are to be construed as applying to the administrator or his deputies or employees, as the case may be.

[Acts 1977, 65th Leg., p. 1502, ch. 609, § 4, eff. Aug. 29, 1977.]

<sup>1</sup> Civil Statutes, art. 6252-13a.

**Art. 5.24c. Transfer of County Clerk's Election Duties to County Tax Assessor-Collector**

(a) The commissioners court by order recorded in its minutes may transfer to the county tax assessor-collector the duties and functions conferred upon the county clerk by law in connection with the conduct of elections if the county clerk and the county tax assessor-collector agree to the transfer. The order shall state the date the transfer of duties is effective.

(b) The commissioners court may rescind the order at any time after two years have elapsed from the date of its adoption, by a rescission order recorded in its minutes, to become effective on a date stated in the order. On the effective date of the rescission order, the duties and functions previously transferred to the county tax assessor-collector shall be performed by the county clerk unless the commissioners court creates the office of county elections administrator, in which case that officer shall perform the duties and functions.

(c) Not later than the third day after the entry of an order transferring election duties and functions to the county tax assessor-collector or after the

entry of an order rescinding the transfer order, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

(d) To the extent practicable, Section 56b of this code (Article 5.24b, Vernon's Texas Election Code) applies to the transfer of duties and functions under this section. For this purpose, the references in Section 56b to the creation of the office of county elections administrator mean the transfer of duties under this section to the county tax assessor-collector, and the references to the county elections administrator mean the county tax assessor-collector.

(e) As soon as practicable after the transfer of duties under this section, the county clerk shall transfer to the county tax assessor-collector all voting equipment and supplies in the clerk's custody and all records and papers in his possession that pertain to an uncompleted election. The commissioners court shall determine which records of prior elections are to be transferred and which are to remain in the county clerk's office.

(f) The amount appropriated by the commissioners court for the new duties and functions to be performed by the county tax assessor-collector under this section may not be less than the amount previously appropriated to the county clerk for the performance of those duties and functions, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

(g) The secretary of state shall prepare advisory budgetary guidelines for the performance of the consolidated duties and functions of the county tax assessor-collector resulting from the implementation of this section.

[Acts 1983, 68th Leg., p. 4739, ch. 829, § 2, eff. Aug. 29, 1983.]

**CHAPTER SIX. OFFICIAL BALLOT**

**Art.**

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- 6.02. Loyalty Affidavits.
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- 6.10. Voters Provide Form.

**Art. 6.01. Official Ballot**

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except (a) as a candidate for two or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast 20 percent or more of the votes for governor at the last preceding general election for that office shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as otherwise provided in this code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 57. Amended by Acts 1955, 54th Leg., p. 48, ch. 34, § 1; Acts 1959, 56th Leg., p. 285, ch. 161, § 1; Acts 1975, 64th Leg., p. 2091, ch. 682, § 14, eff. Sept. 1, 1975.]

**Art. 6.01a. Use of Nicknames and Titles**

Subject to the prohibitions of this section, the name of each candidate on any general, special, or primary election ballot shall be printed on the ballot in the form designated by the candidate. In lieu of his full legal name, the candidate may use in combination with his surname any of his given names or initials or contraction of such names by which he is commonly known, and as a part of his name he may use a bona fide nickname of one unhyphenated word of not more than ten letters, by which he is commonly known and has been so known for at least two years preceding the election. No nickname shall be placed on the ballot unless it meets the foregoing requirements, and in no event shall there be placed on the ballot any nickname indicating any political, economic, social, or religious view or affiliation. The suffix "Sr.," "Jr.," "2nd," or a word or

abbreviation of similar import may be used as part of the candidate's name.

A married woman or widow may use in combination with her surname the given name or initials of her husband or deceased husband with the prefix "Mrs." In the event two or more candidates for the same office have the same or similar surnames, each such candidate may have printed after his name a descriptive statement, not to exceed four words, which will distinguish him from the other. The descriptive words must refer to his place of residence or to his present or former profession, occupation or position (which may be by title or other method), and no other kind of descriptive matter shall be used. Except as herein permitted, no title or other designation of status, office, position, or attainment shall be affixed to any candidate's name.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 31.]

**Art. 6.02. Loyalty Affidavits**

(a) No person shall be permitted to have his name appear upon the official ballot as a candidate or nominee for any public office, as hereinafter stated, at any general, special, or primary election in this state, unless and until he shall have filed a loyalty affidavit as required by this section. The provisions of this section shall apply to candidates for all elective state, district, county, and precinct offices, including the offices of United States Senator and United States Representative, and to all elective offices of cities, school districts, conservation districts, and other political subdivisions of the state, except candidates for President or Vice-President of the United States and presidential elector candidates.

(b) A candidate whose name is to appear on the ballot in any general primary (first primary) election shall file the affidavit with the chairman of the executive committee with whom the request to have his name placed on the ballot is filed, or if filed with more than one, with each chairman. The affidavit must be filed before the deadline for filing applications for that election. Before the name of a write-in candidate in a first primary election is ordered placed on the ballot for a second or runoff primary election or is certified to be placed on the ballot for a general or special election as the party nominee, he shall file the affidavit with the chairman of the state executive committee in the case of a district or state-wide office and with the chairman of the county executive committee in the case of a county or precinct office. A candidate nominated by a party convention or a party executive committee shall file the affidavit with the committee chairman who certifies his nomination, and the affidavit must be filed before his name is certified. An independent or nonpartisan candidate shall file the affidavit with the officer with whom his petition or application for

a place on the ballot is filed, and the affidavit must be filed before the deadline for filing applications for a place on the ballot at that election.

(c) The affidavit shall be in the following form:

I \_\_\_\_\_, of the County of \_\_\_\_\_, State of Texas, being a candidate for the office of \_\_\_\_\_ do solemnly swear that I believe in and approve of our present representative form of government, and, if elected, I will support and defend our present representative form of government and will resist any effort or movement from any source which seeks to subvert or destroy the same or any part thereof, and I will support and defend the Constitution and laws of the United States and of the State of Texas.

\_\_\_\_\_  
(Signature of candidate)

Sworn to and subscribed before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.

\_\_\_\_\_  
(Signature of officer administering oath)

\_\_\_\_\_  
(Title of officer administering oath)

(d) The name of no candidate or nominee of any political party whose principles include any thought or purpose of setting aside representative form of government and substituting therefor any other form of government shall be permitted on the official ballot. It is specifically provided that no candidate or nominee of the Communist Party or the Fascist Party or the Nazi Party shall ever be allowed a place on the official ballot at any election in this state.

(e) The certification of a candidate as the nominee of a political party shall be sufficient evidence of the filing of the affidavit with the proper party chairman to permit the officer to whom the certification is made to place the candidate's name on the general or special election ballot, and it shall not be necessary for the candidate to file an affidavit with any other officer in connection with his candidacy, nor shall it be necessary for the certificate to state that the affidavit has been filed.

(f) If any officer with whom the loyalty affidavit as prescribed herein is required to be filed, fails or refuses to require the affidavit before ordering or certifying the candidate's name for a place on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 58. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 32; Acts 1967, 60th Leg., p. 1880, ch. 723, § 22, eff. Aug. 28, 1967.]

#### Art. 6.03. Certain Political Parties Not Permitted on Ballot

Any political party whose members believe in or advocate the principles and teachings of Communism, or who propose or advocate the overthrow of the Constitutional Government of the United States by force, shall not be permitted to have the name of any such party printed or placed on the official ballot at any General Election hereafter to be held in this State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 59.]

#### Art. 6.04. Removing or Substituting Names on Printed Ballots

Subd. 1. If the ballots for an election have already been printed when notice of a substitute nomination for an office is received, instead of having new ballots printed, the official board charged with the duty of furnishing the supplies for the election may make the necessary change in either of the following methods: (1) by having the ballots overprinted to blot or line out the name of the former nominee and to print above, below, or alongside it the name of the new nominee, if space on the ballot permits use of this method, or (2) by printing pasters or stickers bearing the name of the new nominee, to be pasted over the name of the former nominee.

Subd. 2. If after the ballots are printed it becomes necessary to remove the name of a nominee for whom a substitute nomination has not been made or to remove the name of an independent candidate in order to comply with Section 233 of this code,<sup>1</sup> instead of having new ballots printed, the officer or board charged with the duty of furnishing the supplies for the election may make the change either by having the ballots overprinted to blot out the name of the candidate (and also the square beside the name in the case of paper ballots) or by furnishing blank pasters or stickers to be pasted over the name and square.

Subd. 3. When pasters are used, a paster shall be affixed to each ballot before the presiding judge of the precinct, or the absentee voting clerk, endorses his name on the ballot for identification, or before the opening of the polls where the voting is by use of a voting machine or a voting device to which ballot labels are attached. As used in this section, the term "ballots" includes ballot labels.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 60. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 33; Acts 1975, 64th Leg., p. 2103, ch. 685, § 1, eff. Sept. 1, 1975.]

<sup>1</sup> Article 13.56.

#### Art. 6.05. Form of the Ballot

Subd. 1. All official paper ballots for any general, special, or primary election shall be printed on white paper of uniform style and of sufficient thickness to prevent the marks thereon to be seen through the paper. A suitable number of sample ballots may be printed on yellow paper for any election, but no ballot on yellow paper may be cast or counted.

Subd. 2. The designation of the election (e. g., "General Election, Travis County, Texas") and the date on which the election is held shall be printed at the top of the ballot, above the words "Official Ballot." All ballots prepared for the election shall be numbered consecutively beginning with No. 1 in each county if the election is to be held in a single county or part thereof, or is to be held in more than one county or part thereof and the result in each county is to be canvassed separately prior to the final canvass. In elections held by a city or other political subdivision of the State, all ballots for the election shall be numbered consecutively beginning with No. 1. The numbers shall be printed or stamped in consecutive order on all the ballots prepared for any election, with a separate number for each ballot, at the time of printing and before they are divided up and delivered to the election judges.

Subd. 3. In any general or special election at which the name of any candidate is to be printed on the ballot as the nominee of a political party, the tickets of the political parties which have nominated a candidate or candidates shall be arranged side by side in vertical columns of uniform width separated by a parallel rule. The first vertical column on the left-hand side of the ballot shall be used for printing the titles of the offices to be voted on, with the words "Candidates for:" being printed at the top of the column, and thereunder shall be listed the titles of the offices. In the top space in the second and succeeding vertical columns shall be printed the names of the political parties having nominees on the ballot, in the sequence specified by law. Listed under each party name and opposite each office title shall be printed the name of the party's candidate for the office. If the name of any independent or nonpartisan candidate is to be printed on the ballot, the next succeeding column shall be headed "Independent" and shall contain the names of the independent candidates opposite the appropriate office titles. The last column shall be headed "Write-In." The office titles shall be separated from each other by parallel horizontal lines extending across the ballot, through the party columns, the column for independent candidates, and the column for write-in candidates.

Subd. 4. When presidential electors are to be voted upon, their names shall not appear on the official ballot, but the names of the candidates for president and vice-president, respectively, of the political parties shall appear at the head of their respective tickets, printed as one race, and the names of each set of independent candidates for president and vice-president, printed as one race, shall be printed at the head of the independent column in the order determined under Subdivision 3 of Section 61c of this Code (Article 6.05c, Vernon's Texas Election Code). The votes for presidential candidates shall be canvassed, counted, and returns made in accordance with Section 171 and Section

172 of this Code (Articles 11.02 and 11.03, Vernon's Texas Election Code).

Subd. 5. In any general or special election for which no party nomination has been made, the titles of the offices to be voted on shall be arranged in a vertical column, and beneath the title of each office the names of the candidates shall be arranged in the order specified by law. In any election for which write-in votes are permitted, beneath the names of the candidates under each office there shall be a blank space with either a broken or a solid line underneath, as the space for a write-in vote, and when more than one candidate is to be elected for an office, the number of write-in spaces shall correspond to the number of candidates to be elected. If the over-all size of the ballot, arranged as one column, exceeds 18 inches in length, the office titles may be arranged in parallel vertical columns, all except the last of which shall be at least 16 inches in length.

Subd. 6. On all official ballots for an election, the type for all office titles shall be of uniform style and size; the type for all column headings shall be of uniform style and size; and the type for the names of all candidates shall be of uniform style and size.

Subd. 7. On each official ballot where officers are to be elected or nominated, there shall be printed on the left-hand side of the name of each candidate a square, [ ], and there shall be printed immediately below the words "Official Ballot" the following instruction note: "Vote for the candidate of your choice in each race by placing an 'X' in the square beside the candidate's name." On each official ballot on which party columns appear, a larger square shall be printed on the left-hand side of the name of the party, at the head of each party ticket, and the following shall be added to the instruction note: "You may vote a straight ticket by placing an 'X' in the square beside the name of the party of your choice at the head of the party column." Appropriate changes in the instruction note shall be made where only one race is listed on the ballot or where more than one person is to be elected in any given race.

Subd. 8. When constitutional amendments or other propositions are to be voted on, they shall appear once on each ballot in uniform style and type. Each proposition shall be submitted by printing the word "FOR" and beneath it the word "AGAINST" on the left-hand side of a single statement of the proposition, with a brace or parallel horizontal lines or other suitable device to show clearly to which proposition each "FOR" and "AGAINST" belongs. A square shall be printed on the left-hand side of the word "FOR" and of the word "AGAINST" in the statements submitting each proposition, and the following instruction note shall be printed immediately above the propositions:

"Place an 'X' in the square beside the statement indicating the way you wish to vote." The provisions of this subdivision shall supersede all existing statutes on the form in which propositions are to be submitted in all elections where paper ballots are used and shall also supersede any conflicting enactment passed by the 60th Legislature at its regular session unless such enactment expressly excepts it from the operation of this subdivision.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 61. Amended by Acts 1957, 55th Leg., p. 802, ch. 338, § 1; Acts 1967, 60th Leg., p. 1026, ch. 452, § 1, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 557, ch. 194, § 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 649, ch. 240, § 6, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 657, ch. 247, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1159, ch. 560, § 5, eff. Sept. 1, 1979.]

#### Art. 6.05a. Ballots for Elections Involving Precinct Offices

For any election, general or primary, at which the district office of United States Representative, State Senator, or State Representative, or the precinct office of county commissioner, justice of the peace, constable, public weigher, or precinct chairman of a political party is to be voted on, different ballots shall be prepared for the various districts or precincts involved in the election, to differ with respect to the district or precinct offices to be voted on. The election officers for each election precinct shall be furnished official ballots listing the district and precinct offices and candidates which are to be voted on by the voters in the particular election precinct, and no other district or precinct office shall be listed thereon, so that no voter shall receive a ballot listing any district or precinct office on which he is not entitled to vote. In furnishing ballots to absentee voters, the County Clerk shall furnish the voter with the ballot prepared for use in the election precinct in which he resides.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 34. Amended by Acts 1965, 59th Leg., p. 1552, ch. 678, § 11, eff. June 18, 1965.]

#### Art. 6.05b. Order of Party Columns on the Ballot

In any election held at the expense of the county, in which party columns appear on the official ballot, the columns shall be arranged in the following order, beginning on the left-hand side of the ballot: (1) columns of parties with state organization which have nominated candidates to be voted on at the election, arranged in the order of the number of votes cast throughout the state for each party's candidate for Governor at the last preceding general election for that office, with the party whose candidate for Governor received the highest vote being placed in the first column; (2) columns of parties without state organization which have nominated candidates to be voted on at the election; (3) a column for independent candidates; (4) a column

for write-in candidates. If there is no independent or nonpartisan candidate whose name is to be printed on the ballot, the column for independent candidates shall be omitted.

Where voting machines are used in the election and the columns on the ballot are arranged horizontally, the columns shall appear on the ballot in the order herein provided, beginning at the top of the ballot instead of on the left-hand side.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 35. Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 15, eff. Sept. 1, 1975.]

#### Art. 6.05c. Order of Offices and Names of Candidates

##### Order of State, District, County, and Precinct Offices

Subd. 1. (a) Whenever there are to appear on the ballot for any general, special, or primary election, two or more office titles of offices which are regularly filled at the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code), they shall be listed on the ballot in the following relative order:

##### Federal offices:

President and Vice President  
United States Senator  
Congressman-at-Large  
United States Representative (district office)

##### State offices:

##### (1) Statewide offices

Governor  
Lieutenant Governor  
Attorney General  
Comptroller of Public Accounts  
State Treasurer  
Commissioner of General Land Office  
Commissioner of Agriculture  
Railroad Commissioner  
Chief Justice, Supreme Court  
Justice, Supreme Court  
Presiding Judge, Court of Criminal Appeals  
Judge, Court of Criminal Appeals

##### (2) District offices

State Senator  
State Representative  
Member, State Board of Education  
Chief Justice, Court of Appeals  
Associate Justice, Court of Appeals  
District Judge

- Criminal District Judge
- District Attorney
- Criminal District Attorney
- (3) County offices
- County Judge
- Judge, County Court-at-Law
- Judge, County Criminal Court
- Judge, County Probate Court
- County Attorney
- District Clerk
- District and County Clerk
- County Clerk
- Sheriff
- Sheriff and Tax Assessor-Collector
- County Tax Assessor-Collector
- County Treasurer
- County School Superintendent
- County School Trustee (county with population of two million or more, according to the most recent federal census)
- County Surveyor
- Inspector of Hides and Animals
- (4) Precinct offices
- County Commissioner
- Justice of the Peace
- Constable
- Public Weigher.

The headings "federal offices" and "state offices" and the subheadings under "state offices" shall not be printed on the ballot.

(b) Whenever any new office within either of the above categories is created, the Secretary of State shall issue a directive designating its relative position on the ballot.

(c) Whenever the titles of party offices are to appear on the ballot for a primary election, they shall be listed following the public offices, in the order of "County Chairman" and "Precinct Chairman".

(d) Whenever any provision of this code authorizes or permits certain offices to be grouped and placed on a separate ballot or in a special column or section on the main ballot, the relative order as prescribed in Paragraph (a) of this subdivision shall be observed in listing such offices on the separate ballot or in the special column on the main ballot.

**Elections Held by Other Political Subdivisions**

Subd. 2. In elections held by municipalities, the office titles shall be listed on the ballot in the relative positions in which the offices are listed in the order calling the election, unless otherwise provided by charter or ordinance. In elections held by other political subdivisions, the authority calling the election shall determine the order of the offices on the ballot.

**Order of Names of Candidates**

Subd. 3. (a) In any general or special election in which the names of more than one candidate for the same office are to be printed on the ballot in an independent or non-partisan column or are to be printed on the ballot without party designation, the order in which the names of such candidates are to be printed on the ballot shall be determined by a drawing, to be conducted by the county clerk in elections held at the expense of the county, by the city secretary in city elections, and by the officer with whom the applications for a place on the ballot are filed in elections held by other political subdivisions. The officer conducting the drawing shall post a notice in his office, at least three days prior to the date on which the drawing is to be held, of the time and place of the drawing; and each candidate involved in the drawing or a representative designated by him shall have a right to be present and observe the drawing.

(b) In primary elections, the order in which the names of the candidates appear on the ballot shall be determined in the manner provided in Section 195 of this code.<sup>1</sup>

(c) The provisions of paragraph (a) of this subdivision apply to every runoff election following a general or special election, except runoff elections which are governed by Section 81 of this code (Article 7.16, Vernon's Texas Election Code) and runoff elections in home-rule cities which have charter provisions specifying a different method for determining the order of the names on the ballot in a runoff election.

(d) With respect to a drawing conducted pursuant to Paragraph (a) of this subdivision for an election held at county expense or a city election, on receipt of a candidate's written request accompanied by a stamped, self-addressed envelope, the authority conducting the drawing shall mail notice of the date, hour, and place of the drawing to the candidate. With respect to a drawing conducted pursuant to Paragraph (a) of this subdivision for an election held by any other political subdivision, the authority conducting the drawing shall mail notice of the date, hour, and place of the drawing to each candidate, at the address stated on the candidate's application for

a place on the ballot, not later than the fourth day before the day of the drawing.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 36. Amended by Acts 1967, 60th Leg., p. 1882, ch. 723, § 24, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 1682, ch. 664, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 796, ch. 291, § 83, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 987, ch. 369, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 640, ch. 143, § 2, eff. Sept. 1, 1983.]

<sup>1</sup> Article 13.17.

#### Art. 6.05d. Election for Unexpired Term

Whenever, in any general election or in any primary election for making nominations for a general election, an election is to be held for an unexpired term in an office, the words "unexpired term" shall be printed after the office title on the official ballot.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 37.]

#### Art. 6.05e. Correction of Errors on Ballot; Use of Pastors

If an error is made in printing the name of a candidate on the ballot, it may be corrected by use of a printed sticker or paster, which shall be printed on the same kind of paper and in the same style of type as used on the ballot. Any other error may be corrected in like manner if it can be done without disturbing the regularity of the ballot form. No sticker or paster shall be used on a ballot except as authorized in this section or in Section 60 of this Code, and if otherwise used the names pasted shall not be counted.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 38.]

#### Art. 6.06. How to Mark Ballot

In all elections, general, special, or primary, the voter shall place an "X" in the square beside the name of each candidate for whom he wishes to vote; provided, however, that if the voter places a plus sign (+) or a check mark (✓) or any other mark that clearly shows his intention, in such space, it shall be counted as a vote for that candidate, provided that no more names are thus marked than there are places to be filled. When party columns appear on the ballot, a voter desiring to vote a straight ticket may do so by placing an "X" or other clear mark in the square at the head of the column of the party for which he wishes to vote. If the name of the person for whom the voter wishes to vote is not printed on the ballot, the voter shall write in the name of the candidate for whom he wishes to vote, in the write-in column under the appropriate office title in elections where party columns appear on the ballot, and in an appropriate space under the title of the office in other elections; provided, however, that a voter shall not be entitled to vote for any candidate whose name is not printed on the ballot in any runoff election for nominating candidates or electing officers, and a space for write-in votes shall not be provided on the ballot for such elections. A

voter shall also not be entitled to vote for any candidate whose name is not printed on the ballot in any other type of election where the law expressly prohibits votes for write-in candidates. In all elections where questions or propositions are to be voted on, the voter shall place an "X" or other clear mark in the square beside the statement indicating the way he wishes to vote on each proposition. The failure of a voter to mark his ballot in strict conformity with these directions or failure to vote a full ballot shall not invalidate the ballot, and a ballot shall be counted on all races and propositions wherein the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot. It is specifically provided that the election officers shall not refuse to count a ballot because of the voter's having marked his ballot by scratching out the names of candidates for whom or the statement of propositions for which he does not wish to vote.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 62. Amended by Acts 1957, 55th Leg., p. 802, ch. 338, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 39; Acts 1967, 60th Leg., p. 1028, ch. 452, § 2, eff. Aug. 28, 1967; Acts 1977, 65th Leg., p. 557, ch. 194, § 4, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1159, ch. 560, § 6, eff. Sept. 1, 1979.]

#### Art. 6.06a. Write-in Votes when Office Title is Not on Ballot

Whenever at any general election there is no candidate whose name is to be printed in the ballot for an office subject to being filled at that election and the officer making up the official ballot fails to list the title of the office thereon, no person shall be declared elected to the office by virtue of write-in votes cast by writing in the title of the office and the name of the candidate unless the total number of votes cast for all write-in candidates for that office exceeds fifty percent of the total number of voters participating in the election who are eligible to vote for the office.

[Acts 1967, 60th Leg., p. 1884, ch. 723, § 25, eff. Aug. 28, 1967.]

#### Art. 6.06b. Write-in Candidate for Public Office; Declaration of Candidacy

##### Elections to Which Applicable; Procedure for Filing Declaration

Subd. 1. In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, no write-in vote may be counted for a person unless that person files a declaration of write-in candidacy within the time specified in Subdivision 2 or Subdivision 3 of this section, whichever is applicable. The declaration shall be filed with the same person with whom an independent candidate for the same office files his application to have his name printed on the ballot. It shall contain the same information as that required on the application of a candidate whose

name is to be printed on the ballot, but shall state that the person is running as a write-in candidate instead of requesting that his name be printed on the ballot.

#### Filing Deadline

Subd. 2. Except as provided in Subdivision 3 of this section, the declaration of write-in candidacy must be filed not later than 5 p.m. of the 55th day before election day. The declaration must reach the office of the appropriate officer by that deadline, and a mailing without a delivery by the deadline is not sufficient.

#### Extended Deadline

Subd. 3. Where a candidate whose name is to be printed on the ballot dies or is declared ineligible to hold this office on or after the second day preceding the filing deadline stated in Subdivision 2 of this section, a write-in candidate may file his declaration at any time before 12 noon of the day preceding election day. Absentee ballots voted before the death or ineligibility or before the filing of the declaration of write-in candidacy shall be counted in the same manner as if the write-in candidate had filed under Subdivision 2.

#### Certification of Filing

Subd. 4. On a declaration which is filed under Subdivision 2 of this section, the officer with whom it is filed shall certify the name of the write-in candidate to the clerk for absentee voting in the election (or to each clerk, if there is more than one), before the 45th day preceding election day. On a declaration which is filed under Subdivision 3, he shall notify the clerk for absentee voting immediately if the period for applying for an absentee ballot has not expired. He shall also certify the name of each write-in candidate to the officer who is in charge of distribution of ballots to the presiding judges of the election.

#### Notification to Presiding Election Judges

Subd. 5. Before election day, the officer having charge of distribution of the ballots for the election shall furnish to each presiding judge a sufficient number of copies of a list of the names of write-in candidates who have qualified under this section so that the presiding judge shall be able to comply with the requirements of Subsection (b) of this subdivision.

(b) Each presiding judge shall post a copy of the list of write-in candidates in the same locations where instruction cards are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 85, Texas Election Code (Article 8.03, Vernon's Texas Election Code), or in the same location where sample ballots are posted in accordance with Section 80,

Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 79, Texas Election Code (Article 7.14, Vernon's Texas Election Code).

[Acts 1977, 65th Leg., p. 1282, ch. 503, § 1, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 2234, ch. 418, § 2, eff. Aug. 29, 1983.]

#### Art. 6.07. Constitutional Amendments and Other Questions

Subd. 1. When a proposed constitutional amendment or other question submitted by the Legislature is to be voted on, the form in which it is submitted if the Legislature has failed to prescribe the same, shall be prescribed by the Governor in his proclamation, describing the same in such terms as give a clear idea of the scope and character of the amendment in question. When more than one (1) proposed constitutional amendment or other question is submitted by the Legislature at one (1) election, the Secretary of State shall give to each such proposition and question a separate number, and shall certify the same together with its separate number to the county clerk of each county in the State. The number given to each such proposition, question or proposed amendment shall be determined by lot. The Secretary of State shall hold such drawing at a time and place designated by him and such drawing shall be open to the public. The propositions and questions so submitted shall be printed and numbered on the official ballot in the serial order in which they are numbered by the Secretary of State.

Subd. 1a. A proposed constitutional amendment submitted to the voters by the legislature in the Called Special Session of the 65th Legislature shall be designated "Tax Relief Amendment," and the place of the amendment on the ballot shall be determined by the legislature in the resolution proposing the amendment.

Subd. 2. A notice of each proposed constitutional amendment shall be published, under the authority of the Secretary of State, as required by Section 1, Article XVII, Constitution of Texas. The Secretary of State shall contract with the eligible newspapers for the publication of the notices; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when two publications have been made; shall furnish one approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue a warrant in the amount specified. Executed affidavits must be returned from the owner, editor, or publisher of the newspaper to the Secretary of State within 30 days from the date of the last publication; unless this time limit is observed, the Secretary of State shall refrain from approving affidavits for payment. Provided, however, if the Secretary of State deems it more expeditious or economical, he may make a written contract with any state-wide association of daily and weekly news-

papers in Texas for the publication of the notices of such constitutional amendments in newspapers eligible to publish them. Such association shall cause such notices to be published in the eligible newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such notices; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when two publications have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such notices were published, the number of column inches submitted to each publication, the cost of publication in each newspaper, together with a clipping for such newspaper, and any other information desired by the Secretary of State pertaining to such task; shall return within 30 days from the date of the last publication all affidavits executed by the owner, editor, or publisher of such newspapers, together with an affidavit executed in duplicate by the general manager of such association that the notices have been published by said newspapers as required by the Constitution, to the Secretary of State, who shall, after satisfying himself as to the proper publication of such notices, furnish one approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue a warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

Subd. 2a. (a) Where the Secretary of State contracts directly with the newspapers for publication of notices of proposed constitutional amendments, each newspaper which publishes a notice is entitled to be paid for the publication an amount computed at the rate of 85 percent of the newspaper's published national rate for advertising per column inch if the Secretary of State furnishes to the newspaper a copy of the notice in the form of a camera-ready paste-up proof, a matrix, or a printing plate, and an amount computed at the full rate of the newspaper's published national rate for advertising per column inch if the Secretary of State does not furnish a copy of the notice in that form.

(b) Where the Secretary of State contracts with a state-wide association of newspapers for the publication of the notices, the association is entitled to be paid an amount equal to the sum of the cost of publication in each newspaper, computed at the full rate of each newspaper's national rate for advertising per column inch. The commission retained by the association shall be on a percentage basis uniformly applied to all newspapers, and the percent-

age shall be stipulated in the contract between the Secretary of State and the association.

Subd. 3. The form in which any proposition or question to be voted on by the people of any city, county or other subdivision of the State shall be submitted, unless prescribed by statute, city charter, or ordinance, shall be prescribed by the local or municipal authorities submitting it.

Subd. 4. [Expired]

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 63. Amended by Acts 1955, 54th Leg., p. 907, ch. 357, § 1; Acts 1967, 60th Leg., p. 1029, ch. 452, § 3, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1617, ch. 498, § 1, eff. June 10, 1969; Acts 1975, 64th Leg., p. 445, ch. 189, § 1, eff. May 13, 1975; Acts 1975, 64th Leg., p. 2091, ch. 682, § 16, eff. Sept. 1, 1975; Acts 1978, 65th Leg., 2nd C.S., p. 12, ch. 6, § 1, eff. Aug. 14, 1978.]

Former subd. 4 of this article, added by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, providing that the amendments to the Constitution proposed by S.J.R.No. 11 of the 64th Legislature were to be printed and numbered on the ballot in the order in which numbered by that resolution, expired by its own terms on December 31, 1975.

**Art. 6.08. Repealed by Acts 1967, 60th Leg., p. 1858, ch. 723, § 77, eff. Aug. 28, 1967**

**Art. 6.09. Ballots Furnished**

(a) The authority responsible for furnishing the ballots in an election shall furnish each election precinct a number of ballots equal to the percentage of voters who voted in that precinct in the most recent corresponding election plus 25 percent of that number. The number of ballots furnished may not exceed the total number of registered voters in the precinct. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each endorsed on the package, and entered of record by the clerk in the minutes of the Commissioners Court or, in an election ordered by an authority of a political subdivision other than a county, on the minutes of the governing body of that subdivision. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector.

(b) The number of ballots delivered for use in absentee voting and the range of serial numbers on those ballots and on the ballots delivered for use in regular voting on election day shall also be entered of record in the minutes.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 64. Amended by Acts 1979, 66th Leg., p. 602, ch. 278, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4747, ch. 829, § 5, eff. Aug. 29, 1983.]

Amendment of this article by Acts 1979, 66th Leg., p. 173, ch. 95, § 2, eff. Aug. 27, 1979, was repealed by Acts 1979, 66th Leg., p. 602, ch. 278, § 3, eff. Aug. 27, 1979.

**Art. 6.10. Voters Provide Form**

If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 65.]

**CHAPTER SEVEN. ARRANGEMENT AND EXPENSES OF ELECTION**

**Art.**

- 7.01. Voting Booths.
- 7.02. Booths and Guard Rails.
- 7.03. Open to View.
- 7.04. When Booth Not Required.
- 7.05. Ballot Boxes Marked.
- 7.06. Ballot Boxes.
- 7.07. County Election Board.
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- 7.11. Duty of Sheriff and Constable.
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- 7.13. Municipal Elections.
- 7.14. Providing for Voting Machines.
- 7.15. Providing for Electronic Voting Systems.
- 7.16. Runoff Elections in Cities and Towns of over 200,000.
- 7.17. Inapplication to Elections in which Voting Machines Used.
- 7.17a. Secretary of State to Certify Voting Devices.

**Art. 7.01. Voting Booths**

Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand (10,000) inhabitants or more.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 66.]

**Art. 7.02. Booths and Guard Rails**

There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and who at the last general election were registered to vote, provided, the judges of the election may provide as many more booths and places as they deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six (6) feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three (3) sides

closed and the front side open, shall be twenty-two (22) inches wide on the inside, thirty-two (32) inches deep and six (6) feet four (4) inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 67. Amended by Acts 1981, 67th Leg., p. 3147, ch. 827, § 12, eff. Aug. 31, 1981.]

**Art. 7.03. Open to View**

All booths and voting places shall be properly lighted. Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and 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 officers and persons outside the guard rail, among whom may be one challenger for each political party and no more.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 68.]

**Art. 7.04. When Booth Not Required**

When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six (6) feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him with black lead pencil, and so screened that no other person can see how he prepares his ballot.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 69.]

**Art. 7.05. Ballot Boxes Marked**

For each election precinct, there shall be provided four (4) ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No. \_\_\_\_\_" (giving name and number of precinct); "Ballot box No. 2 for election precinct No. \_\_\_\_\_"; "Ballot box No. 3 for election precinct No. \_\_\_\_\_"; "Ballot box No. 4 for election precinct No. \_\_\_\_\_."

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 70.]

**Art. 7.06. Ballot Boxes**

All ballot boxes shall be securely made of a material and construction and in a design approved by the secretary of state. All ballot boxes shall be provided with a lock and key and shall have an opening at the top just large enough to receive a ballot when voted. Whenever the ballots shall have been counted at any election, general, special or

primary, the counted ballots shall be locked in one of the ballot boxes of suitable size and delivered to the proper official and the key or keys to the said lock shall be delivered to the proper official to be kept for at least thirty days unless sooner needed for recount or contest as provided by law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 71. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 40; Acts 1969, 61st Leg., p. 2662, ch. 878, § 16, eff. Sept. 1, 1969.]

#### Art. 7.07. County Election Board

In general and special elections for election of officers who are regularly elected at the general election provided for in Section 9 of this code,<sup>1</sup> the county judge, county clerk, sheriff, and county chairman of each political party which is required to nominate candidates by primary election shall constitute a board, a majority of whom shall act to provide the supplies necessary to hold and conduct the election. In all other elections held by the county, the board shall be composed of the county judge, county clerk and sheriff. As used herein, the words "supplies" means all supplies and equipment needed for the election, including, without limitation, ballot boxes, voting booths, guard rails, voting machines, and other voting equipment. The supplies shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the presiding judges, provided, however, that delivery of voting machines shall be made in accordance with the provisions of Section 79 of this code.<sup>2</sup> The board shall file with the commissioners court a written report of their action as to supplies furnished by the county, giving a detailed statement of the expenses incurred in procuring such supplies.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 72. Amended by Acts 1967, 60th Leg., p. 1885, ch. 723, § 27, eff. Aug. 28, 1967.]

<sup>1</sup> Article 2.01.

<sup>2</sup> Article 7.14.

#### Art. 7.08. Supplies Needed

The respective counties shall provide the additional supplies needed to comply with this Act in so far as general and special elections are concerned.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 73.]

#### Art. 7.09. Judge to Procure

If from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies. If the certified list of qualified voters is not in his possession at least three (3) days before the election, he shall send for and procure them.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 74.]

**Art. 7.10. Repealed by Acts 1981, 67th Leg., p. 1786, ch. 389, § 39(e)(1), eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3149, ch. 827, § 19, eff. Aug. 31, 1981**

#### Art. 7.11. Duty of Sheriff and Constable

It shall be the duty of the sheriff or any constable of the county when called upon by the proper authority to serve all process and deliver all election supplies provided for by this Code. No extra compensation shall be allowed the sheriff or constable for the performance of such duties.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 76.]

#### Art. 7.12. Expenses for Election Supplies

All expenses incurred in furnishing the supplies, ballots, and booths in any general or special election shall be paid for by the county, except costs in municipal and school elections. All accounts for supplies furnished and services rendered shall first be approved by the Commissioners Court before they are paid by the county.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 77.]

#### Art. 7.13. Municipal Elections

The expense of all city and town elections shall be paid by the municipality in which same are held. In all such elections, the mayor, the city secretary, and/or the governing body shall do and perform each act which in other elections are required to be done and performed respectively by the county judge, the county clerk and the Commissioners Court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 78.]

#### Art. 7.14. Providing for Voting Machines

##### Providing for Examination and Approval of Voting Machines by the Secretary of State

Sec. 1. Any person, firm or corporation owning or controlling any voting machine and desiring to have the same adopted for use in the State of Texas, may apply to the Secretary of State to have such machine examined. Before the examination the applicant shall pay to the Secretary of State the sum of Four Hundred and Fifty Dollars (\$450). The Secretary of State shall cause said machine to be examined as hereinafter provided and shall make and file and keep on file in the office of the Secretary of State a report of such examination, which shall show whether the kind of machine so examined can safely be used by the voters at an election or primary election, under the conditions hereinafter provided. If the report states that the machine can be so used, it shall be deemed approved, and machines of its kind may be adopted for use at elections and primary elections as herein provided. Before making and filing such report, the Secretary of State shall require such voting machine to be exam-

ined by three (3) examiners to be appointed by the Secretary of State for such purpose, one of whom shall be an expert in patent law, and the other two (2) mechanical experts, and shall require of them a written report on such machine, and which reports shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive the sum of One Hundred and Fifty Dollars (\$150) as his compensation and expenses in making an examination and report as to each voting machine examined by him. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any voting machine. When the machine has been approved, any improvement or change that does not impair its accuracy, efficiency or capacity, shall not make necessary a reexamination or reapproval thereof. Any form of voting machine not approved as herein set out, or which has not been examined by voting machine examiners and reported on pursuant to law and its use specifically authorized by law, cannot be used at any election or primary election in the State of Texas.

#### Setting Out Requirements of Voting Machines

Sec. 2. A voting machine approved by the Secretary of State must be so constructed as to provide facilities for voting for such candidates as may be legally placed on an official ballot at any election in this state. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate<sup>1</sup> by any party but whose name is legally on the ballot as an independent candidate, and must permit voting in absolute secrecy. It also must be so constructed that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constructed as to prevent voting for more than one person for the same office and at the same time preventing his voting for the same person twice. It must be provided with a lock or locks, by the use of which immediately after the polls are closed or the operation of such machine for such election or primary election is completed, any movement of the voting or registering mechanism is absolutely prevented. The machine shall be equipped with one or more protective counters. The machine may be equipped with a device which prints a copy or copies of the numbers registered on the counters, as registered before the polls open and after the polls close.

#### Adoption by Commissioners Court

Sec. 3. The commissioners court of any county in the state may adopt for use in elections in at least three of the larger election precincts in voting strength in the county, any kind of voting machine approved by the Secretary of State, and may adopt such voting machine at any time for use in such additional election precincts in the county as it may deem advisable. The court at any time may rescind

or modify its previous order or orders adopting voting machines, and may discontinue use of voting machines altogether, but use of voting machines shall be retained in at least three of the larger election precincts if retained for use in any part of the county.

Voting machines shall be used at the biennial general elections for state and county officers in all precincts in which they have been adopted by the commissioners court. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting in such precincts for the particular election shall be by use of voting machines or paper ballots, and may provide for use of either voting machines or paper ballots in any or all of the precincts for which voting machines have been adopted. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities or other political subdivisions, and by the county executive committee of the political party in primary elections.

#### Experimental Use of Voting Machines

Sec. 4. The Commissioners Court of any county in the State of Texas, where not otherwise herein provided, may secure, for experimental use, at an election or primary election, in one or more precincts without a formal adoption thereof; and its use at such election or primary shall be as valid for all purposes as if it had been formally adopted.

#### Providing Voting Machines

Sec. 5. The commissioners court of a county which had adopted voting machines for that county or any portion thereof, shall as soon as practicable, and in no case later than six months after adoption thereof, provide for each election precinct designated one or more approved voting machines in completed working order, and shall thereafter preserve and keep them in repair.

#### Payment for Voting Machines

Sec. 6. The County Commissioners Court shall provide for the payment of voting machines to be used in such county in such manner as the Court may deem for the best interest of the county, and for the purpose of paying for voting machines, such Commissioners Court is hereby authorized to issue bonds, and certificates of indebtedness, warrants, or other obligations to be used for this purpose and no other, which shall be a charge against the county, such bonds, certificates of indebtedness, or other obligations, may be issued with or without interest payable at such time or times as the Commissioners Court may determine, but shall never be issued nor sold for less than par; provided, however, that such Commissioners Court shall issue such bonds, certifi-

cates of indebtedness, warrants, or other obligations, to be used for the purpose of payment of voting machines in the same manner and with the same authority as provided for the issuance of warrants, bonds, certificates of indebtedness, or other obligations, by the General Laws of this State. The necessary tax shall be set aside at the time of creating such obligation so as to meet the debt provisions of the Constitution; provided, however, that should the Commissioners Court of any county deem it for the best interest of such county, said Commissioners Court is hereby authorized to contract for the renting of voting machines by such county for use in elections for a term of not more than two (2) years in any one contract of rental. Upon the expiration of such terms of contract of rental such Commissioners Court may renew and/or extend same from time to time. Such contracts shall be made only after advertising for bids in the manner provided by the General Laws controlling the purchases made by such county for county purposes provided and except, however, the Commissioners Court of any county is hereby authorized to accept proposals of rental and/or sale of voting machines after advertising as provided by law wherein the rentals paid by such county for the use of such voting machines or a part thereof may be applied on the purchase price of such machines upon such Commissioners Court determining that it is to the best interest of such counties so to do. Such voting machines shall be the property of the county paying for same and/or renting same, subject to the terms of the rental contract, and when used in any election or primary election, the county is not charged by law with the holding of, such machines shall be leased to the authorities charged with holding such election or primary election, and payment shall be received by the county at such lease price per machine for each election day such machines are used in an election as the Commissioners Court shall fix, but not to exceed ten per cent (10%) of the original cost of such voting machine, as may be required to hold each election or primary election. The term each election or primary election, as herein used, shall mean each election day such machines are used for voting purposes in such elections, and the Commissioners Court in fixing such lease price shall fix a lease price, and payment for same shall be received by the county, for each day such machines are actually used for voting in such election or primary election, and in the event a runoff election or primary runoff election is held, such lease price shall be paid to the county for each whether the same be the first election or primary election or the second and/or runoff election or second and/or runoff primary; and those charged with the holding of such election or primary election shall pay the lease price whether it be a school board, a municipality, a political party, or any other organization or authority.

#### Absentee Voting

Sec. 7. In any election in which voting machines are to be used in all or part of the election precincts, the authority charged with holding the election shall within its discretion determine by proper resolution or order whether or not voting machines shall be used for absentee voting by personal appearance at such election. If it be determined by such authority that voting machines shall be used for absentee voting by personal appearance, a voting machine or machines shall be placed in the office of the clerk who is to conduct the absentee voting for the election, as provided in Section 37 of this Code,<sup>2</sup> with the ballot of the election thereon as regulated by law, and those entitled under the law to vote absentee by personal appearance at the clerk's office shall cast their votes on such machine or machines as the case may be, under the laws applicable to absentee voting, and the clerk shall enter on a poll list the name of each such voter at the time he votes. The clerk shall seal the machine or machines at the close of each day's voting in the presence of authorized watchers, if any, and such seal shall be broken by the clerk in the presence of such authorized watchers, if any, the following morning when voting begins. When absentee voting by personal appearance is legally concluded at the election, the clerk shall lock and seal such machine or machines in the manner prescribed for election precincts, to be kept intact until the day of the election. Before seven o'clock p. m. on the day of the election, the machine or machines shall be opened and the vote canvassed, in the manner provided for regular polling places, by the clerk who conducted the absentee voting and two other officers as follows: if an election held by the county, by the county judge and the sheriff; if a city election, by the mayor and one other member of the city governing body, to be designated by the governing body; if an election held by some other political subdivision, by the presiding officer and one other member of the governing body of the subdivision, to be designated by the governing body; and if a primary election, by the chairman and secretary of the executive committee of the political party holding the election; provided, however, that where the absentee ballots voted by mail are counted by a special canvassing board as hereinafter authorized, the special canvassing board shall canvass the absentee votes cast on voting machines. After the canvass has been made, the machine or machines shall be locked and sealed and shall remain locked against voting for the same period as required for other machines used in the election. The results of such canvass shall be returned by sealing and delivering, same to the proper authority as provided by law and such results shall be tabulated and canvassed in the same manner and together with the tabulation and canvassing of the returns for other election precincts. The results of such absentee votes shall not be announced or made

public until after seven o'clock p. m. of the day of the election, when such results shall be announced and made public together with the general results of the election by proclamation of same as provided by law.

In all elections, absentee voting by mail shall be conducted by use of paper ballots, and the authority holding the election shall provide official paper ballots for the casting of absentee ballots by mail as prescribed and provided by the general laws applicable to absentee voting. Should the authority determine by such resolution as above provided that paper ballots are to be used for absentee voting by personal appearance, a sufficient supply of paper ballots shall be provided for absentee voting by personal appearance as well as by mail. The absentee voting by use of paper ballots shall be conducted as prescribed by the general laws applicable to absentee voting, except as otherwise provided herein. If the authority holding the election determines that absentee paper ballots shall be counted by a special canvassing board as hereinafter authorized, the ballots shall be counted and returns made in the manner prescribed. If the ballots are not to be counted by a special canvassing board, they shall be sent to the precinct polling places for counting. On the second day prior to the election, the clerk shall mail or deliver to the presiding judge in the precinct of the voter's residence each absentee ballot which has been lawfully returned to him, in the manner provided in Subdivision 8 of Section 37 of this Code.<sup>3</sup> In county-wide elections, the authority holding the election shall be responsible for delivering to the precinct polling places the absentee ballots voted by mail which are received by the clerk between the second day prior to the election and one o'clock p. m. on election day. On election day, the precinct election officers shall test and qualify the absentee ballots in the manner provided in Subdivision 6 of Section 37 of this Code,<sup>4</sup> and the name of each elector whose absentee ballot is accepted shall be entered on the regular poll list with the words "absentee voter" set down opposite the voter's name.

In election precincts where paper ballots are used, the ballot stubs for the accepted ballots shall be placed in the regular stub box prepared for the precinct, and the ballot envelopes shall be placed in a box for absentee ballots. Between the hours of 2:00 p. m. and 3:00 p. m. on the day of the election, the ballot envelopes shall be opened and the ballots shall be counted and tallied in the same manner as other ballots cast at the election and shall then be placed in ballot box No. 3 for counted ballots.

In election precincts where voting machines are used, the stubs shall be placed in a stub box prepared for absentee ballots for that precinct, and the ballot envelopes shall be placed in a box for absentee ballots. Between the hours of 2:00 p. m. and

3:00 p. m. on the day of the election, the ballot envelopes shall be opened and, under the supervision of the presiding officer and in the presence of two clerks and of the watchers, if any, the ballots shall be registered on the voting machine the same as if the absent voter had been present and voted in person, and the voted paper ballots shall then be placed in a ballot box which shall be locked and returned to the officer having custody of the voted ballots for that election.

All rejected absentee ballots and the applications and accompanying papers on all absentee ballots shall be handled and returned in the manner provided by general law for absentee voting.

#### Special Canvassing Board

Sec. 7a. In all elections in which voting machines are used for voting at regular polling places, both county-wide and less than county-wide, the authority charged with holding the election may in its discretion determine by proper resolution to have absentee paper ballots counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this Code.<sup>5</sup> The special canvassing board shall count the absentee paper ballots and make return thereof in the same way as prescribed for county-wide elections in Sections 37 and 38 of this Code, and all laws applicable to absentee voting in county-wide elections, including the period for absentee voting by mail, shall apply. The board shall be appointed and compensated as provided in Subdivision 6 of Section 37. If absentee voting by personal appearance has been conducted by use of voting machines, the special canvassing board shall also canvass and record the votes cast on the voting machine or machines and make return thereof.

#### Absentee Voting by Paper Ballots for Precinct Offices

Sec. 7b. Whenever, at any election where precinct offices are to be voted on, the authority charged with holding the election determines to use voting machines for conducting absentee voting by personal appearance in the clerk's office and the number of separate precinct offices makes it impossible to place the entire ballot on one voting machine, the authority charged with holding the election may in its discretion further determine by proper resolution or order to use paper ballots for absentee voting by personal appearance for any or all of the precinct offices to be voted on, and to use a voting machine or machines for all other offices to be voted on at the election. The paper ballot used for precinct offices shall conform to all requirements for official ballots as provided elsewhere in this Code, except that there shall be listed thereon only the precinct offices for which the authority holding the election has determined to use paper ballots. Each voter making his personal appearance in the clerk's office shall be furnished with a paper ballot containing the precinct offices for

which he is entitled to vote, and he shall cast his vote for offices listed on the paper ballot in accordance with the procedure for casting absentee ballots voted by personal appearance as provided in Sections 37 and 38 of this Code.

Absentee voting by mail shall be conducted by use of an official paper ballot for all offices to be voted on at the election, in the manner provided in Sections 37 and 38 of this Code.

A special canvassing board, which shall be appointed and compensated as provided in Subdivision 6 of Section 37 of this Code, shall count and make return of the paper ballots cast for precinct offices, as well as the absentee ballots cast by mail, in the manner prescribed in Subdivision 6 of Section 37. The votes cast on the voting machine or machines shall be canvassed and recorded and return thereof made in the manner prescribed for absentee votes cast on voting machines in Section 7 of Section 79 of this Code.

The provisions of this Subsection are cumulative of all other provisions relating to absentee voting.

#### Form of Ballots on Voting Machines

Sec. 8. All ballots shall be printed in black ink on white clear material, of such size as will fit in the ballot frame, and in as plain, clear type as the space will reasonably permit. In all elections, general, special, or primary, a designating letter and number may be affixed to the name of each candidate. In general elections, the party name may be affixed to the name of each candidate, and the names of all candidates of one political party shall be so arranged that a voter may be able to cast his ballot for such candidates as he may desire or to cast one ballot for all the candidates of that political party. In primary elections, however, the ballot shall be so arranged and the lever so locked as to prevent the voting of straight tickets. Should there be so many candidates and/or propositions to be voted upon in any election as to exceed the capacity of one machine, more than one machine shall be provided for each polling place, but in all cases where more than one machine is necessary to list the entire ballot, the names of all candidates for any particular office shall be placed on one machine. In lieu of using an additional machine for listing the ballot, uncontested races may be placed in a separate column headed "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one at which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races shall be voted on as a block, and the requirement of this section that the ballot in general elections be so arranged that the voter may

be able to vote a straight ticket for all candidates of one political party shall not apply to candidates appearing in the uncontested column. However, in no election may the ballot be so arranged that a voter is able to vote as a block on propositions.

If the authorities charged with holding the election determine, in their discretion, that more than one voting machine is necessary to accommodate the number of voters voting in an election precinct, then as many voting machines shall be used for each precinct as such authorities deem necessary, and the same form of ballot containing the names of all candidates and/or propositions arranged in the same manner shall be provided for each machine.

#### Color of Ink for Ballots on Voting Machines in Large Counties

Sec. 8a. In counties having a population in excess of two million (2,000,000) inhabitants according to the last preceding federal census, the ballots may be printed in one or more colors of ink; however, the names of all the candidates for any one office shall be printed in the same color.

#### Sample Ballots

Sec. 9. The authorities charged with holding the election or primary election may provide for each precinct two (2) sample ballots and one model arranged in the form of a diagram showing such part of the face of the voting machine as shall be in use in that election or primary election. Such sample ballots and model shall be on display in each precinct voting place throughout the time the polls are open and attention shall be especially called to them before each voter uses machine.

#### Preparation of Voting Machines

Sec. 10. It shall be the duty of the appropriate officer of the authority holding the election (the county clerk in elections held at the expense of the county, the city secretary in city elections, the presiding officer of the governing body of the political subdivision in elections held by other political subdivisions, and the chairman of the county executive committee in primary elections) to cause the proper ballot labels to be placed on voting machines, to cause the machines to be placed in proper order for voting, and to examine all voting machines in the presence of authorized watchers for any interested persons, before they are sent out to the polling places, to see that all the registering counters are set at zero (000), to lock, in the presence of authorized watchers, all voting machines so that the counting machinery cannot be operated and to seal each one with a numbered seal. A list of the numbered seals and the number on the protective counters, together with the number of the precinct to which each machine was sent, shall be kept as a record open to any citizen, in the records of the officer making the examination, for the length of time

required by law for preservation of the returns of the election. Such inspection and sealing of voting machines shall begin within five days before the day of the election at which such machines are to be used, and shall continue until all such machines are sealed. When all machines are locked and sealed, the key to each machine shall be placed in an envelope and sealed, the signature of the inspecting officer and the signatures of two watchers of opposed interest, if there be such, placed across the seal, and on the envelope shall be written the number then on the protective counter and the number of the seal of the voting machine, such envelope to be delivered to the presiding judge of each precinct.

It shall be the duty of the sheriff in an election held at the expense of the county, the duty of the mayor in a city election, the duty of the presiding officer of the governing body of the political subdivision in an election held by any other political subdivision, and the duty of the county chairman in a primary election, to have a voting machine or machines delivered to each of the polling places where voting machines are to be used, at least one hour before the time set for the opening of the polls in such voting precinct. After the machine has been delivered, the same authority shall cause the machine to be set up in the proper manner and shall cause protection to be given so that the machine shall be free from molestation and injury. The same authority shall cause to be delivered with each machine an auxiliary light where necessary, properly prepared to be lighted in emergency, so arranged that the light will illuminate the face of the machine sufficiently that a voter may be able to read all the names on the machine, and suitable for officers in examining counters. The protective hood and screen of the machine shall be examined to see that they properly conceal all the actions of the voter while the voter is operating the machine. All poll lists and necessary supplies shall be delivered to the presiding judge at the same time the key or keys to the machine are delivered.

**Certificate of Convenience to Transport Voting  
Machines not Required**

Sec. 10a. No necessity shall exist for the issuance of a certificate of convenience as provided by Article 911b, Section 5a, Revised Civil Statutes, for the transporting of voting machines within the county. Such transporting of said voting machines is exempted from Article 1690b(a) of the Penal Code of the State of Texas.

**Instruction of Election Officers**

Sec. 11. Not less than three (3) days before an election or primary election, the authority charged with holding the same, shall cause to be held a public school of instruction for those who will actually conduct the election or primary election at the polling places, such school to be open to any inter-

ested person and notice of such meeting being given to the public press at least forty-eight (48) hours before same is to be held.

**Preliminaries of Opening the Polls**

Sec. 12. The key or keys to the voting machine or machines shall be delivered to the presiding judge of each precinct at least thirty minutes before time for the opening of the polls, the seal of the envelope containing the same to be unbroken, and the seal shall be broken by the presiding judge only in the presence of at least two authorized watchers for opposing interest (if there be such), and shall only be broken after comparison shows that the number written on the envelope and the number shown on the protective counter are identical. If these numbers are found not to be the same, the seal shall not be broken until the officer who prepared the machine or his representative shall arrive and deliver the correct keys or until another and properly sealed machine is delivered. If the numbers written on the envelope and the numbers on the seal of the machine are not identical, then the envelope shall not be opened and the same procedure as above set out shall govern. But if the numbers written on the envelope and the respective numbers on the seal and on the protective counter are found to be the same, the presiding judge shall open the doors concealing the counters, and before the polls are declared open, the election officers and each authorized watcher for any person interested shall carefully examine each counter and see that it registers zero (000). All of those last enumerated then shall examine the ballots and satisfy themselves they are in their proper places on the machine. If the machine is equipped with a device which produces a printed record of the register shown on the counters, the presiding judge shall verify that the printed form is correctly made up and shall take the necessary steps to secure a printed record from each machine, and all the persons authorized to be in the polls shall satisfy themselves that the printed record is correct. The election officers shall cause to be conspicuously placed the sample ballots and model for the guidance of the voters. All the persons authorized to be in the polls shall satisfy themselves that the voting machine is properly placed, being at least three feet from any wall or partition or any other obstruction, and that the face of the machine is turned toward where the election officers and the public may obtain a clear and unobstructed view of the same at all times, except when the curtain on the machine is closed for the casting of the ballot. The election officers and at least two watchers of opposing interest (if there be such) shall then sign a certificate setting out that the keys were delivered intact, that the numbers on the protective counter and the seal correspond with those on the envelope, that all the counters were set at zero (000) and that the ballot

labels were in their proper places. If any counter shall be found not to register zero (000), the presiding judge shall write out a statement to that effect and keep the same prominently posted throughout the day showing the number that counter was found to register, and in filling out the statement of canvass he shall subtract such number from the number found to register on that counter when the polls close. The machine shall then be opened for voting.

#### Conduct of the Voting

Sec. 13. The presiding judge shall be in general charge of the poll and shall see that a clerk of the election properly checks off the name of each voter from the list of qualified voters and enters his name on the poll list before the voter casts his ballot. It shall further be the duty of one of the clerks to see that the voting machine is not tampered with and to attend the machine at all times. He shall inspect the ballot labels after each voter leaves the machine to see that none has been tampered with and to see that the machine has not been injured. He shall see that the coverings of the counter compartments of the machine are never unlocked nor opened so the counters are exposed during voting except for good and sufficient reasons, a statement of which shall be made and signed by all election officers and watchers in the polling place and attached to the returns.

#### Instructions for Voters in the Polls

Sec. 14. In addition to the sample ballots and model hereinbefore mentioned, which shall be prominently displayed and the particular attention of each voter thereto called by the presiding officer, if any voter after entering the machine, but before the curtains thereof are closed, shall desire further instructions, an election officer shall give such instruction without asking, persuading, or otherwise trying to induce such voter to vote for or against any ticket, candidate, amendment, question, or proposition, and watchers may be present while such instruction is being given. Finishing instructions, the election officer and watchers shall retire, whereupon such voter shall close the curtain and vote as in the case of an unassisted voter.

#### Manner of Voting

Sec. 15. But one voter shall be admitted at a time, and no voter shall be permitted to keep the curtain of the machine closed longer than two minutes. However, if a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the machine or to see, he may be assisted by two election officials, or by a person selected by the voter, who shall operate the machine so as to vote the ballot in accordance with the voter's wishes, and he shall be permitted to keep the cur-

tain of the machine closed no longer than five minutes. The provisions of Section 95 of this Code shall govern the assistance rendered under this section insofar as they can be made applicable.

#### Voting for Person whose Name Does Not Appear on the Ballot

Sec. 16. Ballots voted for any person whose name does not appear on the ballot shall be designated "irregular" ballots, but such ballots shall be valid and shall be counted as though they had been voted on the voting machine. Should a voter desire to vote for some person for an office whose name does not appear on the ballot, such person shall write the name of the person for whom he desires to vote on the roll of paper provided and designated for such purpose and such ballot shall be counted and included in the canvass officially made from that precinct, but no irregular ballot shall be cast or counted for any person whose name shall appear on the voting machine.

#### Arrangement of Ballot and Write-in Vote in Certain Counties

Sec. 16a. (a) In any county of this State where voting machines are used and the number of offices to be filled in the election exceeds the number of spaces available on the voting machines when the names of the offices and names of candidates are arranged on the ballot horizontally, the election authorities may use the available spaces on the voting machine in any good and proper manner which will not be confusing to the voter and which will enable the election authorities to conduct the election in an orderly and efficient manner.

(b) In any election in which, pursuant to the authorization in paragraph (a) hereof, the ballot is so arranged that the write-in slot on the voting machine cannot be utilized, and the election is one in which write-in voting is permitted, a sufficient supply of write-in ballots as described herein shall be provided at each polling place. The ballots shall bear the heading prescribed in Subdivision 2 of Section 61 of this code, as amended (Article 6.05, Vernon's Texas Election Code), with the substitution of the words "Official Write-in Ballot" for "Official Ballot," and shall bear the following instruction note: "Do not cast a vote on the voting machine for the office for which you cast a ballot herewith by way of a write-in." The instruction note for the write-in ballot for a general election for state and county officers shall contain the following additional sentence: "If you pull the straight-party lever of a political party that has a nominee for the office for which you are casting a write-in vote, be sure to turn up the selector key by the name of the nominee before you pull the voting lever." Beneath the instruction note there shall appear the following:

FOR \_\_\_\_\_

(Name of write-in candidate)

For the office of:

\_\_\_\_\_  
(Title of office)

If an open write-in campaign is being conducted for more than one office, the ballots shall provide as many spaces as there are offices for which write-in campaigns are being conducted.

Each voter is entitled, but is not required, to receive one official write-in ballot. The procedure outlined in Section 93 of this code, as amended (Article 8.11, Vernon's Texas Election Code), shall be observed in the authentication and delivery of the ballot to the voter. After filling in the write-in ballot, the voter shall deposit the ballot in a ballot box prepared for that purpose in the manner provided for elections conducted by use of paper ballots. No write-in ballot shall be cast or counted for any person whose name appears on the ballot on the voting machine.

Provided however, that the following affidavit shall be signed by any voter who receives an official write-in ballot.

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_, who, having been by me first duly sworn, upon his oath, did depose and say:

That I have not and will not cast a vote on the voting machine for the office of \_\_\_\_\_  
\_\_\_\_\_ for which I have cast a ballot herewith by way of a write-in.

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_.

Presiding officer, Precinct \_\_\_\_\_,  
\_\_\_\_\_ County, Texas.

**Unofficial Ballot; Repair and Substitution  
of Machines**

Sec. 17. If the official ballots for any precinct where voting machines are to be used are not delivered at the time required, or if after delivery they are lost, destroyed or stolen, the authority charged with the duty of furnishing the ballots for the election or the presiding judge of that precinct shall cause other ballots to be prepared, printed or written, as nearly in the form of the official ballots as practicable, and shall cause the ballots so substituted to be used in the same manner, as near as may be, as the official ballots. Such ballots shall be known as unofficial ballots, and a certificate setting out the circumstances of the use shall be made out by the presiding judge and signed by such officer

together with every person legally serving in such poll, such certificate to be attached to the canvass from the precinct. Should any voting machine become out of order while being used, it shall, if possible, be repaired or another machine substituted in its place as promptly as possible, and the Commissioners Court of any county in which voting machines have been adopted either in whole or in part, for use in elections, is authorized and empowered to appropriate funds for servicing, repairing or substituting any such voting machines, on a per diem or on such other basis as to said court may appear just and proper.

**Making Out the Returns and Proclamation of  
the Result**

Sec. 18. (a) Prior to the day of election, the authority charged with furnishing the supplies for the election shall cause to be prepared the necessary blanks for the statement of canvass mentioned herein, which shall be delivered to the presiding judge with other supplies for the election. The statement of canvass shall be of a form to be approved by the Secretary of State and shall conform with the type of voting machine to be used, and the designating number and letter of each candidate or proposition shall be printed next to the candidate's name or the proposition on the statement of canvass.

(b) As soon as the polls are closed, the election officers shall immediately lock the machine against voting. They then shall sign a certificate stating that the machine was locked and sealed, giving the exact time, and giving the number of voters shown on the public counters, which shall be the total number of votes cast on such machine in that precinct, the number on the seal, and the number registered on the protective counter. (This also shall be the procedure at the close of absentee voting when the machines are used for absentee voting by personal appearance.) They then shall open the counting compartment in the presence of the watchers, giving full view of all the counter numbers. The presiding judge shall, under the scrutiny of the watchers, in the order of the offices as their titles are arranged on the machines read and announce in distinct tones the designating number and letter on each counter for each candidate's name, and the result as shown by the counter numbers, and shall then read the votes recorded for each office on the irregular ballots. He shall also in the same manner announce the result of each proposition voted on. The vote as registered shall be entered on the statements of canvass in ink by two clerks and verified by the three election officers and by two watchers of opposing interest (if there be such), the entries to be made in the same order on the space which has the same designating number and letter, after which the figures shall again be verified by being called off in the same manner

from the counters of the machines by watchers of opposed interest (if there be such). The returns of the canvass as required by law shall then be filled out and verified, and shall show the number of votes cast for each candidate and the number of votes cast for and against any proposition submitted, and shall be signed by the three election officers and at least two watchers of opposed interest (if such there be). The counter compartments of the voting machine shall remain open throughout the time of making of all statements and certificates and the official returns and until they have been fully verified, and during such time any candidate or his representative or any representative of any newspaper or press association shall be admitted. The proclamation of the result of the votes cast shall be deliberately announced in a distinct voice by the presiding judge, who shall read the names of each candidate, with the designating number and letter of his counter, and the vote registered on such counter, and also the vote cast for or against any proposition submitted. During such proclamation ample opportunity shall be given to any person lawfully entitled to be in the polling place to compare the results announced with the counter dials of the machine, and any necessary corrections shall then and there be made, after which the doors of the voting machine shall be locked and sealed with the seal provided, so sealing the operating lever of the machine that operation of the voting and counting mechanism will be prevented.

(c) If the machine is provided with a device which produces a printed record of the numbers registered on the counters, the procedure outlined herein shall be followed in lieu of the procedure set out above for preparation of the statements of canvass. The presiding judge, in the presence of at least two clerks and two watchers of opposed interest (if such there be) and of any other person lawfully present who wishes to observe, shall take the necessary steps to secure a printed record from each machine. Ample opportunity shall be given to all persons lawfully entitled to be present at the polling place to examine the printed record. The printed record shall then be signed by the presiding judge and two clerks and by two watchers of opposed interest (if such there be), certifying that the printed record was obtained from the machine designated thereon, and the certified printed record shall constitute the official statement of canvass for that machine.

(d) After the making out of the returns has been completed, the presiding judge shall deliver immediately, and in no event later than five hours after the closing of the polls, the statement of canvass and the returns to the proper authorities as provided by law. Irregular ballots, properly sealed and signed, shall be delivered to the officer designated by law as the custodian of voted paper ballots, and shall be preserved in the same manner and for the same length of time as provided by law for other ballots.

The presiding judge shall deliver to the county clerk the keys of the voting machine enclosed in a sealed envelope, across the seal of which shall be written his own name together with that of at least two watchers of opposed interest (if such there be) or of two other election officers, and on the envelope shall be recorded the date of the election, the number of the precinct, the number of the seal with which the machine was sealed, the number of the public counter and the number of the protective counter.

#### Canvass of the Returns; Recheck and Comparison

Sec. 19. The returns shall be canvassed in the same manner as returns from precincts where paper ballots are used; provided, however, that at the time of the making of the official canvass, where voting machines are used in an election, at the written request of any candidate whose name appears on the ballot or on the written petition of twenty-five voters of the county, city or other subdivision for which the election was held, the authority charged with the duty of canvassing the returns shall make, in the presence of a district judge and the county judge of the county in which the election was held, a recheck and comparison of the results shown on the official returns then in process of being canvassed, with the results appearing and registered on the counter dials of each voting machine used in the election for which a request for a recheck has been made. To enable the canvassing authority to make such recheck and comparison, it shall be authorized and empowered to break the seals on each such voting machine. At the conclusion of the recheck and comparison, the voting machine shall again be sealed up, the necessary corrections, if any, shall be made on the returns, and the result of the election shall be declared as shown by the recheck and comparison of the returns of election with counter dials of the voting machines. If voting machines were used which produced a printed record of the votes cast on such machine, candidates and voters shall have the right under the procedure heretofore detailed to have such printed record compared with the counters on the machine from which such printed record was obtained.

#### Payment for Recheck and Comparison

Sec. 19a. A request for a recheck of voting machines used in an election shall be accompanied with a deposit of \$3 for each precinct to be rechecked. If the request is made by a person or persons other than a candidate at the election, it shall state what interest they represent. If the recheck results in a change in the outcome of the election favorable to the person or persons making the request, the amount of the deposit shall be refunded to the payor; otherwise, it shall be applied to the payment of any expenses incident to the recheck, and any

amount remaining after payment of expenses shall be turned over to the county treasurer for deposit in the general fund of the county.

**Preservation of Ballots and Records of  
Voting Machines**

Sec. 20. The voting machine shall remain locked against voting for a period of ten days from the day of the election, provided that where a second election occurs within such ten-day period, then the voting machine shall remain locked against voting until the returns of the election are officially canvassed or until the expiration of five days from the day of the election, whichever is the later to occur, and then shall have the seal broken only on the order of a district judge having jurisdiction in that county, such order to be entered on the minutes of the district court of that county, and if in the opinion of such district judge, contest is likely to develop, shall remain locked for such time as the district judge may direct; provided, however, such time shall not be for a period of time that will interfere with or prohibit the use of such machines in a subsequent election. On the order of any court of competent jurisdiction, the seal may be broken for the purpose of proper investigation, and when such investigation is completed, the machine shall again be sealed and across the envelope containing the keys shall be written the signature of the person or persons having broken same.

**Custody of Voting Machines and the Keys Thereof**

Sec. 21. The County Commissioners of a county in which voting machines are used shall have general custody and care and repair of such machines, but the County Clerk is charged with the care and custody of the keys and seals for the same. The same authority that caused the delivery of the voting machines shall be charged with the transportation of such machines back into the custody of the County Commissioners and shall furnish all necessary protection to see that such machines are not molested nor injured from the time such machines leave the place where they are regularly stored until they are turned into the custody of the officials of a precinct and from the time that custody ceases on the part of the precinct officials and the machines are returned to the place of regular storage.

Sec. 22. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).

**Application of Other Laws; Fraud and Perjury**

Sec. 23. The provisions of all other laws relating to the conduct of elections or primary elections, shall so far as practicable, apply to the conduct of elections and primary elections where voting machines are used, unless herein otherwise provided; provided, however, it is declared to be the public policy of this State that the provisions herein, pro-

viding for the use of voting machines at elections, are regulations to detect and punish fraud, and to preserve the purity of the ballot box; and any voter who fraudulently or illegally casts a ballot, or who casts a fraudulent or illegal ballot upon a voting machine, at any election (after the casting of such fraudulent or illegal ballot, or such fraudulent or illegal casting of a ballot has been established by final adjudication before a court of competent jurisdiction and by competent evidence), shall be compelled and required to disclose the names of the candidate or candidates for whom he cast such ballot at such election, and the ballot cast by him upon any question or questions at such election in any proceedings instituted under the laws of this State in any court of competent jurisdiction, and whoever in such proceedings shall 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 by the laws of this State.

**Appointment and Compensation of Election  
Officers; Watchers**

Sec. 24. The appointment and compensation of the presiding judges and clerks for precincts where voting machines are used shall be governed by the provisions of Sections 15 and 22 of this Code,<sup>6</sup> and their service and duties shall be governed by the general provisions of this Code, except as otherwise provided herein.

The general provisions of this Code, as supplemented herein, shall govern the qualifications, appointment, and service of watchers for precincts where voting machines are used.

**Definitions**

Sec. 25. The list of candidates and offices and/or propositions to be voted on, used or to be used on the front of the voting machine, shall be deemed official ballots for the purpose of precincts using voting machines.

The word "ballot" as used herein means that portion of the cardboard or other material within the ballot frames containing the names of the candidates and the offices, or the statements of propositions to be voted on, except when referring to irregular or unofficial ballots and except where such word is used in connection with the casting of a vote by a voter, in which event the word "ballot" is defined as the casting of a secret vote.

The terms "protective numbering counter" and "protective counter" mean a separate counter built into the machine which cannot be reset and which records the total number of movements of the operating lever.

The terms "public numbering counter"<sup>7</sup> and "public counter" mean a device in full view of the election officers except while the voter is voting, which records the number of the voter's vote and is

cumulative of the number of voters casting votes on the machine at the election being held.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 79. Amended by Acts 1955, 54th Leg., p. 889, ch. 340, § 1; Acts 1957, 55th Leg., p. 338, ch. 153, § 2; Acts 1957, 55th Leg., p. 798, ch. 333, § 1; Acts 1959, 56th Leg., 3rd C.S., p. 432, ch. 21, § 1; Acts 1959, 56th Leg., p. 183, ch. 101, § 1; Acts 1961, 57th Leg., p. 88, ch. 51, § 3; Acts 1963, 58th Leg., p. 1017, ch. 424, §§ 41 to 54, 121(a); Acts 1963, 58th Leg., p. 1371, ch. 523, § 1; Acts 1967, 60th Leg., p. 1886, ch. 723, §§ 28, 29, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, §§ 17, 18, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 1845, ch. 542, § 111, eff. Sept. 1, 1971; Acts 1975, 64th Leg., p. 2093, ch. 682, §§ 17, 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 658, ch. 247, § 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 598, ch. 237, § 138, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 3148, ch. 827, § 13, eff. Aug. 31, 1981.]

<sup>1</sup> So in enrolled bill.

<sup>2</sup> Article 5.05.

<sup>3</sup> Article 5.05, subd. 8.

<sup>4</sup> Article 5.05, subd. 6.

<sup>5</sup> Article 5.05, subd. 6.

<sup>6</sup> Articles 3.01 and 3.08.

<sup>7</sup> So in enrolled bill.

#### Art. 7.15. Providing for Electronic Voting Systems

##### Purpose

Subd. 1. The purpose of this section is to authorize the use of electronic voting systems in which the voter records his votes by marking or punching a ballot which is so designed that votes may be counted by data processing machines.

##### Definitions

Subd. 2. As used in this section, unless otherwise specified:

(a) "Electronic voting system" means a system of voting in which voted ballots are counted and tabulated by automatic tabulating equipment.

(b) "Automatic tabulating equipment" or "tabulating equipment" means any apparatus which automatically examines and counts voted ballots and tabulates the results.

(c) "Voting equipment" means any kind of equipment used in connection with an electronic voting system other than automatic tabulating equipment.

(d) "Ballot card" means a card which is used in conjunction with ballot labels and which is marked or pierced by the voter in the process of voting an official ballot.

(e) "Ballot labels" means a booklet or one or more pages or sheets of paper or other material containing the names of offices, candidates and parties, and statements of measures to be voted on, and which is used in conjunction with ballot cards.

(f) "Ballot" may refer to paper ballots which are counted by automatic tabulating equipment and

which contain the matters to be voted on and the voter marks, stamps, or otherwise indicates his choices directly on the ballot itself, or it may refer to ballot cards, ballot labels, or combinations of ballot cards and ballot labels, or it may refer to ordinary manually-counted paper ballots, depending on the context.

(g) "Central counting station" means one or more locations selected by the proper public official for the automatic counting and tabulating of ballots.

##### Examination and Approval of Electronic Voting Systems

Subd. 3. (a) Any person, firm, or corporation desiring to have an electronic voting system adopted for use in this state may apply to the Secretary of State to have such system examined. Before the examination the applicant shall pay to the Secretary of State the sum of \$450. The Secretary of State shall cause such system to be examined as herein-after provided and shall make and file and keep on file in his office a report of such examination, which shall show whether the system so examined meets the requirements set forth in Subdivision 4 of this section. If the report states that the system meets those requirements, it shall be approved, and the system may be adopted for use at elections as provided in this section.

(b) Before making and filing his report, the Secretary of State shall require the system to be examined by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be expert in patent law, one of whom shall be expert in electronic data processing, and one of whom shall be expert in election law and procedure, and shall require from them a written report on their examination, which shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive one hundred and fifty dollars as his compensation and expenses in making the examination and report. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any electronic voting system. When a system has been approved, every improvement or change must be filed with the Secretary of State. The Secretary of State may, at any time, in his discretion, reexamine an electronic voting system. Any electronic voting system not approved as herein provided cannot be used at any election in this state.

##### Requirements for Electronic Voting Systems

Subd. 4. (a) Any electronic voting system approved by the Secretary of State must meet the following requirements:

(1) It must permit voting in absolute secrecy, except in the case of voters who have received assistance as provided in this code.

(2) It shall permit each voter:

(A) to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others;

(B) to vote, in a general election, for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballot as an independent candidate;

(C) to vote for a person whose name does not appear on the ballot, in any election and for any office where write-in votes are permitted by law;

(D) to have his vote counted for no more than one person for the same office, unless permitted by law, and at the same time prevent his vote from being counted more than once for the same person for the same office;

(E) to vote for or against any question upon which he is entitled to vote;

(F) to vote, by means of a single mark or punch, for all candidates of one party or to vote a split ticket as he desires.

(b) No electronic voting system shall be approved by the Secretary of State unless he finds that it is suitable for the purpose for which it is intended, and that it will operate efficiently and accurately and provide adequate safeguards against fraudulent manipulation under the conditions under which it is intended to be used.

(c) In his certification of approval of any electronic voting system, the Secretary of State shall certify whether in cases where a voter splits a straight party vote, the system is capable of counting the straight party vote only for the candidates of that party for offices as to which the voter has not voted for individual candidates and of counting the votes cast for individual candidates. If the system is so certified, the voting of a split ticket in that manner shall be allowed in elections using that system.

#### Adoption by Commissioners Court

Subd. 5. (a) The commissioners court of any county in the state may adopt one or more kinds of approved electronic voting systems for use in elections in part or all of the election precincts in the county or in part or all of the conduct of absentee voting, or both. If a particular system is not adopted for use throughout the county, the commissioners court shall designate the precincts in which such system is to be used, and any other authorized method of voting may be used in the remaining precincts. In any precinct designated for use of a particular electronic voting system, the voting in that precinct may be supplemented by use of some other authorized method of voting when in any election it appears that the number of available units of the system designated for use in that precinct is inadequate for that election; and the officer or board charged with the duty of furnishing

supplies of the election may make such supplementation under those conditions.

(b) The commissioners court at any time may rescind or modify its previous order or orders adopting any electronic voting system and may discontinue use of the system altogether.

(c) The electronic voting system adopted by the commissioners court shall be used at the biennial general elections for state and county officers in precincts and for absentee voting as designated by the court for use of such system. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting for the particular election shall be by use of such system or by some other authorized method of voting. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities and other political subdivisions, and by the county executive committee of the party holding the election in primary elections of political parties.

(d) Whenever a municipality or other political subdivision is situated in more than one county, any election held by such political subdivision may be conducted by use of any authorized method of voting which has been adopted by the commissioners court of either such county for use in precincts lying within such political subdivision, regardless of whether that method had been adopted in the other county or counties in which the political subdivision is situated. The governing body of the municipality or other political subdivision shall make the determination as to the method to be used.

#### Experimental Use of Electronic Voting Systems

Subd. 6. The commissioners court of any county in the state may secure, for experimental use in elections in one or more precincts or for absentee voting, without formal adoption thereof, any kind of electronic voting system approved by the Secretary of State, and its use at any election in designated precincts or for absentee voting within the period specified by the commissioners court for experimental use of such electronic voting system shall be as valid for all purposes as if it has been formally adopted; provided, however, that the period for experimental use shall not exceed two years from the date of the order authorizing its use.

#### Providing Voting Equipment

Subd. 7. The commissioners court of a county which has adopted an electronic voting system for that county or any portion thereof, shall as soon as practicable and in no case later than six months after adoption thereof, provide for each election precinct designated the voting equipment which the court deems necessary for accommodation of voters

in the general election for state and county officers, and shall thereafter preserve and keep such equipment in repair. The commissioners court may also, if it deems such action in the best interests of the county, provide for the county a suitable number of pieces of automatic tabulating equipment for use in the central counting stations in the county.

**Payment for Voting Equipment and Automatic Tabulating Equipment**

Subd. 8. (a) The commissioners court shall provide for the payment for voting equipment and automatic tabulating equipment to be used in such county in such manner as the court may deem for the best interests of the county, and for the purpose of paying for such voting equipment or automatic tabulating equipment, or both, the commissioners court is hereby authorized to issue bonds, certificates of indebtedness, warrants, or other obligations to be used for this purpose and no other, which shall be a charge against the general revenue fund of the county. Such bonds, certificates of indebtedness, warrants, or other obligations may be issued with or without interest payable at such time or times as the commissioners court may determine, but shall never be issued or sold for less than par. The commissioners court shall issue such bonds, certificates of indebtedness, warrants, or other obligations in the same manner and with the same authority as provided for the issuance of bonds, certificates of indebtedness, warrants, or other obligations by the general laws of this state. The necessary tax shall be set aside at the time of creating such obligation so as to meet the debt provisions of the Constitution.

(b) If the commissioners court of any county deems it for the best interests of such county, the court is hereby authorized to contract for the renting of an electronic voting system or any portion thereof by such county for use in elections for a term of not more than five years in any one contract of rental. Upon expiration of such terms of contract of rental, the commissioners court may renew or extend the contract from time to time. The commissioners court of any county is also authorized to accept proposals of rental and/or sale of electronic voting systems or any part thereof wherein the rentals paid by such county for the use of such an electronic voting system or a part of the rentals may be applied on the purchase price of such system if the commissioners court determines that it is to the best interest of the county to do so.

(c) The voting equipment and automatic tabulating equipment shall be the property of the county paying for or renting it, subject to the terms of the rental contract. When used in any election not held at the expense of the county, the voting equipment and county-owned tabulating equipment so used shall be leased to the authority holding the election, and payment shall be received by the county at such

lease price as the commissioners court shall fix for each piece of voting equipment or tabulating equipment used, but not to exceed ten percent of the original cost of the unit for each election day such equipment is used; and the authority charged with the expense of holding the election shall pay the lease price, whether it be a municipality or other political subdivision, a political party, or any other organization or authority.

(d) Notwithstanding any other provision of this subdivision, the commissioners court may enter into agreements with the owners or lessees of automatic tabulating equipment located at central counting stations designated by the court pursuant to this section, under which the authority holding the election will pay to such owner or lessee a stipulated charge for use of the equipment under such terms as may be agreed upon. Any such agreement shall be for a term of not more than two years, but it may be renewed or extended from time to time.

**Absentee Voting**

Subd. 9. (a) When an electronic voting system has been adopted by the commissioners court, then the system may be used in any election for absentee voting by personal appearance or by mail, or both. The authority charged with holding the election may within its discretion determine by proper resolution or order whether or not an electronic voting system will be used for absentee voting by personal appearance or by mail, or both, at such election. If an electronic voting system is to be used for such absentee voting and more than one kind of system has been adopted by the commissioners court, the authority shall specify what kind is to be used.

(b) If the authority holding the election determines that an electronic voting system shall be used for absentee voting, the necessary ballots and voting equipment shall be provided in the clerk's office. The procedure for absentee voting where ordinary paper ballots are used shall be followed insofar as it can be made applicable. If an electronic voting system is used for voting by personal appearance and the absentee ballots voted by mail are counted manually, such ballots shall be counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code), except that the county clerk shall deliver the ballots to the canvassing board when the presiding judge so directs. The board shall also prepare the voted electronic voting system ballots for delivery to the central counting station in the manner provided in Subdivision 19 of this section, and such ballots shall be delivered to the central counting station and there tabulated, as provided in Subdivisions 19 and 20 of this section. The absentee voting clerk may deliver ballots that are to be counted at the central counting station to the special canvassing board between the end of the period for voting absentee by personal appearance

and the closing of the polls on election day at intervals specified by the board's presiding judge. The clerk shall have notice of each delivery that is to be made before the polls open election day posted outside his office continuously for at least 24 hours before delivery, and at least 24 hours before the first such delivery in any particular election, the clerk shall notify the county chairman of each political party having a nominee on the ballot of the time that the first delivery is to be made. Watchers appointed for the election are entitled to accompany the election officer making any delivery. The board, at the presiding judge's direction, may begin preparing the ballots for delivery to the central counting station anytime after they are received. The presiding judge of the central counting station shall add and attach the results of any manually counted ballots and attach the results of any written votes to the tabulation made on the automatic tabulating equipment, and shall make returns showing the totals thus obtained.

(c) When absentee ballots voted by personal appearance or by mail are to be marked with an ordinary pen or pencil in the manner that ordinary paper ballots are marked, and the absentee ballots are to be counted manually, the ballots shall be handled in the manner provided in Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code) for the handling of absentee paper ballots, and shall be counted and tallied by a special canvassing board in the same way that ordinary paper ballots are tallied.

(d) When absentee voting is conducted by paper ballots, the ballots prepared for use in the electronic voting system may be used, if practicable, in the absentee voting both by personal appearance and by mail; otherwise, the ballots shall be prepared as ordinary paper ballots provided for in this code.

(e) The authority holding the election may authorize true copies of paper absentee ballots voted by personal appearance or by mail to be made on electronic voting system ballots in the presence of watchers and the ballots counted and tabulated in the manner provided in Subdivisions 19 and 20 of this section. Both the original ballot and the duplicate shall be preserved. Each duplicate ballot shall be clearly labeled by the word "Duplicate" and shall bear a serial number, which shall also be recorded on the original ballot.

#### Instruction of Election Officers

Subd. 10. Not less than three days before an election, the authority holding the election shall cause to be held a public school of instruction on the use of the electronic voting system for those who will conduct the election at the polling places and those who will be at the central counting stations, such school to be open to any interested person.

Notice of the meeting shall be given to the public press at least 48 hours before it is to be held.

#### Watchers at Central Counting Station

Subd. 10a. Watchers may be appointed to observe activities at the central counting station in the same manner as watchers are appointed to serve at regular polling places. The watchers need not be present at the time the central counting station opens, and they may begin service at any time they desire. If the counting of ballots is begun before the official time for closing the polls, any watcher who is on duty after the counting is begun shall remain on duty until the time for closing the polls except for such periods of absence as permitted by the presiding judge of the central counting station. With this exception, a watcher may leave the central counting station and may resume his service at any time until the election officers have completed their duties. A watcher appointed for a regular polling place may also be appointed to serve at the central counting station after the official time for closing the polls. This subdivision does not affect the right of watchers from the polling places to accompany the election officials to the central counting station, as provided in Subdivision 19 of this section.

#### Form of the Ballot

Subd. 11. (a) Except as otherwise provided herein, the ballot for electronic voting systems shall conform to the applicable provisions of this code governing voting by ordinary paper ballots to the extent that they are consistent with the use of electronic voting systems.

(b) This paragraph (b) shall govern the form of the ballot to be used with electronic voting systems in which the voter records his votes on a ballot on which the names of offices, candidates and parties and statements of measures to be voted on are set forth in a manner similar to ordinary paper ballots.

(1) Ballots may be of such size, composition, texture, and color (other than yellow, which shall be used for sample ballots only), and may be printed in any type of ink or combination of inks that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Printing on the ballots shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) The ballots may contain printed code marks or prepunched holes necessary for placing the ballots in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The ballot may be divided into parts and printed upon two or more pages. Where all candidates

for the same office or all party columns cannot be placed on the same face of the same page, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other party columns appear on the following page or pages. If the ballot is printed on more than one page, different tints of paper other than yellow, or some other suitable means may be used to facilitate the sorting of ballots. Each page shall bear the ballot number, and other appropriate provision may be made for identifying the related parts of the ballot. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight party ticket.

(4) Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977.

(5) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu of party columns. The title of each office shall be printed on the ballot followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made at the head of the ballot for voting a straight party ticket, and the candidate of the party which is printed in the first party column on ordinary paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on ordinary paper ballots shall be printed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races," and may be voted on as a bloc.

(c) This paragraph (c) shall govern the form of the ballot to be used with electronic voting systems in which the names of offices, candidates and parties and statements of measures to be voted on are set forth on ballot labels and the voter records his vote by marking or punching a ballot card which is used in conjunction with the ballot labels.

(1) Ballot cards may be of such size, composition, texture and color (other than yellow, which shall be used for sample ballots only) and may be printed in any type of ink or combinations of ink that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Ballot labels may be of such size, composition, texture and color (other than yellow) that will be suitable for the intended manner of use. Printing on the ballot label shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) Ballot cards may contain printed code marks or prepunched holes to assure that the card is properly positioned in the voting device, if the ballot labels are attached to a voting device, or to assure

that the card is placed in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The names of candidates, offices, parties and statements of issues to be voted on may be printed on two or more ballot labels. Where all candidates for the same office or all party columns cannot conveniently be placed on the same face of the same label, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other parties appear on the following page or pages. If the ballot is printed on more than one ballot label, different tints of paper, other than yellow, may be used for different pages of the ballot labels, and other suitable means may be adopted to facilitate the use of the ballot labels with the ballot card. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight ticket.

(4) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu of party columns. The title of each office shall be printed on the party labels followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made on the first page of the ballot labels for voting a straight party ticket, and the candidate of the party which is printed in the first party column on paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on paper ballots shall be printed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races."

(5) The ballot card may have attached at the top an unnumbered detachable stub, which may contain the designation and date of the election and the instructions for marking the ballot and depositing it in the ballot box. The stub shall contain an instruction to the voter not to detach the stub; however, detachment of the stub before the ballot is deposited in the ballot box does not invalidate the ballot card. The election officers who prepare the voted ballot cards for counting shall detach and discard the stubs at the time they examine the ballots as provided in paragraph (a) of Subdivision 19 of this section.

(6) If the number of candidates and/or propositions to be voted upon in any election exceeds the capacity of one ballot card, the ballot may be divided into parts and a different ballot card used for each of the separate parts, but in all cases where more than one card is necessary to accommodate the entire ballot, the names of all candidates for any

particular office shall be placed on the same part. A separate voting device shall be provided for each part at each polling place. Each ballot card shall bear the ballot number, and other appropriate provisions may be made for identifying the related ballot cards. In lieu of using separate ballot parts for listing the ballot, uncontested races may be listed separately under the heading "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one in which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races may be voted on as a bloc.

(7) If the authorities holding the election determine, in their discretion, that more than one voting device is necessary to accommodate the number of voters in an election precinct, as many voting devices shall be used for each precinct as such authorities deem necessary, and the same form of ballot containing the names of all candidates and/or propositions arranged in the same manner shall be provided for each device.

(8) A separate write-in ballot, which may be in the form of a card, ballot, or envelope which the voter places with his ballot or ballot card after voting, shall be provided to permit voters to vote for a person whose name does not appear on the ballot.

(d) This paragraph (d) shall apply to the form of the ballot for all electronic voting systems.

(1) Where officers are to be elected or nominated, there shall be printed on each ballot the following instruction note: "Vote for the candidate of your choice in each race by placing a punch hole in the space provided adjacent to the name of that candidate." Where the ballot is to be marked with a marking device using ink or other substance, the word "mark" shall be substituted for "punch hole." Appropriate changes in the instruction note shall be made where only one race is listed on the ballot or where more than one person is to be elected in any given race. Where measures or propositions are to be voted on, the instruction note shall be: "Place a punch hole (mark) in the space provided beside the statement indicating the way you wish to vote." The ballots shall also contain instructions on how to vote a straight ticket, how to vote a split ticket, and how to vote for a candidate whose name is not on the ballot. The wording of the instructions shall be prescribed by the Secretary of State.

(2) The statement of propositions and measures submitted to the voters may be abbreviated on the ballot if necessary, provided there is displayed at the polling place the verbatim statement on each proposition or measure as it appears on paper ballots. Abbreviation of matter to be voted on

throughout the state shall be done by the Secretary of State.

#### Preparation of Ballot and Program

Subd. 11a. (a) The ballots to be used at an election shall be prepared and procured under the same regulations as ordinary paper ballots, except that the officer responsible for making up the ballot may determine the number of ballots or ballot cards needed for the election based on the turnout for similar elections in the past and shall confer with the programmer for that election before ordering the ballots printed, to make sure that the ballot is properly prepared for counting by means of the electronic tabulating equipment which will be used.

(b) The authority charged with the duty to provide ballots shall select a competent person to prepare the program for the electronic tabulating equipment. The programmer may be one of the persons appointed or approved by the commissioners court under Paragraph (b), Subdivision 20 of this section or some other person, but if the program is prepared by anyone other than the tabulation supervisor, it must be submitted to the tabulation supervisor for his approval at least 10 days before the election.

#### Sample Ballots and Instruction Cards

Subd. 12. The authority charged with providing ballots for an election where an electronic voting system is used shall provide sample ballots and printed instruction cards for voting. Without limitation on other instructions which may be included, the instruction card shall include instructions on how to mark the ballot, how to vote for a person whose name is not printed on the ballot, how to vote a straight ticket or a split ticket where party columns or party affiliations are on the ballot, and how to secure an additional ballot if the ballot is spoiled or marked erroneously. Throughout the time the polls are open, a sample ballot and instruction card shall be posted in each booth or place prepared for the voter to mark his ballot. Extra voting equipment for demonstration purposes may be placed in the polling place.

#### Instructions to Voters

Subd. 13. In addition to the sample ballots and instruction cards hereinbefore mentioned, if any voter desires further instructions, an election officer shall give such instruction without asking, persuading, or otherwise trying to induce such voter to vote for or against any ticket, candidate, or measure, and watchers may be present while such instruction is being given. Finishing instructions, the election officer and watchers shall retire and the voter shall proceed to mark his ballot.

**Assistance to Voter**

Subd. 14. If a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the voting equipment or to see, he may be assisted by two election officers, or by a person selected by the voter, who shall mark the ballot in accordance with the voter's wishes. The provisions of Section 95 of this code<sup>1</sup> govern the assistance rendered insofar as they can be made applicable.

<sup>1</sup> Article 8.13.

**Ballot Boxes**

Subd. 15. For each polling place where an electronic voting system is used, there shall be supplied two ballot boxes for the deposit of voted ballots, which shall be of suitable design and with a suitable opening for placing the ballots therein in such manner that the ballots will not be damaged or rendered unfit for counting on the tabulating equipment. There shall also be supplied suitable containers for transporting the voted ballots to the central counting station.

**Preliminaries of Opening the Polls**

Subd. 16. There shall be provided for each polling place sufficient voting equipment to accommodate the voters at the election. Before the time set for opening the polls, the presiding judge shall inspect the equipment to ascertain whether it is in good working condition. Each voting booth shall be so placed that it will be in full view of all election officers and watchers at the polling place but will permit a voter to mark his ballot in secret.

**Conduct of the Voting**

Subd. 17. (a) The procedure at the polls where voting is by use of an electronic voting system shall be the same as at polling places where paper ballots are used, except as provided in this section. Where the portion of the ballot to be marked by the voter consists of more than one page or ballot card, the related parts may be placed in an envelope or otherwise secured so that the parts will not become separated before delivery to the voter. When a voter selects his ballot, he shall be instructed to use only the voting equipment provided for marking the ballot and that he is not to mark his ballot in any other way and is not to place any other marks thereon, except for write-ins. After a voter has marked his ballot, he shall deposit it in the ballot box provided for the deposit of voted ballots.

(b) The election officers shall inspect the voting equipment from time to time while voting is in progress to ascertain that it has not been injured or tampered with and is in proper working order. If any equipment becomes out of order at an election, it shall be repaired or replaced as promptly as possible. If repair or replacement cannot be made,

the ballots may be marked with a pencil and counted manually in the same manner that paper ballots are counted.

**Procedure While Polls are Open**

Subd. 18. (a) At any time after the expiration of one hour after the voting has begun, the presiding judge may direct the receiving officers to deliver ballot box No. 1 to the clerks preparing the ballots for the central counting station, who shall immediately deliver in its place ballot box No. 2, which shall be opened and examined and securely closed and locked; and until the boxes are again interchanged, the voters shall deposit their ballots in box No. 2. In this manner, ballot boxes No. 1 and No. 2 may be interchanged periodically as directed by the presiding judge, but the box for receiving the ballots shall not be exchanged and the ballots shall not be removed from it at any time before the polls are closed unless there are more than 10 ballots in the box. Once the box for receiving the ballots is delivered to the clerks preparing the ballots for the central counting station, they shall remove the voted ballots from the ballot box and carry out the procedures prescribed in Subdivision 19 of this section preparatory to making the ballots, envelopes, and other materials ready for delivery to the central counting station.

(b) The authority holding the election may in its discretion also provide that voted ballots of designated precincts shall be delivered by authorized election officials, in the presence of watchers, to a central counting station at stated intervals during the day and that the processing of such ballots in accordance with the procedures prescribed in Subdivision 20 may begin prior to the close of the polls. Such processing may be limited by the authority holding the election to procedures preparatory to the counting and tabulating of ballots, or the authority holding the election may also permit the preliminary counting and tabulating of ballots with automatic tabulating equipment; but in no event shall any results be disclosed prior to the close of the polls, and all persons connected with the handling and tabulating of the ballots shall be subject to the provisions of Section 105 of this code (Article 8.23, Vernon's Texas Election Code) with respect to revealing information as to the results of the election.

**Procedure After Polls are Closed**

Subd. 19. (a) As soon as the polls are closed and the last ballot has been deposited in the ballot box, the election officers shall immediately secure or inactivate all voting equipment in the polling place so that no equipment may be used or operated by any unauthorized person. They shall then remove from the ballot box all voted ballots not theretofore removed in accordance with Subdivision 18 of this section. They shall examine the ballots for write-in

votes and count the votes cast for candidates whose names have been written in; provided, however, that if the voting system is such that write-in votes can be detected and segregated by the tabulating equipment, the counting of write-in votes may be done at the central counting station. Before any write-in vote is counted, the election officers shall examine the ballot to ascertain whether the write-in vote is valid, and count it only if it is found to be valid. A notation shall be made on the invalid portion of a ballot and it shall be segregated from other ballots and placed in the container provided for that purpose. Write-in votes shall be added to the results of the count of the ballots at the central counting station and be included in the official returns for the precinct. If the ballot consists of more than one part, the precinct election officials, after checking for write-in votes, shall then sort the ballots according to types or parts.

(b) All ballots not voted shall be handled in the manner provided in Section 100 of this code.<sup>1</sup> The presiding judge shall make out and sign a statement accounting for all ballots delivered to him, as provided in Section 100.

(c) The authority holding the election shall provide ballot containers made of metal, wood, or some other material approved by the secretary of state, with numbered metal seals, for use in delivering voted ballots from the polling place to the central counting station. A record of the serial numbers of the seal shall be preserved, and a copy of such records shall be furnished the central counting station. All voted ballots which are to be counted by automatic tabulating equipment shall be placed in a ballot container at the polling place for delivery to the central counting station. The poll lists and tally sheets for write-in votes shall be enclosed in envelopes provided for that purpose and placed in the container with the voted ballots. Before sealing the ballot container, the election judge shall execute a certificate in triplicate recording the number of ballots placed in the container and the serial number of the seal. The certificate shall also be signed by an election clerk as witness and by at least two watchers of opposed interests if such there be. The original of the certificate shall be placed in the container with the ballots, and the container shall then be sealed so that no additional ballots may be deposited and no ballots may be removed without breaking the seal. One copy of the certificate shall be immediately mailed to the authority holding the election in a pre-addressed stamped envelope at the nearest post office or postbox by an election officer other than those who deliver the ballot container to the counting station. The other copy of the certificate shall be retained with the election records at the polling place.

(d) After the ballot container is sealed, two authorized election officers shall immediately deliver the

ballot container to the central counting station, and watchers shall have the privilege of accompanying them. They shall deliver the container to the presiding judge of the central counting station or his designated representative, who shall give them signed receipts for the container, in a form specified by the secretary of state. The container shall be opened only by the presiding judge of the central counting station or his designated representative, who shall inspect the container and the seal and shall verify the serial number on the seal with the record of serial numbers provided by the authority holding the election and with the original certificate enclosed in the container. Any irregularities shall be reported to the presiding judge of the counting station, who shall take appropriate action. After the container has been opened and the ballots removed, the original certificate and the broken seal shall be preserved with the other permanent election records of the central counting station.

(e) As an alternative to the procedure provided above, the authority holding the election may in its discretion provide prelocked and presealed ballot boxes for use in designated precincts and require that ballot boxes be delivered to the central counting station in their locked and sealed condition and that the processing of voted ballots required to be performed at the polling place by the above provisions be performed at the central counting station. In that event, the authority holding the election shall provide an adequate number of ballot boxes for each polling place, which shall be locked and sealed prior to delivery. Each ballot box shall be locked in such a way that it may not be opened except with a key of which only the election authority has possession and sealed with a numbered metal seal in such a way that the ballot box may not be opened without breaking the seal. A record of the serial numbers of the seals shall be preserved, and a copy of such record and the keys to the ballot box locks shall be furnished the central counting station. Upon completion of the voting at the polling place, or whenever a ballot box has been inactivated, the ballot box slot through which ballots are inserted shall be closed with a paper seal signed by the election judge, an election clerk, and two watchers of opposed interests if such there be. The ballot box containing the voted ballots shall then be delivered to the central counting station by the election officers in its locked and sealed condition under the same security measures as are provided in Paragraph (d) above for ballot containers. All procedures provided above to be performed at the polling place other than the processing of voted ballots shall be performed by the election officers at the polling place, and copies of all poll lists and reports shall be enclosed in envelopes provided for that purpose and inserted in the final ballot box to be delivered to the central counting station before the ballot box slot is sealed. The ballot box shall be

opened at the central counting station only by the presiding judge of the counting station or his designated representative, who shall inspect the ballot box, the metal seal and the paper seal and shall verify the serial number on the metal seal with the record of serial numbers provided by the election authority. Any irregularities shall be reported to the presiding judge of the counting station, who shall take appropriate action. The presiding judge or his authorized representative shall give the two election officers who deliver the ballot box receipts in a form specified by the secretary of state. The broken metal and paper seal shall be preserved with the other permanent election records of the central counting station. After the ballot box has been opened, the voted ballots shall be processed in the manner provided in Paragraph (a) above by authorized central counting station election officers. In the event the election authority permits early processing of ballots at the central counting station as provided in Subdivision 18, emptied ballot boxes may be relocked and resealed at the central counting station by representatives of the election authority for further use at polling places.

(f) After the election officers at the polling place have delivered all ballots to the central counting station, the ballot label assemblies and all other election supplies and records, including all duplicate certificates and unused seals, shall be delivered to the proper authority designated by law to receive them.

<sup>1</sup> Article 8.18.

#### Procedure at Central Counting Station

Subd. 20. (a) The commissioners court shall establish one or more central counting stations to receive and tabulate voted ballots. The commissioners court shall appoint a competent person with experience in the conduct of an election under the system in use (herein called the manager of the central counting station), who shall be in charge of the overall processing of the ballots at the central counting station. He shall be responsible for setting up a plan for the orderly performance of the various duties required at the counting station and for making the necessary arrangements for the orderly handling of the ballots and other records after they are delivered to the counting station. Except as provided in Paragraph (e) of this subdivision, he shall assign the specific duties to be performed by the clerks employed at the counting station, and shall be responsible for the proper instruction of the clerks in the performance of their duties.

(b) The commissioners court shall appoint a competent person trained in the operation of the electronic tabulating equipment to be used (herein called the tabulation supervisor), who shall be in charge of the operation of the electronic equipment. The tabulation supervisor shall select the necessary

personnel to assist him in the operation of the electronic equipment, and all persons selected by him shall be subject to the approval of the commissioners court as an assurance that they will possess the necessary competence, training, and experience to perform their duties satisfactorily. No person except one selected and appointed in accordance with these provisions shall operate any of the electronic equipment or handle the ballots from the time they have been turned over to the tabulation supervisor for counting until the counting is completed.

(c) The service of the trained personnel provided for in Paragraphs (a) and (b) of this subdivision is deemed essential to the successful operation of an electronic voting system, and the personnel provided for therein shall be employed in every election in which the system is used, by whatever authority conducted. The commissioners court shall fix the amount of compensation to be paid to them. The manager of the counting station must be a resident qualified voter of the county, except that during the first year after adoption of a system in a county, a nonresident may be appointed. Persons employed to operate the electronic equipment need not be residents or qualified voters of the county. Officers and employees of the county are eligible for appointment under both Paragraphs (a) and (b), and may be paid additional compensation for their services. Except as provided herein, persons employed under these two paragraphs are not subject to the qualifications and disqualifications for election judges and clerks as stated in Sections 17 and 18 of this code.<sup>1</sup>

(d) The board or body having authority to name the presiding judges for the election shall appoint a presiding judge for the central counting station, who shall be a qualified voter of the county if the election is countywide, and of the political subdivision in which the election is held if it is less than countywide. The judge is not subject to the qualifications and disqualifications relating to the other presiding judges of the election. This exemption from the provisions of Section 17(b) of this code (Article 3.03, Vernon's Texas Election Code) does not apply to the judge of the central counting station if he is related to any candidate on the ballot, except the county clerk, within the second degree either by affinity or consanguinity. He shall perform the duties imposed on him by Subdivisions 19 and 20 of this section. He may be present at any time and at any place within the counting station and may make suggestions to and counsel with the manager and tabulation supervisor concerning any and all phases of the election. He shall possess the power given to a presiding judge by Section 87 of this code (Article 8.05, Vernon's Texas Election Code) and shall be responsible for maintaining order at the counting station. He shall also supervise the service of the watchers, if any, and shall supervise the absences of all central counting station person-

nel, under the rules applicable to election clerks at regular polling places as stated in Section 16 of this code (Article 3.02, Vernon's Texas Election Code), between the time that actual counting of the ballots is begun and the time for official closing of the polls if counting is begun before the polls are closed. He shall be paid at the same rate and in the same manner as the other presiding judges of that election, except that he shall be entitled to a minimum of \$10 regardless of the number of hours worked.

(e) The manager and presiding judge of the central counting station shall appoint the clerks to serve at the counting station. The presiding judge may designate one or more clerks of his selection to assist in receiving the ballots and other records from the polling places and in performing the duties imposed on him after the ballots are counted. The manager shall select the clerks to assist in preparing the ballots for counting. Each clerk shall be a qualified voter of the county but need not be a qualified voter of the political subdivision holding the election if it is less than countywide. The clerks are not subject to the qualifications and disqualifications relating to the clerks serving at the polling places for the election, but they shall be compensated under the same regulations as the other clerks; provided, however, that each clerk who serves for the full time that the counting station is in operation shall be entitled to a minimum of three hours' pay regardless of the number of hours worked. This exemption from the provisions of Section 17(b) of this code (Article 3.03, Vernon's Texas Election Code) does not apply to any clerks serving at the central counting station if they are related to any candidate on the ballot, except the county clerk, within the second degree either by affinity or consanguinity.

(f) Prior to the start of the count of the ballots, the authority in charge of holding the election shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least 48 hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city or other political subdivision where such equipment is used, if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be conducted by processing a pre-audited group of ballots marked or punched so as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. The programmer, the tabulation supervisor, and the manager and presiding judge of the counting station shall be jointly responsible for preparing the test materials. In such test a different number of

valid votes shall be assigned to each candidate for an office, and for and against each measure. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made and certified to by the presiding judge of the counting station before the count of the official ballots is started. The tabulating equipment shall pass the same test at the conclusion of the count before the election returns are approved as official. On completion of the test count made before the start of the count of the ballots, the test materials shall be sealed in a suitable container, using a paper seal signed by the tabulation supervisor, the manager, and the presiding judge of the counting station, and by at least two watchers of opposed interests if such are present at the test. The presiding judge shall have custody of the materials until the test is made at the conclusion of the count. On completion of that test count, the programs and test materials shall be sealed and retained as provided for paper ballots.

(g) The ballots for the various election precincts shall be separately tabulated by precincts. The ballots for a precinct shall be removed from their containers and prepared for processing by the automatic tabulating equipment. They shall be checked to ascertain that they are properly grouped and arranged so that all similar ballots from the precinct are together.

(h) The valid portion of a ballot which has been invalidated in part by the election officers as provided in Subdivision 19 of this section may be duplicated in the presence of watchers and substituted for the partially invalidated ballot, which shall be preserved, or such partially invalidated ballots may be counted manually.

(i) If it appears that a ballot cannot be counted by the automatic tabulating equipment, it may be counted manually or the manager of the counting station may cause a duplicate ballot to be made in the presence of the watchers and substituted for the original ballot, which shall be preserved. Each duplicate ballot prepared under either this paragraph or the preceding paragraph shall be clearly labeled with the word "Duplicate" and shall bear a serial number, which shall also be recorded on the original ballot.

(j) The manager shall be in charge of preparing the ballots for counting, and ballots shall not be turned over to the tabulation supervisor for counting until the manager or his designated representative has approved them as ready for counting.

(k) Upon completion of the count for each precinct, the presiding judge of the counting station shall add to the results as so determined the results of the write-in votes as counted and tallied by the precinct election officers and shall thereupon make a written return of the election in the number of copies required for elections where paper ballots are

used. The ballots, together with one copy of the returns, the poll list, and the tally list for write-in votes, shall be placed in a box made of metal, wood, or some other material approved by the secretary of state, which shall be securely locked. The voted ballots and all records of the election shall be delivered to the proper authorities as provided for election precincts where paper ballots are used. The presiding judge shall be responsible for the performance of the duties imposed by this paragraph.

(l) If for any reason it becomes impracticable to count all or a part of the ballots or ballot cards with tabulating equipment, the authority holding the election may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(m) If the automatic tabulating equipment used with any electronic voting system produces a printed record of the votes tabulated by such equipment, such printed record to which have been added the write-in and absentee votes shall, after being duly certified, constitute the official return for that precinct.

<sup>1</sup> Articles 3.03, 3.04.

#### Applicability of Other Laws

Subd. 21. Except as otherwise provided in this section, the provisions of all other laws relating to the conduct of elections shall apply, so far as practicable, to the conduct of elections where electronic voting systems are used.

#### Preservation of Ballot Labels

Subd. 22. Where voting devices with ballot labels attached are used for voting, the ballot label assemblies, including the plastic ballot mask, shall be delivered to the same person, and kept intact for the same length of time, as are voting machines under Section 20 of Section 79 of this code.<sup>1</sup>

<sup>1</sup> Article 7.14, § 20.

#### Post-Election Examination of Program and Other Materials; Recount

Subd. 23. At the time of making the official canvass, where an electronic voting system is used, upon the written request of any candidate whose name appears on the ballot or upon the written request of 25 voters of the county, city, or other subdivision for which the election was held (hereinafter called the petitioner), the authority charged with the duty of canvassing the returns shall defer a canvass on the office or proposition identified in the request until the procedure outlined in this subdivision has been completed. The request shall be directed to a district judge, with a copy to the presiding officer of the canvassing board. The request may ask for any one or more of the following, and it may be amended to include additional items

at any time not later than 48 hours after completion of the procedures originally requested:

(1) Permission to examine the program used in counting the ballots.

(2) Permission to examine the materials used in making the test counts.

(3) Permission to examine the ballot assemblies for all or part of the voting devices, where a punch-card ballot is used.

(4) Permission to make a recount of the test count, using the program and the test materials.

(5) A recount of the ballots for all or part of the election precincts, using the same methods and materials as in the original count. A recount under this paragraph, or a recount of the test count, shall be made by a person selected and compensated by the petitioner, subject to approval by the district judge as to his competence to operate the electronic tabulating equipment. The recount may be made either on the equipment which was used for the official count at the central counting station or on any tabulating equipment located within the county which is capable of counting the ballots. If it is made on the equipment at the central counting station, the person in charge of the equipment must make the equipment available at a reasonable rate of compensation, to be paid by the petitioner. The petitioner shall also be responsible for any expense involved in using any other equipment. A return of the results of the recount shall be made and certified by the person making the recount, and shall be attested by the manager and tabulation supervisor of the central counting station.

(6) A manual recount of the votes cast on the office or proposition identified in the request. The recount shall be made by a committee of two or more persons appointed by the district judge, and they shall be compensated at the same rate as the election judges and clerks for the election. The district judge shall make a preliminary estimate of the cost and shall require the petitioner to make a deposit in that amount before the recount is ordered. A return of the results of the recount shall be made and certified by the committee.

(7) A recount of the ballot for all or part of the election precincts, using corrected materials as detailed herein. If an examination or utilization of the program, the ballot assemblies, or the test count materials reveals an apparent error in the preparation or use of the materials or a defect in the functioning of the equipment which affected the outcome of the election, the petitioner shall make a written report to the district judge, copies of which shall be furnished to the presiding officer of the canvassing authority, the programmer for the election, and the manager, tabulation supervisor, and presiding judge of the central counting station. If the programmer, manager, and tabulation supervi-

sor unanimously agree that the error or defect does exist and that it can be remedied so that the true results of the election can be ascertained, the correction shall be made under supervision of the district judge; and the manager, tabulation supervisor, and presiding judge shall recount the ballots and prepare corrected returns in the same manner as for the original count. Any other relief incident to an examination of materials and request for a recount under this paragraph must be obtained through an election contest filed in a district court.

Upon presentation of an order signed by the district judge, the custodian of the election records shall deliver them into the custody of the person designated in the order to be responsible for their safekeeping while they are being used. After the use is completed, they shall be returned to the original custodian for safekeeping in the same manner as when they were originally delivered to him. The district judge or someone designated by him to serve in his place and the manager and the tabulation supervisor of the central counting station where the ballots were counted shall be present at all times while the election records are being used. The manager and tabulation supervisor shall be paid at a reasonable rate of compensation for time spent in performing the duties imposed by this subdivision, except that the authority responsible for the expenses of the election shall determine what compensation, if any, they shall receive for making a corrected recount as outlined in numbered Paragraph (7) of this subdivision. Except for their services in that capacity, the district judge shall require the petitioner to make a deposit to cover estimated costs for their services.

Whenever a recount is ordered, by whatever method it is to be made, each opposing candidate must be given notice of the time and place for making the recount and may be present or have a representative present to observe the proceeding. If the recount is for an election on an issue or proposition, the district judge may order that notice be given to such persons or groups as he deems desirable to provide representation for the opposing interest. The returns made on the recount shall be used in lieu of the original returns in the official canvass of the election for the office or proposition identified in the request; provided, however, that if any write-in ballots, absentee ballots, or other ballots were not recounted, the original returns shall be used as to those ballots.

If as a result of the recount the outcome of the election is changed favorable to the petitioner, any deposit for costs which the petitioner has made shall be returned to him, and the authority responsible for the expenses of the election shall pay the costs of the recount and shall reimburse the petitioner for any expenditure he has made for equipment and personnel in having the recount made; provided,

however, that if the central counting station equipment and personnel were not used, the amount of reimbursement shall not exceed the amount which use of that equipment and personnel would have cost. If the recount does not change the outcome, the petitioner shall pay all costs. A change in the outcome of the election favorable to the petitioner means that as a result of the recount the proposition identified in the request carries, or the candidate identified in the request is declared to have been nominated or elected to the office, or to have become entitled to be a candidate in a runoff election, or to have tied with another candidate between the two of whom the right of nomination, election, or a place on a runoff ballot is to be decided.

#### Penal Provisions

Subd. 24. (a) No person may:

(1) wilfully tamper with or damage any voting equipment, as defined in Subdivision 1 of this section, or any automatic tabulating equipment, to be used or being used in any election;

(2) wilfully prevent or attempt to prevent the correct operation of any voting equipment or automatic tabulating equipment;

(3) wilfully program or attempt to program any automatic tabulating equipment so as to produce an inaccurate count in an election; or

(4) intentionally repunch a ballot card to reflect a vote contrary to the intent of the voter.

(b) A person who violates any provision of this section is guilty of a felony, and upon conviction is punishable by imprisonment in the penitentiary for not less than three nor more than five years, or by a fine of not less than \$500 nor more than \$1,000, or by both.

(c) Except as they conflict with the provisions of this section, the provisions of the Penal Code of Texas, 1925, as amended, relating to paper ballots, apply also to ballot cards.

[Acts 1967, 60th Leg., p. 1888, ch. 723, § 29a, eff. Aug. 28, 1967. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, §§ 19 to 22, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 2068, ch. 680, §§ 1 to 10, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2093, ch. 682, § 19, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 659, ch. 247, §§ 3 to 6, 11, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 867, ch. 310, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg. p. 2344, ch. 423, § 1, eff. Aug. 29, 1983.]

A former article 7.15, relating to transportation of voting machines in counties of 300,000 to 355,000, and derived from Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 80, was repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).

#### Art. 7.16. Runoff Elections in Cities and Towns of over 200,000

Sec. 1. In all cities and towns in this State, whether incorporated under General and Special Law, (including home rule cities) having a popula-

tion in excess of two hundred thousand (200,000) inhabitants, according to the last preceding or future Federal Census the election of candidates for all municipal offices shall be determined in the following manner:

(a) Election by majority vote. Any candidate for office in any duly held municipal election receiving a majority of all the votes cast for the office for which he is a candidate shall be elected to such office.

(b) In the event any candidate for either of said offices fails to receive a majority of all votes cast for all the candidates for such office at such election the Mayor of said city shall, on the first day following the completion of the official count of the ballots cast at said first election, issue a call for a second election to be held in said city within thirty (30) days following the issuance of such call, at which said second election the two (2) candidates receiving the highest number of votes for any such office in the first election at which no one was elected at said first election by receiving a majority of all votes cast for all candidates for such office, shall again be voted for. The official ballot to be used at said second election shall be prepared by the City Clerk or City Secretary and the name of no person shall appear thereon unless he was a candidate for the office designated at said first election, and the two (2) persons receiving at said first election the first and second highest number of votes cast for candidates for such office at such first election shall be entitled to have their names printed on said official ballot in the order of their standing in the computation of the votes cast for such candidates at said first election as candidates at said second election for such office; provided, however, that in the event any person who was a candidate at said first election and who shall be entitled to become a candidate at such second election shall fail to request that his name shall appear on the official ballot therefor at such second election as herein provided, the candidate for such office standing next highest in the computation of votes shall succeed to the rights of such candidate who failed to request that his name appear upon the ballot at said second election; provided further, that two (2) candidates for such office at said first election shall be entitled to become candidates therefor at said second election, which two (2) candidates shall be those two (2) among such candidates as shall stand highest respectively in the computation of all votes cast for all the candidates for such office at said first election as shall file written request to be placed on the official ballot as candidates for such office at said second election. In the event of a tie in the vote for the two (2) leading candidates for any office at said first election, said office shall be filled at a second election as herein provided for, at which such candidates so tied in said first election may again become candidates. In the event such candi-

dates who tied in said first election, or either or them, shall fail so to do, the two (2) candidates for such office who are next highest in the computation of votes therefor and who desire to become candidates therefor at said second election shall be entitled so to do in order of the number of votes they respectively received at said first election. In the event of a tie between the two (2) candidates for any office at said second election, they shall cast lots to determine who shall be elected to such office.

Sec. 2. Notwithstanding any provision in Section 1 of this statute, when in any municipal election nominations have been made by one or more political parties and the names of the candidates are listed on the ballot in party columns in conformity with the provisions of this code applicable to the method of voting used in the election, if any party nominee is a candidate in a succeeding runoff election, the ballot for the runoff election shall also be arranged in party columns in the same relative order as they appeared on the ballot for the first election, omitting any column in which no candidate's name is to be printed on the runoff ballot. If all candidates whose names appear on the runoff ballot are independent candidates, the ballot shall be made up without party columns, and the names of the two candidates in each race shall be printed on the ballot in the order of their standing in the computation of the votes cast at the first election.

Sec. 3. Whenever any home-rule city whose charter provides for election of more than one member of its governing body from the same list of candidates attains a population in excess of 200,000 inhabitants, not later than the 90th day before the first regular election at which the provisions of this section are applicable, the governing body of the city shall assign a place number to each such position, identifying it by the name of the incumbent member at the time the designation is made; and thereafter one person to fill each such position shall be elected separately by place number until such time as the charter is amended to provide for some other method of election that is consistent with an election by majority vote.

Sec. 4. This law does not apply to any city whose charter provides for the selection of its officers by means of a preferential type of ballot or to any city whose charter requires that its officers be elected by majority vote and specifies the procedures for conducting a runoff election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 81. Amended by Acts 1961, 57th Leg., p. 88, ch. 51, § 2; Acts 1977, 65th Leg., p. 326, ch. 157, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1681, ch. 664, § 1, eff. Aug. 29, 1977.]

#### Art. 7.17. Inapplication to Elections in which Voting Machines Used

The provisions of Articles 38, 61, 73, 93, 187, and 200, relating to the use of the stub ballot, shall not

apply to elections in which voting machines are used as provided elsewhere in this Code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 82. Amended by Acts 1961, 57th Leg., p. 88, ch. 51, § 1.]

**Art. 7.17a. Secretary of State to Certify Voting Devices**

(a) Any person, firm, or corporation owning or controlling any voting device or system and desiring to have the same adopted for use in this state may apply to the secretary of state to have such device or system examined under the provisions of this section if in the opinion of the secretary of state the device or system cannot be adequately examined under either Section 79 or Section 80 of this code (Article 7.14 or Article 7.15, Vernon's Texas Election Code). Before the examination the applicant shall pay to the secretary of state the sum of \$450. The secretary of state shall cause the device or system to be examined as hereinafter provided and shall make and file and keep on file in the office of the secretary of state a report of such examination, which shall show whether the kind of device or system so examined can safely be used by the voters under the conditions hereinafter provided. If the report states that the device or system can be so used, it shall be deemed approved and the device or system may be adopted for use in any election held in this state. Before making and filing such report, the secretary of state shall require the voting device or system to be examined by three examiners to be appointed by the secretary of state for such purpose, one of whom shall be an expert in patent law and the other two shall be mechanical experts or electronics experts, as may be appropriate, and shall require each of them to make a written report on such device or system, which reports shall be attached to the secretary of state's report and kept on file. Each examiner shall receive the sum of \$150 as his compensation and expenses in making an examination and report as to each voting device or system examined by him. Neither the secretary of state nor any examiner may have any pecuniary interest in any voting device or system. When a device or system has been approved, every improvement or change must be filed with the secretary of state. The secretary of state may, at any time, in his discretion, reexamine a device or system approved under this section. Any form of voting device or system not approved under either this section or Section 79 or 80 of this code cannot be used at any election in this state.

(b) A voting device or system approved by the secretary of state must be so constituted as to provide facilities for voting for such candidates as may be legally placed on an official ballot in any election in this state. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballot as

an independent candidate, and must permit voting in absolute secrecy. It also must be so constituted that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constituted as to prevent a voter from having his vote counted for more than one person for the same office, unless permitted by law, and at the same time preventing his vote from being counted for the same person twice. It must also permit each voter to vote for a person whose name does not appear on the ballot, in any election and for any office where write-in votes are permitted by law. It must also permit the voter to vote by means of a single mark or punch or other appropriate act for all the candidates of one party or to vote a split ticket as he desires. No voting device or system shall be approved by the secretary of state unless he finds that it is suitable for the purpose for which it is intended, and that it will operate efficiently and accurately and provide adequate safeguards against fraudulent manipulation under the conditions under which it is intended to be used.

(c) In the event a voting system is approved under this section for which this code prescribes no applicable or suitable procedures concerning its use, the secretary of state shall, upon certification of such system, issue a directive prescribing the procedures, limitations, and conditions for the implementation of such system.

[Acts 1977, 65th Leg., p. 572, ch. 205, § 1, eff. Aug. 29, 1977.]

**CHAPTER EIGHT. CONDUCTING ELECTIONS AND RETURNS THEREOF**

**Art.**

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**Art. 8.01. Officers of Election Sworn**

Before opening the polls, the presiding judge of election and each of the other judges (if any) and clerks who are present at the opening of the polls shall repeat in an audible voice: "I solemnly swear that I will not in any manner request or seek to persuade or induce any voter to vote for or against any candidate or candidates, or for or against any proposition to be voted on; and that I will faithfully perform this day my duty as officer of the election, and guard as far as I am able, the purity of the ballot box, so help me God." Each clerk who commences his service at any time thereafter shall also repeat the oath before performing any of his duties as an election officer.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 83. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 55.]

**Art. 8.02. Preliminary Arrangements**

The presiding judge and such clerks as he designates shall meet at the polling place in sufficient time before opening of the polls to complete the preliminary arrangements required by this section. However, no judge or clerk shall be paid for more than one hour of work before the polls open. Watchers may be present during any or all of the

time that the preliminary arrangements are being made. Before opening of the polls, the election officers shall arrange the guard rail, the space within the guard rail, the voting booths, if any, and the furniture for the orderly and legal conduct of the election. The election officers shall then examine the ballot boxes and the blank official ballots to see that they are properly printed and numbered, removing any unnumbered or otherwise defectively printed ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4, for defective, mutilated, and unused ballots. They shall examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certified list of voters, rubber stamps and all things required for the election. The package of official ballots shall remain in the custody of the presiding judge and shall not be opened until the morning of the election and at the polling place. The presiding judge shall cause to be placed, at the outer limits of the area prescribed in Section 109<sup>1</sup> within which loitering and electioneering are prohibited, visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: "Distance marker. No electioneering or loitering between this point and the entrance to the polls." The election officers shall examine the ballot boxes and then relock them, after all present can see that they are empty. The ballot clerks with official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of registered voters for the precinct shall be as conveniently near each other as practicable within the polling place.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 84. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 56; Acts 1967, 60th Leg., p. 1900, ch. 723, § 30, eff. Aug. 23, 1967.]

<sup>1</sup> Article 8.27.

**Art. 8.03. Instruction Card Posted**

Before the election begins, one instruction card shall be posted conspicuously near each distance marker and one posted up in each voting booth where it can be read. When there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 85.]

**Art. 8.03a. Posting Informational Signs**

(a) A sign, card, poster, or similar material pertaining to an election may not be posted at a polling place unless this code or other law requires or allows the posting.

(b) All signs posted under the provisions of Subsection (a) shall conform to form and content as prescribed by the Texas Election Code.

(c) A person other than an election judge or clerk shall not post materials within 100 feet of the entrance to the polling place.

(d) Any person who knowingly violates the provisions of Subsection (a) or (c) of this section shall be guilty of a Class C misdemeanor.

[Acts 1983, 68th Leg., p. 4544, ch. 751, § 1, eff. Aug. 29, 1983.]

#### Art. 8.04. Presiding Judge Absent

If no presiding judge was appointed or fails to act or fails to attend on election day, the voters present may appoint their own presiding officer, who is a qualified voter, and they may also appoint the necessary assistant judges of election. When a presiding officer who has been appointed by a Commissioners Court fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk having been appointed fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place another with the same qualifications, and return a certificate of such appointment with each election return.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 86.]

#### Art. 8.05. Power of Presiding Judge

Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 87.]

#### Art. 8.06. To Inspect Ballot Boxes

Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 88.]

#### Art. 8.07. Present Registration Certificate

No citizen shall be permitted to vote, except as provided in the Constitution of Texas unless he first presents to the judge of election his registration certificate unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, to be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this Code. The affidavit may be incorporated into any combination signature roster and list of registered voters as prescribed by the secretary of state.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 89. Amended by Acts 1977, 65th Leg., p. 592, ch. 209, § 4, eff. Aug. 29, 1977.]

#### Art. 8.08. Procedure for Accepting Voter; Signature Roster

Subd. 1. An election officer shall receive from the voter his registration certificate, when he presents himself to vote. If the voter has lost or mislaid his certificate or left it at home, he shall make an affidavit of that fact. For elections held on or after April 1 and no later than June 30 in even-numbered years, if any voter who is a resident of a county in a primary election or of a county, municipality, or district which is conducting any other election has failed to receive a certificate for the current two-year registration period, the election officer shall determine if the name of such voter appears on the list of cancelled voter registration certificates for the particular election precinct, and, if so, the election officer shall allow such voter to cast a ballot in the manner stated in Section 48a of this code. The election officer shall announce the voter's name in an audible voice and shall ascertain that his name appears on the list of registered voters or shall satisfy himself, in the manner stated in Section 48a of this code, that the voter is a registered voter and is entitled to vote in that precinct. He shall then require the voter to sign the signature roster provided for in Subdivision 3 of this section. If the voter has presented his registration certificate, the election officer shall compare the signature on the roster with the signature on the certificate to see that it is the same. If he finds that the signatures do not correspond, he shall not allow the voter to vote unless the voter complies with the procedure prescribed in Section 91 of this code for acceptance of a challenged voter.

Subd. 2. When a voter is accepted for voting, the election officer shall place a notation on the list of registered voters showing that he has voted and shall enter the voter's name on the poll list or shall use a combination signature roster and list of registered voters in the manner and format prescribed by the secretary of state. If a separate poll list is

used, the names on the poll list shall be entered in the same order as the names on the signature roster. The officer shall return the registration certificate to the voter and shall allow him to select his ballot. The voter shall then immediately retire to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law.

Subd. 3. There shall be kept at each polling place a signature roster of persons offering to vote at the election. Each person offering to vote shall sign the roster if he is able to do so. If a voter is unable to sign his name, an election officer shall enter the voter's name on the roster and shall make a notation of whether the voter is unable to sign because of physical disability, blindness, or illiteracy. If a person is rejected for voting after signing the roster, the presiding judge shall make a notation of that fact by the person's name, stating the reason for the rejection. After the election is over, the signature roster shall be returned with the copy of the poll list which is intended for public inspection and shall be preserved under the same rules as the poll list.

Subd. 4. Notwithstanding any other provision of this code which prescribes a criminal penalty, an election officer who knowingly violates any provision of this section shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not more than 90 days, or be both so fined and imprisoned.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 90. Amended by Acts 1971, 62nd Leg., p. 2523, ch. 827, § 17, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 2079, ch. 681, § 20, eff. June 20, 1975; Acts 1977, 65th Leg., p. 593, ch. 209, § 5, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1215, ch. 468, § 4, eff. Aug. 29, 1977.]

#### Art. 8.09. Vote Challenged

When a person offering to vote at any general, special, or primary election shall be objected to by an election judge or clerk, a poll watcher, or any other person, the presiding judge shall examine him upon oath touching the points of such objection, and if such person establishes his right to vote to the satisfaction of the presiding judge, he shall be permitted to vote, and the word "sworn" shall be written upon the poll list or on the prescribed combination form opposite the name of the voter. If upon his own oath the person fails to establish his right to vote to the satisfaction of the presiding judge, his vote shall not be accepted unless in addition to his own oath he submits proof by the oath of one registered voter of the precinct that he is a qualified voter, as defined by Section 34 of this code, as amended (Article 5.02, Vernon's Texas Election Code), at such election and in such precinct. When such proof is submitted, his vote shall be accepted, and the word "challenged" and the name and address of the person testifying under oath as

to the voter's qualifications shall be written on the poll list or on the prescribed combination form opposite the name of the voter.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 91. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 57; Acts 1977, 65th Leg., p. 593, ch. 209, § 6, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 1066, ch. 238, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4717, ch. 824, § 1, eff. Aug. 29, 1983.]

#### Art. 8.10. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963

#### Art. 8.11. Delivery of Ballot

Subd. 1. After all defectively printed ballots have been removed, the presiding judge shall cause his signature to be placed on the back of each ballot to be used at the election. The ballots may be signed by the presiding judge in his own handwriting, or they may be stamped with a facsimile of his signature by the presiding judge or by another election officer under his direction. Where a 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.

Subd. 2. After the signature of the presiding judge is placed on the back of the ballots, one of the election officers shall 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 an election officer.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 93. Amended by Act. 1963, 58th Leg., p. 1017, ch. 424, § 58; Acts 1971, 62nd Leg., p. 2524, § 18, eff. Aug. 30, 1971.]

#### Art. 8.12. Marked Ballot

At either a general, special or primary election, any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot on paper, if he has one.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 94.]

#### Art. 8.13. Aid to Voter

Subd. 1. Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in prepar-

ing his ballot, except when a voter is unable to prepare the same because of the voter's inability to read the language in which the ballot is printed or because of some bodily infirmity which renders the voter physically unable to write or to see, in which case two officers of such election shall assist the voter (with the aid of an interpreter, when necessary), they having first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; that they will confine their assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming candidates and the political parties to which they belong; and that they will prepare the voter's ballot as such voter directs. If the election is a general election, the election officers who assist such voters shall be of different political parties, if there be such officers present. One or more watchers may be present when the assistance herein permitted is being given by election officers, but each watcher must remain silent except in cases of irregularity or violation of the law.

Subd. 2. Instead of being assisted by two election officers as provided in Subdivision 1 of this section, a voter who is entitled to assistance may select any qualified voter residing in the precinct to assist him, subject to the restriction stated in Section 330a of this code,<sup>1</sup> and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare the voter's ballot as the voter directs." The election officer who administers the oath shall cause a notation of the name and address of the person rendering the assistance to be entered on the poll list by the name of the voter who is assisted, together with a notation of the person's kinship to the voter if related as parent, grandparent, spouse, child, brother, or sister.

Subd. 3. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

Subd. 4. When an election officer assists a voter, the officer shall read the entire ballot to the voter unless the voter informs the officer that he wishes to vote only in certain specified races. When a voter is to be assisted by someone other than an election officer, the officer who waits on the voter shall ask the voter if he wants the entire ballot read to him, and if the voter says that he does, the officer shall instruct the person who will

render the assistance that he must read the entire ballot to the voter.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 95. Amended by Acts 1957, 55th Leg., p. 338, ch. 153, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 59; Acts 1975, 64th Leg., p. 2093, ch. 682, § 20, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2060, ch. 806, §§ 3, 4, eff. Aug. 27, 1979.]

<sup>1</sup> Article 15.30a.

#### Art. 8.13a. Use of English Language; Interpreter

No election judge or clerk shall use any language other than the English language in performing any duty as such judge or clerk of the election, except that it shall be permissible for him to use some other language when examining, aiding, or giving instructions to a voter who does not understand the English language. Any voter unable to speak or understand the English language may communicate with the election officer in some other language, and if the election officer is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the precinct. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the presiding judge: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by any election officer and each question, answer, or statement addressed to any election officer by the voter." When any language other than the English language is used either by the voter or by an election officer, any election officer or any watcher shall be entitled to request and receive a translation into the English language of anything spoken in another language.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 60.]

#### Art. 8.14. Officers not to Electioneer

No election judge, clerk or other person connected with the holding of an election, shall on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of the preceding Section [art. 8.13].

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 96.]

#### Art. 8.15. Deposit of Ballot

Subd. 1. After the voter has prepared his ballot, he shall fold it so as to conceal the printing thereon and so as to expose the signature of the presiding judge on the back of the ballot (except that ballot cards and certain other types of ballots used in electronic voting systems should not be folded), and then deposit it in the proper ballot box.

Subd. 2. The ballot stub to be signed by the voter and the stub box for the deposit of the signed

stub, formerly provided for in this and other sections of this code, are eliminated by amendments enacted by the 65th Legislature at its regular session in 1977. All statutory provisions relating to the use of ballot stubs and stub boxes which appear in other statutes enacted at the regular session of the 65th Legislature, regardless of whether they are enacted before or after this amendment, or enacted at any prior session, except provisions relating to stubs attached to ballot cards used in an electronic voting system, are to be treated as void.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 97. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 61; Acts 1977, 65th Leg., p. 660, ch. 247, § 7, eff. Aug. 29, 1977.]

Section 12 of the 1977 amendatory act provides:

"The statutory provisions relating to the preservation, examination, and destruction of ballot stubs which were in effect on the date of the election continue to apply to the ballot stubs for elections held before the effective date of this Act."

#### Art. 8.16. Mutilated Ballots

At any general or primary election no voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first return such ballot. No one shall be supplied with more than three (3) ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots which shall be deposited in box No. 4.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 98.]

#### Art. 8.17. Bystanders Excluded

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and watchers, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, inspectors, watchers, and children under 10 years old who accompany a parent who is admitted to vote. Notwithstanding any other provision of this code, the child or children may also be present in the voting booth or compartment while the parent is voting.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 99. Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 17, eff. June 20, 1975; Acts 1977, 65th Leg., p. 309, ch. 143, § 1, eff. Aug. 29, 1977.]

#### Art. 8.18. Defective, Mutilated, and Unused Ballots in Box No. 4

In any general, special, or primary election, there shall be deposited in ballot box No. 4, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The term "defaced

and mutilated ballot" as used in this article means a ballot which has been returned by the voter as provided in Section 98 of this code.<sup>1</sup> It does not include any ballot which a voter has deposited in the ballot box containing ballots to be counted, and the election officers shall place in ballot box No. 3 with other voted ballots any ballot which has been voted but which they refuse to count by reason of its being marked in an unintelligible manner or for any other reason. Ballot box No. 4 shall be locked and shall be delivered to the county judge or other officer receiving the returns for use in the official canvass, at the same time that the returns are delivered, with a statement which shall be placed therein, signed by the presiding judge, of the number of ballots received by him, the number of mutilated or defaced ballots that the box contains, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots delivered to the election officers may be accounted for. When the returns of votes cast are canvassed by the commissioners court or other authority as provided for by law, such ballot box shall be opened, the ballots counted, and a record made of what they found the contents to be. The box shall then be relocked and delivered to the county clerk or other officer having custody of the voted ballots, and shall be preserved by him until expiration of the period for contesting the election. If no contest has arisen, the custodian of the box may then destroy or otherwise dispose of the contents as he sees fit.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 100. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 62; Acts 1969, 61st Leg., p. 2662, ch. 878, § 23, eff. Sept. 1, 1969.]

<sup>1</sup> Article 8.16.

#### Art. 8.19. Deposit and Count

In all elections, general, special, or primary, at the expiration of one hour after voting has begun, the receiving officers shall deliver ballot box No. 1 to the counting officers, who shall at once deliver in its place ballot box No. 2, which shall again be opened and examined and securely closed and locked; and until the ballots in box No. 1 have been counted, the voters shall deposit their ballots in box No. 2. Ballot box No. 1 shall, upon its receipt by the counting officers, be immediately opened and the ballots taken out by one of them, who shall read and distinctly announce while the ballot remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheet. The ballot shall then be placed in box No. 3, which shall remain locked and in view until the counting is finished, when the box shall be returned, locked and sealed, to the county clerk or other officer as provided by law. Ballot boxes No. 1 and 2 shall be used by the receiving officers and the counting officers alternately, as above provided, as often as the counting officers have counted and exhausted

the ballots in either box. It is provided, however, that the box for receiving the ballots shall not be delivered to the counting officers and the ballots shall not be removed therefrom at any time before the polls are closed unless there are more than ten ballots in the box. After the polls have closed, the counting of votes shall proceed continuously until all of the votes are counted and the returns are properly certified and signed.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 101. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 63; Acts 1967, 60th Leg., p. 1900, ch. 723, § 31, eff. Aug. 28, 1967.]

#### Art. 8.19a. Counting Straight-ticket Ballots

In an election where party columns appear on the official ballot, the tally sheets for the election shall be prepared with appropriate spaces for tallying straight-ticket ballots. Each straight-ticket ballot voted shall be tallied for the party receiving the vote instead of being tallied for the individual candidates of the party. When the presiding judge makes out the returns for the election, to the number of votes tallied for each party nominee individually there shall be added the number of straight-ticket votes tallied for the party which nominated the candidate.

[Acts 1969, 61st Leg., p. 2662, ch. 878, § 24, eff. Sept. 1, 1969.]

#### Art. 8.19b. Tallying Votes for Write-in Candidates

In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, before the counting begins the presiding judge shall furnish the counting officers with the list of write-in candidates who have qualified for the election as provided in Section 62b of this code.<sup>1</sup> Only the names of the candidates printed on the ballot and the names of write-in candidates appearing on the list shall be entered on the tally sheets, and a write-in vote for any other person shall not be tallied.

[Acts 1977, 65th Leg., p. 1283, ch. 503, § 2, eff. Aug. 29, 1977.]

<sup>1</sup> Article 6.06b.

#### Art. 8.20. Examining Ballots

No officer of election shall unfold or examine the face of a ballot when received from an elector, nor the endorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor shall he permit the same to be done; nor shall he examine or permit to be examined the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases especially provided by law. No official of the election shall make any note of the number of the ballot

or any note that would make possible for the identification of a ballot delivered to a voter.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 102.]

#### Art. 8.21. Ballots Not Counted

The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, shall count no ballot where two (2) or more are folded together, or is unnumbered. If the names of two (2) or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. Likewise no ballot shall be counted if it is found to be fraudulent, but in the absence of a showing of fraud the mere failure of the presiding judge to sign the ballot shall not make any such ballot illegal.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 103.]

#### Art. 8.22. Death, Declination or Ineligibility of Candidate Before Election

(a) When the name of a deceased or ineligible candidate or of a candidate who has declined a nomination is printed on the ballot for a general or special election, as provided in Section 233 of this code (Article 13.56, Vernon's Texas Election Code), the votes cast for him shall be counted and return made thereof; and if he receives a plurality of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate shall be certified as the two highest candidates for the runoff election.

(b) If after the 65th day preceding the first primary election, a candidate in that primary dies or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code (Article 13.56, Vernon's Texas Election Code), to be printed on the general election ballot. If such a deceased or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If a candidate whose name is to appear on the second primary ballot dies

between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code (Article 13.26a, Vernon's Texas Election Code).

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 104. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 64; Acts 1967, 60th Leg., p. 1901, ch. 723, § 32, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 25, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 883, ch. 332, § 2, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 533, ch. 112, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2235, ch. 418, § 3, eff. Aug. 29, 1983.]

#### Art. 8.23. Revealing Information Before Polls are Closed

It shall not be unlawful for any presiding judge of an election to reveal at any time the number of votes that have been cast up to that time, but it shall be unlawful for any judge, clerk, watcher, or other person connected with the holding of an election, before the hour for closing the polls, to reveal any information as to the names of persons who have or have not voted at the election, or as to the votes that have been received for or against any proposition or candidate, or as to the candidate who is leading or trailing in the tabulation of the votes. Anyone who violates any provision of this section is guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 105. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 65; Acts 1967, 60th Leg., p. 1901, ch. 723, § 33, eff. Aug. 28, 1967.]

#### Art. 8.24. Status of Count Announced

Immediately upon the closing of the polls, and at intervals of two (2) hours thereafter, one of the judges of election shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the official ballot; and thereupon he shall publicly announce from such memorandum, the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially to newspaper reporters who may call for information; and the presiding judge and associate judge may furnish reporters information concerning the status of the count at other times after the polls have been closed. The announcement of the status of the count shall continue, as aforesaid, until the count has been com-

pleted, when a correct but unofficial announcement of the total number of votes received by each candidate shall be made as above provided. In all general, special or primary elections, the presiding judge of election shall, upon the completion of the count, immediately transmit by telephone or by more expeditious means, if available, to the office of the county clerk if the election be a general or special election, or to the county chairman, if a primary election, an unofficial but complete report of the number of votes cast for each candidate, and/or cast for or against each proposition submitted to the voters for determination. No judge, clerk, supervisor or other officer of election shall make any statement, or give any information in any manner, of the number of votes cast for or against any candidate or for or against any proposition submitted to the people, or convey to any person his opinion regarding the state of the polls until after the closing thereof, and then only as herein expressly permitted. The provisions of this Section shall apply to all elections, general, special or primary. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 106.]

#### Art. 8.25. Tabulation of Unofficial Returns

Sec. 1. The county clerk in case of general or special election, or the county chairman if a primary election, shall tabulate such unofficial returns when received, and at convenient intervals until midnight of election day shall announce or have announced at the courthouse door, or some other designated place, the total number of votes, as far as tabulated at the time, counted for each candidate, and/or for or against each proposition submitted to the voters for determination. When returns from each precinct of the county shall have been tabulated the county clerk or county chairman shall immediately prepare an unofficial memorandum of the total number of votes received by each candidate, and/or cast for or against each proposition submitted to the people, and shall post a copy of the same at the courthouse door or at some other designated public place in the county.

Sec. 2. For receiving unofficial returns by telephone and tabulating them as herein provided, the county clerk or county chairman and assistants employed in the work shall receive the same compensation per hour as allowed precinct judges of election.

Sec. 3. Charges for telephone or other service in transmitting unofficial returns to the county clerk in general or special elections shall be payable out of the general fund of the county. Charges for such services in primary elections shall be payable out of the funds of the political parties holding such elections.

Sec. 4. The tabulation of unofficial returns shall be preserved for public inspection until such time as official returns shall have been tabulated; thereafter, the unofficial tabulation may be destroyed.

Sec. 5. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 107. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a).]

**Art. 8.26. Privilege From Arrest**

In all cases except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 108.]

**Art. 8.27. Electioneering or Loitering near Polls**

(a) It shall be unlawful for any sound truck to approach within one thousand feet of a polling place during the hours the polls are open for the purpose of making any political speeches or electioneering for or against any proposition or candidate.

(b) It shall be unlawful for any person to do any electioneering or loitering while the polls are open within one hundred feet of any outside door through which a voter may enter the building in which a polling place is located. The presiding judge shall prevent unlawful electioneering or loitering, and for this purpose he may appoint a special peace officer to enforce this authority upon approval of the appointment by the presiding officer of the canvassing authority for the election. Notwithstanding the general authority granted to election judges in Section 87 of this code,<sup>1</sup> a special peace officer appointed by the presiding judge shall not undertake to enforce the provisions of this section unless his appointment has been approved as required herein.

(c) Any person who operates a sound truck, either as the driver of the vehicle or as the speaker or operator of the sound equipment, in violation of this section, or who does any electioneering or loitering in violation of this section, is guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 109. Amended by Acts 1967, 60th Leg., p. 1901, ch. 723, § 34, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.05.

**Art. 8.28. Disabled Voter**

If any voter is physically unable to enter the polling place without assistance, two (2) of the judges of the election or primary may deliver an official ballot to him at the entrance of the polling place and permit him to make out his ballot and cast it for him.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 110.]

**Art. 8.29. Returns of Elections Held by the County**

When the ballots have all been counted, the presiding judge of the election in person shall make out

returns of the same certified to be correct and signed by him officially, showing: (1) the total number of votes polled at such polling place, and (2) the total number of votes polled for each candidate and/or the number polled for or against any proposition voted on. One of the returns, together with a poll list and tally list, shall be sealed up in an envelope and delivered by the presiding judge to the county judge of the county for use in the official canvass of the result. Another of said returns, together with a poll list and tally list, shall be delivered to the county clerk of the county to be kept by him in his office open to inspection by the public for sixty days from the day of the election. Another of said returns, together with a poll list and tally list, shall be placed in the ballot box containing the voted ballots; and the other of said returns, together with a poll list, shall be retained by the presiding judge of the election for sixty days from the day of the election. In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns for use in the official canvass shall be delivered to the county clerk of the county, who shall safely keep the same in his office, and he, or the county judge, shall deliver the same to the Commissioners Court on the day appointed by law to open and canvass the returns of the election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 111. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 66.]

**Art. 8.29a. Returns of Other Elections**

When some other statute regulating the conduct of a specific type of election provides the procedure for making returns of the election, for canvass of the returns, or for custody and disposition of the voted ballots, those provisions shall govern such matters in the conduct of the election. In the absence of such other law, the provisions of this Code applicable to elections held by the county, as modified by this section, shall govern such matters for all elections held by cities, school districts, and other political subdivisions of this state, insofar as these provisions can be made applicable, and references in this Code to the county judge, commissioners court, and the county clerk shall be deemed to mean the appropriate officer or board, as herein provided, for the type of election involved.

Unless otherwise provided by law, the returns of all elections held at the expense of the county shall be canvassed by the Commissioners Court, and the copy of the precinct returns and accompanying records for use in the official canvass shall be delivered to the county judge. The county clerk shall have custody of the voted ballots; the copy of the returns and accompanying records for public inspection shall be delivered to the county clerk; and the keys to the ballot boxes containing the voted ballots shall be delivered to the sheriff.

Unless otherwise provided by law, the returns for all municipal elections shall be canvassed by the city governing body and the copy of the precinct returns and accompanying records for use in the official canvass shall be delivered to the mayor. The city secretary or clerk shall have custody of the voted ballots; the copy of the returns and accompanying records for public inspection shall be delivered to the city secretary or clerk; and the keys to the ballot boxes containing the voted ballots shall be delivered to the city marshal or chief police officer. If the city has no city marshal or chief police officer, or if such office is vacant, the keys shall be delivered to the sheriff of the county in which the city is located, and if located in more than one county, to the sheriff of the county in which the office of the mayor is maintained.

Unless otherwise provided by law, the returns of all elections held by school districts, conservation districts, and other political subdivisions shall be canvassed by the governing board of the subdivision holding the election, and the copy of the returns and accompanying records for use in the official canvass shall be delivered to the presiding officer of the governing board. The governing board shall make proper provision for custody, storage, and safekeeping of the ballot boxes containing the voted ballots, which shall be delivered to the presiding officer or to such other person as the governing board shall direct. The copy of the returns and accompanying records for public inspection shall be delivered to the presiding officer of the governing board. The keys to the ballot boxes containing the voted ballots shall be delivered to the constable of the justice precinct in which the office of the governing board of the subdivision is maintained. If the office of constable is vacant, the keys shall be delivered to the sheriff of the county in which the office of the governing board of the subdivision is maintained.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 67.]

**Art. 8.29b. Copies of Returns, Poll Lists or Combination Forms, and Tally Lists; Distribution**

(a) In precincts using paper ballots. In all general, special, and primary elections, the number of copies of the returns, poll list or prescribed combination form, and tally list required for each precinct in which paper ballots are used shall be as follows: four copies of the returns, three copies of the poll list or prescribed combination form, and three copies of the tally list. These records shall be distributed as follows:

(1) One copy of the returns and tally list shall be delivered to the presiding officer of the authority which canvasses the returns (the county judge in elections held by the county; the mayor in city elections; the presiding officer of the governing board in elections held by other political subdivi-

sions; and the chairman of the county executive committee in county primary elections) and shall be preserved by the canvassing authority for sixty days from the day of the election.

(2) One copy of the returns, poll list, or prescribed combination form, and tally list shall be delivered to the proper officer (the county clerk in elections held by the county and in county primary elections; the city secretary or clerk in municipal elections; and the presiding officer of the governing board in elections held by other political subdivisions), to be kept by him in his office open to inspection by the public for sixty days from the day of the election.

(3) One copy of the returns, poll list, or prescribed combination form, and tally list shall be placed in the ballot box containing the voted ballots.

(4) The presiding judge shall retain in his custody one copy of the returns and one copy of the poll list or prescribed combination form of the election, and shall keep the same for sixty days after the day of the election, subject to the inspection of anyone interested in such election.

(b) In precincts using voting machines. In all general, special, and primary elections, there shall be made out, for each precinct in which voting machines are used, three copies of the poll list and three copies of the returns. These records shall be distributed and preserved as provided in Paragraphs (1), (2), and (4) of Subdivision (a) of this section, and shall be subject to the provisions of Subdivision (c) of this section.

(c) Destruction of records. In event of any contest or criminal investigation growing out of an election within sixty days after the day of the election any officer having custody of records of the election shall deliver such records to any competent officer having process therefor, for any tribunal or authority authorized by law to demand them. If no contest or criminal investigation arose within sixty days after the day of the election, the records referred to in Paragraphs (1), (2), and (4) of Subdivision (a) of this section may be destroyed after the expiration of the sixty-day period; provided, however, that no record shall be destroyed until all laws providing for recordation of any information contained therein have been complied with; and provided further, that the district judge, upon his own motion, or upon the request of the county or district attorney, may, by an order entered on the minutes of the district court, defer the destruction of any election record for such period as he deems necessary, subject to further orders of the court. The records referred to in Paragraph (3) of Subdivision (a) of this section, which are placed in the ballot box containing the voted ballots, shall be destroyed at the same time that the voted ballots are destroyed, as provided elsewhere in this Code.

(d) The presiding judge shall deliver all applications for registration received pursuant to Section 48a of this code<sup>1</sup> to the officer who receives the election records that are open to public inspection at the same time that he delivers those records. Within five days after the election, this latter officer shall forward the applications from all election precincts to the county registrar of voters, who shall process the applications and issue registration certificates thereon in the same manner as other applications.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 68. Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1217, ch. 468, § 7, eff. Aug. 29, 1977.]

<sup>1</sup> Article 5.16a.

#### Art. 8.30. Time for Report by Election Judges

The presiding judges in the several precincts in this state, in general and special elections, shall deliver the written returns of the election to the county judge of their respective counties immediately after all votes have been counted and tabulated, and not later than twenty-four hours after the closing of the polls. Within forty-eight hours after the returns have been canvassed by the commissioners court, as provided by law, the county judges shall forward by mail to the Secretary of State complete returns of the general and special elections in their respective counties. If a county judge fails or neglects to make such report the county clerk is hereby authorized to forward by mail to the Secretary of State complete returns of the general and special elections in their respective counties and if both the county judge and the county clerk neglect or fail to make such report, it shall be the duty of the Secretary of State to request by mail, telephone or telegraph that the report be forwarded to him immediately. In case no report is had from such county within ten days from the day of the election, it shall be the duty of the Secretary of State to send a special messenger to such county to obtain from the proper officers a complete return of such election, and the expense of such messenger shall be paid from the general fund of such county. This section shall in no wise be construed as repealing Section 122 of this Code.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 112. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 69.]

<sup>1</sup> Article 8.40.

#### Art. 8.31. Return of Election Supplies

The presiding judge shall deliver the certified lists of qualified voters and all stationery, rubber stamps, blank forms, and other election supplies not used, to the county clerk at the same time that he delivers the returns of the election, and not later than twenty-four hours after the closing of the polls. He shall provide for the safe storage of the

voting booths in some place and notify the county clerk.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 113. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 70.]

#### Art. 8.32. Ballots and Copy of Returns Delivered to County Clerk

Immediately after the counting of the ballots is completed, the presiding judge shall place all the ballots voted, together with one copy of the returns, poll list, and tally list, into a wooden or metallic box or any approved ballot box, and shall securely fasten the box with nails, screws, or locks, and he shall immediately, and in no case later than 24 hours after the closing of the polls, deliver the box to the county clerk of his county. He shall deliver the key or keys to the sheriff, who shall keep the same for 30 days. It shall be the duty of the county clerk to keep the box securely, and it shall be unlawful for the county clerk or anyone else to burn or otherwise destroy these ballots and records, or permit it to be done, except where provided for by the law; and anyone violating this provision of this section upon conviction shall be fined not to exceed \$1,000. Also, the presiding judge shall deliver a copy of the returns, together with a copy of the poll list and tally list, to the county clerk at the same time that he delivers that ballot box, and the clerk shall immediately announce the returns of the election in the precinct reporting, and shall post the returns on a bulletin board within his office. In event of any contest or criminal investigation growing out of the election within 60 days after the day of the election, the county clerk shall deliver the ballot box to any competent officer having process therefor, for any tribunal or authority authorized by law to demand such box. If no contest or criminal investigation arose out of the election within 60 days after the day of such election, the clerk shall destroy the contents of the ballot box by burning or shredding same; provided, that the district judge, upon his own motion or upon the request of the county or district attorney, may, by an order entered on the minutes of the district court, defer the destruction of the contents of the ballot box for such period as he deems necessary, subject to further orders of the court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 114. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 71; Acts 1967, 60th Leg., p. 1902, ch. 723, § 35, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 26, eff. Sept. 1, 1969.]

#### Art. 8.33. Repealed by Act 1963, 58th Leg., p. 1077, ch. 424, § 121(a), eff. Aug. 23, 1963

#### Art. 8.34. Commissioners to Open Returns

On the Monday next following the day of election or sooner, the Commissioners Court shall open the election returns and canvass the result, recording the state of the polls in each precinct in a book to be

kept for that purpose; provided, that, in the event of a failure from any cause of the Commissioners Court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 116.]

#### Art. 8.35. Returns Not Canvassed

No election returns shall be opened or canvassed unless the same have been returned in accordance with the provisions of this Code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 117.]

#### Art. 8.36. Certificates of Election

After the canvass of the result of the election has been made, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him, and the day on which such election was held, and shall sign the same and cause the seal of the county court to be impressed thereon.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 118. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 72.]

#### Art. 8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman

Not later than February 1 following each general election for state and county officers, the chairman of the county executive committee of each political party with a state organization that had nominees on the general election ballot shall send to the state chairman of the party a list of the names of the party's nominees who were elected to county and precinct offices in that county at that election, and the office to which each was elected.

[Acts 1975, 64th Leg., p. 2107, ch. 687, § 1, eff. Sept. 1, 1975.]

#### Art. 8.37. Returns for State and District Officers

In all elections for state or district officers, including presidential electors, or for voting on proposed amendments to the constitution, the county clerk shall, within 48 hours after the commissioners court has opened the returns and canvassed the result, as provided in Section 116,<sup>1</sup> certify and transmit returns of the election to the seat of government of the state, sealed in an envelope directed to the secretary of state and endorsed "Election Returns for \_\_\_\_\_ County, for \_\_\_\_\_" (filling the first blank with the name of the county and the other blank with the designation of the election). The secretary of state shall prescribe the necessary forms and instructions for the use and guidance of

the county clerk in forwarding the returns under this section and Section 122.<sup>2</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 119. Amended by Acts 1967, 60th Leg., p. 1157, ch. 514, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 27, eff. Sept. 1, 1969.]

<sup>1</sup> Article 8.34.

<sup>2</sup> Article 8.40.

#### Art. 8.38. Such Returns Counted

Not earlier than the 15th day or later than the 21st day after election day, at the time set by the Secretary of State, the Secretary of State in the presence of the Governor and one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, or in case of vacancy or of inability or failure of either to act, then in the presence of either one (1) of them, shall open and count the returns of the elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 120. Amended by Acts 1963, 58th Leg., p. 1138, ch. 442, § 13; Acts 1981, 67th Leg., p. 536, ch. 219, § 1, eff. Aug. 31, 1981.]

#### Art. 8.39. Governor to Give Certificate

When the returns have been counted, the Governor shall immediately make out, sign and deliver a certificate of election, with the seal of the State thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 121.]

#### Art. 8.40. Returns for Governor and Lieutenant Governor

Each county clerk shall promptly certify and transmit returns of the election for governor and lieutenant governor to the seat of government of the state, sealed in an envelope directed to the speaker of the House of Representatives in care of the secretary of state and endorsed as provided in Section 119.<sup>1</sup> The secretary of state shall keep the returns, with the seal of the envelope to remain unbroken, until the organization of the next Legislature, when he shall, on the first day thereof, deliver them to the speaker of the House of Representatives.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 122. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 28, eff. Sept. 1, 1969.]

<sup>1</sup> Article 8.37.

#### Saved From Repeal

*Article 8.30, requiring election judges to deliver written returns to the county judges immediately after all votes have been counted and tabulated, provides in the last sentence that it should in no wise be construed as repealing this article.*

**Art. 8.41. Repealed by Acts 1967, 60th Leg., p. 1158, ch. 514, § 2, eff. Aug. 28, 1967**

See, now, art. 8.37.

**Art. 8.42. Returns for Members of the Legislature in Special Elections**

Whenever a special election is held in any representative or senatorial district in this State for the election of any Member of the Legislature, the returns shall be canvassed and the results declared in accordance with Article 32c of this Code.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 124. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 74; Acts 1965, 59th Leg., p. 777, ch. 368, § 2.]

<sup>1</sup> Article 4.12.

**Art. 8.43. County Clerk to Certify to Secretary of State**

On or immediately after January 1, next following a general election, each county clerk shall make out and certify to the Secretary of State a tabular statement showing who were elected, and to what office and the date of qualification, and giving the number of the precinct officers; together with the statutory fees, for issuance of each commission.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 125. Amended by Acts 1967, 60th Leg., p. 1902, ch. 723, § 36, eff. Aug. 28, 1967.]

**Art. 8.43a. Precinct Returns Forwarded to Secretary of State**

Subd. 1. Within 70 days after each general election, and within 30 days after each special election at which a statewide office is voted on, the county clerk shall forward to the Secretary of State a report of the number of votes cast for each candidate for a statewide office in each precinct of the county. In a presidential election year the report shall include the votes cast for each party's candidates for president and vice-president. The report may be in the form of either transcribed or photographic copies of the precinct returns for the statewide offices as made by the presiding judges of the election, or in the form of a tabulated statement compiled from the official canvass by the Commissioners Court, or in such other form as the Secretary of State approves for reporting the information to him.

Subd. 2. The Secretary of State shall preserve all information received under the provisions of Subdivision 1 of this section as public records of his office, either in the form in which the information is reported to him or in the form of a tabulated statement prepared by him from the reports received from the county clerk, for a period of 10 years, after which time he may transfer the records to the records management division of the State Library for further retention for a period of 20 years. At the expiration of 30 years from the date

of the election, the State Librarian may dispose of the records in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

Where the Secretary of State prepares a tabulated statement from reports furnished to him by the county clerk, he shall preserve the reports for a period of two years, after which time he may transfer them to the records management division of the State Library, and the State Librarian may dispose of them in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

[Acts 1971, 62nd Leg., p. 47, ch. 24, § 2, eff. March 18, 1971.]

**Art. 8.44. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963****Art. 8.45. Commission to Officers**

The Governor shall commission all officers except Governor, members of Congress, electors for President and Vice-President, of the United States, members of the Legislature and municipal officers.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 127.]

**Art. 8.46. Death of Governor-elect or Death or Incapacity of Governor-elect and Lieutenant Governor-elect**

Pursuant to the provisions of Article IV, Section 3a, of the Constitution of the State of Texas, the successor to the office of Governor shall be as follows:

If, at the time the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, the person receiving the highest number of votes for the office of Governor, as declared by the Speaker, has died, then the person having the highest number of votes for the office of Lieutenant Governor shall act as Governor until after the next general election.

It is further provided that in the event that both the Governor-elect and the Lieutenant Governor-elect die or have become permanently incapacitated to take their oaths of office at the time when the Legislature shall canvass the election returns for the offices of Governor and Lieutenant Governor, and the Legislature finds that neither the Governor-elect nor the Lieutenant Governor-elect are able to take the oath of office and fulfill the duties thereof, then the Speaker of the House of Representatives and the President pro tem of the Senate will call a joint session of the House of Representatives and Senate for the purpose of electing a Governor and Lieutenant Governor.

The person receiving the highest number of votes cast by the Members of the Legislature for the office of Governor shall become the Governor and

hold that office until the next general election, at which time the unexpired two-year remainder of the term shall be filled by election. The person receiving the highest number of votes for the office of Lieutenant Governor cast by the Members of the Legislature, shall become Lieutenant Governor and hold that office until the next general election, at which time the unexpired two-year remainder of the term shall be filled by election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 128. Amended by Acts 1981, 67th Leg., p. 2467, ch. 640, § 1, eff. Aug. 31, 1981.]

#### CHAPTER NINE. CONTESTING ELECTIONS

##### Art.

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##### Art. 9.01. District Court, Jurisdiction and Venue

The district court shall have original and exclusive jurisdiction of all contests of elections, general or special, for all school, municipal, precinct, county, district, state offices, or federal offices, except elec-

tions for the offices of Governor, Lieutenant Governor, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Attorney General, and Members of the Legislature.

The venue of suits or contests between candidates for any office to be filled by the choice of voters of the entire state shall be in Travis County. The venue of suits or contests between candidates for any justice of any Court of Appeals shall be in the county where said Court of Appeals has its sittings.

The venue in all other election contests between candidates shall be in the county where the candidate receiving the certificate of election resides. If there is but one district court in the county in which venue is placed by this law and the judge of said court is disqualified to hear any contest, said judge shall be replaced for purposes of said contest in the manner provided by law for civil suits.

Nothing herein shall be construed to prohibit the district court in the county where any such contest may be filed from changing the venue to some adjacent county, upon showing of adequate cause.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 129. Amended by Acts 1981, 67th Leg., p. 797, ch. 291, § 84, eff. Sept. 1, 1981.]

##### Art. 9.02. Contest or Prosecution by Attorney General

(1) In any special, general, or primary election in this State for any office, national, state, district, county, precinct, school, or municipal, or any election on any proposition, the Attorney General of Texas, in the case of elections involving two (2) or more counties, and the district and county attorneys, in the case of elections involving less than two (2) counties, may on their own motion, and shall when allegations of election frauds are presented to them by written affidavit of two (2) or more reputable citizens, investigate the conduct of such election and the making, canvassing, and reporting of returns. To make effective the power of such officers to investigate, the Attorney General, in elections involving two (2) or more counties, and the district and county attorneys in all other elections, are hereby authorized to impound all of the election records in the hands of any county clerk, district clerk, or any other election official by applying for and obtaining an order of a district court placing such records in the custody of the court to be examined by such officers in the presence of the district judge or a grand jury. All of such records, except the stub box, shall be subject to inspection and examination by the attorneys for the State in the cases hereby placed within their respective jurisdictions. The stub box containing identification of the individual voters shall not be opened or inspected by anyone except as otherwise provided in this Act with reference to election contests and in a

grand jury room when alleged violations involve the contents of said box.

The application for impoundment and inspection of records shall be filed with the district court of a county in which the election was held, or an adjoining county, or Travis County in the case of state-wide elections, and the judge of said court shall immediately issue an order impounding such records in a vault or other secure place under such terms and conditions as will keep the records under his custody and control during the entire examination and inspection proceeding and for such additional time as he may direct. The ex parte proceeding herein provided for inspection in the presence of the judge shall be conducted in the usual manner as a court of inquiry, and the court shall issue such processes for witnesses and records relevant to the conduct of such election as may be requested by the appropriate attorney for the State, and disregard of subpoenas or other processes or refusal to testify at such hearing shall be punished by the court as in civil cases.

(2) The summary court proceeding and venue set out in subsection (1) above may be followed in the investigation and development of evidence relating to all other alleged violations of the Texas election laws. The Attorney General of Texas is hereby authorized to appear before a grand jury and prosecute any violation of the election laws of this State by any candidate, election official, or any other person, in state-wide elections, or elections involving two (2) or more counties. He may institute and maintain such prosecution alone or in conjunction with the county or district attorney of the county where such prosecution is instituted. He may call upon and direct county and district attorneys to handle the investigations and prosecutions provided for above or to assist him in such procedures. This Section is intended to be cumulative and in addition to all other prosecutions authorized by other Sections hereof and other statutes. Concurrent venue for indictments and prosecutions under this Section shall be in the county where the election law violation occurred, or an adjoining county, or in Travis County if the violation involves or relates to a state-wide election for any State or national office or any proposition submitted to the people.

(3) Any subpoena or subpoena duces tecum issued by the clerk of any district court for any hearing, election contest, or election law violation shall be effective if served anywhere within this State, provided, however, no witness shall be punished for failure to comply with such subpoena or subpoena duces tecum unless the fees provided by law are tendered him as required by statute or court rule. When called upon by the Attorney General, the Department of Public Safety and Texas Rangers shall serve any subpoenas and assist in any investigations which may be necessary.

(4) The expense of any investigation on the part of the Attorney General of an election law violation shall be paid by the State of Texas. There is hereby appropriated for the biennium of 1951-52 the sum of Five Thousand Dollars (\$5,000) out of funds not otherwise appropriated from which such expenses may be paid.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 130.]

#### Art. 9.03. Notice of Contest

Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty (30) days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 131.]

#### Art. 9.04. Reply to Notice of Contest

The person holding such certificate shall, within ten (10) days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 132.]

#### Art. 9.05. Service of Notice

The notice, statement and reply required by the two preceding articles may and shall be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen (16) years at the usual place of abode or business of such person.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 133.]

#### Art. 9.06. Where to File Papers

If the contest be for the validity of an election for any State office, except the offices provided for in Section 155,<sup>1</sup> or for any district office, except Members of the Legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 134.]

<sup>1</sup> Article 9.27.

#### Art. 9.07. Cause to be Docketed

When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes. If the office contested for be that of district clerk, then a clerk pro tem shall

be appointed as is provided by law in suits where the clerk is a party to the suit.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 135. Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(39), eff. Aug. 31, 1981.]

#### Art. 9.08. Evidence and Procedure

In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases. As to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 136.]

#### Art. 9.09. To Execute Bond

Whenever the validity of any election for an officer other than for Members of the Legislature is contested, the contestee shall, within twenty (20) days after the service of said notice and statement of such contest upon him, file with the clerk of the court in which such contest is pending a bond with two (2) or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for a period of two (2) years; conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 137.]

#### Art. 9.10. Failure to File Bond

If the contestee fails to file the bond as required in the preceding Section [art. 9.09], and within the time therein prescribed, said clerk shall notify the contestant immediately of such failure; and such contestant shall have the right within ten (10) days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 138.]

#### Art. 9.11. Execution of Bond by Contestant Certified

Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the Governor, that the contestee failed to give the required bond, and that

the contestant has given such bond in accordance with law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 139.]

#### Art. 9.12. To Commission Contestant

Upon receiving such certificate from the clerk, the Governor shall issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof unless it shall otherwise be determined and ordered by the court upon the trial of such contest.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 140.]

#### Art. 9.13. Failure of Contestant to Execute Bond

The Governor shall issue the commission to the contestee at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by Section 137 [art. 9.09], in which event the Governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in Section 138 [art. 9.10], and within the time therein required, the clerk shall certify all the facts in the case, under his official seal to the Governor, who shall thereupon issue the commission to the contestee.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 141.]

#### Art. 9.14. Fraudulent Vote Not Counted

If any vote or votes are found upon the trial of any contested election to be illegal or fraudulent, the trial court shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 142.]

#### Art. 9.15. Election Declared Void

If it appears on the trial of any contest provided for in Section 134 [art. 9.06] that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or managers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made

in all respects as required by the general election laws of the State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 143.]

#### Art. 9.16. Bonds Subject to Suit

The bonds required to be filed by the contestant and contestee under the provisions of this chapter [arts. 9.01-9.38] shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 144.]

#### Art. 9.17. Appeal Available

Either the contestant or contestee may appeal from the judgment of the district court to the Court of Appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the Court of Appeals over all other cases. In cases of appeal as provided for in this Section, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the Court of Appeals for that district.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 145. Amended by Acts 1981, 67th Leg., p. 797, ch. 291, § 85, eff. Sept. 1, 1981.]

Section 149 of the 1981 amendatory act provides, in part: "This Act takes effect on September 1, 1981. Appeals to the courts of appeals filed on or after that date shall be filed in the court of appeals having jurisdiction."

#### Art. 9.18. Taxing Costs

The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 146.]

#### Art. 9.19. Measure of Damages

Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter [arts. 9.01-9.38], the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided that he shall have acted in good faith in receiving the certificate of election or commission for the office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 147.]

#### Art. 9.20. For Legislature

##### Initiation of Election Contest

Subd. 1. A candidate for State Senator or Representative who desires to contest the election must initiate election contest proceedings in the manner prescribed by this section.

##### Notice and Statement

Subd. 2. (a) Not later than 10 days after election day, the contestant shall give notice in writing of his intent to contest the election to the candidate who is shown by the unofficial returns to have the greatest number of votes when the returns of all counties are totaled.

(b) The contestant shall give the contestee a written statement of the grounds on which the election is contested not later than five days after the day the official results are declared.

(c) Within the period of time prescribed by Subsection (b) of this subdivision, the contestant shall mail a certified copy of the notice and statement to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

##### Reply

Subd. 3. The candidate who receives the notice and statement shall cause a reply in writing to be delivered to the contestant, his agent or attorney, within 10 days after receiving the notice and statement; and within the same period of time he shall mail a certified copy of the reply to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, in care of the Secretary of State.

##### Service; Use of Certified Mail

Subd. 4. (a) The notice, statement, and reply may be served as provided in Section 133 of this code (Article 9.05, Vernon's Texas Election Code) or by certified mail with return receipt requested.

(b) When certified mail is used for service or to transmit a copy of the notice, statement, or reply to the Secretary of State, the fact and date of sending and the fact and date of receipt may be proven with window receipts and return receipts for certified mail.

##### Duty of Secretary of State

Subd. 5. (a) The Secretary of State shall submit the papers of the case to the President of the Senate or to the Speaker of the House of Representatives, as the case may be, not later than three days after receipt of the contestee's reply.

(b) The papers of the case consist of the copies of the notice, statement, reply, and the Secretary of State's certified statement of the total votes cast for

each candidate for the office as shown by the official canvass of the returns.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 148. Amended by Acts 1965, 59th Leg., p. 199, ch. 83, § 2; Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4719, ch. 825, § 1, eff. Aug. 29, 1983.]

#### Art. 9.21. Discovery; Master of Discovery

##### Discovery Procedures

Subd. 1. The parties to a contest for the office of State Senator or Representative may conduct discovery under the procedures applicable in civil actions generally, subject to any changes in those procedures or limitations imposed by the master of discovery or by rules of the House in which the contest is pending.

##### Master of Discovery

Subd. 2. (a) The presiding officer of the House at any time after receiving the papers of the case from the Secretary of State may appoint a master of discovery in the manner that a master in chancery is appointed in civil actions generally for the purpose of supervising discovery proceedings.

(b) The master must be a member of the House in which the contest is filed.

(c) The presiding officer may limit the master's authority in the same manner as a civil court in the appointment of a master in chancery.

(d) The master's rulings are subject to review by the committee to which the contest is referred unless otherwise provided by rules of the House.

##### Costs of Discovery

Subd. 3. Each party is responsible for the initial payment of his own costs of discovery, but discovery costs may be assessed by the House as provided by Section 151 of this code (Article 9.23, Vernon's Texas Election Code).

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 149. Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4719, ch. 825, § 2, eff. Aug. 29, 1983.]

#### Art. 9.22. Grounds of Contest; Scope of Inquiry

The grounds on which an election for the office of State Senator or Representative may be contested and the scope of inquiry of the contest are the same as for an election contest tried before a court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 150. Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

#### Art. 9.23. Costs of Contest

The House considering an election contest for the office of State Senator or Representative may assess the costs of the contest against any one or more of the parties, except that costs may not be

assessed against a contestee who prevails in the contest.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 151. Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4719, ch. 825, § 3, eff. Aug. 29, 1983.]

#### Art. 9.24. Contest Referred to Committee; Hearing and Report

##### Referral to Committee

Subd. 1. As soon as practicable after receiving the papers of the case from the Secretary of State, the President of the Senate or Speaker of the House of Representatives shall refer a contest for the office of State Senator or Representative to a special committee, standing committee, or committee of the whole.

##### Committee Hearing and Report

Subd. 2. The committee shall proceed without delay to fix a time for the hearing of said case and, after due notice to the parties thereto, shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and findings of fact in respect to said case to the House, accompanied by all the papers in the case and the evidence taken therein, with such recommendations as may to them seem proper.

##### Minority Report

Subd. 3. Any one or more of the committee dissenting from the views of the majority may present a minority report.

##### Withdrawal of Contest

Subd. 4. (a) A contestant may withdraw his election contest at any time before the committee submits its report to the House by filing with the committee chairman and the presiding officer of the House a written statement of withdrawal signed by the contestant or his attorney.

(b) On withdrawal of the contest, the contest is dismissed and the presiding officer shall have the statement of withdrawal read into the journal of the appropriate House.

(c) Costs of the contest following a withdrawal may be assessed as provided by Section 151 of this code (Article 9.23, Vernon's Texas Election Code).

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 152. Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4720, ch. 825, § 4, eff. Aug. 29, 1983.]

**Art. 9.25. Committee Procedure****Procedure Generally**

Subd. 1. The procedure for the committee hearing of an election contest for the office of State Senator or Representative shall be as prescribed by rules of the House in which the contest is pending.

**Evidence**

Subd. 2. Unless otherwise provided by House rule, the rules of evidence and the laws in force respecting the admissibility of evidence in the district courts of this State shall be observed by said committee, so far as the same may be applicable.

**Issuance of Process**

Subd. 3. Said committee shall have the power to send for persons and papers, and the chairman of said committee shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the House in which the contest is pending, or by such other person as the presiding officer of said House may designate.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 153. Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 27, 1979.]

**Art. 9.25a. Oath of Office by Contestee**

The contestee is entitled to take the oath of office and be seated at the regularly scheduled time while the election contest is pending. However, the contestee may not vote on any matter involving the contest, and he is subject to the action taken by the House on the contest.

[Acts 1983, 68th Leg., p. 4720, ch. 825, § 5, eff. Aug. 29, 1983.]

**Art. 9.26. Disposition of Contest by House****House to Consider Report**

Subd. 1. The House in which a contest for the office of State Senator or Representative is pending, as soon as practicable after the report of the committee has been received, shall fix a day for consideration of the report.

**Action on Contest**

Subd. 2. The House may seat the contestant or the contestee or may hold the election void. In the last case the Governor shall at once be notified of the vacancy.

**Mileage and Fees**

Subd. 3. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the House in which said

contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 154. Amended by Acts 1979, 66th Leg., p. 1836, ch. 748, § 1, eff. Aug. 1, 1979.]

**Art. 9.27. Contest for State Office**

If the contest be for the validity of any election for Governor, Lieutenant Governor, Comptroller, State Treasurer, Land Commissioner or Attorney General, the same shall be tried and determined by both Houses of the Legislature in joint session, and the provisions of this chapter [arts. 9.01-9.38] governing in case of a contest for the validity of an election for members of the Legislature shall apply to and govern in a contest for the office above named, as far as applicable.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 155.]

**Art. 9.28. United States Senator**

If the nomination of any candidates for United States Senator be contested, the same shall be conducted under the provisions of the law regulating contests for Governor.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 156.]

**Art. 9.29. For Presidential Electors**

Any person intending to contest the election of any or all of the persons duly declared elected as electors of president and vice-president, shall within ten (10) days from the said fourth Monday in November, file with the Secretary of State a written statement of the ground on which such contestant relies to sustain such contest, and shall within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within eight (8) days after receiving such notice, file with the Secretary of State his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the State Board of Canvassers, consisting of the Governor, one (1) citizen of the state, appointed by the Governor with the advice and consent of the Senate, who shall serve for a term of two (2) years, and Secretary of State, or any two (2) of them; and their decision shall be rendered at least two (2) days before the time fixed by law for the meetings of the electors. Such decision, in which two (2) at least of such Board shall join, shall be final, and certificates of election, in accordance therewith shall at once be issued by the Secretary of State to the proper parties. Where not otherwise herein provided, the provisions of law relating to contests for the validity of an election for members

of the Legislature shall apply to such contests for presidential electors.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 157. Amended by Acts 1963, 58th Leg., p. 1138, ch. 442, § 14.]

#### Art. 9.29a. Application of Sunset Act

The State Board of Canvassers is subject to the Texas Sunset Act;<sup>1</sup> and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.171, eff. Aug. 29, 1977.]

<sup>1</sup> Civil Statutes, art. 5429k.

#### Art. 9.30. Other Contested Elections

If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town, or village, any resident of such county, precinct, city, town, or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as applicable, as are prescribed in this chapter [arts. 9.01-9.38] for contesting the validity of an election for a county office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 158.]

#### Art. 9.31. Parties Defendant

In any case provided for in the preceding Section [art. 9.30], the county attorney of the county, or if there is no county attorney, the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town, or village which they may represent, nor shall such contestee be required to give bond upon an appeal.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 159.]

#### Art. 9.32. Constitutional Amendment

Within sixty (60) days from the date of any election upon any proposed amendment to the Constitution, and not thereafter, any citizen of this State who is a qualified voter, shall have the right to contest said election by filing his petition in a district court of Travis County, fully stating his grounds for contest, naming the Secretary of State as contestee; and thereupon the district judge, in whose court the contest is filed, shall make an order for the issuance, and the clerk of said court or the judge thereof, shall issue a writ of injunction enjoining the Secretary of State from tabulating, estimating or canvassing the returns of said election and

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from ascertaining or declaring the result of said election until said contest is finally determined. Citation shall be issued and served upon the Secretary of State as in other Civil cases. At the time of filing such petition, contestant shall cause to be published in a daily newspaper printed in Texas, for at least ten (10) days before appearance day, a brief notice to all parties interested that such suit has been filed. The Secretary of State shall within twenty (20) days from service of citation file a formal answer but shall not be liable for any costs. Any qualified citizen or citizens adversely interested in such contest may appear by counsel of their own choosing upon either side of the contest, but opponents of the contest shall have the right to direct and control the pleadings of the Secretary of State and the conduct of the contest upon the part of the contestees; and contestants shall jointly and not severally plead in the cases. The said court shall cause the party contesting the result of said election and the parties adversely interested to form issues and shall as near as may be conform the hearing and determination of such contest to the proceedings usual in courts in contested election cases. The court shall permit contestants to amend their petition, include therein allegations charging fraud, irregularities or mistakes, upon such terms as to the court may seem just, and likewise the contestees shall have the right both to contest the charges made by the contestant and to make counter charges, but the court shall bring the parties to issue with all possible dispatch.

Said contestant shall be required to give a good and sufficient bond to be approved by the clerk of the court wherein said contest is filed, conditioned that the said contestant will pay, in the event he is defeated in said contest, all the costs that may be incurred in the trial of said contest. He shall not be permitted to file any such contest and give in lieu of the bond herein provided for any affidavit of inability to pay the costs as provided for by law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 160.]

#### Art. 9.33. Power of Court

The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities used in connection with said election that may be necessary or proper to determine the issues raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest. The

said court may proceed to the trial of said issue raised by said contest after having given the contestants and the contestees full and fair opportunity to produce before said court the evidence upon such issues. The court may adjourn the said hearing from time to time and may, before the final determination of said cause, make such orders and decrees as to the court may seem just and proper, requiring any election officers to make such certificate of the result of such election as in the judgment of the court such officers should have made in making the returns of such election. Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of the question whether a majority of the legal votes cast in said election, either in favor of or against said proposed amendment, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 161.]

#### Art. 9.34. To Compel Returns

The said court shall have full authority when the result of such election in any voting precinct box shall have been ascertained and determined, to order and compel the proper officers thereof to make true and correct returns of such election in such voting box as finally determined by said court, to the proper officers of such county and when the result in any county shall have been ascertained and determined by said court, to order and compel the proper returning officers of such county to make true and correct returns of the result of said election in said county as to said amendment as ascertained by said court to the Secretary of State, and to order the Secretary of State to make his returns, tabulations, canvassings, countings and certificates in accordance with the result of such election as finally ascertained and determined by the court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 162.]

#### Art. 9.35. Decree

Either party may appeal as in other civil cases and the same shall have precedence over all other causes pending in the appellate courts to which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the Constitution of this State. Upon final judgment in said appellate court, it shall enter a decree ordering and directing the Secretary of State to declare the true result of said election as judicially determined and ascertained by

said court, and the Secretary of State shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgment of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgment of said court.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 163. Amended by Acts 1981, 67th Leg., p. 2645, ch. 707, § 4(40), eff. Aug. 31, 1981.]

#### Art. 9.36. Result Final

The result of said contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding. If no contest of said election is filed and prosecuted in the manner and within the time herein provided for, it shall be conclusively presumed that said election as held and the result thereof as declared are in all respects valid and binding upon all courts, provided, that pending such contest the enforcement of all laws in relation to the subject matter of such contest shall not be suspended, but shall remain in full force and effect.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 164.]

#### Art. 9.37. To Examine the Ballots

At any time when the grand jury is making an investigation of any criminal violation of the election laws, and finds probable cause, a request may be made to a district judge of that county for an order directed to the County Clerk to permit the grand jury to examine the ballot box and ballots therein in so far as may be necessary to determine the issue at stake. Such order may be issued by the district judge in his sound discretion. In that case, the grand jury shall make such examination in secret before a quorum of the grand jury and only then; when such examination is complete the boxes shall be relocked and returned to the custody of the County Clerk.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 165.]

#### Art. 9.38. Best Evidence

In case the ballots or ballot have been illegally destroyed before the time allowed by the 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.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 166.]

#### Art. 9.38a. Recount of Paper Ballots

##### Grounds for Recount

Subd. 1. (a) A candidate for nomination or election to any public office or to the party office of county chairman or precinct committeeman may obtain a recount of the votes cast for the office on

manually counted paper ballots, in the manner outlined in this section:

(1) if the difference in the number of votes received by him and the next highest candidate above him is less than five percent of the number of votes received by such next highest candidate, as shown by the returns of the election officers, and the candidate seeking the recount would gain the election or nomination or a place on a runoff election ballot if the recount showed him to have received a greater number of votes than that opponent, or

(2) if one or more judges of the election make an uncontradicted affidavit stating that certain ballots cast for the office were counted or were not counted, as the case may be, and the Secretary of State certifies that, on the basis of the statements in the affidavit, the election officers were in error in either counting or failing to count the ballots, as the case may be, and further certifies that from the affidavit or affidavits submitted to him and on the basis of the unofficial returns it appears likely that the number of miscounted ballots were of sufficient number to change the result of the election in that race as it affects the candidate seeking the recount.

(b) In addition to recount grounds prescribed by Paragraph (a) of this subdivision, a candidate for nomination or election to an office may obtain a recount of the votes cast for the office on manually counted paper ballots in the manner outlined in this section if the candidate did not receive the greatest number of votes and if the total number of votes cast for all candidates for such office is less than 1,000, as shown by the returns.

(c) If the ground of the application for a recount is that prescribed by Paragraph (a)(1) or (b) of this subdivision, the request must be for a recount of all the ballots cast for the office in each and every election precinct, including the absentee ballots cast for the office; and the canvassing board shall order a complete recount.

(d) If the ground of the application is that prescribed by Paragraph (a)(2) of this subdivision, the candidate at his option may request a recount of all the ballots cast in the election or only the ballots cast in the election precincts in which the miscounting is alleged to have occurred; and if only a partial recount is requested, the canvassing board shall order a recount only of all the ballots cast in those precincts in which the Secretary of State certifies that ballots were erroneously counted or not counted.

#### **Procedure for Requesting Recount; General Provisions**

Subd. 2. (a) A candidate desiring a recount must file a written, signed application with the presiding officer of the body which canvasses the returns of the election and makes the official declaration of the result (hereinafter called "canvassing

board"). The application may be presented for filing at any time after the returns from all election precincts involved have been received from the presiding judges of the election, and it must be presented not later than the second day after the official declaration of the result; provided, however, that if the application is for a partial recount in any election wherein the unofficial returns show that a runoff election for the office involved will be necessary or wherein a runoff would be necessary if the recount changed the result of the election, the application must be filed not later than the fifth day after the day of the election. If the chairman of a state executive committee receives an application under the first ground stated in Subdivision 1 of this section, or receives the certification for a recount from the Secretary of State upon an application filed under the second ground, more than three days before the next scheduled meeting of the state committee, he may direct the county executive committee in each county involved to conduct the recount and to report the result to the state committee; and if the application is for a recount in a first primary election, which recount might affect a runoff election in the second primary, in the stated circumstances the state chairman shall direct the county committee in each county involved to proceed immediately with the recount.

(b) In addition to other requirements stated in this section, each application must show the name and address of each opposing candidate, and the name and address of the presiding judge of each election precinct for which a recount is requested. On the same day that a candidate delivers or mails his application to the presiding officer of the canvassing board, he must deliver in person or mail by certified or registered mail, with return receipt requested, a copy of the application and any supporting papers to each opposing candidate at the election.

#### **Procedure Where Ground for Recount is Alleged Error in Counting or Failing to Count Ballots**

Subd. 3. A candidate requesting a recount under the second ground stated in Subdivision 1 of this section must attach to his application a supporting affidavit or affidavits showing that the conditions for requesting the recount are met. On the same day that he delivers or mails his application to the presiding officer of the canvassing board, he must deliver or mail a copy of the application, together with a copy of each supporting affidavit, executed as an original, to the Secretary of State with the request that the Secretary of State make the certification described in Subdivision 4 of this section. Any opposing candidate shall be entitled to file with the Secretary of State a controverting affidavit or affidavits in denial of statements made in the supporting papers filed by the candidate requesting the recount, within three days after the date on which

the application was delivered in person or mailed to him.

**Action by Secretary of State on Request  
for Certification**

Subd. 4. Not sooner than three days nor later than five days after receipt of a request for certification under Subdivision 3 of this section, the Secretary of State shall consider the request and take action thereon. If from uncontroverted statements in the supporting papers it clearly appears, on the basis of the statutes and court decisions of this state, that the election officers were in error in counting or failing to count certain ballots and that the error likely affected the outcome of the race, he shall so certify. If the facts alleged fail to show a clear case of error or raise an unresolved legal question as to whether an error was committed with respect to certain ballots, the Secretary of State shall so find, and he shall not undertake to make a ruling on disputed facts or unresolved legal questions. Within the time stated above, the Secretary of State shall certify his findings and conclusions to the candidate making the request, with a copy to the presiding officer of the canvassing board and to each opposing candidate.

**Deposit to Cover Costs of Recount**

Subd. 5. A candidate requesting a recount shall deposit with the presiding officer of the canvassing board either cash, a cashier's check, a certified check, or a surety bond of an authorized corporate surety, in the amount of ten dollars for each election precinct in which a recount is to be made pursuant to his request, or in the amount of fifty dollars, whichever amount is the greater. If the application is filed under the first ground stated in Subdivision 1 of this section, the deposit must accompany the application; if the application is filed under the second ground, the deposit must be made within three days after the date on which the Secretary of State certifies that error which likely affected the outcome of the race was committed in one or more of the election precincts. For the purpose of this section, absentee ballots counted by a special board of election officers constitute ballots for a separate election precinct.

**Right of Opposing Candidate to Obtain Full Recount**

Subd. 6. If a candidate is granted a partial recount under Subdivisions 3 and 4 of this section, any opposing candidate may obtain a recount of all ballots in all precincts by filing a request for a full recount with the chairman of the canvassing board within three days after the date on which the Secretary of State makes his certification, and by accompanying the request with either cash, a cashier's check, a certified check, or a surety bond of an authorized corporation surety, in the amount of ten dollars for each additional election precinct for

which a recount will be made as a result of his request. On the same day that he delivers or mails his request, the opposing candidate must deliver in person or mail by registered or certified mail, with return receipt requested, a copy of the request to the original applicant. Within two days thereafter, the original applicant must make a similar deposit covering the additional precincts to be recounted.

**Procedure for Ordering Recount**

Subd. 7. (a) Where a candidate has complied with all conditions for obtaining a recount, as soon as practicable the canvassing board conducting the recount shall set a date on which the recount is to begin and shall notify by mail each opposing candidate of the place or places where the recount will be conducted and the exact time when it will begin. The time for commencing the recount shall not be sooner than two days nor later than four days after the date of the notification. The recount shall be conducted in the office of the officer having custody of the voted ballots, who shall be entitled to be present or to have a representative designated by him present while the recount is in progress.

(b) The canvassing board shall appoint a committee of at least four disinterested registered voters of the political subdivision in which the ballots were cast, who shall make the recount. The board shall designate one member of the recount committee to serve as its chairman. Where ballots to be recounted are in the custody of different officers at more than one location, a committee shall be appointed for each location. No person who served as an election judge, clerk, or watcher in any precinct for which ballots are to be recounted shall be eligible for appointment to a recount committee. The committee shall permit any affected candidate or one person authorized in writing by such candidate to be present to watch the recount, to inspect the ballots, to observe the tallying of the votes, and to observe all other actions of the committee in connection with the recount.

**Procedure for Making the Recount**

Subd. 8. (a) The canvassing board shall issue an order to the officer having custody of the voted ballots, stating the names of the recount committee and the time at which the recount is to begin, and directing him to deliver to the chairman of the committee the ballot box or boxes containing the ballots to be recounted. A similar order for delivery of the keys to the ballot boxes shall be issued to the officer having custody of the keys. A copy of each order shall be delivered to the chairman of the committee, who shall present it, as proof of his identity, to the officer named in the order.

(b) The committee shall proceed to make the recount as directed, working for at least seven hours each day on every day that is not a Sunday or a

legal holiday until the recount is completed. During the time that the recount is not actually in progress, the ballot boxes shall be relocked and returned to the custody of the officer who delivered them to the committee, and the keys shall be retained in the custody of the chairman of the committee.

(c) After the recount is completed, the committee shall make out its report and deliver it to the presiding officer of the canvassing board. The chairman of the committee shall deliver the locked ballot boxes with the original contents intact and the ballot box keys to the respective officers who originally had custody of the boxes and the keys.

#### Action by Canvassing Board Following Recount

Subd. 9. As soon as practicable, and not later than two days after receiving all the committee reports, the presiding officer of the canvassing board shall convene the board, which at such meeting shall declare the result of the election for the office involved on the basis of the revised returns. The board and its presiding officer shall take such further actions as may be necessary in the same manner as for an original canvass.

#### Costs of Recount

Subd. 10. (a) The members of the recount committee shall be paid an amount to be fixed by the canvassing board, but not to exceed the maximum hourly rate payable to election judges and clerks, which shall be charged as costs. Expenses incurred by the canvassing board or its chairman in giving the notices required by this section shall also be charged as costs.

(b) If the recount shows that the applicant received a greater number of votes than shown by the returns of the election judges, and if as a result of the recount the applicant is declared to have been nominated or elected to the office, or to have become entitled to be a candidate in a runoff election, or to have tied with another candidate between the two of whom the right of nomination, election, or a place on a runoff ballot is to be decided, the cost of the recount shall be paid by the authority charged with the duty of paying the expenses of the election for which the recount was made, and the amount deposited by the applicant shall be returned to him; provided, however, that if the original application was for a partial recount and the results of the election would have been changed in either of the foregoing manners on the basis of the partial recount only, the costs of the recount in additional precincts as the result of a request by an opposing candidate for a full recount shall be borne by the opposing candidate making the request. Otherwise, the cost of the recount shall be paid by the applicant, and any amount remaining from the deposit shall be returned to him. Any costs over the amount of the deposit shall be paid by the applicant

if he is charged with the cost of the recount; and any costs of a recount in additional precincts over the amount of the deposit made by the opposing candidate requesting the full recount shall be paid by such candidate if he is charged with the costs in those precincts.

#### Application for a Full Recount Following a Partial Recount

Subd. 11. (a) Whenever there has been only a partial recount in which less than fifty percent of the total votes cast for the office, as shown by the original returns, were recounted, and as a result of the partial recount the number of votes received by any candidate is changed in such a manner that he would be entitled to request a recount under the first ground stated in Subdivision 1 of this section, but he had not been entitled to a recount on that ground on the basis of the original returns, he may obtain a recount in all additional precincts by following the procedure outlined in this subdivision.

(b) Whenever there has been a partial recount of more than fifty percent but less than seventy-five percent of the total votes cast, any candidate may obtain a recount in all additional precincts if he was not entitled to a recount on the first ground on the basis of the original returns, but as a result of the recount the difference in the number of votes received by him and the next highest candidate above him is less than two percent of the number of votes received by such next highest candidate, as shown by the revised returns, and he would gain the election or nomination or a place on a runoff election ballot if the full recount showed him to have received a greater number of votes than that opponent.

(c) An application under this subdivision for a recount in all additional precincts shall be made in the same manner and shall be treated in all other respects as an original application for a full recount, except that it covers only the additional precincts. The application may be made at any time after every recount committee involved in the partial recount has made its report, and must be filed not later than the second day after the canvassing board declares the result of the election on the basis of the revised returns following the partial recount. If as a result of the recount in the additional precincts the applicant therefor is declared to have been nominated or elected to the office, or to have become entitled to be a candidate in a runoff election, or to have tied with another candidate between the two of whom the right of nomination, election, or a place on a runoff ballot is to be decided, the cost of the recount in the additional precincts shall be paid by the authority charged with the duty of paying the expenses of the election, and the amount deposited by the applicant shall be returned to him. Otherwise, the cost of the recount in the additional precincts shall be paid by the applicant therefor, and

any amount remaining from the deposit shall be returned to him. Any costs for the recount in the additional precincts over the amount of the deposit shall be paid by the applicant therefor if he is charged with the cost of the recount.

**Effect of Recount on an Election Contest**

Subd. 12. Nothing in this section shall be deemed to prevent the filing of an election contest in a district court or to prevent the ordering of a recount in an election contest or to compel the court hearing the election contest to accept a recount under this section as conclusive of the results of the election.

**Election on Measure**

Subd. 13. (a) Any 25 or more persons, acting jointly, who were eligible to vote in the election may obtain a recount of the votes cast on a measure on manually counted paper ballots:

(1) if the difference in the number of votes received for the measure and against the measure is less than five percent of the total number of votes on the measure, as shown by the returns of the election officers; or

(2) on the ground prescribed by Subdivision 1(a)(2) of this section with respect to an election on an office.

(b) In addition to the grounds prescribed by Paragraph (a) of this subdivision, any 25 or more persons, acting jointly, who were eligible to vote in the election may obtain a recount if the total number of votes for and against the measure is under 1,000, as shown by the returns.

(c) If the ground of the application for a recount is that prescribed by Paragraph (a)(1) or (b) of this subdivision, the request must be for a recount of all the ballots cast on the measure in each election precinct, including absentee ballots, and the canvassing board shall order a complete recount.

(d) If the ground of the application is that prescribed by Paragraph (a)(2) of this subdivision, the applicants at their option may request a recount of all ballots cast in the election or only those cast in the election precincts in which the miscounting is alleged to have occurred. If a partial recount is requested, the canvassing board shall order a recount only of all the ballots cast in those precincts in which the secretary of state certifies that ballots were erroneously counted or not counted.

(e) Except as provided by Paragraphs (a)-(d) of this subdivision, the provisions of this section regulating a recount for an election on an office, including those relating to the deposit for and assessment of costs, govern a recount for an election on a measure, with the appropriate changes consistent with this subdivision to account for the fact that the election is on a measure instead of for an office.

(f) A statute outside this code supersedes this subdivision to the extent of any conflict.

[Acts 1967, 60th Leg., p. 1903, ch. 723, § 37, eff. Aug. 28, 1967. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 2, eff. Sept. 1, 1969; Acts 1979, 66th Leg., p. 1779, ch. 722, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2696, ch. 733, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 306, ch. 67, § 1, eff. Aug. 29, 1983.]

**Art. 9.38b. Compelling Voter to Testify How He Voted**

In an election contest or criminal proceeding in which the issue is relevant, any voter who fraudulently or illegally casts a ballot or who casts a fraudulent or illegal ballot at any general, special, or primary election may be required and compelled, after the fraud or illegality has been established by competent evidence before a tribunal of competent jurisdiction, to disclose in testimony before the tribunal having jurisdiction of the matter the name of any candidate for whom he voted and the way he voted on any question at the election. The voter's testimony may be impeached by the testimony of other witnesses in regard to statements by the voter, either before or after the election, or by other competent evidence; and the issue of how the voter voted shall be decided on the basis of all the evidence before the tribunal. In an election contest, instead of undertaking to determine how individual voters voted, the tribunal may declare the election void and order another election if the number of illegal votes is sufficient to change the outcome of the election. This section applies to election contests and criminal proceedings instituted under any provision of this code or under any other statute of this state.

[Acts 1977, 65th Leg., p. 661, ch. 247, § 10, eff. Aug. 29, 1977.]

**CHAPTER TEN. CONSTITUTIONAL AMENDMENTS**

**Art.**

10.01. Constitutional Amendments.

10.02. Duties of Officers.

10.03. Convention to Ratify Proposed Amendments to Federal Constitution; Election of Delegates.

**Art. 10.01. Constitutional Amendments**

The election where Constitutional Amendments are to be voted on shall be held by the general election officials named by the Commissioners Court and if supervisors are desired they shall be named as provided for by the law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 167.]

**Art. 10.02. Duties of Officers**

In holding elections on Constitutional Amendments the judges and clerks shall have the same qualifications, perform the same duties, and receive

the same compensation as in general elections. The supervisors shall perform the same duties, be paid in the same manner, take the same oath, and have the same obligations as for general elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 168.]

**Art. 10.03. Convention to Ratify Proposed Amendments to Federal Constitution; Election of Delegates**

**Election of Delegates**

Sec. 1. Whenever the Congress of the United States shall submit to the respective States a proposed Amendment to the Constitution of the United States and shall propose that it be ratified by conventions in the several States, an election shall be held on the fourth (4th) Saturday in August of the year in which any such amendment is submitted by the Congress of the United States, at which election thirty-one (31) delegates and thirty-one (31) alternates each, such total number of delegates and such total number of alternates to be composed of one (1) delegate and one (1) alternate from each of the several thirty-one (31) Senatorial Districts of the State, shall be elected, provided that the same is submitted to this State within the time necessary to comply with the provisions hereof, otherwise at the succeeding General Election.

**Nominating Conventions**

Sec. 2. On the sixtieth (60th) day preceding the day of the election those persons, groups and organizations in favor of the ratification of the Amendment, and those persons, groups and organizations against the ratification of the Amendment shall hold separate Conventions in the City of Austin. Any qualified voter of this State shall be entitled to participate and vote in either of said Conventions, but not in both. Ten (10) days prior to the meeting of such Conventions it shall be the duty of the Governor of this State to designate a qualified voter of this State known by him personally to be in favor of the ratification of such Amendment, and it shall be the duty of the person so appointed to select and designate the place in the City of Austin at which the Convention of those persons, groups and organizations favoring the ratification of the Amendment shall convene and hold its meeting and the person so appointed shall preside as president pro tem until the permanent officers of the Convention are elected. The Governor shall likewise appoint a qualified voter of this State, known to him to oppose the ratification of the proposed Amendment, and the person so appointed shall select and designate the place in the City of Austin where the Convention of those persons, groups and organizations opposing the ratification of the proposed Amendment shall convene and hold their meeting, and the person so appointed shall preside and act as president pro tem until the permanent officers of the Convention of

those persons opposing the ratification of the Amendment are elected.

**Nomination and Qualifications of Delegates and Alternates**

Sec. 3. After each such Convention has been organized and its permanent officers elected the same shall proceed to nominate thirty-one (31) delegates and thirty-one (31) alternates each, such total number of delegates and such total number of alternates to be composed of one (1) delegate and one (1) alternate from each of the several thirty-one (31) Senatorial Districts of the State. Candidates for the offices of delegates and alternates to the Convention to pass on the proposed Amendment shall be citizens and residents of this State and duly qualified voters in the Senatorial District from which they offer their candidacy for election, and their names shall be certified by the Chairman and Secretary of the respective Conventions to the Secretary of State within five (5) days after the day of holding the respective Convention. No person shall be eligible as a delegate or alternate of the Convention of those persons opposing the ratification of the Amendment unless he shall make affidavit before some officer authorized to administer oaths that he is opposed to the ratification of the Amendment, and will so cast his vote in Convention, and no person shall be eligible as a delegate or alternate of the Convention favoring the ratification of the proposed Amendment unless he shall make affidavit in writing before some officer authorized to administer oaths that he favors the ratification of the Amendment, and will so cast his vote in Convention, and each such delegate and alternate shall file his affidavit with the Chairman of the Convention of which he is the nominee, or with the Secretary of State, which affidavit shall be filed within fifteen (15) days after the date of the filing of the list of delegates and alternates with the Secretary of State by the respective Chairmen of the Conventions. No nominee of either Convention shall be either a State, District or County office holder. The Chairman of each Convention shall file the affidavit of the respective nominees of each Convention with the Secretary of State, together with the certified list of nominees for said Convention.

**Journal of Nominating Conventions**

Sec. 4. Each such Convention shall be required to keep a journal of its proceedings and set forth among the minutes thereof the respective names of each delegate and alternate nominated at such Convention, together with the number of votes received by each such nominee, together with all other proceedings that may be had in said Convention. It shall be the duty of the Chairman of each such Convention, upon the adjournment thereof, to deposit each such journal with the Secretary of State

where the same shall remain as a permanent public record.

#### Certification of Nominees by Secretary of State

Sec. 5. It shall be the duty of the Secretary of State to certify to the County Clerk of each county in this State the names of the persons selected as the nominees of each Convention and to show in his certificate those delegates and alternates in favor of the ratification of the Amendment and those delegates and alternates against the ratification of such Amendment.

#### General Election Laws Applicable

Sec. 6. All laws pertaining to conducting and holding General Elections and the qualifications of voters shall apply to the holding of the election ordered by the Governor except in so far as they are inconsistent with the provisions of this Act.

#### Form of Ballot

Sec. 7. The election shall be by ballot, separate from any ballot to be used at the same election, and shall be prepared as follows: It shall first state the substance of the proposed Amendment. This shall be followed by appropriate instructions to the voter. It shall then contain perpendicular columns of equal width headed respectively, in plain type "FOR ratification of the above Amendment," and "AGAINST ratification of the above Amendment." In the column headed "FOR ratification of the above Amendment" shall be placed the names of the nominees or delegates and alternates nominated as in favor of the ratification; in the column headed "AGAINST ratification of the above Amendment" shall be placed the names of the nominees or delegates and alternates nominated as opposed to the ratification. The voter shall be entitled to vote for any number of candidates whose names appear on such ballot, not to exceed thirty-one (31) delegates and thirty-one (31) alternates. Such voter shall indicate his choice by drawing a line through or striking out all the names of such candidates other than the ones for whom he desires to cast his vote.

The ballot shall be substantially in the following form:

#### PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

The Congress has proposed an amendment to the Constitution of the United States which reads as follows:

(Here insert the proposed amendment)

#### INSTRUCTIONS TO THE VOTER

FOR the ratification of the above amendment. (Insert names of delegates and then alternates in alphabetical order favoring the ratification of the amendment.)

AGAINST the ratification of the above amendment. (Insert names of delegates and then alternates in alphabetical order against the ratification of the amendment.)

#### Form of Ballot in Case of Proposed Repealing Amendment

Sec. 7a. Provided, however, that if such proposed amendment, is one which repeals another amendment to the Constitution of the United States then it shall not be necessary to state the substance of the proposed amendment; and in lieu of the words "FOR ratification of the above amendment," and "AGAINST ratification of the above amendment" at the top of the two perpendicular columns, there shall be inserted the words "FOR repeal of the \_\_\_\_\_ amendment," and the words "AGAINST repeal of the \_\_\_\_\_ amendment," respectively; the number of such amendment which it is proposed to repeal to be inserted in the blank space above, as e. g. "FOR repeal of the Eighteenth (18th) Amendment," and "AGAINST repeal of the Eighteenth (18th) Amendment." In such instances the ballot shall be substantially in the following form:

#### INSTRUCTIONS TO THE VOTER

FOR the repeal of the \_\_\_\_\_ amendment. (Inserting in the blank the number of the amendment proposed to be repealed.) (Insert names of delegates and then alternates in alphabetical order favoring the repeal of the amendment.)

AGAINST the repeal of the \_\_\_\_\_ amendment. (Inserting in blank the number of the amendment proposed to be repealed.) (Insert names of delegates and then alternates in alphabetical order against the repeal of the amendment.)

#### Voting and Marking Ballots

Sec. 7b. The voter shall be entitled to vote for not more than thirty-one (31) delegates (candidates) and thirty-one (31) alternates (candidates) and shall indicate his choice by drawing a line through or marking out all the names of such delegates (candidates) and alternates (candidates) other than the ones for whom he desires to cast his vote.

#### Making and Canvassing Returns

Sec. 8. Returns shall be made of the election in the same manner and by the same officers as is provided by law for the making of returns of elections for Railroad Commissioners. On the thirtieth (30th) day following the day of the election and not before, the Secretary of State, in the presence of the Governor and the Attorney General, or either of them, shall open and canvass the returns of the election.

**Certificates of Election**

Sec. 9. The thirty-one (31) delegates and the thirty-one (31) alternates receiving the highest number of votes shall be declared elected and the Governor shall issue to each of those persons a certificate of election which shall be signed by the Governor and attested by the Secretary of State.

**Time of Convening of Ratification Convention**

Sec. 10. On the ninetieth (90th) day following the day of the election the thirty-one (31) delegates and thirty-one (31) alternates elected at the said election and commissioned by the Governor shall convene in the City of Austin at 10 o'clock A.M., and shall thereupon constitute a convention to pass upon the question of whether or not the proposed amendment to the Constitution shall be ratified.

**Quorum: Alternates**

Sec. 11. A majority of the delegates so elected shall constitute a quorum at such convention for the purpose of transacting business. A majority of the quorum present and voting may act for the convention. In the event any delegate to such conventions, after he has been duly elected, shall die, resign, become incapacitated or fail to attend such convention, then and in any such event the alternate of such delegate shall act in the stead of said delegate with the full and complete powers of said delegate.

**Journal of Ratification Convention**

Sec. 12. The convention shall keep a journal of its proceedings in which shall be recorded the vote of each delegate on the question of the ratification of the proposed Amendment, and upon final adjournment the journal reflecting the vote of the delegates, together with the minutes of the convention, shall be filed with the Secretary of State of the State of Texas where it shall remain on file as a public record.

**Certificate of Ratification**

Sec. 13. If the convention shall agree to the ratification of the proposed Amendment, a certificate to that effect shall be executed by the President and Secretary of the Convention and transmitted to the Secretary of State of this State and to the Secretary of State of the United States. The Secretary of State shall in turn transmit such certificate under the great Seal of the Sovereign State of Texas to the Secretary of State of the United States.

**Election Expenses; Duties of Public Officials**

Sec. 14. The expenses necessary to conduct such election shall be paid for by the respective counties of this State in the same manner as is now provided by law with reference to any other general or special Statewide election and the duties of all pub-

lic officials with reference to providing for such election shall be the same as is now prescribed by law with reference to other elections except as herein provided.

**Appointment of County Chairman and Vice-Chairman**

Sec. 15. The permanent chairman of each Convention provided for in Section 2 hereof is hereby empowered to appoint a chairman and vice-chairman for each county. The chairman in each county (or the vice-chairman in the event of failure or inability of the chairman) is hereby empowered to appoint one assistant election judge and one clerk for each voting precinct for the purpose of assisting in holding the election provided for by this Act. Should a chairman or vice-chairman fail to make such appointments, then the presiding judge of each precinct is hereby empowered to appoint such assistants, in the manner now provided by statute, the appointees, however, shall be selected to equally represent both sides of the question; otherwise the said election, manner of conducting the same and the returns thereof, shall be in all things held as is now provided by statute for the holding of general elections. None of the expenses arising or accruing because of the appointment of or the services rendered by the officials provided for in this Section shall be borne by the State or any county thereof; provided, however, any other usual, customary election expenses for officials to hold said election and for other election expenses shall be paid as is now provided by law for general elections.

**Expenses of Delegates**

Sec. 16. The delegates elected to such Convention shall defray their own expenses incurred in connection therewith.

**Conflicting Statute or Resolution of Congress**

Sec. 17. If Congress should, at any time, either by Resolution or by Statute, prescribe the method and manner in which the Convention shall be constituted, and shall not except from the provisions of such Statute or Resolution such States as may have theretofore provided for constituting such conventions, the provisions of this Act shall be inoperative in so far as the same shall operate as to conflict with such Resolution or Act of Congress.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 169.]

**CHAPTER ELEVEN. PRESIDENTIAL ELECTION****Art.**

- 11.01. Time of Election; Qualifications of Electors.
- 11.01a. Parties Entitled to Nominate Presidential Elector Candidates.
- 11.01b. Independent Candidate for President.
- 11.01c. Write-In Candidate for President.
- 11.02. Effect of Votes for Presidential Candidates.
- 11.03. Canvass of Votes and Returns.

Art.

11.04. Certification of Candidates.

11.05. Electors to Convene.

11.06. Pay of Electors.

**Art. 11.01. Time of Election; Qualifications of Electors**

Subd. 1. On the first Tuesday after the first Monday in November in the year 1980 and every four years thereafter, there shall be elected by the voters of the State as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect.

Subd. 2. Each elector at the time of nomination as a presidential elector candidate, at the time of election, and at the time of the convening of the electors must be a registered, qualified voter of this state and must not hold the office of senator or representative in congress, or any office of trust or profit under the United States.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 170. Amended by Acts 1977, 65th Leg., p. 647, ch. 240, § 1, eff. Aug. 29, 1977.]

**Art. 11.01a. Parties Entitled to Nominate Presidential Elector Candidates**

Any political party entitled to have the names of its nominees printed on the ballot for the general election provided for in Section 9 of this code<sup>1</sup> may nominate candidates for presidential electors and have the names of its candidates for President and Vice President printed on the ballot.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 75. Amended by Acts 1967, 60th Leg., p. 1907, ch. 723, § 38, eff. Aug. 28, 1967.]

<sup>1</sup> Article 2.01.

**Art. 11.01b. Independent Candidate for President**

Subd. 1. Any person eligible to hold the office of President of the United States may have his name and the name of a vice-presidential running mate printed on the ballot as independent candidates in the presidential race by complying with the provisions of this section.

Subd. 2. A person desiring to become an independent candidate for president shall file with the Secretary of State, not later than the second Monday in July before the general election at which his name will appear on the ballot:

(1) an application to have his name and the name of an eligible vice-presidential candidate as his running mate printed on the ballot on a form prescribed by the Secretary of State;

(2) the signed written consent of the person designated as the vice-presidential candidate to have his name printed on the ballot in that capacity;

(3) a list of the names and addresses of persons to represent the applicant as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate; and

(4) a petition of voters signed by qualified voters of the state in a number equal to not less than one percent of the entire vote of the state cast for president and vice-president at the last preceding presidential general election.

Subd. 3. A petition may not be circulated for signatures until after the date of the general primary election in that election year, and any signature obtained on or before that date is void. A voter who voted in the general primary of any political party that held a presidential primary that year is ineligible to sign the petition of an independent candidate for president. The following statement shall appear at the head of each page of a petition: "I certify that I did not vote this year in the general primary election of any political party that held a presidential primary."

Subd. 4. The Secretary of State shall prescribe the form for the petition of voters to be filed by an independent candidate for president. For each signer the petition shall show the signer's address, the county of issuance and number of his voter registration certificate, and the date of signing. The petition may be in multiple parts. To each part shall be attached an affidavit of the person who circulated it, stating that he witnessed the affixing of each signature, that he called the attention of each signer to the statement at the head of the page before the person signed the petition, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters.

[Acts 1977, 65th Leg., p. 647, ch. 240, § 2, eff. Aug. 29, 1977.]

**Art. 11.01c. Write-In Candidate for President**

Subd. 1. Any person eligible to hold the office of President of the United States may become a write-in candidate for the office by complying with the provisions of this section. No write-in vote cast for the office may be counted unless the person whose name is written in has complied with these requirements. The Secretary of State shall certify to the county clerks the names of write-in candidates who have complied with this section at the same time that he certifies the names of the presidential candidates to be printed on the ballot.

Subd. 2. A person desiring to become a write-in candidate for president shall file with the Secretary of State, not later than the 65th day before the general election:

(1) a declaration that he is a write-in candidate for the office of president;

(2) the name of an eligible vice-presidential candidate as his running mate and the signed written consent of that person to the candidacy; and

(3) a list of the names and addresses of persons to represent the write-in presidential candidate as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate.

[Acts 1977, 65th Leg., p. 648, ch. 240, § 3, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 2236, ch. 418, § 4, eff. Aug. 29, 1983.]

#### Art. 11.02. Effect of Votes for Presidential Candidates

A vote for the set of candidates of any political party or for a set of independent or write-in candidates for both President and Vice-President of the United States shall be conclusively deemed to be a vote for the presidential elector candidates representing that party or that set of independent or write-in candidates, and shall be so counted and recorded for such electors as the state shall be empowered to elect. No vote shall be counted unless the voter has cast his vote for both the candidate for President and the candidate for Vice-President of the same political party or set of independent candidates. A ballot on which a voter has written in the name of a presidential candidate who has filed a declaration of write-in candidacy in accordance with this section shall be counted as a vote for the presidential elector candidates representing that write-in candidate, regardless of whether the name of the corresponding vice-presidential candidate is written in.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 171. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 76; Acts 1977, 65th Leg., p. 649, ch. 240, § 4, eff. Aug. 29, 1977.]

#### Art. 11.03. Canvass of Votes and Returns

The canvass of the votes for candidates for President and Vice-President of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or set of independent or write-in candidates, respectively, and the certificate of such election made by the Governor shall be in accord with such return.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 172. Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 5, eff. Aug. 29, 1977.]

#### Art. 11.04. Certification of Candidates

The names of the candidates for President and Vice-President and for presidential electors, respectively, of a political party as defined in the law shall be certified to the Secretary of State by the chairman and secretary of the state committee of the

party not later than the 60th day prior to the election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 173. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 77; Acts 1977, 65th Leg., p. 888, ch. 332, § 6, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2236, ch. 418, § 5, eff. Aug. 29, 1983.]

#### Art. 11.05. Electors to Convene

On or before the meeting of the electors, the Governor shall cause three (3) lists of names of such electors to be made out and delivered to them as required by Act of Congress. The electors so chosen shall convene in the Capitol at Austin on the first Monday after the second Wednesday in December next after their election and vote for President and Vice-President of the United States and make such return thereof as is or may be required by the laws of the United States. If any person so chosen elector shall, by death or disabling cause, fail to attend by the hour of two o'clock in the afternoon on the day fixed by law, and vote as required by law or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in place of any such absent or disqualified person, and shall immediately report their action to the Secretary of State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 174.]

#### Art. 11.06. Pay of Electors

Such electors shall receive the same pay for mileage in traveling to and from Austin and twice the pay daily while engaged there in the duties required of them by law, as that allowed by law to the Members of the Legislature.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 175.]

### CHAPTER TWELVE. UNITED STATES SENATORS

#### Art.

12.01. United States Senators.

12.02. Vacancy in Office of United States Senator or Congressman-at-Large.

12.03. If Two Senators.

#### Art. 12.01. United States Senators

As to the nomination and election of United States Senators all the applicable laws of this code for the nomination and election of the Governor shall govern in the nomination and election of United States Senators.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 176.]

#### Art. 12.02. Vacancy in Office of United States Senator or Congressman-at-Large

1. When a vacancy occurs in the representation of this State in the United States Senate or in the representation of this State in the House of Representatives of the Congress of the United States by a

Congressman elected by the people at large, such vacancy shall be filled for the unexpired term in the manners herein provided.

2. If a vacancy exists in the representation of this State in the Senate of the United States at a time when the Congress is in session, the Governor shall forthwith make a temporary appointment of a suitable and qualified person to represent this State in the Senate of the United States until a senator is elected and shall have qualified.

3. If a vacancy occurs in the office of a United States Senator or a Congressman-at-Large during the year in which a general election is held in this state and prior to the tenth day of March of said year, the Governor shall, within five days after the vacancy occurs, issue writs of election directing that the nomination and election of a United States Senator or of a Congressman-at-Large to fill such vacancy shall be accomplished in the manner provided by law for the nomination and election of the Governor; provided that when a vacancy in either or both of said offices is to be filled in this manner, a candidate for nomination by any political party holding a primary election in that year shall have until the first day of April of the election year to make application to have his name placed on the official ballot to be used in the primary election held by said political party for choosing its nominee for said office to run in the general election.

4. If such vacancy occurs in either or both of the aforesaid offices during a year in which no general election is to be held or after the ninth day of March of a general election year, the vacancy shall be filled at a special election or special elections, the first of which shall be called by writ of election, issued by the Governor within five days after the vacancy occurs, directing that a special election be held throughout the state on a specified day, which shall be not less than sixty days nor more than ninety days after the date of the writ, for the purpose of electing a United States Senator or a Congressman-at-Large to fill the existing vacancy and to serve for the unexpired term of the then vacant office.

5. In all special elections called to fill a vacancy in the office of United States Senator or in the office of Congressman-at-Large a majority vote of the electors participating in said elections shall be necessary for election. In event no candidate receives a majority of the votes cast at the first election, the Governor shall, within five (5) days after the results of said election were officially declared, call a second election to be held throughout the State on a specified day which shall be not less than thirty (30) nor more than forty (40) days after the date of the writs issued by the Governor. In the second special election the candidates shall be limited to the participants in the first election who received the largest and next largest number of

votes at the first election. The Secretary of State shall, within five (5) days after the results of the first election are officially declared, certify to the County Clerk of each County in the State the names of the said two (2) candidates who are eligible to participate in the second election and the Clerks will make up the ballot for said election according to said certificate. The candidate who receives the largest number of votes in the second election shall receive a Certificate of Election to the unexpired term of the office for which he was a candidate.

6. All special elections called for the purpose of filling vacancies in the two (2) offices mentioned in this Section shall be conducted according to existing law as supplemented by this Section, but if there is a conflict between this Section and the existing law, the provisions of this Section shall prevail.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 177. Amended by Acts 1957, 55th Leg., p. 421, ch. 201, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 78.]

#### Art. 12.03. If Two Senators

When there are two (2) Senators to be elected from Texas to Congress, each candidate offering his name for election shall designate in his application for a position on the ticket whether in a general or special election or primary, whether he is a candidate for the short term or long term.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 178.]

### CHAPTER THIRTEEN. NOMINATIONS

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## Art. 13.01. Primary Election

The term "primary election," as used in this chapter [arts. 13.01-13.59], 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 for at a general or special election, or to nominate the county executive officers of a party. [Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 179.]

## Art. 13.01a. Who Are Members of Organized Party

(1) The members of an organized political party who shall be permitted to participate in its convention procedure as set forth in this code shall be only those persons who have become qualified as members of the party by voting in the elections of the party or have otherwise qualified as provided in this section. Having once become a qualified member of a party, a person shall remain a qualified member of that party for the duration of that voting year.

(2) The election and convention procedure of the party shall include the general primary election and the second primary election provided for in Section 181 of this code,<sup>1</sup> and shall include the conventions of the party at precinct, county and state level in both its state convention procedure and its national convention procedure insofar as they apply herein.

(3) Persons who have not qualified as members of a political party as required by this section shall be disqualified to participate in the convention procedure of the political parties and shall also be disqualified to be selected or to hold the position of executive committee member, precinct judge or chairman, delegate to any convention of a party, national committeeman, committeewoman or presidential elector of the party.

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear that I have not voted at a primary election or participated in a convention of any other political party during this voting year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The first time a voter presents his voter registration certificate at a primary election, the election officer shall stamp the appropriate party designation within the party affiliation space on the face of the certificate. If the voter is voting on a statement of a lost registration certificate, the presiding judge shall issue to him a certificate of his having voted, in the following form:

Date \_\_\_\_\_  
 \_\_\_\_\_ has voted on this date in the  
 (Name of Voter)  
 primary election of the \_\_\_\_\_ Party.  
 \_\_\_\_\_  
 Presiding Judge, Precinct No. \_\_\_\_\_,  
 \_\_\_\_\_ County, Texas.

When a voter votes by absentee ballot in a primary election, the county clerk shall stamp the appropriate party designation on the voter's registration certificate; of if the voter is voting on a statement of a lost or unreturned certificate, the clerk shall deliver or mail to the voter, at the time specified by law for returning a registration certificate to an absentee voter, a certificate of his having voted by absentee ballot in the primary.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall present to the precinct chairman his affidavit that he has not participated in the primary or convention of any other party during that voting year. Thereupon, the precinct chairman shall stamp the appropriate party designation on the voter's registration certificate if the voter presents it, and if the registration certificate is not presented, the chairman shall issue to the voter a certificate in the following form:

Date \_\_\_\_\_  
 \_\_\_\_\_ has affiliated with the  
 (Name of Voter) \_\_\_\_\_  
 \_\_\_\_\_ Party for the current year.  
 \_\_\_\_\_  
 Precinct Chairman, Precinct No. \_\_\_\_\_,  
 \_\_\_\_\_ County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he receives it. The county clerk shall keep the affidavits on file in alphabetical order within each precinct for a period of two years after the end of the voting year in which they are filed. The county clerk shall maintain a separate file for each political party.

(6) A voter registration certificate which has been stamped with a party designation, a certificate of having voted in a primary election, or a certificate of party affiliation issued by a precinct chairman, all as provided in this section, shall serve as evidence

that the person whose name appears on the certificate is affiliated with the party designated on the certificate and is therefore eligible to participate in that party's conventions.

(7) No person who participates in the primary or convention of any political party during a voting year shall participate in any subsequent primary or convention of any other party during that same voting year. Any vote cast in a primary election in violation of this prohibition shall be void and shall not be counted for any purpose, and the violator shall be punishable as provided in Article 240 of the Texas Penal Code.<sup>2</sup>

(8) Any person who participates or attempts to participate in a party convention held by a political party on a certification of qualifications other than one prescribed in this section shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed one thousand dollars.

[Acts 1959, 56th Leg., p. 1049, ch. 480, § 2. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 79; Acts 1967, 60th Leg., p. 1907, ch. 723, § 39, eff. Aug. 28, 1967; Acts 1971, 62nd Leg., p. 2525, ch. 827, § 20, eff. Aug. 30, 1971; Acts 1975, 64th Leg., p. 750, ch. 296, § 15, eff. Nov. 5, 1975.]

<sup>1</sup> Article 13.03.  
<sup>2</sup> Transferred; see, now, art. 15.49.

**Art. 13.02. Nominated at Primary**

On primary election day in 1974 and every two years thereafter, candidates for all state offices to be chosen, and candidates for Congress and all District offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that casts twenty percent (20%) or more of the votes for Governor at the last general election for that office, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 180. Amended by Acts 1973, 63rd Leg., p. 1409, ch. 542, § 5, eff. Aug. 27, 1973.]

**Art. 13.03. Date of Primary**

The first Saturday in May of 1960, and every two (2) years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary

elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any office under this Article, a second primary election shall be held by such political party on the first Saturday in June succeeding such general primary election, and only the name of the two (2) candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary, except as herein stated, provided that in case no one received a majority in the first primary and if the second and third highest candidates in that race shall be tied these two (2) shall cast lots under the direction of the county chairman or state chairman as the case may be to see which of the two (2) shall have his name printed on the second primary ballots. The second primary election shall be conducted according to the law prescribed for conducting the general primary election and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations, except where provided for by law. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than thirty (30) days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them.

[Acts 1951, 52nd Leg., p. 1097, ch. 462, art. 181. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 1.]

#### Art. 13.04. Voting Places of Political Parties

Subd. 1. The chairman of the county executive committee of each party holding a primary shall designate the polling place in each precinct where voting in the primary of that party will be held.

Subd. 2. Each political party holding a primary shall have a sign, showing the party name, prominently displayed immediately above each entrance to each of the party's precinct polling places.

Subd. 3. The primary election or convention of a political party may be held in the same building as the primary or convention of a different party or parties, but each party shall hold its primary or convention in a separate room from any other party, and the room shall be specifically designated as to political party by a sign in 160-point type or larger, prominently displayed above each entrance to the

room. If such primary elections or conventions are held in adjoining rooms, there shall be no avenue of communication from one such room to the other. The voting machines, ballots, election supplies, and election officers of one primary election or convention shall not be used in the election or convention of another political party.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 182. Amended by Acts 1967, 60th Leg., p. 1909, ch. 723, § 40, eff. Aug. 28, 1967.]

**Art. 13.04A. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967**

See, now, art. 13.04.

**Art. 13.04b. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967**

See, now, art. 13.04.

**Art. 13.05. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

#### Art. 13.06. Judges of Primary

Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 184. Amended by Acts 1967, 60th Leg., p. 1909, ch. 723, § 40a, eff. Aug. 28, 1967.]

#### Art. 13.07. Nominations by Majority

In all nominations by political parties holding primary elections as provided in Chapter 13 of this Code [arts. 13.01-13.59], and amendments thereto, the candidates for County and precinct offices shall be nominated by a majority vote of the electors voting in such primary; provided that if no candidate received a majority of the votes cast for the candidates for the office for which he is a candidate, the County Executive Committee, after canvassing the results of such primary as provided by law shall cause the names of the two (2) candidates receiving the highest number of votes to be placed on the ballot to be voted upon at the second primary at the time and in the manner provided by law for such second primary. If all candidates for County and precinct offices are nominated within the County at the first primary election, it shall still be the duty of the County Executive Committee to hold a second primary election for the purpose of nominating District and State candidates.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 185.]

**Art. 13.07a**

**ELECTION CODE**

Repealed

Art. 13.07a. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

**Art. 13.08. Conduct of the Primary Elections**

(a) The primary election held by a political party pursuant to Sections 180 and 181 of this code (Articles 13.02 and 13.03, Vernon's Texas Election Code) shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in this code.

(b) In order for a candidate to have his name placed on the ballot for the general primary election, his application for a place on the ballot must be accompanied by a filing fee or a nominating petition in compliance with Subsection (c) or (d) of this section.

(c) The schedule of filing fees for either a full term or an unexpired term for the various offices is as follows:

(1) United States Senator .....	\$2,000
(2) All other statewide offices .....	1,500
(3) United States representative .....	1,500
(4) State senator .....	750
(5) State representative .....	400
(6) Member, state board of education ..	250
(7) Chief justice or associate justice, court of appeals .....	750
(8) District judge or judge of any court having status of a district court as classified in Section 61c of this code, as added and amended (Arti- cle 6.05c, Vernon's Texas Election Code) .....	700
(9) Judge of a statutory county court or judge of any court having status of a county court as classified in Section 61c of this code, as added and amended (Article 6.05c, Ver- non's Texas Election Code), other than the constitutional county court .....	700
(10) District attorney or criminal district attorney or a county attorney that performs the same functions as either of the above .....	600
(11) A county office as classified in Sec- tion 61c of this code, as added and amended (Article 6.05c, Vernon's Texas Election Code), for which a specific fee is not set by this sub- section .....	300
(12) County surveyor or inspector of hid- es and animals .....	50
(13) Judge of the constitutional county court and county commissioner,	

County of 200,000 or more inhabit- ants .....	\$600
County under 200,000 inhabitants ...	300
(14) Justice of the peace or constable, County of 200,000 or more inhabit- ants .....	500
County under 200,000 inhabitants ...	200
(15) Public weigher .....	50

No fee shall be charged for any office of a political party.

(d) In lieu of the payment of a filing fee, a candidate may file a nominating petition which may be in multiple parts and must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide office, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the number of votes cast in the territory for that party's candidate for governor in the last preceding gubernatorial general election. However, in no event shall the number required be more than 500; and if two percent of the votes cast in the territory was less than 25, the number required is the lesser of 25 signatures or 10 percent of the number of votes cast.

Where a candidate is running in a district, county, or precinct which has been created or the boundaries of which have been changed since the last gubernatorial general election, he may request that the secretary of state in the case of a district or county office, or the county clerk of the county in which the precinct is situated in the case of a precinct office, make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last gubernatorial election. Not later than the 15th day after receiving such a request, the officer shall make the estimate and notify the candidate, and also the officer with whom the candidate files his application. The estimate shall be used as the official basis for computing the number of signatures required on a petition. If an advance estimate is not requested, the officer with whom the petition is filed shall make the estimate, whenever necessary, before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court having jurisdiction in the territory involved.

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the (fill in name) Party for the office for which (fill in name) is a candidate. I have not signed the petition of a candidate who is running for any office<sup>1</sup> the primary of any other party. I understand that by

signing this petition I become ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party, including a party which is not holding a primary election, during the voting year in which this election is held, and that I am guilty of a misdemeanor if I attempt to do so."

To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

The petition must show the following information with respect to each signer: His address (including his street address if residing in a city, and his rural route address if not residing in a city), his current voter registration certificate number (also showing the county of issuance if the office includes more than one county), and the date of signing. The secretary of state shall prescribe a form for the petition before the 30th day prior to the filing deadline and provide copies of that form to the state chairman and the county chairmen of each party holding a primary election. However, a candidate may use any other form which complies with the requirements of this section. It is the specific intent of the legislature that there shall be no requirement for the administering of an oath to any person signing a petition under the provisions of this section.

A petition filed under this section shall be filed with the same officer with whom an application for a place on the ballot for the office being sought is to be filed and must be filed at the same time as such an application.

(e) The fees paid to the county chairman on applications filed with him pursuant to the provisions of Section 190 of this code, as amended (Article 13.12, Vernon's Texas Election Code), the apportionment of fees received from the state chairman pursuant to this subsection, and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 of this code, as amended (Article 13.18, Vernon's Texas Election Code), and shall be applied to payment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying costs. The remaining costs incurred shall be borne by the

state except as otherwise provided by procedures outlined in this code. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state an itemized listing of all filing fees for statewide offices and for district offices collected on applications filed with him pursuant to Section 190. Within 10 days after the regular filing deadline, the state chairman shall also forward all filing fees for district offices collected by him pursuant to Section 190 to the county chairmen for the counties lying partially or wholly within such district. The amount forwarded to each county chairman shall be equal to the quotient obtained upon dividing the appropriate filing fee by the number of counties in the district of the candidate paying the fee. The state chairman shall retain all filing fees for statewide offices and all filing fees for district offices paid to him under filing deadlines falling after the regular deadline and shall apply them to the sole use of helping defray the costs incurred by the state chairman and the state executive committee in conducting the primary elections.

(f) In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Section 79 (Article 7.14, Vernon's Texas Election Code), and not exceeding \$5 per unit for voting equipment adopted under Section 80 (Article 7.15, Vernon's Texas Election Code); provided, however, that the county commissioners court shall not be required to provide voting machines or equipment for use in any election precinct in which fewer than 100 votes were cast in the preceding first or general primary or runoff primary election. The maximum amount fixed in this subsection includes the lease price for the use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station; but all actual expenditures incidental and necessary to operation of the central counting station in counting the ballots are payable out of the primary fund.

(g) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where necessary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with absentee voting or any other services rendered by the county clerk in

the primary elections, except for voting machines and/or punch card units used in conducting the absentee voting or any other services for which reimbursement is specifically authorized by law.

(h) The secretary of state is authorized to promulgate rules under which compensation is limited to polling places at which voters of more than one election precinct cast their votes, notwithstanding the provisions of Section 10(g) (Article 2.02(g), Vernon's Texas Election Code). The rules for such common polling places shall provide for adequate public notice by the county chairman to the voters in election precincts affected by the application of such rules and shall provide for an adequate number of polling places taking into account all other relevant factors including distances of polling places from parts of the precincts served, estimated voter turn-out, and geographic or other boundaries. However, the secretary of state may not require that there be less than one polling place for each commissioner's precinct for reimbursement purposes.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place and the maximum number of other necessary office personnel employed to assist in the performance of the duties placed upon the county chairman, taking into account the number of registered voters in the election precinct or precincts, the number of votes cast in the precinct, county, or state in previous elections, the method of voting, and any other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks and other necessary office personnel employed in excess of the applicable limits set by his rules if he finds that the employment of additional clerks or other office personnel was justified by a good cause. The total compensation paid to the county chairman and the secretary of the county executive committee (where the executive committee has named a secretary) in the performance of the duties placed upon the chairman shall not exceed five percent of the amount actually spent in holding the primary elections for the year; provided, however, that in no case shall the total compensation paid be less than \$300 nor more than \$8,000.

(j) The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at least 10 days before the election to which the rules apply.

(k) The county chairman shall account for the primary fund in the manner provided in Section 196 of this code.<sup>2</sup>

(l) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The attorney general shall be specifically responsible for the enforcement of this section.

(m) In the event a court of competent jurisdiction declares any portion of this section or any other provision of this code relating to the financing of primary elections to be invalid, the secretary of state shall promulgate reasonable rules for the enforcement of the intent of the legislature, consistent with the court's judgment and the valid portions of the code. Such authority of the secretary of state shall include authority to promulgate a schedule of filing fees, if necessary, and that schedule shall be substituted for the statutory schedule until the legislature enacts a new schedule.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 186. Amended by Acts 1955, 54th Leg., p. 1131, ch. 424, § 1; Acts 1955, 54th Leg., p. 1295, ch. 513, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 81; Acts 1967, 60th Leg., p. 1910, ch. 723, § 42, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2046, ch. 675, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1281, ch. 502, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1398, ch. 563, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 240, ch. 127, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 455, ch. 210, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 798, ch. 291, § 86, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 4882, ch. 865, § 1, eff. Aug. 29, 1983.]

<sup>1</sup> So in enrolled bill; word "in" probably omitted.

<sup>2</sup> Article 13.18.

Section 2 of Acts 1977, 65th Leg., ch. 502, provided:

"If any filing fee amended by this Act is declared invalid, then the amount of such filing fee shall be the amount prescribed by prior law."

#### Art. 13.08a. State Financing

(a) Each county chairman of each political party in the state which is holding primary elections shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary elections to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes, court decisions, and administrative rulings of this state. Any other provisions of this code notwithstanding, the secretary of state shall pay for

expenditures which, in his discretion, are reasonably necessary for the proper conduct and supervision of the primary elections under the provisions of this code. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate any balance remaining from previous primary elections in the appropriate primary fund, and any amount of the fees and contributions received by the chairman for the conduct and financing of the primary elections for the particular year, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a second or runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected, and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall retain the difference in the primary fund referred to in Section 196 of this code (Article 13.18, Vernon's Texas Election Code). The exact amount of the balance in the primary fund shall be reported to the secretary of state in the actual expense report provided by this section and said amount shall be a beginning balance on hand for the next ensuing primary conducted by the chairman or his successor. If the primary fund is invested as authorized in Section 196, the beginning balance on hand for

the next ensuing primary shall be the amount of the primary fund after termination of the investment.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses properly incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable for any debts incurred in the administration of the primary but unpaid because the appropriation provided by the legislature was not sufficient to cover the actual expenditures made.

(f) A county chairman may request that the secretary of state approve an expenditure for the purposes of the auditing of the expenditures made out of the primary fund; however, the secretary of state shall not be required to approve such an expenditure. The secretary of state may require an audit of the primary fund, without such a request, when, in his discretion, he believes a valid purpose will be served by such a procedure.

(g) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting statements and reports to the secretary of state.

(h) Wherever the word "county chairman" is used in this section, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(i) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Acts 1957, 55th Leg., p. 1426, ch. 494, § 1. Amended by Acts 1962, 57th Leg., 3rd C.S., p. 45, ch. 16, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 82; Acts 1963, 58th Leg., p. 1280, ch. 492, § 1; Acts 1969, 61st Leg., p. 2275, ch. 766, § 1, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 2050, ch. 675, § 2, eff. Sept. 1, 1975.]

**Art. 13.08a-1. State Financing of Primary Expenses of State Executive Committee**

(a) If the state executive committee of a political party which is holding primary elections wishes to obtain state financing of the expenses incurred by the state chairman and the committee in conducting the primary elections in addition to the filing fees retained by the state chairman under Section 186 of this code, as amended (Article 13.08, Vernon's Texas Election Code), the state chairman shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary, together with an itemized statement of any filing fees received by him under filing deadlines falling after the regular deadline to and including the date of the estimate and a statement of the amount of any balance remaining from previous primary elections. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. No expenditure in connection with a party convention or with any party activity other than the conduct of a primary election may be allowed. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate the amount of the fees collected and retained by the state chairman for that election year and any balance remaining from previous primary elections and shall certify to the comptroller of public accounts the net estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) When a runoff for any statewide or district office is necessary, within 15 days after the first primary the state chairman shall submit to the secretary of state a sworn itemized estimate of the state executive committee's costs for the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the state chairman shall submit to the secretary of state a sworn itemized report of the actual costs incurred by the state chairman and the state executive committee in conducting the primary election or elections (as the case may be) and of any filing fees not previously reported. If the actual expenditure for an item exceeded the estimated

amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees retained and the payments from the state exceed the actual expenditures incurred, the chairman shall retain the difference, to be used as a beginning balance on hand for the next ensuing primary conducted by the party.

(d) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section or refuses to allow an increase under Subsection (c), the state chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Acts 1977, 65th Leg., p. 1398, ch. 563, § 2, eff. Aug. 29, 1977.]

**Art. 13.08b. Refund upon Death of Candidate**

No refund of a filing fee shall be made except to a candidate who dies or is declared ineligible to be a candidate for the office before the date of the first or general primary election, in which case the fee paid by the candidate shall be refunded to the candidate or to his estate, as appropriate.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 3. Amended by Acts 1967, 60th Leg., p. 1911, ch. 723, § 43, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2052, ch. 675, § 3, eff. Sept. 1, 1975.]

**Art. 13.08c. Superseded**

Acts 1971, 62nd Leg., 1st C.S., p. 33, ch. 11, § 4, adding a § 186c to the Election Code, classified as art. 13.08c, authorized a petition of voters in lieu of payment of assessment or fee. Said Act was superseded by Acts 1972, 62nd Leg., 2nd C.S., ch. 2, classified as art. 13.08c-1.

**Arts. 13.08c-1 to 13.08c-4. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975**

**Art. 13.09. Balloting at Primaries: Write-in Votes Permitted for Party Offices Only**

(a) The vote at all primary elections shall be by official ballot, which shall conform to the provisions of this section and other provisions of this code relating to the official ballot for a primary election that are applicable to the method of voting used in the election. The provisions of this section which are expressed in terms applicable to paper ballots

shall be construed in a manner consistent with the method of voting used in the election whenever some other method is used. The name of the party shall be printed at the head of the ballot, and under such head shall be printed the names of all candidates, those for each nomination being arranged in the order determined by the county executive committee as provided in Section 195 of this code,<sup>1</sup> beneath the title of the office for which the nomination is sought.

(b) Write-in votes shall not be permitted in primary elections for any office other than the party offices of county chairman and precinct chairman, and a write-in vote for any other office shall be void and shall not be counted for any purpose. Write-in votes for the party offices of county chairman and precinct chairman shall be permitted in the general primary election but shall not be permitted in the second (runoff) primary. On the general primary ballot, an appropriate space for a write-in candidate shall be provided under the title of each of these two party offices, following the names of the candidates; and if for either office there is no candidate whose name is to be printed on the ballot, the title of the office shall nevertheless be printed on the ballot with a space for a write-in candidate provided thereunder.

(c) The official ballot shall be printed in black ink upon white paper. The ballot shall be printed by the county committee in each county, which shall furnish to the presiding judge of the general primary for each voting precinct at least as many of such official ballots as the county election board determines is necessary for each party based upon the votes cast in the area in the last preceding presidential general election.

(d) Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county, or justice precinct, such candidates shall be voted for and nominations made separately, and all such nominations shall be separately designated on the official ballots by numbering the same "Place No. 1," "Place No. 2," etc. Each candidate for such nominations shall designate in the announcement of his candidacy, and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. Each voter shall vote for only one candidate for each nomination.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 187. Amended by Acts 1957, 55th Leg., p. 802, ch. 338, § 3; Acts 1963, 58th Leg., p. 1017, ch. 424, § 85; Acts 1967, 60th Leg., p. 1911, ch. 723, § 44, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1410, ch. 542, § 8, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 660, ch. 247, § 8, eff. Aug. 29, 1977.]

<sup>1</sup> Article 13.17.

**Art. 13.10. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 13.11. Test on Ballot**

No official ballot for primary election shall have on it any symbol or device or any printed matter, except a uniform primary test, reading as follows: "I am a \_\_\_\_\_ (inserting name of political party or organization of which the voter is a member) and pledge myself to support the nominee of this primary"; and any ballot which shall not contain such printed test above the names of the candidates thereon, shall be void and shall not be counted.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 189.]

**Art. 13.11a. Ineligibility to Become Opposing Candidate**

Any person who has participated as a voter or as a candidate in either the first primary election or the runoff primary election of a political party shall be ineligible to have his name printed on the ballot at the succeeding general or special election as an independent candidate for any office for which a nomination was made by such party at either such primary election, and shall be ineligible to have his name printed on the ballot as the nominee of any other party for any office to be voted on at the general or special election.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 86.]

**Art. 13.12. Application for Place on Ballot; Filing; Deadline; Extension; Withdrawal; Notice**

(a) The application to have the name of any person affiliating with a party placed on the official ballot for a general primary as a candidate for the nomination of such party for any office for which a nomination may be made at such primary shall be governed by the rules stated in this section.

(b) Such application shall be in writing, indicating the office for which nomination is sought and whether for a full term or for an unexpired term, signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence, and post-office address of such person, and if made by him shall also state his age. If the application is made by qualified voters, there shall be endorsed on the application or filed in a separate instrument, before the deadline for filing applications, a statement signed by the candidate showing his consent to such candidacy.

(c) The application shall be filed with the state chairman in the case of all statewide offices and all district offices which are filled by the choice of voters residing in more than one county. It shall be filed with the county chairman of the particular

county in the case of county and precinct offices and district offices which are filled by the choice of voters residing in only one county or less than one county. Except as provided in Subsection (d) of this section, the application shall be filed not later than 6 p.m. on the first Monday in February preceding such primary.

(d) The filing deadline stated in Subsection (c) of this section shall be extended for the particular party primary and office involved, as provided in this subsection: (i) if between the fifth day preceding the filing deadline stated in Subsection (c) and the 65th day preceding the general primary, both dates included, any candidate for an office dies, if the candidate had complied with all prerequisites for having his name placed on the ballot which he was required to perform by the date of his death; (ii) if between the filing deadline stated in Subsection (c) and the 65th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or (iii) if between the filing deadline stated in Subsection (c) and the 65th day preceding the general primary, both dates included, the only candidate who has filed for a particular office in the primary of that party withdraws or is declared ineligible. In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p.m. on the 15th day following the death, withdrawal, or declaration of ineligibility of the candidate; provided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 60th day preceding the primary, the deadline for filing shall be 6 p.m. on the 60th day preceding the primary. Notwithstanding the provisions of Subsection (e) of this section, an application which is not received by the chairman until after 6 p.m. on the 60th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing.

(e) Except as otherwise provided in Subsection (d) of this section, an application required to be filed under this section with the state chairman shall be considered filed if sent to the chairman at his post-office address by registered or certified mail from any point in this state not later than the day on which the filing deadline falls, as shown by the postmark, provided, however, that if the deadline falls on a Saturday, Sunday, or holiday observed by the post office, it must be postmarked not later than the next regular business day for the post office. Any application not received by the state chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of

mail unless it is delivered before the deadline. An application required to be filed under this section with the county chairman is not timely unless it is received by the chairman before the appropriate filing deadline, and an application mailed but not actually received by the deadline may not be accepted.

(f) A candidate may withdraw by filing with the chairman with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each county chairman with whom the candidate's application was filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

(g) A candidate shall not be permitted to withdraw after the 65th day preceding the general primary. If after the 65th day preceding the general primary a candidate dies or is declared ineligible, the procedure detailed in Section 104 of this code (Article 8.22, Vernon's Texas Election Code) shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

(h) Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county and Secretary of State a list containing the names of all candidates, as the names are to appear on the primary election ballot, arranged by office for which nomination is sought, whose applications have been timely received and the candidates' addresses, as entered on the applications. In like manner each chairman shall file, within three days after any extended filing deadline under Subsection (d) of this section, a supplemental list of candidates whose applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

(i) On the second Monday in March preceding each general primary, the state committee shall meet at some place to be designated by its chair-

man, who shall not less than three days prior to such meeting notify by mail and members of the committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names of such candidates as shown by the applications received by him. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish same, and one copy shall at once be mailed to the chairman of the executive committee of each county.

(j) The terms of this law shall apply to the county chairman and precinct committeemen, and the names of such candidates shall not be printed on the primary ballot unless such application shall have been filed as provided herein.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 190. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 3; Acts 1962, 57th Leg., 3rd C.S., p. 45, ch. 16, § 2; Acts 1963, 58th Leg., p. 1017, ch. 424, § 87; Acts 1967, 60th Leg., pp. 1912, 1913, ch. 723, § 45, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 30, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1409, ch. 542, § 7, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 883, ch. 332, § 3, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 583, ch. 272, § 1, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 2236, ch. 418, § 6, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4638, ch. 798, § 1, eff. Aug. 29, 1983.]

#### Art. 13.12a. Nomination and Election to Fill Unexpired Term

(a) Offices to which applicable; occurrence of vacancy. The provisions of this section shall govern nomination for and election to unexpired terms which are to be filled by election at the general election, in state, district, county and precinct offices where the vacancy occurs by reason of the creation of a new office or the death, resignation, or removal from office of the incumbent in an existing office, and the length of the unexpired term to be filled at the election extends beyond the first day of January following the election. This section does not apply to offices, vacancies which are to be filled by special election, nor does it apply to the office of United States Senator, which is governed by Section 177 of this code.<sup>1</sup> For the purpose of this section, where a new office is created to come into existence at a date subsequent to the effective date of the statute or date of entry of the order creating it, the vacancy shall be deemed to occur as of the effective date of the statute or date of entry of the order, and where the incumbent of an office has submitted a resignation to become effective at a future date, the vacancy shall be deemed to occur upon acceptance of the resignation.

(b) Nominations by parties holding primary elections. For any party holding primary elections for nominating candidates for the ensuing general elec-

tion, nominations for unexpired terms shall be made in accordance with the following provisions.

(1) If the vacancy occurs more than five days prior to the regular deadline for filing an application for a place on the general primary ballot, as provided in Section 190 of this Code (Article 13.12, Vernon's Texas Election Code), nomination for the unexpired term shall be made by primary election in the same manner and under the same rules applicable to nominations for full terms.

(2) If the vacancy occurs on or after the fifth day preceding the regular filing deadline and on or before the 65th day before the day of the general primary election, nomination for the unexpired term shall be made by primary election, and candidates shall have until the end of the 60th day preceding the day of the general primary in which to file applications for a place on the primary ballot. The applications must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing. Except as otherwise provided herein, the application shall conform to the requirements of Section 190 of this Code and shall be accompanied by the filing fee or petition provided for in Section 186 of this Code (Article 13.08, Vernon's Texas Election Code). Immediately following the deadline for filing applications, the state chairman shall certify to the county chairman the names of candidates, if any, who have filed applications with him and paid their filing fee or filed a petition in accordance with this paragraph. Whenever the name of more than one candidate for the same office is to be placed on the ballot pursuant to the provisions of this paragraph, the county chairman shall call a meeting of the primary committee, in time to allow printing of the ballots before commencement of absentee voting in the general primary, and the primary committee shall determine by lot, in open meeting, the order in which the names of the candidates shall be printed on the ballot. If there is not more than one candidate for the same office, the county chairman shall make any necessary changes in the ballot as previously made up by the primary committee.

(3) If the vacancy occurs after the 65th day preceding the day of the general primary and on or before the 65th day before the day of the general election, the state executive committee in the case of state offices, the appropriate district executive committee in the case of district offices, the county executive committee in the case of county offices, and the appropriate precinct committee in the case of precinct offices, shall have the power to name a nominee for such office, and a nomination shall not be made by any other method; provided, however, that in any case where a district committee empowered to name a nominee fails to do so because it is unable to agree upon a nominee by majority vote,

the state executive committee of that political party may name a candidate for such office and certify the name of the nominee to the proper officer.

(c) Nominations by parties not holding primary elections. For any party which is authorized to make nominations by party conventions, as provided in this Code, a nomination for the unexpired term shall be made at the appropriate party convention having power to make nominations for the particular office if the vacancy occurs more than two days prior to the date on which the convention is held. If the vacancy occurs on or after the second day preceding the convention and on or before the 65th day before the day of the general election, the appropriate executive committee of the party shall have the power to name a nominee, and a nomination shall not be made by any other method.

(d) Nominations by executive committees. The nomination must be made and certified to the proper officer not later than the 60th day before the day of the general election. Nominations for state offices and for district offices (including districts composed of only one county or part of one county) shall be certified to the Secretary of State, and nominations for county and precinct offices shall be certified to the county clerk. The certificate of nomination shall be signed and acknowledged by the chairman of the committee making the nomination, and shall set forth the name of the nominee, the office for which he was nominated, and when, where, by whom, and how the nomination was made.

(e) Independent and nonpartisan candidates. If the vacancy occurs on or before the date of the second primary election, applications of independent or nonpartisan candidates must be filed in accordance with the provisions of Section 227 of this Code (Article 13.50, Vernon's Texas Election Code), not later than thirty days after the second primary election day. If the vacancy occurs after the second primary election day, and on or before the 65th day before the day of the general election, independent or nonpartisan candidates may file applications in the manner provided in Section 227, except that the application shall be filed not later than the 60th day before the day of the general election. No person shall sign an application prior to the occurrence of the vacancy, and any signature before that time shall be void.

(f) Write-in candidates. If the vacancy occurs on or before the 65th day before the day of the general election, the title of the office shall be printed on the ballot for the general election regardless of whether any nominations have been made for the unexpired term, and each voter may write in the name of the candidate of his choice.

(g) When election not to be held. If a vacancy occurs after the 65th day before the day of the general election, no one shall be elected to the

unexpired term at that election, and the person appointed to fill the vacancy shall continue to hold office until the next succeeding general election and until a successor has been elected and has qualified.

(h) In all nominations made by an executive committee under this section or under Section 233 of this code,<sup>2</sup> or under any other provision of law, a majority of the members of the committee must participate in making the nomination, and all nominations must be made by a majority vote of those members participating in the nomination.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 88. Amended by Acts 1967, 60th Leg., p. 1913, ch. 723, §§ 46 to 48, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2053, ch. 675, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 885, ch. 332, § 4, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2238, ch. 418, § 7, eff. Aug. 29, 1983.]

<sup>1</sup> Article 12.02.

<sup>2</sup> Article 13.56.

#### Art. 13.13. Certificates to County Committee

At the meeting of the county executive committee provided for in Section 195 of this Code,<sup>1</sup> the county chairman shall present to the committee the certificates of the chairman of the state committee, showing the names of all persons whose names are to appear on the official ballot as candidates for statewide offices and the office of Justice of the Court of Appeals.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 191. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 87; Acts 1981, 67th Leg., p. 798, ch. 291, § 87, eff. Sept. 1, 1981.]

<sup>1</sup> Article 13.17.

#### Art. 13.14. Primary Committee

Subject to the approval of the committee, the county chairman shall appoint a subcommittee of five (5) members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet at any time on or after the day of the meeting of the county executive committee held under Subsection (a), Section 195 of this code, as amended (Article 13.17, Vernon's Texas Election Code), and before the fourth Tuesday in March and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the names of the candidates for nomination for State, district, county and precinct offices thereon in the order determined by the county executive committee as herein provided.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 192. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 4; Acts 1979, 66th Leg., p. 237, ch. 124, § 1, eff. Aug. 27, 1979.]

Arts. 13.15, 13.16. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

**Art. 13.17. Order of Offices and Names on Ballot**

(a) The various county committees of any political party, on the third Monday in March preceding each general primary, shall meet at the county seat and determine by lot, in open meeting, the order in which the names of all candidates for all offices, including statewide races, requested to be printed on the official general primary ballot shall be printed thereon.

(b) At the meeting of the county executive committee for canvassing the returns of the general primary, as provided for in Section 202 of this code,<sup>1</sup> the committee shall determine in like manner the order in which the names of candidates for county and precinct offices shall be printed on the ballot in those races for which a runoff election is necessary. Upon receipt from the state chairman of the names of candidates for state and district offices which are to be printed on the second primary ballot, the chairman of the county executive committee shall immediately convene the primary committee, which shall determine by lot in open meeting the order in which the names of the candidates for state and district offices shall be printed on the second primary ballot and shall make up the official ballot for such election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 195. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 5; Acts 1967, 60th Leg., p. 1914, ch. 723, § 49, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.24.

**Art. 13.18. County Executive Committees**

Subd. 1. There shall be for each political party required by law to hold primary elections for nomination of its candidates, a county executive committee in each county, to be composed of a county chairman and one member from each election precinct in such county. Each committeeman shall be chairman of his election precinct. The county chairman and the committeeman shall be elected by majority vote at the primary elections every two years, the county chairman by the qualified voters of the whole county, and the precinct chairman by the qualified voters of their respective election precincts. If in any race no candidate receives a majority of the votes at the general primary, a runoff election for the office shall be held at the second primary election. The county chairman and the precinct chairmen shall assume the duties of their respective offices on Saturday following the runoff primary immediately after the committee has declared the results of the runoff primary election. The list of precinct chairmen and the county chairman so elected shall be certified by the chairman of the county committee to the county clerk, along with the nominees of the party.

Subd. 2. No person shall be permitted to hold a proxy or vote a proxy at meetings of the county executive committee. Any vacancy in the office of county chairman or precinct chairman shall be filled by the committee. A majority of the total membership of the committee must participate in filling a vacancy, and the person selected must receive a majority vote of those members participating in the selection. Each precinct chairman shall be a resident of the precinct which he represents, and the office shall become vacant if he changes his residence to a place outside the precinct. Where the boundaries of election precincts are changed by the commissioners court, existing precincts altered, new precincts formed, or former precincts abolished, if only one previously elected or appointed precinct chairman resides within a precinct as so changed, he shall continue in office as chairman of that precinct until his successor is elected and assumes office. If more than one precinct chairman resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies. Changes in precinct boundaries made by the commissioners court shall not become effective to alter or affect the membership of the county executive committee until the first day of February following the entry of the order making the change.

Subd. 3. Whenever a vacancy occurs in the office of county chairman, the secretary of the county executive committee may call a meeting of the committee for the purpose of filling the vacancy at any time after the vacancy occurs, and upon the written request of any member of the committee, the secretary shall call the meeting for a date not more than 20 days after he receives the request, giving notice to each member of the time and place where the meeting will be held and the purpose of the meeting. If the county committee does not have a secretary, or if the secretary fails to call a meeting as herein provided upon being requested to do so, the chairman of the state executive committee shall call the meeting in like manner upon written request of any member of the county committee. The officer who calls the meeting shall designate one member to act as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman.

Subd. 4. The county executive committee may name a secretary, who may be either a member of the committee or such other person as the committee may select, and the secretary is hereby authorized to receive applications for a place on the primary ballot and when so received the application shall be officially filed. The combined compensation allowed the secretary and the chairman for their services shall in no case exceed five percent of the amount actually spent for necessary expenses in holding the primary election for that year, exclusive of the

compensation allowed to the chairman and secretary.

Subd. 5. The funds received by the county executive committee from contributions, fees and assessments paid by candidates, and expenses paid by the secretary of state shall constitute the primary fund, and any surplus remaining in the fund after payment of the necessary expenses for holding the primary elections for that year shall be retained in the primary fund, and the balance reported to the secretary of state as required by Section 186a of this code.<sup>1</sup> The county executive committee is authorized to invest the primary fund by deposit with any federally insured institution; provided, however, that the required length of time of the deposit shall not extend beyond 30 days prior to the next general primary election.

Subd. 6. In cases where there is no county party organization in a county, the state executive committee may, by a majority vote of the total membership of the committee, appoint a qualified voter of that county to serve as the acting county chairman until such time as his successor is elected and assumes office under the provisions of Subdivision 1 of this section. A temporary county chairman appointed under the provisions of this subdivision shall call a meeting of the voters of that county, at which time a temporary county executive committee may be elected by the voters participating in the meeting, with such committee to be empowered to fulfill all the duties placed upon a county executive committee by law until such time as a permanent executive committee is elected by the voters in the party's primary.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 196. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 90; Acts 1969, 61st Leg., p. 2662, ch. 878, § 33, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 2052, ch. 675, § 5, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 1, eff. Aug. 29, 1977.]

<sup>1</sup> Article 13.08a.

#### Art. 13.18a. District and Precinct Executive Committees

(1) For a district composed of more than one county or part thereof, the county chairman of each county wholly within the district shall be ex officio a member of the district executive committee for each such district of which his county is a part. When a part of a county is joined with one or more other counties or parts of counties to form a district, at a meeting of the county executive committee on the second Monday in February preceding each general primary election the precinct chairman of the election precincts included within such part of the county shall elect one of their number to serve as district committeeman; and a district committeeman shall be selected in this manner for each type of district and for each district for which any part of the county less than the whole county is joined with

territory in another county or counties. The district committee thus formed shall elect its own chairman. Whenever a vacancy occurs in a district office and the district committee is empowered to name a nominee or a substitute nominee, or whenever for any other reason it becomes necessary for the district committee to meet and organize, the chairman of the state executive committee shall call a meeting of the district committee by giving notice to each member of the time and place where such meeting will be held and of the purpose of the meeting. The state chairman shall designate one member as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman. The chairman elected by the committee shall continue to act as chairman during the remainder of that term of office, and shall call any subsequent meetings of the committee which are held during that time.

(2) For a district composed of only one county, the county executive committee shall constitute the district executive committee for that district, and the county chairman shall be chairman of the district executive committee.

(3) For a district composed of only a part of one county, the precinct chairmen of the election precincts included within the district shall constitute the district executive committee. At the meeting of the county executive committee on the second Monday in February preceding each general primary election, the precinct chairman within the district shall elect one of their number to serve as chairman of the district executive committee; and a chairman shall be selected in this manner for each type of district and for each district composed of only a part of the county.

(4) Within three days after the aforesaid meeting of the county executive committee, the county chairman shall forward to the state chairman the names of the district committeemen and of the chairmen of the district committees who were selected at the meeting.

(5) At this same meeting of the county committee, the precinct chairmen in each commissioners precinct and justice precinct shall select one of their number to serve as chairman of the precinct executive committee for each respective commissioners precinct and justice precinct. The precinct chairmen of the election precincts within the commissioners precinct or justice precinct shall constitute the precinct committee.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 91. Amended by Acts 1967, 60th Leg., p. 1914, ch. 723, § 50, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2053, ch. 675, § 7, eff. Sept. 1, 1975.]

**Art. 13.18b. Names of Elected Party Officers to be Recorded**

In certifying the names of the elected county chairman and precinct chairmen to the county clerk, as required by Section 196 of this code,<sup>1</sup> the county chairman shall enter the names on a separate list from the list of party nominees certified by him. In the list he shall include the addresses and precinct numbers of the precinct chairmen and the address of the county chairman. He shall mail a copy of the list to the chairman of the state executive committee of the party. The county clerk shall record the names of the elected party officers, designating the office to which each person was elected, in the book provided for in Section 116 of this code.<sup>2</sup> The purpose of requiring certification of the names of the elected party officers is to provide a public record thereof, and the titles of the party offices and the names of the persons elected thereto shall not be placed on the general election ballot.

[Acts 1965, 59th Leg., p. 1552, ch. 678, § 13, eff. June 18, 1965. Amended by Acts 1967, 60th Leg., p. 1915, ch. 723, § 51, eff. Aug. 28, 1967.]

<sup>1</sup> Article 13.18.

<sup>2</sup> Article 8.34.

**Art. 13.19. Supplies**

The executive committee shall have a general supervision of the primary in such county and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies, including but not limited to the number of voter registration applications, necessary for holding same in each election precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four (24) hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 197. Amended by Acts 1977, 65th Leg., p. 1216, ch. 468, § 6, eff. Aug. 29, 1977.]

**Art. 13.20. Booths Used for Primary**

The voting booths, ballot boxes and guard rails, prepared for a general election, may be used for the organized political party nominating by primary election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 198.]

**Art. 13.21. Repealed by Acts 1977, 65th Leg., p. 594, ch. 209, § 8, eff. Aug. 29, 1977****Art. 13.22. Precaution Against Fraud**

The same precautions required by law to secure the purity of a ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or place prepared for voting and the procedure involving the removal of the detachable stub and the depositing of the ballot and the stub in the proper boxes shall be observed in all primary elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 200.]

**Art. 13.23. Ballots Delivered to County Clerk**

Immediately after the counting of the ballots is completed as required in Section 101 of this code,<sup>1</sup> and not later than twenty-four hours after closing of the polls, the presiding judge of each election precinct shall deliver to the county clerk the ballot box containing ballots voted, in the manner prescribed in Section 114 of this code;<sup>2</sup> and all other provisions of Section 114 shall also apply to primary elections.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 201. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 92; Acts 1967, 60th Leg., p. 1915, ch. 723, § 52, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.19.

<sup>2</sup> Article 8.32.

**Art. 13.24. Returns and Canvass**

Immediately upon completion of counting of the ballots, as required in Section 101 of this code,<sup>1</sup> the presiding judge of each election precinct shall notify the chairman of the county executive committee either personally or by telephone of the results. He shall immediately thereafter make out returns of the same in the manner prescribed in Section 111 of this code<sup>2</sup> and shall immediately and not later than twenty-four hours after the closing of the polls, make the proper distribution of the returns and other records of the election as provided in Section 111b of this code.<sup>3</sup>

Upon receiving returns from each election precinct in the county, the chairman of the county executive committee shall order the members of the county executive committee to convene at the county seat of the county on the following Tuesday succeeding the day of such primary election, and the returns shall be opened by the committee in executive session and shall be canvassed by them. The results recording the state of the polls in each precinct shall be entered in the book provided for in Section 116 of this code<sup>4</sup> by the county clerk, and the chairman of the county executive committee shall furnish to the county clerk the necessary information for compliance with this provision. Upon relation of the county chairman, the county

attorney shall immediately institute mandamus proceedings in the proper court to compel delinquent returning officers to make proper returns as required by law, and it shall be the duty of the county chairman and county clerk to notify the county attorney of the delinquency.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 202. Amended by Acts 1959, 56th Leg., p. 221, ch. 130, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 6; Acts 1963, 58th Leg., p. 1017, ch. 424, § 93; Acts 1967, 60th Leg., p. 1915, ch. 723, § 53, eff. Aug. 28, 1967.]

<sup>1</sup> Article 8.19.

<sup>2</sup> Article 8.29.

<sup>3</sup> Article 8.29b.

<sup>4</sup> Article 8.34.

#### Art. 13.24a. Precinct Returns Forwarded to Secretary of State

Subd. 1. Within 30 days after each primary election, the chairman of the county executive committee shall forward to the Secretary of State a report of the number of votes cast for each candidate for a statewide office in each precinct of the county. The report may be in the form of either transcribed or photographic copies of the precinct returns for the statewide offices as made by the presiding judges of the election, or in the form of a tabulated statement compiled from the official canvass by the county executive committee, or in such other form as the Secretary of State approves for reporting the information to him.

Subd. 2. The Secretary of State shall preserve all information received under the provisions of Subdivision 1 of this section as public records of his office, either in the form in which the information is reported to him or in the form of a tabulated statement prepared by him from the reports received from the county chairman, for a period of 10 years, after which time he may transfer the records to the records management division of the State Library for further retention for a period of 20 years. At the expiration of 30 years from the date of the election, the State Librarian may dispose of the records in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

Where the Secretary of State prepares a tabulated statement from reports furnished to him by the county chairman, he shall preserve the reports for a period of five years, after which time he may transfer them to the records management division of the State Library, and the State Librarian may dispose of them in accordance with the procedure outlined in Chapter 494, Acts of the 56th Legislature, Regular Session, 1959.

[Acts 1971, 62nd Leg., p. 47, ch. 24, § 3, eff. March 18, 1971.]

#### Art. 13.25. Canvass by Committee

At the meeting of the county executive committee provided for in the preceding section, returns from the election precincts of the county shall be canvassed by the committee in accordance with the provisions of this section. Such canvass shall include an actual checking and comparison of the poll lists with the tally lists and return sheets, and a mere tabulation of votes as shown by the return sheets shall not be deemed a compliance with this provision. All discovered errors in the returns shall be corrected before the results of the election are certified, and upon the sworn statement of any candidate filed with the committee within seven days after the date of canvass, setting out any alleged error in the primary election returns as certified by the chairman of the committee, the committee shall be reconvened for the investigation and consideration of such alleged error, which provision is hereby declared to be mandatory and may be enforced by writ of mandamus. When the votes have been canvassed in accordance with the foregoing provisions and the result thereof declared by the committee, the chairman of the committee shall make a list of the candidates for county and precinct offices who received the necessary vote to nominate and shall certify the same and deliver it to the county clerk of the county. At the meeting of the committee after the general primary, in case no candidate received a majority of the votes the county executive committee shall determine the two candidates who received the highest number of votes cast for all candidates for the particular office and order their names printed on the ballot for the second primary.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 203. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 94.]

#### Art. 13.26. Tie in Primary

If, upon a canvass of the returns of the first primary election, it appears that for a county or precinct office, the two (2) highest candidates have received an equal number of votes, then the names of such two (2) highest candidates shall be certified for places on the ballot of the second primary, unless the said candidates shall agree in writing to cast lots for such nomination. In case the second and third highest candidates in that race shall be tied and no one has a majority the provisions of Section 181 [art. 13.03] shall govern. Should a tie vote result from any contest in the second primary election, then the executive committee shall provide for the casting of lots in the presence of said candidates, and that candidate who shall be successful by lot shall be certified as the nominee for such office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 204.]

**Art. 13.26a. Withdrawal of Candidate in Second Primary**

Any candidate whose name is to appear on a second primary ballot may withdraw as a candidate by filing with the chairman of the state executive committee in the case of a state or district office, and with the chairman of the county executive committee in the case of a county or precinct office, not later than twenty days prior to the day of the election, a signed request, duly acknowledged by him, that his name not be printed on the ballot at such election. If one of the candidates withdraws, the remaining of the two highest candidates shall be certified as the nominee and a runoff election for nomination to that office shall not be held.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 95. Amended by Acts 1967, 60th Leg., p. 1916, ch. 723, § 54, eff. Aug. 28, 1967.]

**Art. 13.27. Canvass by State Executive Committee**

(a) The chairman of the executive committee for each county shall immediately prepare, within twenty-four hours after the vote in the primary election has been canvassed by the county executive committee as provided in Section 202 of this code,<sup>1</sup> a tabulated statement of the votes cast in his county for each candidate for each nomination for a state, district, county or precinct office, and of those cast for county chairman and precinct chairman, and within that twenty-four-hour period deliver such statement as to a state or district office, in a sealed envelope to the chairman of the state executive committee by registered or certified mail or any other method of delivery in which the sender receives a receipt from the carrier indicating the date of deposit with the carrier. The state chairman shall present the same to the state executive committee as herein provided.

(b) On the second Thursday following the day of the general primary in May, the state executive committee shall meet at a place selected at the meeting held on the second Monday in March preceding, and shall open and canvass the returns of the election as to candidates for state and district offices, as certified by the various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. In the event any candidate for a state or district office received in the general primary the necessary vote to nominate, within twenty days after the canvass the chairman of the state executive committee shall certify the name of such candidate to the Secretary of State, to be printed upon the official ballot for the general election as a candidate of the party for the office to which he was nominated. If such returns show that for any state or district office no candidate received a ma-

majority of all the votes cast for all candidates for such office, the committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority and shall certify same to the county chairmen of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the first Saturday in June thereafter.

(c) Not later than the third Saturday in June of each election year, the state executive committee shall meet at the call of the chairman fixing the date of the meeting, at a place selected at the meeting held under Subsection (b) of this section, and shall open and canvass the returns of the second primary election as to candidates for state and district offices as certified by the various county chairmen to the state chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the state committee and certified by its chairman. Within twenty days thereafter, the chairman of the state executive committee shall certify to the Secretary of State, the names of the state and district candidates receiving the highest vote, to be placed on the general election ballot.

(d) Within twenty days after the date of each canvass, the chairman of the state executive committee shall forward a copy of the tabulated statement prepared by the committee to the Secretary of State, who shall file such statement in the records of his office.

[Acts 1951, 52nd Leg., p. 1097, art. 205. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 7; Acts 1963, 58th Leg., p. 1017, ch. 424, § 96; Acts 1967, 60th Leg., p. 1916, ch. 723, § 55, eff. Aug. 28, 1967; Acts 1979, 66th Leg., p. 238, ch. 125, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 239, ch. 126, § 1, eff. Aug. 27, 1979; 1983, 68th Leg., p. 2241, ch. 418, § 8, eff. Aug. 29, 1983.]

<sup>1</sup> Article 13.24.

**Art. 13.28. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 13.29. To Publish Nominees**

The County Clerk, under his official hand and seal, shall cause the names of the candidates who have received the necessary vote to nominate as directed by the county executive committee and as certified by the chairman of said committee, for each office, to be published in some newspaper published in the county, if any there be, but if there be no newspaper published in the county, then he shall post a list of such names in at least five (5) public places in the county, one (1) of which notices shall be posted at the courthouse door. Provided, that if a contest for the nomination for any county or precinct office in the county be pending, posting and/or publication as to that office shall be deferred

until the contest is finally determined after which, he shall post or publish as to that particular office as hereinabove set out.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 207.]

#### Art. 13.30. Contest of Primary Nominations

(1) The district court shall have original and exclusive jurisdiction of all contests for nominations growing out of primary elections.

(2) The venue of suits or contests between candidates for nomination for State office and United States Senator and Congressman-at-large is hereby fixed in the District Court of Travis County, Texas, unless the parties shall agree upon some other county. The venue of suits between candidates involving party nomination for district offices and United States Congressman shall be in the county in which the fraud or illegality is alleged to have occurred, or in the county that may be agreed upon by the parties. The venue of suits involving party nominations for precinct or county offices shall be fixed as in the county where such cause of action originated. Provided, that nothing herein shall be construed to prohibit the district court in the county where any such contest may be filed from changing the venue to some other adjacent county, upon showing of adequate cause, and in the event of any such change of venue, the district court of the county to which such contest is transferred shall be governed by all the provisions of this Act.

(3) Any candidate desiring to contest the result of any primary election in which he was a candidate shall file his suit in the district court within ten days from the date of canvass of the results of the election by the state executive committee in the case of a state-wide office or a district office in a district which includes territory situated in more than one county, and within ten days from the date of canvass by the county executive committee in the case of a county or precinct office or a district office in a district which consists of only one county or part of one county. Process with a true copy of the petition or complaint attached thereto shall be served upon the opposite party as in other civil suits, except that the return day thereof shall be fixed by the district judge. If, after the exercise of due diligence, the contestee cannot be found in the county in which the contest is filed, service may be had upon the agent or attorney of the contestee, or by leaving the process with some person over the age of sixteen years at the usual place of abode or business of the contestee, or his last address. If service cannot be effected within three days in any of the above methods, service upon the contestee may be had by serving the county clerk in the county where suit is filed, and any candidate who files for a place on the ballot in the primary election shall thereby appoint such county clerk as his agent to receive service for him under the circumstances

above set forth. If service is made by any of the methods above set forth other than actual in hand service to the contestee, the officer effecting such service shall cause an exact copy of the papers so served to be mailed to the contestee by certified mail, return receipt requested, to the address shown on the contestee's filing papers, said mailing to be made immediately after the alternative means of service is completed. If a candidate for a district office in a district which includes territory situated in more than one county files a contest in one or more counties without filing a contest in every county having territory within the district, the contestee shall have five days from the date of first service of process on him in the suit or suits filed by the contestant, in which to file a contest in such other counties of the district as he may desire to do. In a suit filed by a contestee under the authorization of the preceding sentence, the parties shall be designated, and the suit shall proceed, in the same manner as original contests filed under this Section. Nothing herein shall be construed to prevent the contestee in a pending suit from himself filing a contest as a contestant, within ten days from the applicable date of canvass, in the district court of any county having venue of the contest proceeding.

(4) The filing of the suit shall be immediately called to the attention of the district judge by the clerk of said court. If the district court be then in session, the judge thereof shall set the said contest for trial at a date not more than ten (10) days from the date of the filing of said contest. If the district court be not in session at said time, the judge thereof shall order a special term of said court to be convened not later than ten (10) days from the filing of such contest for the hearing of same.

(5) For good cause shown, supported by affidavit of either party, the trial of said contest, in the discretion of the court, may be postponed one (1) time for not exceeding five (5) days.

(6) The contestee shall file his answer within five (5) days from the date of service on the contestee, but either party, or both, shall have the right to amend before announcing ready for trial and set up additional causes of action or matters of defense, as the case may be. Failure of the contestee to file an answer as above provided shall not constitute grounds for a default judgment against the contestee. Where the allotted period for the contestee's answer overlaps the date on which the trial is to begin, the contestee shall be permitted to plead orally in open court, such oral plea to be reduced to writing and filed with the court and with the contestant within three (3) days of said oral plea.

(7) In the trial of such cause the trial judge shall have wide discretion as to matters of pleading, procedure and admissibility of evidence, the purpose of this Section being to subserve the ends of justice,

rather than strict compliance with technical rules of pleading, procedure, and evidence.

(8) The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities proper to determine the issue raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest.

(9) Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of such election contest, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof, illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake.

(10) In addition to the powers and authority heretofore granted to the district courts, where fraud or illegality is charged, if such charges of fraud or illegality be supported by some evidence, or by affidavit of reputable persons, and the ends of justice seem to require it, the court shall have authority to unseal and reopen the ballot boxes to determine controverted issues, and the court may recount, or under its direction cause to be recounted, the ballots cast in any or all precincts of the county to determine the true result of such election. In all such cases in which a reopening of ballot boxes is ordered, the court shall exercise all due diligence to preserve the secrecy of the ballots, and upon completion of such recount, the said ballot boxes with their original contents shall be resealed and redelivered to the county clerk.

(11) When the District Court shall have decided the contest, unless notice of appeal to the Court of Appeals be given and an appeal bond filed within five (5) days, the said Court shall certify its findings to the officers charged with the duty of providing the official ballot for the ensuing election for observance in the preparation of the ballot for that particular party. The trial Court shall further fix a time within which the record in the trial Court shall be filed in the appellate Court, and make all such other orders in the cause as in his discretion may be

necessary and expedient in order to expedite such appeal.

(12) In all contests for party nominations filed in the district courts under authority of this Act, either party thereto may appeal to the Court of Appeals for that particular Supreme Judicial district, which appeal shall be advanced upon the docket of said court and shall have precedence over all other cases. Provided, that no appeal in such cases shall be dismissed as moot merely because of possible interference with the printing of the official ballot unless the appellant has been guilty of negligence in perfecting and prosecuting such appeal, but such appellate court shall retain jurisdiction of such appeal and expeditiously dispose of same. Upon decision of the appeal by the Court of Appeals no motion for rehearing shall be filed except with approval of the court given within three (3) days after such decision. The Supreme Court of Texas shall have no jurisdiction to review any election contest filed under this Act by writ of error, certified question, or any other manner.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 208. Amended by Acts 1967, 60th Leg., p. 1917, ch. 723, § 55a, eff. Aug. 28, 1967; Acts 1981, 67th Leg., p. 799, ch. 291, §§ 88, 89, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2646, ch. 707, § 4(41), eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5192, ch. 943, § 1, eff. Aug. 29, 1983.]

#### Art. 13.31. Name Printed on Ballot

After the names of the successful candidates have been published or posted in compliance with Section 207 of this code (Article 13.29, Vernon's Texas Election Code), and all contests, if any, have been determined, the county clerk shall cause the names of all the nominees to be printed on the official ballot in the column for the ticket of that party. At the appropriate time, the county clerk shall cause to be printed on the official ballot the names of all other candidates certified to him for placement on the ballot in accordance with this code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 209. Amended by Acts 1983, 68th Leg., p. 4709, ch. 821, § 1, eff. Aug. 29, 1983.]

#### Art. 13.32. Repealed by Acts 1983, 68th Leg., p. 4709, ch. 821, § 2, eff. Aug. 29, 1983

#### Art. 13.33. Referendum on Platform Demands

No political party in this state which is required to nominate its candidates by primary election shall, in convention assembled, place in the platform or resolutions of the party any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote at the general primary election of such party next preceding the state convention and shall have been endorsed by a majority of all the votes cast in such primary election. The state executive committee may submit, at the general primary

election, any demand for specific legislation on any subject, or any other matter, which may be proposed for inclusion in the platform or resolutions of the party, and upon petition of five per cent of the voters of the party, as shown by the total number of votes cast for Governor at the last preceding general primary, the state executive committee shall submit any such question or questions to the voters at the next general primary.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 211. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 97.]

**Art. 13.34. Precinct, County, and Senatorial District Conventions**

(a) On the second Saturday after the general primary election day in each election year, there shall be held in each county a county convention of each party holding primary elections; provided, however, that except as provided in the last sentence of this subsection, whenever the territory of a county forms all or part of more than one state senatorial district, in lieu of the county convention in such county there shall be held on the day stated above a convention (hereinafter called senatorial district convention) in each part of the county constituting all or part of each of such senatorial districts. Each county convention or senatorial district convention shall be composed of delegates elected in accordance with party rules adopted under Section 220b of this code (Article 13.43b, Vernon's Texas Election Code) by the qualified members of the party in each precinct at precinct conventions to be held on the general primary election day. However, notwithstanding the provisions of this subsection, in any county which forms all or part of two senatorial districts, the less populous of which has a population of less than 50,000 persons, according to the last preceding federal census, there shall be held one county convention in lieu of the two senatorial district conventions which would otherwise be required by this subsection.

(b) The selection of delegates to the state conventions of a party required to nominate candidates by primary election is governed by party rules adopted under Section 220b of this code. In the state conventions each county or each part of a county which holds a senatorial district convention shall be entitled to one vote for each delegate which it is entitled to elect.

The delegates so elected shall be delegates for all state conventions held throughout the remainder of the year and such of them as may attend such state conventions shall cast the votes for the territory which they represent in such conventions.

(c) The qualified members of the party in each election precinct of the county shall assemble on the date named and shall be called to order by the precinct chairman, or in his absence by any qualified member of the party residing within the precinct.

Before transacting any business, the precinct chairman shall cause to be made a list of all qualified members of the party present. The name of no person shall be entered upon the list nor shall he be permitted to vote, be present at, or participate in the business of the convention until it is made to appear that he is a qualified voter in the precinct, from a certified list of the qualified voters, the same as is required in conducting a general election, and that he has qualified as a member of the party as provided in Section 179a of this code.<sup>1</sup> The precinct convention shall elect from among those present and qualified a permanent chairman and such other officers as may be necessary to conduct its business. The chairman of the convention shall possess all the power and authority that is given to election judges by the provisions of this code. After the convention is organized it shall elect its delegates to the county convention or senatorial district convention, as the case may be, and transact such other business as may properly come before it. The only qualifications for serving as a delegate to a county or senatorial district convention, or to a state convention, are that the person shall be a qualified voter residing within the territory which he is selected to represent and shall be affiliated with the party as prescribed in Section 179a of this code. Such of the delegates selected at the precinct convention as may attend the county or senatorial district convention shall cast the number of votes equal to the full delegate strength of the precinct. The officers of the precinct convention shall keep a written record of its proceedings, including the list of persons present and a list of delegates elected to the county or senatorial district convention, with the residence address of each delegate shown thereon, which shall constitute the returns from the convention. The record, and a copy thereof, shall be signed officially, sealed up and safely transmitted in person or by registered mail by the permanent chairman of the precinct convention within three days after the precinct convention to the county clerk of the county, who shall affix his file mark thereto and who shall promptly deliver the original copy of such return to the chairman of the county executive committee, and the return filed with the county clerk shall be open to public inspection during the regular office hours.

<sup>1</sup> Article 13.01a.

(d) The chairman of the county executive committee shall deliver the lists of delegates named by the precinct conventions in the county to the county convention, or shall deliver the appropriate precinct lists to each of the temporary chairmen of the senatorial district conventions to be held within the county, as the case may be, and these lists shall constitute the temporary roll of those selected as delegates to the county convention or senatorial district conventions and only delegates on such temporary roll shall be permitted to vote in the tempo-

rary organization of the convention. No person shall be permitted to hold a proxy or vote a proxy at a county convention or senatorial district convention. The county chairman shall be the temporary chairman of the county convention. The senatorial district committeeman selected as provided in Section 196a of this code shall be the temporary chairman of the senatorial district convention for a part of a county which is joined with other territory in a senatorial district, and the chairman of the district executive committee selected as provided in Section 196a of this code<sup>1</sup> shall be the temporary chairman in a district composed of only a part of one county. After being called to order by the temporary chairman, the convention shall elect a permanent chairman and such other officers as may be necessary to conduct its business. Immediately upon the adjournment of each such county or senatorial district convention, the permanent chairman thereof shall make out a certified list of the delegates chosen, together with a copy of all resolutions adopted by the convention, and shall sign the same, the permanent secretary of such convention attesting his signature, and within five days after the convention shall forward such certified list, resolutions and copies of each thereof by sealed registered or certified letter to the Secretary of State in Austin, Texas, who shall affix his file mark thereon and who shall deliver the originals thereof to the chairman of the state executive committee, prior to any state convention. The state chairman shall call a meeting of the state executive committee, which shall, at the meeting, prepare a complete list of the delegates elected to the state conventions by each county convention or senatorial district convention as certified by the Secretary of State. The chairman shall then present the certified list to any state convention, at any time prior to its beginning, and such lists shall constitute the temporary roll of those selected as delegates to such conventions, and only delegates on such temporary roll shall be permitted to vote in the temporary organization of any such state convention. No person shall be permitted to hold a proxy or vote a proxy at a state convention from more than one county.

<sup>1</sup> Article 13.18a.

(e) The county executive committee in its meeting on the third Monday in March preceding the general primary, provided for in Section 195 of this code (Article 13.17, Vernon's Texas Election Code), or, upon its failure to act, the county chairman shall determine the hour and place at which the precinct conventions shall be held on primary election day. The committee shall set the time for convening the precinct convention in each precinct between the hours of seven o'clock p.m. and nine o'clock p.m., but the precinct convention may not convene until the ballots in the precinct have been counted. The county chairman shall then be required to post a copy of this order on a bulletin board at the county

courthouse and file a copy of the same in the office of the county clerk, where it shall be open to public inspection. This notice shall be posted and filed by the county chairman at least ten days prior to the holding of the precinct conventions. Also at this meeting the county executive committee, or, upon its failure to act, the county chairman, shall decide the hour and place at which the county convention shall be held, and the county chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk, at least ten days prior to the date of the county convention. When senatorial district conventions are to be held in a county in lieu of the county convention, at this meeting the precinct chairmen for the election precincts which will select delegates to each senatorial district convention, or upon their failure to act, the temporary chairman of the convention, shall decide the hour and place at which each respective senatorial district convention shall be held, and each temporary chairman shall post this order on the bulletin board at the county courthouse and also file a copy of this notice with the county clerk, at least ten days prior to the date of the convention. Should the above-designated persons fail to post such orders and file such notices, then any member of the county executive committee who was entitled to participate in the decision may post such orders and file such notices and such shall constitute the orders and notices required herein. Should more than one member of the county executive committee post such orders and file such notices, then the first posting and filing in point of time shall prevail.

(f) Representatives of newspapers, wire news services, and radio and television stations shall have the right to attend the precinct conventions, the county conventions, the senatorial district conventions, and the state conventions for the purpose of reporting the proceedings thereof.

(g) All nominees for the Legislature or the United States Congress and all state representatives, state senators and members of Congress shall be entitled to admission to the state conventions of their party, but unless elected as a delegate they shall not be entitled to vote or otherwise participate in the affairs of the convention.

(h) No person shall be ineligible to serve as a delegate to any county, senatorial district, state or national convention of any political party by reason of his holding any public office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 212. Amended by Acts 1957, 55th Leg., p. 430, ch. 206, § 1; Acts 1959, 56th Leg., p. 335, ch. 165, § 8; Acts 1962, 57th Leg., 3rd C.S., p. 157, ch. 53, § 1; Acts 1963, 58th Leg., p. 1017, ch. 424, § 98; Acts 1967, 60th Leg., p. 1918, ch. 723, § 56, eff. Aug. 28, 1967; Acts 1969, p. 2404, ch. 809, § 1, eff. Sept. 1, 1969; Acts 1969, p. 2662, ch. 873, § 34, eff. Sept. 1, 1969; Acts 1981, 67th Leg., p. 64, ch. 28, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 1759, ch. 341, § 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4201, ch. 668, § 1, eff. Aug. 29, 1983.]

**Art. 13.34a. Refusing Employee Privilege of Attending Political Convention**

It shall be unlawful for any employer to refuse to an employee the privilege of attending a precinct convention of a political party with which the employee is affiliated or is eligible to affiliate or attending a county, district, or state convention to which the employee is a duly constituted delegate. An employer shall not be required to compensate an employee for the time the employee is absent for the purpose of attending a political convention, but the employee shall not be subjected to any other penalty or deduction of wages because of the exercise of such privilege. Any employer who violates any provision of this section shall be fined not to exceed five hundred dollars.

[Acts 1963, 58th Leg., p. 1017, ch. 424, § 99. Amended by Acts 1981, 67th Leg., p. 1808, ch. 397, § 1, eff. Aug. 31, 1981.]

**Art. 13.34b. Participation in Conventions by Persons Voting on List of Cancelled Voter Registration Certificates**

Notwithstanding any other provision of this code, any person whose name appears on the list of cancelled voter registration certificates and who has voted in the primary election of a party may participate in any part of the convention process of such party on the same basis as any other qualified member of the party.

[Acts 1979, 66th Leg., p. 1670, ch. 698, § 1, eff. Aug. 27, 1979.]

**Art. 13.35. Date and Place for State Convention**

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall announce the date, hour, and place where the State convention of the party shall be held, said date to be any day between the first Tuesday and the last Saturday, inclusive in September, 1980, and each two (2) years thereafter; provided, however, that no decision on the date, hour, and place of holding said convention be made prior to the state convention at which the members of said committee were elected. The chairman of the State executive committee shall file with the Secretary of State a notice of the date, hour, and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 213. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 9; Acts 1975, 64th Leg., p. 2099, ch. 683, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 584, ch. 273, § 1, eff. Aug. 27, 1979.]

**Art. 13.36. Repealed by Acts 1963, 58th Leg., p. 1017, ch. 424, § 121(a), eff. Aug. 23, 1963**

**Art. 13.37. Repealed by Acts 1983, 68th Leg., p. 2244, ch. 418, § 10, eff. Aug. 29, 1983**

**Art. 13.38. State Convention**

The state convention to announce a platform of principles and to announce nominations for Governor and other state offices, held by a political party making nominations by primary election, shall meet as provided in Section 213 of this Code,<sup>1</sup> and shall remain in session from day to day until all nominations are announced and the work of the convention is finished. The convention shall elect a chairman and a vice-chairman of the state executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the state, one of whom shall be a man and the other a woman, the members of the committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold office until his successor is elected; and, in case of a vacancy, a majority of the members of the committee shall fill the vacancy by electing some eligible person thereto, but such person shall be of the same sex as the vacating member and from the same senatorial district.

At any meeting of the state executive committee a person cannot hold a proxy or participate in such meeting unless he is a resident of the same senatorial district as the member giving the proxy, and no person shall be permitted to hold or vote more than one proxy.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 216. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 100; Acts 1975, 64th Leg., p. 2100, ch. 683, § 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 584, ch. 273, § 2, eff. Aug. 27, 1979.]

<sup>1</sup> Article 13.35.

**Art. 13.39. Certificate of Nomination**

Every certificate of nomination made by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 217. Amended by Acts 1967, 60th Leg., p. 1921, ch. 723, § 57, eff. Aug. 28, 1967; Acts 1983, 68th Leg., p. 2241, ch. 418, § 8, eff. Aug. 29, 1983.]

**Art. 13.40. Repealed by Acts 1967, 60th Leg., p. 1932, ch. 723, § 77, eff. Aug. 28, 1967**

**Art. 13.41. Mandamus**

Any executive committee or committeeman or primary officer or other person charged under any provision of this code with any duty relative to the

holding of the primary election, or the canvassing, determination or declaration of the result thereof, or the holding of any party convention, may be compelled by mandamus to perform the same in accordance with the provisions of this code.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 218. Amended by Acts 1967, 60th Leg., p. 1921, ch. 723, § 58, eff. Aug. 28, 1967.]

#### Art. 13.42. Spirit of Law

No immaterial error made by any officer of a primary election; or any immaterial violation of the primary election laws by an elector, shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 219.]

#### Art. 13.43. Contest of Primary

Except for a place on party tickets for public elective offices, all contests within a political party shall be decided by the State, district, or county executive committee, as the nature of the office may require each such committee to retain all such powers and authority now conferred by law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 220.]

#### Art. 13.43a. Contests for Office of Precinct Chairman or County Chairman

Notwithstanding any other provision of this Code, and particularly notwithstanding Section 220<sup>1</sup> thereof, the district courts of this state are vested hereby with jurisdiction to hear and determine election contests relative to the party offices of precinct chairman and county chairman, the same as though it were a contest for a place on a party ticket for public office.

[Acts 1957, 55th Leg., p. 545, ch. 254, § 1. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 101.]

<sup>1</sup> Article 13.43.

#### Art. 13.43b. Party Rules

Subd. 1. On a date no later than 30 days prior to the first precinct convention to be held in 1972, each political party with a State-wide organization which made any nomination for the 1970 general election or plans to make any nomination for the 1972 general election shall file with the Secretary of State a set of specific, detailed, and written party rules for the conduct of its conventions, executive meetings, and any other party meetings.

Subd. 2. The rules shall state, or adopt by reference, the rules of parliamentary procedure which govern the conduct of the party's conventions and meetings from the precinct level through the State level, including rules on quorums, methods by which votes shall be cast and counted, the operation of committees, the appointment and duties of convention committees, presentation of delegate nomina-

tions, presentation of resolutions and other matters for consideration by a convention, and the method of selecting presidential elector candidates. Further, the rules shall provide for the nomination, election and formulae for representative apportionment within the State of all party officials, convention delegates and alternates, and convention officials, except for those party officials whose election is presently provided by statute. Any formulae for apportionment adopted in the rules of any party must be based upon relative population or party strength within participating units, or both. The rules must provide for the periodic and timely publicizing of such rules, the processes and procedures by which the party rules and procedures must be adopted and amended, and any other matters within the discretion of the party. They may not conflict with any statutory prescription or prohibition, and they need not embrace matters which are regulated by statute.

Subd. 3. The chairman of the State Executive Committee of the party is responsible for filing a copy of the rules with the Secretary of State, but any member of the State Executive Committee may file the rules if the chairman fails to do so. The rules must be certified by the State chairman or by two other members of the State committee as having been adopted at a State Convention of the party, with the date and place of holding the convention shown in the certificate, except that temporary rules for 1972 may be adopted by the State Executive Committee of the party subject to action by the next State Convention as provided in Subdivision 6. These party rules shall be published and made available through State party headquarters to any interested person on request. Such rules may provide for amendment by action of the State Party Executive Committee.

Subd. 4. The rules may be changed only by action of a State Convention. When any change is made, a certified copy of the changes shall be filed with the Secretary of State, in the manner described in Subdivision 3, not later than 30 days following their adoption.

Subd. 5. The rules as filed with the Secretary of State shall govern the conduct of the party's conventions and the meetings of its executive committees. Observance of a rule may be enforced through mandamus proceedings as provided in Section 218 of this code and Chapter 723, Acts of the 60th Legislature, 1967 (Article 1735a, Vernon's Texas Civil Statutes), the same as if the rule were embraced in this code.

Subd. 6. If on January 1 of a year in which a general election is held, a party which had nominees on the ballot at either of the last three general elections has not filed a set of rules in accordance with this section, the Secretary of State shall give written notice to the State chairman of the party

within 15 days thereafter, informing him that no nominee of the party will be placed on the ballot for the general election that year unless the rules are filed not later than 30 days prior to the first precinct convention to be held that year, provided that for 1972, the State Executive Committee of the party may adopt temporary rules to be ratified in accordance with this subdivision. Any duly constituted, properly representative committee of the party, on authorization of the State chairman or a majority of the State Executive Committee, may draft temporary rules to be put into effect by a majority vote of the State Executive Committee. These temporary rules must be submitted, with advance publicity preceding their presentation, as an item of business on the official agenda of the party's next State Convention for debate, amendment and permanent ratification. The Secretary of State shall notify each county clerk, not later than the date of the general primary election that year, of any such political party which has failed to comply with the requirements of this section. Neither the Secretary of State nor any county clerk may accept a certification of nominations made by a defaulting party for the general election that year, and no nominee of that party may be placed on the ballot for the election.

[Acts 1971, 62nd Leg., p. 1947, ch. 589, eff. Aug. 30, 1971.]

**Art. 13.44. Parties of Ten Thousand (10,000) and Less Than Two Hundred Thousand (200,000)**

The provisions of Articles 2980,<sup>1</sup> 3008,<sup>2</sup> and 3012,<sup>3</sup> Revised Civil Statutes of Texas, 1925, as amended by this Act, relative to the form, numbering and secrecy of the ballot, as well as the procedure involving the selection of the ballot and the removal of the detachable stub, shall apply to all primary elections as well as those held under or by authority of Chapter 467, Acts, Second Called Session, Forty-fourth Legislature, as amended,<sup>4</sup> except as provided in Section 7 hereof.<sup>5</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 221.]

<sup>1</sup> Article 6.05.

<sup>2</sup> Article 8.11.

<sup>3</sup> Article 8.15.

<sup>4</sup> Repealed; see, now, Alcoholic Beverage Code.

<sup>5</sup> See art. 7.17 of this Code.

**Art. 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor**

**Parties Receiving More Than Two Percent of Vote for Governor**

Subd. 1. Beginning with the year 1976, any political party whose nominee for Governor in the last preceding gubernatorial general election received as many as two percent but not more than 20 percent of the total votes cast for Governor must nominate

its candidates for the general election by conventions as provided in Sections 224 and 225 of this code.<sup>1</sup> In the year 1974, a party whose candidate for Governor received as many as two percent but less than 20 percent of the total votes cast for Governor in the general election held in 1972 may make its nominations by primary elections or by conventions. The state executive committee of a party which has a choice as to the method of nomination in 1974 shall decide, and by resolution declare, whether the party nominations will be made by conventions or by primary elections, and shall certify their decision to the Secretary of State not later than 12 months before the 1974 general election.

**Parties Receiving Less Than Two Percent of Vote for Governor**

Subd. 2. (a) Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election for that office, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election for that office, may nominate candidates by conventions as provided in Sections 224 and 225 of this code, but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 30 days after the date for holding the party's state convention, the lists of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,<sup>2</sup> signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election for that office; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election for that office. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition.

(b) The following statement shall appear at the head of each page of the petition: "I know the contents of this petition, requesting that the names of the nominees of the \_\_\_\_\_ Party be printed on the ballot for the next general election. I am a

qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this voting year." The petition may be in multiple parts. To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters. The petition may not be circulated for signatures until after the date of the party's precinct conventions. Any signatures obtained on or before that date are void.

(c) Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year, or any person who votes in a primary election or participates in a convention of any other party during the same voting year after having signed the petition, is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500.

(d) The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

(e) At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,<sup>3</sup> he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements.

[Acts 1959, 56th Leg., p. 335, ch. 165, § 11. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 102; Acts 1967, 60th Leg., p. 1921, ch. 723, § 59, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 2662, ch. 878, § 35, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 1409, ch. 542, § 6, eff. Aug. 27, 1973; Acts 1975, 64th Leg., p. 2094, ch. 682, § 21, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 2, eff. Aug. 29, 1977.]

<sup>1</sup> Articles 13.47 and 13.48.

<sup>2</sup> Articles 13.45a and 13.47.

<sup>3</sup> Article 1.03.

#### Art. 13.45a. Regulation of Party Affairs and Conventions

Subd. 1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

##### Party Not Holding Primary Elections

Subd. 2. The management of party affairs and the conduct of conventions of political parties which are making nominations by the convention method are not subject to the provisions of Sections 196, 196a, 196b, 212, 213, 215, and 216 of this code.<sup>1</sup> Except as to matters regulated in this code by express provisions applying to such parties, each such party has authority to regulate its affairs and convention procedures.

##### Time and Place of Precinct and County Conventions

Subd. 3. The county executive committee of each political party which is making nominations by the convention method shall determine, at a meeting held at least twenty days before the date of the precinct conventions, the hour and place of holding each precinct convention in such county, as well as the hour and place of holding the county convention. Should the county executive committee fail to do so, it shall be the duty of the county chairman to make such determination. It shall be the duty of the county chairman to post a notice of the hours and places of holding the conventions on a bulletin board at the county courthouse and to file a copy thereof in the office of the county clerk at least ten days prior to the precinct conventions. The notice filed with the county clerk shall be open to inspection by the public during office hours of the clerk. Failure of the county chairman to post or to file the above notice as provided herein shall make such chairman ineligible to be a delegate or alternate delegate, or to hold or vote a proxy at the next succeeding county, district and state conventions of the party.

Should the county chairman fail to file with the county clerk a notice of the hour and place of holding the precinct convention in any precinct, then any qualified voter, resident in such precinct, may file with the county clerk a notice of the hour and place of holding such precinct convention, and such shall constitute the legal hour and place therefor. Should more than one such qualified voter file such notice, then the first filing in point of time shall prevail. A certificate of the county clerk as to the filing or nonfiling of any notice provided in this section shall be conclusive.

Neither the county chairman nor the county executive committee shall appoint any precinct chairman during that period of time subsequent to the posting and filing of notices for the precinct conventions and prior to the time of holding such precinct conventions. Nothing herein, however, shall prevent qualified voters of a precinct having no chairman

from meeting, electing their own chairman and holding a precinct convention of such party, but if an hour and place therefor has been designated in either of the methods provided above, then the convention shall be held at such hour and place.

The county convention of any such party shall be held in a public place at the county seat.

#### Precinct Convention Lists of Certain Parties

Subd. 4. At each precinct convention of a party subject to the provisions of Subdivision 2 of Section 222 of this code,<sup>2</sup> the precinct chairman shall serve as the temporary chairman of the convention until a permanent chairman is elected. The temporary chairman shall cause a list to be made of the names of all persons attending the convention and participating therein, together with the address (including street address or post office address) and registration certificate number of each participant. Within three days after the precinct convention, he shall officially sign and certify to the list and shall transmit one signed, certified copy to the chairman of the state executive committee of the party, and shall file another signed, certified copy in the office of the county clerk of the county wherein the precinct is situated.

[Acts 1967, 60th Leg., p. 1922, ch. 723, § 60, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

<sup>1</sup> Articles 13.18, 13.18a, 13.18b, 13.34, 13.35, 13.37 and 13.38.  
<sup>2</sup> Article 13.45.

**Art. 13.46. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975**

**Art. 13.47. Conventions of Parties Not Required to Hold Primary**

Political parties which are not required by law to make nominations by primary election may make nominations by conventions as provided herein.

Nominations for statewide offices shall be made at a state convention, which shall be held on the second Saturday in June of the election year, and which shall be composed of delegates selected in the various counties at county conventions held on the second Saturday in May. The county conventions shall be composed of delegates from the general election precincts of such counties elected therein at precinct conventions held in such precincts on the first Saturday in May.

Nominations for district offices of districts composed of more than one county or part thereof shall be made at district conventions held on the third Saturday in May of the election year, composed of delegates elected thereto from the counties having territory within the district, at the county conventions held on the second Saturday in May.

Nominations for county and precinct offices and for district offices of districts composed of only one

county or part of one county shall be made at the county conventions held on the second Saturday in May.

The state executive committee of each party shall determine the formula by which the number of delegates to the county, district, and state conventions of that party shall be governed, and shall also formulate such rules as it deems desirable with respect to participation of delegates at a county convention in the nomination of candidates for precinct offices and for district offices of districts composed of only a part of the county, and in the election of delegates to a district convention where only a part of the county is included in the district.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 224. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 13; Acts 1963, 58th Leg., p. 1017, ch. 424, § 102; Acts 1967, 60th Leg., p. 1923, ch. 723, § 61, eff. Aug. 28, 1967.]

**Art. 13.47a. Application for Nomination; Affidavit of Intent to Run; Filing**

Sec. 1. No person shall be nominated by any state, district, or county convention held pursuant to Articles 222, 223 and 224<sup>1</sup> of this Code unless he has filed with the chairman of the appropriate executive committee an application requesting that his name be placed before the convention as a candidate for nomination. The application shall conform to the requirements of Article 190 of this Code (Article 13.12, Election Code, Vernon's Texas Civil Statutes), and shall be filed in the same manner and within the time prescribed by that Article, except that it shall request that the candidate's name be placed before the convention instead of requesting that his name be placed on the general primary ballot.

Sec. 2. A person who has been nominated by a convention may decline the nomination, but he shall not be eligible for nomination by that party to any other office to be voted on at the same election except as a candidate for an unexpired term where the vacancy in office occurred subsequent to the date of the convention at which he was originally nominated.

Sec. 3. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

Sec. 4. The requirements of Section 1 do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing applications for a place on a primary election ballot as prescribed in Paragraph 2 of Section 190 of this code (Article 13.12, Vernon's Texas Election Code).

[Acts 1961, 57th Leg., p. 173, ch. 90, § 1. Amended by Acts 1967, 60th Leg., p. 1924, ch. 723, § 61a, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2095, ch. 682, §§ 22, 28, eff. Sept. 1, 1975.]

<sup>1</sup> Articles 13.45, 13.46 and 13.47.

**Art. 13.48. Nominations Certified**

Nominations so made by a state convention shall be certified by the chairman of the state executive committee of such party to the Secretary of State. Nominations made by a district convention shall be certified by the chairman of the district executive committee to the Secretary of State. Nominations made by a county convention for county and precinct offices shall be certified by the chairman of the county executive committee to the county clerk, and nominations for district offices shall be certified by said chairman to the Secretary of State. Nominations by party conventions must be certified to the proper officer within twenty days after the date of the convention at which the nomination was made.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 225. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 103.]

**Art. 13.49. Illegal Participation**

No person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 226.]

**Art. 13.50. Nonpartisan and Independent Candidates**

Subd. 1. This section applies to nonpartisan or independent candidates for federal, state, district, county, and precinct offices in the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). A person may run as a nonpartisan or independent candidate for any such office, other than the offices of president, vice president, and presidential elector, by complying with this section and other applicable provisions of this code.

Subd. 2. (a) As a condition precedent to having a candidate's name printed on the official ballot as an independent candidate under this section, in addition to the application required by Subdivision 3 of this section, the person must file, by the deadline provided in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), a declaration of his intent to run as an independent candidate. The declaration shall state the person's name, occupation, county of residence, post office address, age, and the office for which he intends to run, and shall be signed and duly acknowledged by the person desiring to be a candidate. It shall be filed with the officer with whom the application required by Subdivision 3 of this section is filed.

(b) The requirements of Paragraph (a) of this subdivision do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing application for a place on a primary election ballot as prescribed in Section 190 of this

code (Article 13.12, Vernon's Texas Election Code), and do not apply to candidates for any office for which the filing deadline in a primary election is extended under the provisions of Paragraph 2a of Section 190. However, an independent candidate who is not required to file a declaration of intent under Paragraph (a) of this subdivision must file with the secretary of state or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

Subd. 3. The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within 30 days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding gubernatorial general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding gubernatorial general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed 500.

Subd. 4. No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at

either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election. An application may not be circulated for signatures until the day after the general primary election day, or if a runoff primary election is held for the office sought by the applicant, until the day after the runoff primary election day. A signature obtained before the day an application may be circulated is void.

Subd. 5. In addition to the person's signature, the application shall show each signer's address, the number of his voter registration certificate, and the date of signing.

Subd. 6. Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 227. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 104; Acts 1975, 64th Leg., p. 2095, ch. 682, § 23, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1042, ch. 472, § 1, eff. Aug. 27, 1979.]

#### Art. 13.51. Signer's Statement on Application; Verification

The following statement shall appear at the head of each page of the application: "I know the contents of this application; I have not participated in the general primary election or the runoff primary election of any party which has nominated, at either such election, a candidate for the office for which I desire \_\_\_\_\_ (here insert the name of the candidate) to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force and am signing this application of my own free will." The application may be in multiple parts. To each part of the application shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the application, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that

the signatures thereon are genuine and the persons signing it are registered voters.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 228. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 104; Acts 1977, 65th Leg., p. 1703, ch. 677, § 3, eff. Aug. 29, 1977.]

#### Art. 13.52. Consent to Run

Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state or of the district, as the case may require, and the county judge shall issue his instruction to the county clerk of the county, directing that the name of the candidate on whose favor the application is made shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that any candidate who is required by Subdivision 2, Section 227 of this code (Subdivision 2, Article 13.50, Vernon's Texas Election Code) to file a statement of intent to become an independent candidate must have filed such statement in compliance with the provisions of that subdivision, and any candidate not required to file such statement must file with the Secretary of State or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 229. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 104; Acts 1975, 64th Leg., p. 2097, ch. 682, § 24, eff. Sept. 1, 1975.]

#### Art. 13.53. Independent Candidates at City or Town Election

Independent candidates for office at a city or town election may have their names printed upon the official ballot on application signed by qualified voters addressed to the mayor, such application being in the same form and subject to the same requirements herein prescribed for application to be made to the Secretary of State or the county judge; provided, that in city elections it shall be necessary that the application be signed by qualified voters equaling five per cent of the entire vote cast for mayor at the last municipal election, or by twenty-five qualified voters, whichever is the lesser number; and the application and the candidate's written<sup>1</sup> consent must be filed at least thirty days prior to the election day. Provided further, that if the office is one to which two or more persons are to be elected, the application may be for as many candidates as there are persons to be elected to that office, and a voter may sign applications of candidates for that office in the number that is to be elected; but if he signs the applications of more than the number to be elected, the signature shall be void as to all such applications. And provided further, in elections for a city or town office, it shall not be necessary that independent candidates be nominated, but anyone otherwise qualified may have his name printed upon the official ballot for a

particular office by filing his sworn application with the mayor at least thirty days prior to the election day and by paying such filing fees as may be required by statute or by charter provision.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 230. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.]

<sup>1</sup> So in enrolled bill.

#### Art. 13.54. Nominations by Parties Without State Organization

Any political party without a state organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor by a county convention held on the second Saturday in May of the election year, which convention shall be composed of delegates from the various election precincts in the county, elected therein at conventions held in such precincts on the first Saturday in May. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge not later than June 30 following the conventions, signed by qualified voters of the county equal in number to at least three per cent of the entire vote cast for governor in such county at the last general election for that office. No person who is affiliated with any other political party is eligible to sign the application. The application shall contain the following information with respect to each person signing it: his address, the number of his voter registration certificate, and the date of signing. The application may not be circulated for signatures until after the date of the precinct conventions, and any signatures obtained on or before that date are void. The application may be in multiple parts. To each part there shall be attached an affidavit of the person who circulated it, who must be a registered voter in the county, stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to his best knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are qualified voters of the county.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 231. Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 25, eff. Sept. 1, 1975.]

#### Art. 13.55. For City and Town Elections

Each incorporated city or town in this State, whether incorporated under the general or special laws, may make nominations for office in the following manner: in each of said cities and towns

there shall be an executive committee for each political party, consisting of a city chairman and one (1) member for each ward in such city or town, and in case such city or town is not divided into wards, for either political or election purposes, then there shall be selected four (4) members of said committee, in addition to the city chairman. If any city or town shall be divided into wards, for either political or election purposes, or both, then such party executive committee shall consist of one (1) member from each ward and a city chairman of such executive committee. Provided, however, that no city or town in this State shall have a smaller number than four (4) executive committeemen and a chairman of such executive committee. In all cities and towns which now have no executive committee, the county chairman of the party desiring to make nominations in such cities and towns shall appoint an executive committee to serve until the next city election shall be held, and in each city and town in this State in which a political party may desire to make nominations, there shall be held, at least thirty (30) days prior to the regular city election, an election at which there may be nominated by such political party, officers to be elected at the next city election, and at which election there shall be selected the executive committee for such party in said city or town herein provided for, and in all such city primary elections, the provisions of the law relating to primary elections and general elections shall be observed. The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; provided, that upon petition being made to said city or county chairman, signed by twenty-five per cent (25%) of the voters of the party in such city, as shown by the last general State election, requesting that party nominations be made for city officers, then said city executive committee, through an order of its chairman, shall order a primary election or mass convention of the qualified voters of the party, as may be petitioned for by the voters presenting said petition, and it shall thereupon be the duty of said city executive committee to grant such request as shall be contained in such petition, and such primary election or mass convention shall be ordered, and it shall be mandatory upon such city or county chairman to order such election or mass convention to be held within ten (10) days from the time such petition is presented. At such primary election or mass convention a new executive committee shall be selected to serve during the ensuing terms; provided that this law shall not be construed so as to prevent independent candidates for city offices from having their names upon the official ballot, as provided by law. This section shall not repeal the provisions of any charter heretofore or hereafter specially granted to any city in this State.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 232.]

**Art. 13.56. Death, Withdrawal, or Ineligibility of Candidate; Filling Vacancy in Nomination**

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments. If the declination occurs on or before the 65th day before general election day, the officer receiving the declaration shall take the necessary action to have the name of the nominee removed from the ballot.

(b) If on or before the 65th day before the day of the election, a nominee dies, declines the nomination as provided by this subsection, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. An executive committee may not make a substitute nomination after a declination unless the nominee declines the nomination because of a catastrophic illness, the diagnosis of which occurred after the 65th day before general primary election day, that would incapacitate the nominee permanently and continuously to prevent him from performing the duties of the office sought and the nominee files with the declaration required by Subsection (a) of this section a certificate describing the illness signed by at least two licensed physicians. The secretary of state shall prescribe the form of the certificate. A certificate of the substitute nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The certificate must be filed not later than the 60th day before the day of the election. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 5th day after the deadline for certification by the district committee and in any event not later than the 60th day before election day.

(d) If a party nominee dies or declines the nomination or is declared ineligible after the 65th day preceding the day of the general election, the procedure set out in Section 104 of this code (Article 8.22, Vernon's Texas Election Code) shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate in the general election for state and county officers may not withdraw after the 65th day before election day, and a candidate in an election other than the general election for state and county officers may not withdraw after the 21st day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible on or before the 65th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and on or before the 65th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible after the 65th day before election day, his name shall be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code (Article 8.22, Vernon's Texas Election Code) shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(j) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 233. Amended by Acts 1963, 56th Leg., p. 1017, ch. 424, § 105; Acts 1967, 60th Leg., pp. 1924, 1925, ch. 723, § 62, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 887, ch. 332, § 5, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 531, ch. 112, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2243, ch. 418, § 9, eff. Aug. 29, 1983.]

#### Art. 13.57. Party Name

No new political party shall assume the name of any preexisting party; and the party name printed on the official ballot shall not consist of more than three words. As used in this section, the term "preexisting party" does not include a political party which is no longer in existence.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 234. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 36, eff. Sept. 1, 1969.]

#### Art. 13.58. National Convention

(a) Any political party holding primary elections in an election year during which it desires to elect delegates to a national convention shall hold a state convention at such hour and place and on such date as may be designated by the state executive committee of the party, such date to be any day between the second and fourth Tuesdays, inclusive, following the second primary election date. Such convention shall be composed of delegates duly elected at the county and senatorial district conventions as provided for in Section 212 of this code.<sup>1</sup> The chairman of the state executive committee shall notify the Secretary of State as to the date, hour and place at which the state convention will be held and shall also mail a copy of such notice to each county chairman and the temporary chairman of each senatorial district convention in the state at least ten days prior to the date of the state convention.

(b) Any political party not holding primary elections which desires to elect delegates to a national convention shall elect such delegates at the state convention provided for in Section 224 of this code.<sup>2</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 235. Amended by Acts 1959, 56th Leg., p. 335, ch. 165, § 14; Acts 1967, 60th Leg., p. 1925, ch. 723, § 63, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2100, ch. 683, § 3, eff. Sept. 1, 1975.]

<sup>1</sup> Article 13.34.

<sup>2</sup> Article 13.47.

#### Art. 13.58a. Expired

This article, enacted by Acts 1975, 64th Leg., p. 630, ch. 261, § 1, requiring certain political parties to hold presidential primary elections and prescribing the method for selecting delegates to national nominating conventions of those parties, expired by the terms of § 2 of the Act on March 1, 1977.

#### Art. 13.59. Nominations for Two (2) or More State Offices of Same Classification

That whenever nominations for two (2) or more state offices of the same classification are to be made at the same primary or general election, each such office shall be separately designated on the official ballot used at such primary or general election by numbering the places as "No. 1," "No. 2," "No. 3," etc., and the candidates for each place shall be separately nominated. Such designations shall be made by the State Committee of the political party holding the election. Each candidate for nomination for such offices shall designate in the announcement of his candidacy, and in his request to have his name placed on the official primary ballot, the number of the nomination or place for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. No person shall be a candidate for more than one of such places.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 236.]

#### Art. 13.59a. Nonpartisan Elections in Home-Rule Cities

A home-rule city with a population of more than 900,000 according to the last federal census that holds nonpartisan elections for a city office and that has adopted by charter requirements for both a petition and fee of \$50 to be filed in order to have a candidate's name placed on the official ballot may conduct nonpartisan elections for a city office in accordance with its charter provisions.

[Acts 1983, 68th Leg., p. 2430, ch. 431, § 1, eff. Aug. 29, 1983.]

### CHAPTER FOURTEEN. POLITICAL FUNDS REPORTING AND DISCLOSURE ACT OF 1975

#### Art.

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**Art. 14.01. Definitions**

As used in this chapter—

(A) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination or election to any public office which is required by law to be determined by an election. Some examples of affirmative action are:

1. Filing of application for a position on a ballot.
2. Filing of application for nomination by a convention under Section 224a of this code.<sup>1</sup>
3. Independent candidate's declaration of intent under Section 224a of this code.
4. Public announcement of a definite intent to run for office at a particular election, either with or without designating the specific office to be sought.
5. Statement of definite intent and solicitation of support through letters or other modes of communication, prior to a public announcement.
6. Solicitation of or acceptance of a contribution for use in a future election.
7. Seeking the nomination of an executive committee of a political party to fill a vacancy pursuant to Section 233 of this code (Article 13.56, Vernon's Texas Election Code).
8. Filing of a designation of a campaign treasurer.

(B) "Office-holder" is defined as any person serving in a public office as defined herein and any other constitutionally designated member of the Executive Department.

(C) "Corporation" is defined as every organization organized or operating under authority of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, any corporation or association organized by authority of any law of Congress or of any other state or nation than Texas, national, state, private or unincorporated banks, trust companies, building and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies,

cooperatives, abstract and title insurance companies, and stock companies. However, any political committee whose only principal purpose is to accept contributions and to make expenditures, as defined in this section, shall not be deemed to be a corporation under the provisions of this chapter if such committee is incorporated for liability purposes only. Incorporation of a political committee shall not relieve any person of any liability, duty, or obligation created pursuant to any provision of the Texas Election Code.

(D) "Contribution" is defined as: (1) any advance, loan, deposit or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election; providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election and that the receipt of or making of the contribution or expenditure may occur before, during, or after an election; or as (2) any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services, or anything of value knowingly accepted by any officeholder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision. "Contribution" does not include an honorarium to a public servant that is excluded from the application of penal sanction by Section 36.10(3) of the Penal Code.

(E) "Expenditures" is defined as any payments made or obligations incurred (1) by a candidate, or political committee, when such payments or obligations are involved in an election; or (2) by an office-holder, when such payments are made in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the political subdivision. "Involved in an election" has the same meaning as in (D) above.

(F) "Election" is defined as any election held to nominate or elect a candidate to any public office. It shall also include any election at which a measure is submitted to the people.

(G) "Public office" is defined as any office created by or under authority of the laws of this state, that is filled by the voters.

(H) "State office" is defined as any public office of the state government which is to be filled by the choice of the voters of the entire state, except presidential electors.

(I) "District office" is defined as any public office of the state government, less than state-wide, which is to be filled by the choice of the voters residing in more than one county, and the offices of State Senator, State Representative, and State Board of Education.

(J) "County office" is defined as any public office of the state or county government which is to be filled by the choice of the voters residing in only one county or less than one county, except for those offices specifically enumerated as district offices above.

(K) "Municipal office" is defined as any public office of any incorporated city, town, or village which is to be filled by the choice of the voters.

(L) "Office of a political subdivision" is defined as any public office of any political subdivision of this state which is organized as a body politic and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.

(M) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.

(N) "Person" is defined as an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.

(O) "Political committee" is defined as any group of persons (1) formed to collect contributions or make expenditures in support for or in opposition to a candidate or candidates, whether presently identifiable or not, or a measure or measures, whether presently identifiable or not, on a ballot in a public election; or (2) formed to collect contributions or make expenditures for office holders whether presently identifiable or not.

(P) "Specific purpose political committee" is defined as: (1) any political committee which accepts only contributions and/or makes only expenditures in support for or in opposition to candidates who are identifiable and for whom the office(s) to be sought are known and any political committee only accepting contributions and/or making expenditures in support for or in opposition to measures which are identifiable; or (2) any political committee which accepts only contributions and/or makes only expenditures in assisting identifiable office-holders.

(Q) "General purpose political committee" is defined as: (1) any political committee which accepts contributions and/or makes expenditures in

support for or in opposition to candidates who are indefinite in identity or for whom the office(s) to be sought are unknown and any political committee which accepts contributions and/or makes expenditures in support for or in opposition to measures which are indefinite in identity; or (2) any political committee which accepts contributions and/or makes expenditures in assisting office-holders, who are not identified.

(R) "Political advertising" is defined as anything in favor of or in opposition to any candidate for public office or office of a political party, or in favor of or in opposition to any political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any measure submitted to a vote of the people, which is communicated in any of the following forms:

(1) anything published in a newspaper, magazine, or journal or broadcast over a radio or television station in consideration of money or other thing of value; or

(2) any handbill, pamphlet, circular, flier, commercial billboard sign, bumper sticker, or similar printed material.

The term does not include nonpolitical letterheads, ordinary printed invitations to and tickets for fund-raising events or other affairs, campaign pins, buttons, fingernail files, matchbooks, emblems, hats, pencils, and similar materials.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 237. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 106; Acts 1973, 63rd Leg., p. 1101, ch. 423, § 2, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2257, ch. 711, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 735, ch. 276, §§ 1, 2, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2708, ch. 738, § 2, eff. Jan. 1, 1982; Acts 1981, 67th Leg., p. 3325, ch. 873, § 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2584, ch. 444, § 1, eff. Sept. 1, 1983.]

<sup>1</sup> Article 13.47a.

The 1973 Act, which by §§ 2 to 13 amended various articles of this chapter and art. 3.05(b), provided in §§ 1, 14 to 16:

"Sec. 1. This Act shall be styled the Campaign Reporting and Disclosure Act of 1973.

"Sec. 14. Nothing in this Act repeals or otherwise affects Article 5428a, Revised Civil Statutes of Texas, 1925, as added by House Bill No. 8, Acts of the 63rd Legislature, Regular Session, 1973.

"Sec. 15. All laws in conflict with this Act are hereby repealed to the extent of the conflict only.

"Sec. 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable."

The 1975 Act, which by §§ 2 to 14 amended arts. 14.01 to 14.10, 14.13 and 14.15, provided in §§ 1, 15 to 17:

"Sec. 1. This Act shall be styled the Political Funds Reporting and Disclosure Act of 1975."

"Sec. 15. Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973.

"Sec. 16. There is hereby appropriated to the Secretary of State out of the General Revenue Fund the amount of \$204,020 for the year ending August 31, 1976, and the amount of \$147,020 for the year ending August 31, 1977, for the purpose of implementing this Act.

"Sec. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

#### Art. 14.02. Appointment of Campaign Treasurer

(A) Notwithstanding the following subsections of this section, no designation of a campaign treasurer shall be required in order that an office-holder accept contributions or make expenditures as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) and Section 237(E)(2), Texas Election Code, as amended (Article 14.01(E)(2), Vernon's Texas Election Code). Unexpended campaign contributions, as defined in Subsection (D)(1) of Section 237, which are lawfully accepted, may be used by an office-holder for expenditures in connection with the office pursuant to subsection (E)(2) of Section 237. Notwithstanding the requirement set forth in subsection (F)(1) of this section, any contribution as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) that has been lawfully accepted prior to the designation of a campaign treasurer may be utilized as campaign contributions after such designation.

(B) (1) Every candidate for nomination to or election to a state or district office and every specific purpose political committee in any such election or in an election involving a statewide or district measure and every general purpose political committee shall designate a campaign treasurer by written appointment filed with the Secretary of State, and may also designate assistant campaign treasurers for each county by written appointment to be filed either with the county clerk of said county, or the Secretary of State.

(2) Each specific purpose political committee in an election involving a state or district office or a statewide or district measure and each general purpose political committee may also designate an assistant campaign treasurer to act in the absence of the political committee's campaign treasurer. The written appointment of the assistant campaign treasurer must be filed with the Secretary of State.

(C) Every candidate for nomination to or election to a county office and every specific purpose political committee in any such election or in an election involving a county measure shall designate a campaign treasurer by written appointment to be filed with the county clerk of such county.

(D) Every candidate for nomination to or election to a municipal office or an office of a political subdivision and every specific purpose political com-

mittee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign treasurer by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate assistant campaign treasurers for each county affected by such candidacy.

(E) Any campaign treasurer or assistant campaign treasurer designated as provided in this Section may be removed by the candidate or political committee at any time by the written appointment of a successor filed in the manner provided for the original designations.

(F)(1) Except as expressly permitted in this chapter, no contribution as defined in Section 237(D)(1) shall be accepted nor any expenditure, as defined in Section 237(E)(1), including the paying of any filing fee, made by an individual until he has filed the name of his campaign treasurer with the appropriate authority. No contribution shall be accepted nor any expenditure made by a political committee until it has filed the name of its campaign treasurer with the appropriate authority. If it is not otherwise possible for a candidate or specific purpose political committee to determine which authority is appropriate for the filing of campaign treasurer designation, then a filing with the Secretary of State shall be sufficient, but only until such time as the appropriate authority may be determined in accordance with Subsections (B), (C), and (D) of this Section.

*Text of (F)(2) as amended by Acts 1983, 68th Leg., p. 2585, ch. 444, § 2*

(2) It is unlawful for a political committee to make a contribution or an expenditure in support of or in opposition to a candidate for a state or district office in a primary or general election unless the committee's designation of campaign treasurer has been filed before the 30th day preceding the appropriate election day.

*Text of (F)(2) as amended by Acts 1983, 68th Leg., p. 2657, ch. 459, § 1*

(2) It is unlawful for a political committee to make a contribution or an expenditure in support of or in opposition to a candidate for a state or district office in a primary or general election unless the committee's designation of campaign treasurer has been filed before the 30th day preceding the appropriate election day.

(G) It shall be unlawful for any candidate, political committee, campaign treasurer, assistant campaign treasurer, or any other person to expend funds from any unlawful contributions.

(H) Nothing in this Act shall be construed to prohibit a candidate from appointing himself or herself as the campaign treasurer.

(I) An individual intending to become a candidate for public office may file a designation of campaign treasurer before taking any affirmative action for the purpose of seeking nomination or election.

(J) A designation of a campaign treasurer or an assistant campaign treasurer shall be deemed to be timely filed if it is placed in the United States Post Office properly addressed to the appropriate authority within the time limits applicable to such designation. The postmark will be prima facie evidence of the date that such statement was deposited with the post office. The person filing the designation may show by competent evidence that the actual date of posting was to the contrary. No charge shall be made for filing designations of campaign treasurer or assistant campaign treasurer with any authority.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 238. Amended by Acts 1973, 63rd Leg., p. 1102, ch. 423, § 3, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2259, ch. 711, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 736, ch. 276, §§ 3, 4, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2585, ch. 444, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2657, ch. 459, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3111, ch. 533, § 1, eff. Aug. 29, 1983.]

#### Art. 14.03. Campaign Contributions

(A) It shall be lawful for an individual not acting in concert with any other person to expend a sum in a campaign which shall not in the aggregate exceed \$100 per election for any lawful purpose out of his own funds to aid or defeat any candidate or measure, where the sum is not to be repaid to him. Such a sum will not be reportable to any authority unless it constitutes a contribution. If an individual not acting in concert with any person wishes to expend more than \$100 for any lawful purpose out of his own funds to aid or defeat any candidate or candidates or measures, he may do so either by making a contribution or by complying with all of the provisions of this chapter as if he were a campaign treasurer of a political committee.

(B) It shall be lawful for any individual to donate his own personal services and personal traveling expenses to aid or defeat any candidate or measure and such a donation shall not constitute a contribution or expenditure, as defined in Section 237 of this code<sup>1</sup> only so long as he either is not compensated or reimbursed for same.

(C) It shall be unlawful for any person to make any contribution or expenditure in the name of another or on behalf of another without revealing that fact in order that the proper disclosure may be made.

(D) Except as expressly permitted by Paragraphs (A), (B), and (E) of this Section it shall be unlawful for any person, other than a candidate, his cam-

paign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee, to make or authorize any campaign expenditure. Except as provided in Paragraphs (A), (B) and (E) of this Section, campaign expenditures must be made by the candidate, campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee.

(E)(1) It shall be lawful for a corporation or a labor organization to expend its own funds for the purpose of aiding or defeating a measure by making a contribution to a political committee that supports or opposes measures exclusively.

(2) It shall be lawful for a corporation or labor organization, not acting in concert with any other person, to make direct expenditures from its own funds for the purpose of aiding or defeating a measure by complying with this Section as if the corporation or labor organization were an individual.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 240. Amended by Acts 1973, 63rd Leg., p. 1103, ch. 423, § 5, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2261, ch. 711, § 5, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2587, ch. 444, § 3, eff. Sept. 1, 1983.]

<sup>1</sup> Article 14.01.

#### Art. 14.03a. Form of Contribution

It is unlawful for a person except a general purpose political committee to accept a single contribution from a person in the form of cash that exceeds \$100.

[Acts 1981, 67th Leg., p. 3325, ch. 873, § 2, eff. Sept. 1, 1981.]

#### Art. 14.03b. Restriction on Contributions to Certain Office-Holders During Regular Session

(a) It is unlawful for a person to make a contribution to a person who holds a state office or to a member of the legislature, or to a specific-purpose political committee that supports or assists a person who holds a state office or a member of the legislature, during a period beginning on the 30th day before the day a regular session of the legislature is convened and continuing through the day of final adjournment.

(b) It is unlawful for a person who holds a state office, a member of the legislature, or a specific-purpose political committee that supports or assists either a person who holds a state office or a member of the legislature to accept a contribution during the period prescribed in Subsection (a) of this section.

(c) This section does not apply to a contribution that was made and accepted with the intent that it be used in an election held or called during the period prescribed in Subsection (a) of this section in

which the person accepting the contribution is a candidate if the contribution was made after the person has designated a campaign treasurer for the office sought and before the person was sworn in to that office.

[Acts 1981, 67th Leg., p. 3325, ch. 873, § 2, eff. Sept. 1, 1981.]

**Art. 14.03c. State Officer-Elect and Legislator-Elect Considered Office-Holder**

(a) For purposes of this chapter, a state officer-elect or a member-elect of the legislature is considered an office-holder beginning on the day after the day of the general or special election in which the officer-elect or member-elect was elected.

(b) This section does not relieve the state officer-elect or the member-elect of any reporting responsibilities he may have as a candidate under Section 243 of this code (Article 14.07, Vernon's Texas Election Code.)

[Acts 1981, 67th Leg., p. 3325, ch. 873, § 2, eff. Sept. 1, 1981.]

**Art. 14.03d. Prohibition of Personal Use of Contributions**

(a) A person who accepts a contribution as a candidate or office-holder shall not convert such contributions to personal use except as authorized by the State Ethics Advisory Commission.

(b) In this section, "personal use" means a use which primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include any payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a holder of public office including payment of rent, interest, utility, and other reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County.

(c) This section applies only to contributions accepted after the effective date of this Act.

(d) A person who converts a contribution to his personal use in violation of this section is civilly liable to the State of Texas for an amount equal to the amount of the converted contribution plus reasonable court costs.

[Acts 1983, 68th Leg., p. 2588, ch. 444, § 5, eff. Sept. 1, 1983.]

Section 16 of the 1983 Act provides:

"Section 239d, Texas Election Code [this article], as added by this Act, applies only to contributions accepted on and after the effective date of this Act."

**Art. 14.04. Civil Remedy**

(A) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or who knowingly makes an unlawful expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name appeared on the ballot in the election in which the unlawful contribution or expenditure was involved for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(B) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(C) Any person who knowingly makes or knowingly accepts an unlawful contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful contribution or expenditure.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 241. Amended by Acts 1973, 63rd Leg., p. 1104, ch. 423, § 6, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2261, ch. 711, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 276, § 5, eff. Aug. 29, 1977.]

**Art. 14.05. Criminal Penalty**

Any person who knowingly makes or knowingly accepts an unlawful contribution or who knowingly makes an expenditure in violation of this Chapter shall be guilty of a Class A misdemeanor unless otherwise provided by law.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 242. Amended by Acts 1967, 60th Leg., p. 1925, ch. 723, § 64, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1104, ch. 423, § 7, eff. June 14, 1973; Acts 1975, 64th Leg., p. 2262, ch. 711, § 7, eff. Sept. 1, 1975.]

**Art. 14.06. Corporations and Labor Organizations Not to Contribute**

(A) It is unlawful for any corporation, as defined in this Act, to make a contribution or expenditure, as defined in Section 237 of this code (Article 14.01, Vernon's Texas Election Code), or any labor organization to make a contribution or expenditure, or for any candidate, office-holder, political committee, or other person to knowingly accept any contribution prohibited by this Article except that a corporation or labor organization may make a contribution or expenditure for the purpose of aiding or defeating a measure in accordance with Section 239 of this code (Article 14.03, Vernon's Texas Election Code).

(B) For the purpose of this section, "labor organization" means any organization of any kind, or any

agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(C) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate; provided, however, that nothing in this section shall prevent the making of a loan or loans to any candidate, office-holder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in this chapter, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or by a labor organization aimed at its members and their families; or the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by threats thereof, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

(D) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or

payment. An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

(E) Any corporation or labor organization that violates Subsection (A), (B), or (C) of this section shall be guilty of a felony of the third degree.

(F) Every officer or director of any corporation or labor organization who shall consent to any such unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

(G) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 243. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 108; Acts 1973, 63rd Leg., p. 1105, ch. 423, § 8, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2262, ch. 711, § 8, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 267, § 6, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 3326, ch. 873, § 3, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2588, ch. 444, § 4, eff. Sept. 1, 1983.]

#### Art. 14.07. Records and Sworn Statement

(A) Each candidate, office-holder, and political committee, or a campaign treasurer representing the same, is hereby required to keep an accurate record of contributions received, and of all expenditures made. Such record shall contain all information hereinafter required to be reported by such candidate, office-holder, or political committee.

(B) Each candidate whose name is printed on the ballot, each person who, after having become a candidate, has withdrawn as a candidate, each write-in candidate taking affirmative action in an election and each political committee involved in an election concerning a candidate or measure shall file sworn statements as required herein. Each office-holder and political committee as defined in Subsections (O)(2), (P)(2), or (Q)(2) in Section 237 of this Code,<sup>1</sup> shall file sworn statements as required herein.

(C)(1) Each statement filed by a candidate, office-holder, political committee, or the political committee's campaign treasurer must list all contributions received and all expenditures made during the period covered by the statement as described in Subsection (H) of this section. Each statement must include, for the period covered, the following information:

(a) the full name and complete address of each person from whom contributions in an aggregate amount of more than \$50 were received, and the date and amount of the contributions;

(b) the full name and complete address of each person to whom any expenditures aggregating more than \$50 were made, and the date, amount, and purpose of the expenditures;

(c) the full name and complete address of each person to whom a payment that is not an expenditure was made, if the payment was made from a contribution, and the date, amount, and purpose of the payment;

(d) the full name and complete address of each person who assisted in obtaining credit or a loan of money for or on behalf of the candidate, office-holder, or political committee, or who guaranteed or otherwise agreed to assume any financial obligation for or on behalf of the candidate, office-holder, or political committee, if the benefit of the credit, the proceeds of the loan, or the guarantee or assumption of the obligation was to be involved, directly or indirectly, in an election, and the date and total value of the credit, loan, or guarantee or assumption;

(e) a total of all contributions of \$50 and less received and a total of all expenditures of \$50 and less made;

(f) a total of all contributions received and all expenditures made; and

(g) the total of unexpended contributions received or the outstanding indebtedness from expenditures made as of the end of the period covered by the previous statement required to be filed under this section.

(2) Each statement filed by a candidate or a political committee must include the campaign treasurer's name, business or residence street address, and telephone number.

(3) Each statement filed by a general-purpose political committee or its campaign treasurer must include the principal occupation of each person from whom contributions in an aggregate amount of more than \$50 were received in the period covered by the statement.

(4) Each statement filed by a political committee or its campaign treasurer must include the amount of each expenditure in the form of a contribution made to a candidate, office-holder, or another political committee that was returned to the political committee during the period covered by the statement, the name of the person to whom the expenditure was originally made, and the date it was returned.

(5) A contribution received but not accepted is not required to be reported pursuant to this section. A determination of whether to accept a contribution

that is received by a candidate, office-holder, campaign treasurer, or assistant campaign treasurer shall be made before the end of the reporting period during which the contribution was received. If the determination on accepting the contribution is not made before that time, it is considered accepted on the last day of the reporting period for purposes of reporting pursuant to this section. The candidate, office-holder, campaign treasurer, or assistant campaign treasurer who received a contribution that was not accepted shall return it to the contributor not later than the 30th day after the deadline for filing a statement for the reporting period during which the contribution was received. A candidate, office-holder, campaign treasurer, or assistant campaign treasurer commits a Class A misdemeanor if he knowingly fails to return a contribution as required by this subdivision.

(6) For purposes of the time and manner of reporting, an expenditure need not be considered to have been made until the amount is readily determinable or, if the character of the expenditure is such that normal business practice is not to disclose the amount until the next periodic bill is received, then the expenditure need not be considered to have been made until the date of receipt of the bill.

(C-1) In addition to the filing of a sworn statement under this section, the information required to be reported on the statement regarding contributions from a person that in the aggregate exceed \$1,000 to a candidate for the office of state senator or to a specific purpose political committee organized in support of or in opposition to such candidate or \$200 to a candidate for the office of state representative or to a specific purpose political committee organized in support of or in opposition to such candidate and that are knowingly accepted during the period beginning on the ninth day before election and ending at 12:00 noon on the second day before election day shall be reported by such candidate or specific purpose political committee by telegram or delivered by hand to the secretary of state within 48 hours of acceptance.

(D)(1) A general-purpose political committee must file a statement of organization with the secretary of state at the time it files the name of its campaign treasurer. The name of a general-purpose political committee may not be the same as, or deceptively similar to, the name of any other general-purpose political committee whose statement of organization is filed with the secretary of state. If there is a change in the information required to be included in the statement of organization, the political committee shall file an amended statement of organization with the secretary of state not later than the 30th day after the change occurs. The statement of organization must include the political committee's campaign treasurer's name, business or residence

street address, and telephone number, and the following information:

(a) the name of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the political committee, if applicable; or

(b) the name of each person that determines to whom the political committee makes contributions or for what purposes the political committee makes expenditures.

(2) Each political committee receiving contributions or making expenditures on behalf of a candidate, or office-holder, shall notify the candidate, or office-holder, as to the name and address of the political committee and its campaign treasurer, if one is required. The candidate, or office-holder, shall include within each statement required by this code a list identifying the name and address of each such political committee and its campaign treasurer, if one is required. "On behalf of" means the knowing acceptance of a contribution for a candidate(s), or office-holder(s), or the making of an expenditure for a candidate(s), or office-holder(s). Any campaign treasurer, candidate, office-holder, or other person managing a political committee, who violates the provisions of this subdivision shall be guilty of a Class A misdemeanor.

(3) In reporting a contribution received from a political committee not in this state, the information for the contributing committee that is required by Subdivision (1) of this subsection shall be included unless a copy of the committee's statement of organization filed with the Federal Election Commission is filed under Subsection (G) of this section.

(E) Such statements shall be accompanied by the following affidavit verified by the person filing the statement:

"I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all information required to be reported by me pursuant to the Political Funds Reporting and Disclosure Act of 1975."

(F) The statement and oath shall be filed as follows: for a county office, or a measure submitted at an election called by a county, with the county clerk of the county; for a district office or a state office, or statewide measure, or other constitutionally designated members of the Executive Department, with the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality, with the city secretary or city clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision other than a county or municipality, with the secretary of the governing body of the political subdivision. General purpose political committees shall file the required sworn statements and oaths with the Secretary of State.

The deadline for filing any statement required under this section is 5 p.m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p.m. of the next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.

(G) In the event a political committee has elected to comply with the provisions applicable to political committees within this state, the requirements of this paragraph shall not be applicable. A candidate, office-holder, or political committee shall not accept a contribution aggregating more than \$500 in a reporting period from a political committee not in this state unless the contribution is accompanied by either: (1) a written statement which sets forth the full name and complete address of each person who contributed more than \$100 to such committee during the preceding twelve months and which is certified by an officer of the contributing political committee; or (2) a certified copy of the contributing political committee's statement of organization filed as required by law with the Federal Election Commission. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported. For the purpose of reporting, "political committee not in this state" shall mean any political committee expending 80 percent or more of its expenditures in any combination of elections outside of this state and federal offices not voted on in this state within the immediately preceding twelve-month period.

(H)(1)(a) Candidates and the campaign treasurers of specific purpose political committees as defined in subsection (P)(1) of Section 237, shall file sworn statements at the times required in paragraph (4) of this subsection.

(b)(i) Office-holders and specific purpose political committees assisting office-holder(s) as defined in subsection (P)(2) of Section 237 of this Code shall file sworn statements on or before July 15 and on or before January 15 of each year of all contributions received and all expenditures made during the six calendar months preceding the statements in accordance with the provisions of subsection (C) of this section but reporting only such contributions

accepted and expenditures made that have not been previously reported.

(ii) In addition to the statements required in subsection (H)(1)(b)(i) above, any such office-holder shall file additional statements to cover all contributions received and expenditures made by such office-holder for that period of time prior to the designation of a campaign treasurer by such office-holder, and after such designation all contributions and expenditures are to be reported pursuant to subsection (H)(1)(a). The statements required by this subsection shall be filed not later than the 15th day following the designation of a campaign treasurer.

(2) Campaign treasurers of general purpose political committees shall file sworn statements at times required in paragraph (5) of this subsection.

(3) If the operations of a political committee necessitate a change in the applicability of paragraph (1) or (2) of this subsection, the campaign treasurer of such political committee shall make such change and declare the identity of the authorities with whom future filings are expected to be made by filing (a) notification(s) with the authority(ies) with whom such committee has previously been required to file sworn statements. Failure to file such notice(s), when such change has been properly made, before the next applicable deadline for filing sworn statements under the formerly applicable sections, shall constitute a Class B misdemeanor.

(4)(a) Every candidate and every specific purpose political committee shall file two sworn statements for each year in which the candidate or the specific purpose political committee is not involved in an election. The two sworn statements shall be filed on or before July 15 of each nonelection year and on or before January 15 following a nonelection year. The period reported in the first such statement begins on January 1 or the day of campaign treasurer designation, as applicable, and ends on and includes June 30. The period reported in the second such statement begins on July 1 and ends on and includes December 31.

(b)(i) Every opposed candidate and every specific purpose political committee shall file three sworn statements relating to the election in which such person is involved in addition to any statement as provided in paragraph (4)(b)(iii) of this subsection. The three sworn statements shall be filed not later than the 30th day prior to the election, not later than the 7th day prior to the election, and not later than the 30th day after the election, respectively. The period reported in the first such statement shall begin on the day of campaign treasurer designation or on the day after the end of the period covered by the last required statement, as applicable, and end on and include the 40th day prior to the election. The period reported in the second such statement shall begin on the 39th day before the election and end on and include the 10th day before the election.

The period reported in the third such statement shall begin on the 9th day before the election and end on and include the 25th day after the election. In the event an opposed candidate or a specific purpose political committee becomes involved in an election after the end of any period covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer or on the day after the end of the period covered by the last required statement, as applicable.

(ii) In lieu of any third statement required by paragraph (4)(b)(i) of this subsection, which falls on the 30th day after any general, primary, or special election, whenever a candidate or specific purpose political committee is involved in a run-off election, not later than the 7th day before the run-off election, the candidate or specific purpose political committee shall file a statement of all previously unreported contributions and expenditures through the 10th day before the run-off election. The next statement required shall be filed not later than the 30th day after the run-off election and shall report all contributions received and all expenditures made during a period beginning on the 9th day before the run-off election and ending on the 25th day after the run-off election.

(iii) Each year after the last deadline for filing a statement of contributions and expenditures under paragraph (4)(b)(i) of this subsection, an additional statement shall be filed, provided, however, if there have been no expenditures made or contributions knowingly accepted since the last required reporting period, or if any contributions knowingly accepted and any expenditures made have all been reported under Subsection (H)(1)(b) of this section, there shall be no filing required. The annual statement shall be filed on or before January 15 (following the last filing) and the period shall cover all previously unreported contributions and expenditures through and including the 31st day of December.

(c) Every unopposed candidate shall file two sworn statements during the year in which an election occurs in which the unopposed candidate is involved. The statements shall be filed on or before July 15 of the year in which the election occurs and on or before January 15 of the year following the election. The period reported in the first such statement begins on January 1 or the day of campaign treasurer designation, as applicable, and ends on and includes June 30. The period reported in the second such statement begins on July 1 and ends on and includes December 31.

(5) All general purpose political committees shall file sworn statements as designated either in this paragraph or in Paragraph (6) of this subsection:

(a) On January 15th of each year, a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported;

(b) Not earlier than the 40th day and not later than the 30th day before the date of an election in which the general purpose committee is involved, a statement of all contributions received and all expenditures made during the period from the date on which the general purpose political committee filed a designation of a campaign treasurer through the 40th day before the date of the election which have not been previously reported;

(c) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made through the 10th day before the date of the election which have not been previously reported;

(d) Not earlier than the 25th day and not later than the 30th day after the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made since the date covered by the last report filed under this subsection;

(e) Whenever a general purpose political committee is involved in a run-off election, in lieu of the statement to be filed by not later than the 30th day after the first election, the committee shall file a statement on the 7th day before the date of the run-off election showing all contributions received and all expenditures made since the date of the last report filed under this subsection;

(f) In the event a general purpose political committee becomes involved in an election after the end of any periods covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(6) In lieu of the sworn statements required under Paragraph (5) of this subsection, a general purpose political committee may elect to file sworn monthly statements of all contributions received and all expenditures made which have not been previously reported by filing the sworn statements designated herein:

(a) A notice of intent to file monthly statements shall be filed between January 1 and January 15 of the first year in which the committee intends to file monthly statements. However, a general purpose political committee formed after January 15 of any particular year may upon designation of its campaign treasurer file at the same time a notice of intent to file monthly statements pursuant to this paragraph. The filing remains effective until notice of intent to revert to the regular filing schedule is

filed pursuant to Subparagraph (c) of this paragraph.

(b) On the first day of each calendar month, even if there has been no activity, a statement of all previously unreported contributions received and all previously unreported expenditures made through the 25th day of the preceding month. Any general purpose political committee filing under the procedures of this paragraph shall include in each statement the dates and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than \$10 has been received or borrowed during the reporting period. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than \$10 were made during the appropriate reporting period and the purpose of such expenditures.

(c) If a general purpose political committee electing to file sworn monthly statements wishes to revert to filing the sworn statements required under Paragraph (5) of this subsection, such committee must file its intent to do so between January 1 and January 15 in addition to a statement of all contributions received and expenditures made which have not previously been reported.

(7) Candidates for offices created under laws of the United States are specifically exempted from the requirements of this section. It is provided, however, that they shall file copies of any reports required by federal laws with the secretary of state on the same date they file such reports with the appropriate federal authorities.

(8) Final Statement. A candidate or political committee may cease filing sworn statements regarding a campaign after a final statement has been filed and designated as such. Any of the required sworn statements may constitute a final statement if its filing results in the completion of the reporting of all contributions and expenditures involved in an election, together with the appropriate related information, required to be reported.

(9) In the event a general purpose political committee makes a contribution to either another general purpose political committee or an out of state political committee, and cannot thereby make the determination of the appropriate times to make filings of sworn statements, such contributing general purpose political committee shall be deemed to have complied with the requirements of this Section by filing a sworn statement with the Secretary of State fully reporting such contribution (as an expenditure) no later than the next succeeding filing deadline for the January 15th annual statement.

(10) In the event a campaign treasurer of a political committee is terminated, either voluntarily or by action of the political committee, he shall file a

sworn statement no later than the 10th day after such termination, reporting all appropriate matters for the period from the end of the period reported in the preceding sworn statement through the day of his termination. Any subsequent sworn statement which is to be filed by a successor campaign treasurer need not report those matters included in the previous campaign treasurer's termination statement.

(I)(1) If any candidate, office-holder, or campaign treasurer of a political committee fails to file a sworn statement containing all information required by this chapter, such person shall be guilty of a Class C misdemeanor.

(2) Any candidate, office-holder, campaign treasurer, assistant campaign treasurer, or other person managing a political committee who swears falsely in a filed statement is subject to the provisions of Section 37.02 of the Texas Penal Code.

(J) Any candidate or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in the election in which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.

(K) Any candidate, office-holder, or campaign treasurer or assistant campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.

(L) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.

(M) No charge shall be levied for the filing of any report required by this section.

(N) No charge greater than that authorized by the State Board of Control for copies of similar documents filed with state agencies shall be charged for copies of any reports required to be filed by this section.

(O) A statement filed under this section shall be written in black ink or typed with black typewriter ribbon, on a form prescribed by the secretary of state, unless the statement is a computer printout.

*Text of (P) as added by Acts 1983, 68th Leg., p. 2589, ch. 444, § 6*

(P) An assistant campaign treasurer designated by a political committee under Section 238(B)(2) of this Code (Article 14.02, Vernon's Texas Election Code) may perform any duties imposed on the political committee's campaign treasurer by this Section in the absence of the campaign treasurer.

*Text of (P) as added by Acts 1983, 68th Leg., p. 3112, ch. 533, § 2*

(P) An assistant campaign treasurer designated by a political committee under Subdivision (2) of Subsection (B) of Section 238 of this Code (Article 14.02, Vernon's Texas Election Code) may perform any duties imposed on the political committee's campaign treasurer by this Section in the absence of the campaign treasurer.

[Amended by Acts 1975, 64th Leg., p. 2263, ch. 711, § 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 738, ch. 276, §§ 7 to 14, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 1868, ch. 446, § 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 3327, ch. 873, §§ 4 to 7, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2589, ch. 444, § 6, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 2657, ch. 459, §§ 2, 3, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 3112, ch. 533, § 2, eff. Aug. 29, 1983.]

<sup>1</sup> Article 14.01.

#### Art. 14.07a. Annual Report of Unexpended Contributions

(a) Each of the following persons shall file a sworn statement each year, even if there is no additional activity, for as long as the person retains unexpended contributions:

(1) a former office-holder who has unexpended contributions after the filing of the last sworn statement required to be filed by Section 243 of this code (Article 14.07, Vernon's Texas Election Code); or

(2) an unsuccessful candidate for public office who:

(A) was opposed and has unexpended contributions after the filing of the last sworn statement required to be filed by Section 243 of this code; or

(B) was unopposed and has unexpended contributions.

(b) An annual statement filed pursuant to this section shall be filed between January 1 and January 15 of each year. The statement shall include the full name and complete address of each person to whom a payment is made from unexpended contributions and the date, amount, and purpose of the payment. The statement shall include the total amount of unexpended contributions at the end of the year and the amount of interest earned on the contributions during the calendar year. The statement shall be filed with the same authority with whom the person was required to file sworn statements pursuant to Section 243 of this code. An unsuccessful unopposed candidate shall file the

statement with the authority with whom an opposed candidate for that office is required to file.

(c) The provisions of Section 243 of this code pertaining to penalties, inspection, and charges apply to an annual statement filed pursuant to this section.

(d) A person may retain contributions accepted under this chapter for six years after the person is no longer an office-holder or candidate, pending any future candidacy. If the person does not become a candidate within the six-year period, the person must dispose of any unexpended contributions in accordance with Subsection (e) of this section and must report the disposition by filing a sworn statement in accordance with this section not later than the 30th day after the end of the six-year period.

(e) A person required to dispose of unexpended contributions under this section must transfer the funds as follows:

(1) to the political party with which the person was affiliated when his name last appeared on the ballot;

(2) to a candidate or a political committee;

(3) to the general revenue fund;

(4) to any person from whom contributions were received; or

(5) to a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes; or

(6) to a public or private postsecondary educational institution or an institution of higher education as defined in Section 61.003(7), Texas Education Code, solely for the purpose of assisting or creating a scholarship program.

(f) A person who disposes of unexpended contributions under Subsection (e)(2) of this section must report each contribution as if he were a specific purpose political committee.

(g) Contributions disposed of under Subsection (e)(3) of this section may be appropriated only for the financing of political party primary elections.

(h) The amount of contributions disposed of under Subsection (e)(4) of this section may not exceed the aggregate amount received from the person who made the contribution during the last two years that the candidate or officeholder accepted contributions pursuant to this chapter.

[Acts 1981, 67th Leg., p. 3329, ch. 873, § 8, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 2601, ch. 444, § 7, eff. Sept. 1, 1983.]

#### Art. 14.07b. Modified Reporting Procedure

(a) A candidate or political committee required by Section 243 of this code (Article 14.07, Vernon's Texas Election Code) to file sworn statements may file a sworn statement as provided by this section

instead, if the candidate or political committee does not intend to accept contributions exceeding \$500 or to make expenditures exceeding \$500 in the election.

(b) When designating a campaign treasurer, the candidate or political committee shall file a declaration of intent not to exceed \$500 in contributions or expenditures with the authority with whom the candidate or political committee is required to file a designation of campaign treasurer. The declaration of intent must contain a statement that the candidate or political committee understands that if the \$500 maximum for contributions or expenditures is exceeded, sworn statements must be filed in accordance with Section 243 of this code.

(c) The candidate or political committee shall file a sworn statement not later than the 30th day after election day. The reporting period covered by the statement begins on the day of the campaign treasurer designation and ends on the 25th day after election day.

(d) A candidate or political committee that exceeds the \$500 maximum shall file sworn statements as required by Section 243 of this code. If a candidate or political committee exceeds the maximum after the filing deadline prescribed by Section 243 for the first sworn statement required to be filed under that section, the candidate or political committee shall file a sworn statement not later than 48 hours after the maximum is exceeded. The reporting period covered by the statement begins on the day of the campaign treasurer designation and ends on the day the maximum is exceeded. The reporting period for the next sworn statement filed by the candidate or political committee begins on the day following the last day of the period covered by the first sworn statement.

(e) The amount of a filing fee paid by a candidate is excluded from the \$500 maximum expenditure permitted under this section.

(f) Section 243 of this code applies to a candidate or political committee filing in accordance with this section to the extent that Section 243 does not conflict with this section.

[Acts 1983, 68th Leg., p. 2602, ch. 444, § 8, eff. Sept. 1, 1983.]

#### Art. 14.07c. Civil Penalty for Late Statement Filed With Secretary of State

(a) The secretary of state shall determine from any available evidence whether a sworn statement required to be filed with him under Section 243 of this code (Article 14.07, Vernon's Texas Election Code) is late. On making that determination, the secretary shall immediately mail a notice of the determination to the person responsible for filing the statement and to the appropriate attorney for the state.

(b) If a statement is determined to be late, the person responsible for filing the statement is civilly liable to the state for \$100. The appropriate attorney for the state may not initiate suit for the penalty until the 10th day after the date the notice is mailed under Subsection (a) of this section. If the penalty is paid before the 10th day after the mailing, the secretary of state shall notify the appropriate attorney for the state, and the civil suit under this section may not be initiated.

(c) A penalty paid voluntarily under this section shall be deposited to the credit of the general revenue fund.

(d) This section is cumulative of any other available sanctions for late filings of sworn statements.

(e) The prohibitions prescribed by Section 249(D) of this code (Article 14.13, Vernon's Texas Election Code) on the reporting by the secretary of state of alleged violations of this chapter while a candidate is engaged in campaign activities do not apply to the procedures for collecting a penalty under this section.

[Acts 1983, 68th Leg., p. 2602, ch. 444, § 8, eff. Sept. 1, 1983.]

**Art. 14.08. Repealed by Acts 1981, 67th Leg., p. 2709, ch. 739, § 1, eff. Aug. 31, 1981**

**Art. 14.09. Political Advertising**

(A) It is unlawful for any person knowingly to enter into a contract or transaction to print, publish, or broadcast any political advertising which does not disclose thereon that it is political advertising and which does not state thereon the name of the person who personally entered into the contract or transaction with the printer, publisher, or broadcaster, or the person represented by such agent and, in the case of advertising that is printed or published, the address of the agent or the person represented by the agent. A violation of this provision shall constitute a Class A misdemeanor. However, in the event the political advertisement conveys the impression that it emanates from a source other than its true source for the purpose of injuring any candidate or influencing the vote in any election, the candidate, campaign treasurer, assistant campaign treasurer or any other person purchasing or contracting for the furnishing of such political advertisement in support of or in opposition to any candidate or measure, who knowingly violates this subsection shall be guilty of a felony of the third degree.

(B) Any advertising medium or any officer or agent thereof who willfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due, or any person who pays or offers to

pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising or production matter, shall be fined not more than \$100. No advertising medium may charge a rate for political advertising in excess of the following:

(1) For advertising broadcast over a radio or television station, including a community antenna or cable television system, the rate charged shall not exceed the lowest unit charge of the station for the same class, condition and amount of time for the same period;

(2) For advertising printed or published by any other medium, the rate charged shall not exceed the lowest charge made for comparable use of such space for other purposes. The rate shall take into account the amount of space used, the number of times used, the frequency of use, and the kind of space used, as well as the type of advertising copy submitted by or on behalf of a candidate, or political committee. All discount privileges otherwise offered by a newspaper or magazine to advertisers shall be available upon equal terms to all candidates, or political committees.

(C) It is unlawful for an officer or employee of any political subdivision of this state to expend or authorize the expenditure of the funds of such political subdivision for the purpose of political advertising. The provisions of this subsection shall not apply to any advertising which describes the factual reasons for a measure and which does not advocate the passage or defeat of such measure.

(D) It is the legislative intent to impose both civil and criminal responsibility on persons, corporations, partnerships, labor unions, or labor organizations, or any unincorporated associations, firms, committees, clubs, or other organizations, or groups of persons, including any groups of persons associated with a political party or element thereof, for violations of this section.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 246. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 109; Acts 1967, 60th Leg., p. 1926, ch. 723, § 68, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 1109, ch. 423, § 10, eff. June 11, 1973; Acts 1975, 64th Leg., p. 2268, ch. 711, § 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 742, ch. 276, § 15, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2001, ch. 799, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4522, ch. 740, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1983 amendatory act provides:

"Political advertising governed by a contract or transaction entered into before the effective date of this Act is subject to Section 245(A), Texas Election Code (Article 14.09, Vernon's Texas Election Code), as it existed on the date the contract or transaction was entered into, and that law is continued in effect for that purpose."

**Art. 14.10. Campaign Communications**

(A)(1) It is unlawful for an individual to misrepresent his identity or, if acting or purporting to act as

an agent for any person, to misrepresent the identity of that person in any written or oral communication relating to the campaign of a candidate for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure with the intent to injure any candidate or to influence the vote on the measure.

(2) It is unlawful for any person to issue any communication relating to the candidacy of a person for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure, which purports to emanate from any source other than its true source.

(B)(1) It is unlawful for any candidate for nomination or election to a public office to use the title of an office in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(2) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which states, implies, or otherwise represents that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(C) A violation of this section is a Class A misdemeanor.

[Acts 1975, 64th Leg., p. 2269, ch. 711, § 12, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1663, ch. 657, § 1, eff. Aug. 29, 1977.]

**Art. 14.10A. Repealed by Acts 1977, 65th Leg., p. 1663, ch. 657, § 2, eff. Aug. 29, 1977**

**Art. 14.11. Repeal of Conflicting Laws**

All laws and parts of laws in conflict herewith are repealed in so far as such laws are in actual conflict with the provisions of this code, and in case of such conflict the provisions of this code shall control and be effective. However, nothing in this Act shall be construed to nullify or repeal any Act of the Legislature passed at the Regular Session of the Fifty-second Legislature.

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 247.]

**Art. 14.12. Partial Unconstitutionality and Repeals**

If any part of this code is held unconstitutional, it shall not void or affect the application of any part of this code which can operate independently of the unconstitutional provision.

Nothing in this Act shall in anywise alter, amend or repeal House Bill No. 43, Acts, Regular Session, Fifty-second Legislature.<sup>1</sup>

[Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 248.]

<sup>1</sup> Civil Statutes, arts. 3154(a), 3158a.

**Art. 14.13. Regulation of Illegal Acts; Providing Duties for Secretary of State**

(A) Filing complaint with Secretary of State. Any citizen of this state may file with the Secretary of State a complaint alleging that a person has committed one or more of the following violations of this chapter:

(1) Failure to file a statement of contributions and expenditures that is required to be filed with the Secretary of State, or late filing of a statement with the Secretary of State.

(2) Filing of a statement of contributions and expenditures with the Secretary of State that does not conform to law.

(3) Accepting a contribution or making an expenditure before the filing of a designation of a campaign treasurer in an election in which the designation is required to be filed with the Secretary of State.

(4) Making or accepting an unlawful contribution or making an unlawful expenditure.

(B) Form and contents of complaint. A complaint must:

(1) be signed and sworn to by the complainant as containing allegations that are true and correct and made on personal knowledge; and

(2) state the name of the person accused, the election involved, if any, and the alleged violation; and

(3) allege facts indicating that the person accused has committed a violation.

(C) Notice to the accused. Upon receipt of a complaint meeting the requirements of Paragraphs (A) and (B) of this section, the Secretary of State shall give notice by registered or certified mail, restricted delivery, return receipt requested, to the person who is the subject of the complaint:

(1) informing the person that the complaint has been filed;

(2) attaching a copy of the complaint;

(3) requesting the person to make a written response within 15 days after the date shown on the notice (the date of mailing); and

(4) attaching a copy of this section.

(D) Referral to prosecuting attorney and Attorney General.

(1) If the accused is a candidate or the campaign treasurer of a candidate or of a political committee

supporting a candidate, the Secretary of State shall not report any alleged violations to the prosecuting attorney or to the Attorney General while the candidate is still engaged in the campaign in the specific election in which the alleged violation is said to have occurred or in a subsequent runoff or general election for the same term of office.

(2) After a lapse of 25 days from the date of a notice pursuant to Paragraph (C) or after a lapse of 25 days from an election described in (D)(1) above of this section, if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law, the Secretary of State shall forward to the appropriate prosecuting attorney the original complaint and the accused's response (if any) to the notice, together with certified copies of all pertinent records filed with the Secretary of State, in order that appropriate action may be taken.

(3) If the alleged violation is one for which a civil penalty accrues in favor of the state, the Secretary of State shall also forward to the Attorney General certified copies of the original complaint, the accused's response, and all pertinent records filed with the Secretary of State, in order that appropriate action be taken.

(E) Malicious complaints. A civil action for damages exists against the complainant in favor of any person against whom a complaint is filed maliciously and without probable cause, after the termination of any resulting prosecution. In addition, a person who makes a false allegation in a complaint is subject to the provisions of the Texas Penal Code relating to the offense of perjury.<sup>1</sup>

(F) The procedures outlined in this section are cumulative of other available procedures for investigation and enforcement of violations of this chapter. Nothing in this section shall be taken as precluding the filing of a complaint directly with a prosecuting attorney or as precluding investigations and prosecutions by a prosecuting attorney and actions by the Attorney General for recovery of civil penalties without a referral from the Secretary of State.

(G) Duties of Secretary of State.

(1) It shall be the duty of the Secretary of State to prescribe forms for any instruments required to be filed by this code, regardless of whether the instruments are to be filed with the Secretary of State or with some other authority, and to make such forms available to persons required to file such statements and information with the Secretary of State, or any other authority.

(2) It shall be the duty of the Secretary of State to furnish such forms to the following: the State Executive Committee of any political party, the clerk of each county, the duly elected chairman of each county political subdivision or authority holding an election under this code.

(3) The State Executive Committee, county clerk, county chairman, and secretary or clerk shall make available to all candidates, office-holders, or political committees the forms provided by the Secretary of State.

(4) It shall be the duty of the Secretary of State to interpret and administer the provisions of this Act in the exercise of his authority stated in Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code) and to make such interpretations and administrative rulings available to any person upon request.

*Text of (G)(5) as added by Acts 1983, 68th Leg., p. 718, ch. 165, § 1*

(5) After January 1 of each year, the secretary of state shall submit to the governor and members of the legislature a report with respect to the preceding calendar year containing:

(A) each interpretation, ruling, or opinion issued under Subdivision (4) of this subsection;

(B) a statement of each violation of this chapter that has been reported to the secretary of state and referred to the appropriate official for prosecution;

(C) a statement of any difficulties encountered in the administration of this chapter; and

(D) any suggested legislation to conform this chapter to pertinent court decisions or interpretations, rulings, or opinions issued by the secretary of state.

*Text of (G)(5) as added by Acts 1983, 68th Leg., p. 2604, ch. 444, § 9*

(5) Not later than the fifth day before each applicable deadline, the Secretary of State shall notify each person responsible for filing sworn statements with the Secretary under Section 243 of this code (Article 14.07, Vernon's Texas Election Code) of the deadline for filing a statement.

(6) After January 1 of each year, the Secretary of State shall submit to the Governor and members of the legislature a report with respect to the preceding calendar year containing:

(A) each interpretation, ruling, or opinion issued under Subdivision (4) of this subsection;

(B) a statement of each violation of this chapter that has been reported to the Secretary of State and referred to the appropriate official for prosecution;

(C) a statement of any difficulties encountered in the administration of this chapter; and

(D) any suggested legislation to conform this chapter to pertinent court decisions or interpretations, rulings, or opinions issued by the Secretary of State.

(H) Review of sworn statements.

(1) Periodically, the Secretary of State shall review the sworn statements filed with the Secretary under this chapter.

(2) If the Secretary of State determines that a person has failed to comply with this chapter, the Secretary shall notify the person by certified mail of the determination of noncompliance.

(3) The notice required by Subdivision (2) of this paragraph shall include a statement that the person notified must take the action necessary to comply with this chapter not later than the 30th day after the date the notice was mailed.

(4) The Secretary of State shall maintain a listing of those persons who fail to comply with Subdivision (3) of this paragraph. The listing is open to public inspection.

[Acts 1975, 64th Leg., p. 2270, ch. 711, § 13, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 718, ch. 165, § 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2604, ch. 444, §§ 9, 10, eff. Sept. 1, 1983.]

<sup>1</sup> See Penal Code, § 37.01 et seq.

#### Art. 14.14. Injunctions

The district courts of this state shall have jurisdiction to issue injunctions to enforce the provisions of this code upon application by any citizen of this state.

[Acts 1973, 63rd Leg., p. 1111, ch. 423, § 12, eff. June 11, 1973.]

#### Art. 14.15. Venue for Offenses

Venue for any offense resulting from a violation of this chapter shall lie exclusively in the county of residence of the accused, except when the accused is a nonresident of Texas, in which case venue shall lie in Travis County.

[Acts 1975, 64th Leg., p. 2272, ch. 711, § 14, eff. Sept. 1, 1975.]

### CHAPTER FIFTEEN. OFFENSES RELATING TO ELECTIONS

#### SUBCHAPTER A. POLL TAX

Art.

15.01 to 15.03. Repealed.

#### SUBCHAPTER B. OFFENSES BEFORE ELECTION

- 15.11. Clerk to Post Names of Candidates.
- 15.12. Failure to Place Name of Candidate on Ballot.
- 15.13. Protecting Ballots, Supplies and Returns.
- 15.14. Refusing Employé Privilege of Voting.
- 15.15. Certificate of Naturalization.
- 15.16. Pay for Editorial Matter.
- 15.16a. Political Advertising; Regulations.
- 15.17. Repealed.

#### SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

- 15.21. List of Qualified Voters.

Art.

- 15.22. Permitted Illegal Voting.
- 15.23. Refusing to Permit Voter to Vote.
- 15.24. Influencing Voter.
- 15.25. Illegal Acts of Judge of Election.
- 15.26. Intimidation by Election Officer.
- 15.27. Election Officer Opening Ballot.
- 15.28. Election Officer Divulging Vote.
- 15.29. Interfering with Ballot.
- 15.30. Aid to Voter.
- 15.30a. Restriction on Number of Voters Assisted by Same Person in an Election.
- 15.31. Presiding Officer Failing to Deliver Ballot.
- 15.32. Making False Canvass; Court May Open Ballot Boxes.
- 15.33. False Certificate by Chairman.
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#### SUBCHAPTER D. ILLEGAL VOTING

- 15.41. Illegal Voting.
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- 15.49. Participating in Primary Elections or Conventions of More Than One Party.
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#### SUBCHAPTER E. OFFENSE AFTER ELECTION

- 15.61. Altering or Destroying Ballots, Etc.
- 15.62. Messenger Tampering with Ballot.
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#### SUBCHAPTER F. MISCONDUCT AT ELECTIONS

- 15.71. Hiring Vehicle to Convey Voters; Removing Ballots from Polling Place.
- 15.72. Defacing Election Booth, Etc.
- 15.73. Intimidation or Reprisal Against a Voter.
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#### SUBCHAPTER A. POLL TAX

Arts. 15.01 to 15.03. Repealed by Acts 1981, 67th Leg., p. 3149, ch. 827, § 19, eff. Aug. 31, 1981

#### SUBCHAPTER B. OFFENSES BEFORE ELECTION

Art. 15.11. Clerk to Post Names of Candidates  
The county clerk of each county shall post in a conspicuous place in his office for the inspection and

information of the public the names of all candidates that have been lawfully certified to him to be printed on the official ballot for at least ten days before he orders the same to be printed on said ballot, and he shall order all the names of the candidates so certified printed on the ballot as provided by law and in case the county clerk refuses or wilfully neglects to comply with this requirement he shall be fined not less than two hundred nor more than five hundred dollars.

[1925 P.C.]

**Art. 15.12. Failure to Place Name of Candidate on Ballot**

Any county clerk or other officer charged by law with the duty of preparing or having printed the official ballot at any general or special election, and any county chairman or member of the county executive committee of any political party so charged with the duty of preparing or having printed the official ballot to be used at any primary election of such party, who fails or refuses, except in cases permitted by law, to have the name of any candidate or candidates whose nominations have been certified to him placed or printed on such official ballot, shall be confined in the penitentiary not less than one nor more than five years.

[1925 P.C.]

**Art. 15.13. Protecting Ballots, Supplies and Returns**

If any person intrusted with the transmission to the precinct election judges of official ballots, sample cards, distance markers and any supplies required to conduct an election wilfully fails to deliver the same within the time required by law, or wilfully does any act to defeat the delivery thereof, or not being a person intrusted therewith, shall do any act to defeat the due delivery thereof, he shall be fined not less than two hundred nor more than five hundred dollars.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

**Art. 15.14. Refusing Employé Privilege of Voting**

Whoever refuses to an employé entitled to vote the privilege of attending the polls, or subjects such employé to a penalty or deduction of wages because of the exercise of such privilege, shall be fined not to exceed five hundred dollars.

[1925 P.C.]

**Art. 15.15. Certificate of Naturalization**

Whoever wilfully procures from any court, clerk or other officer a certificate of naturalization, which has been allowed, signed or sealed in violation of the laws of the United States or of this State, with intent to enable him or any other person to vote at any election, when he or such person is not entitled

by the laws of the United States to become a citizen or to exercise the elective franchise, shall be confined in the penitentiary not less than five nor more than ten years.

[1925 P.C.]

**Art. 15.16. Pay for Editorial Matter**

If any editor or manager of a newspaper, magazine or journal, or any person having control thereof, demands or receives any money, thing of value, reward or promise of future benefit for publishing anything as editorial matter in advocacy of or opposition to any candidate, or for or against any proposition submitted to a vote of the people, he, and also the one offering such reward, shall be fined not less than five hundred dollars nor more than one thousand dollars, or be imprisoned in jail not less than ten days nor more than thirty days. If the offense be committed by the president of any corporation, or by any officer thereof with the knowledge or consent of its president, in addition to punishment of the individual, its charter shall be forfeited. Either party to a violation of this article may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify.

[1925 P.C.. Amended by Acts 1963, 54th Leg., p. 1017, ch. 424, § 111.]

**Art. 15.16a. Political Advertising; Regulations**

Sec. 1. No newspaper, magazine, or other publication, published daily, biweekly, weekly, monthly, or at other intervals shall sell, solicit, bargain for, offer, or accept for money, other consideration, or favors, any kind or manner of political advertising from more than one candidate for any or all local, county, State, or Federal offices, unless such publication shall have been published and distributed generally for at least twelve (12) months next preceding the acceptance of the advertising.

Sec. 2. Provided however that this Act shall not apply to publications which have been published and circulated generally for at least twelve (12) months next preceding the acceptance of such advertising, for other than purely political purposes in some locality other than that in which it is located and published at the time of accepting such political advertising from more than one candidate.

Sec. 3. And provided further that Section 1 of this Act shall not apply to publications which have, prior to the acceptance of political advertising from more than one candidate, been published and circulated generally for a period of less than one year immediately preceding the acceptance of such advertising in the event that such publication can show ownership of its physical plant and that its advertising rates are in proportion to the amount and kind of its circulation.

Sec. 4. Whoever violates the provisions of this Act shall be fined not less than Five Hundred Dollars (\$500) nor more than One Thousand Dollars (\$1,000), or be imprisoned in jail not less than three (3) months nor more than six (6) months, or both. Each violation of this Act shall be a separate offense.

[Acts 1939, 46th Leg., p. 251.]

**Art. 15.17. Repealed by Acts 1981, 67th Leg., p. 3329, ch. 873, § 9, eff. Sept. 1, 1981**

#### SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

##### **Art. 15.21. List of Qualified Voters**

Any person who being an officer, clerk or employee of the county's registrar of voters, precinct judge, or clerk of election who knowingly puts in the certified list of registered voters of a precinct any other number than that written when the voter registration certificate was issued; or who knowingly delivers to or receives from any voter any voter registration certificate on which is placed any other name than that first written when it was issued, shall be fined not to exceed five hundred dollars.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

##### **Art. 15.22. Permitted Illegal Voting**

Any judge of an election or primary who wilfully permits a person to vote, whose name does not appear on the list of registered voters of the precinct and who fails to present his voter registration certificate or make affidavit of its loss or misplacement or inadvertently left at home, except in cases where no voter registration certificate is required, shall be fined not exceeding five hundred dollars.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

##### **Art. 15.23. Refusing to Permit Voter to Vote**

Any judge of any election who refuses to receive the vote of any voter who, when his vote is objected to, shows by his own oath and the oath of a registered voter of the precinct that he is entitled to vote at such election and in such precinct, or who refuses to deliver an official ballot to one entitled to vote under the law, or who refuses to permit a voter to deposit his ballot after one entitled to vote has legally folded and returned same, shall be fined not to exceed five hundred dollars.

[1925 P.C.. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 113; Acts 1983, 68th Leg., p. 4718, ch. 824, § 2, eff. Aug. 29, 1983.]

##### **Art. 15.24. Influencing Voter**

Any judge, clerk or other person who may be in the room where an election, either primary, special

or general, is being held, who there indicates by word or sign how he desires a citizen to vote or not to vote, shall be fined not less than two hundred nor more than five hundred dollars and be confined in jail not less than ten nor more than thirty days.

[1925 P.C.]

##### **Art. 15.25. Illegal Acts of Judge of Election**

Any judge of election who wilfully permits the removal of ballots before the closing of the polls or wilfully fails to keep order within the polling place, or permits any person, except the clerks and judges of election or those who enter for the purpose of voting, to come within the guard rail, or knowingly permits anyone to remove, alter or deface a stamp number or signature legally placed on a ballot for future identification shall be fined not to exceed one hundred dollars.

[1925 P.C.]

##### **Art. 15.26. Intimidation by Election Officer**

Any manager, judge or clerk of an election who shall, while in discharge of his duties as such, by violence or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be fined not exceeding one thousand dollars.

[1925 P.C.]

##### **Art. 15.27. Election Officer Opening Ballot**

Any manager or other officer of election who shall unfold or examine any ballot, or who shall examine the indorsement on any ballot by comparing it with the list of voters when the votes are counted or being counted, or who shall examine or permit to be examined by any other person the ballots subsequent to their being received into the ballot box, except in the manner prescribed by law, shall be confined in the penitentiary not less than one nor more than two years.

[1925 P.C.]

##### **Art. 15.28. Election Officer Divulging Vote**

Any presiding officer, judge, clerk, watcher, interpreter, person assisting a voter in preparing his ballot, inspector, or any other person performing official functions, of any general, primary or special election who shall from an inspection of the ballot or other information obtained at the polling place and not in a judicial investigation divulge how any person has voted at such election is guilty of a felony of the third degree.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 5, eff. June 20, 1975.]

##### **Art. 15.29. Interfering with Ballot**

If any manager, judge or clerk of any election shall put into or permit to be put in the ballot box

any ballot not given by a voter, or take out or permit to be taken out of such box any ballot deposited therein except in the manner prescribed by law, or change any ballot given by an elector, he shall be fined not less than one hundred nor more than one thousand dollars.

[1925 P.C.]

**Art. 15.30. Aid to Voter**

Any judge or clerk at an election or any other person who assists any voter to prepare his ballot except when a voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him unable to write or to see or to operate the voting equipment, or who in assisting a voter in the preparation of his ballot prepares the same otherwise than as the voter directs, or who suggests by word or sign or gesture how such voter shall vote, shall be fined not less than two hundred dollars nor more than five hundred dollars or be confined in jail for not less than two nor more than twelve months, or both.

[1925 P.C.. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 114, eff. Aug. 23, 1963; Acts 1975, 64th Leg., p. 2098, ch. 682, § 27, eff. Sept. 1, 1975.]

**Art. 15.30a. Restriction on Number of Voters Assisted by Same Person in an Election**

(a) In any single election, it is unlawful for a person, other than a clerk or deputy clerk for absentee voting or an election judge or clerk at a regular polling place, to assist in preparing the ballot of more than five voters who are not related as parent, grandparent, spouse, child, brother, or sister to the person rendering the assistance. A violation of this subsection is a Class B misdemeanor. A person commits a separate offense for each voter assisted in violation of this subsection.

(b) A clerk or deputy clerk for absentee voting or an election judge or clerk at a regular polling place who knowingly permits assistance to be rendered in violation of Subsection (a) of this section commits a Class B misdemeanor.

(c) Subsection (a) of this section does not apply to a person who is called on by an absentee voting clerk or a presiding election judge to render oral assistance to Spanish-speaking voters in order to comply with the requirements of the federal Voting Rights Act,<sup>1</sup> regardless of whether the person rendering the assistance has been officially designated as a deputy absentee voting clerk or as an election clerk at a regular polling place.

(d) A violation of this section does not affect the validity of the ballot of the voter who is unlawfully assisted.

[Acts 1979, 66th Leg., p. 2061, ch. 806, § 5, eff. Aug. 27, 1979.]

<sup>1</sup> 42 U.S.C.A. § 1973 et seq.

**Art. 15.31. Presiding Officer Failing to Deliver Ballot**

Any presiding officer of any election precinct who shall fail, immediately after such election, to securely box, in the mode prescribed by law, all the ballots cast thereat, and within the time provided by law, thereafter to deliver the same to the county clerk of his county, shall be fined not less than fifty nor more than five hundred dollars, and in addition thereto, may be imprisoned in jail not exceeding six months.

[1925 P.C.]

**Art. 15.32. Making False Canvass; Court May Open Ballot Boxes**

Any Judge or Clerk of an election, chairman or member of a party executive committee, or officer of a primary, special or general election, who willfully makes any false canvass of the votes cast at such election, or a false statement of the result of a canvass of the ballots cast shall be confined in the penitentiary not less than two (2) nor more than five (5) years. In all such cases, the Court shall have authority to unseal and open the ballot boxes, and the Court may count, or cause to be counted under its direction, the ballots cast in any election; however, in so doing the Court shall exercise due diligence to preserve the secrecy of the ballots, and upon completion of such count the said ballot boxes with their original contents shall be resealed and redelivered to the County Clerk who shall keep the same until ordered by the Court to destroy the same.

[1925 P.C.. Amended by Acts 1943, 48th Leg., p. 433, ch. 296, § 1.]

**Art. 15.33. False Certificate by Chairman**

Any chairman of a county executive or district or State executive committee who is charged with the duty of certifying the names of the candidates selected by a primary convention or primary election who wilfully omits to certify the name of any candidate legally chosen, or who certifies falsely regarding anyone chosen or defeated, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

**Art. 15.34. Giving False Certificate of Election**

If any officer authorized by law to give a certificate of election shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine not exceeding three hundred dollars, and in addition thereto may be imprisoned in jail not less than one month nor more than one year.

[1925 P.C.]

**Art. 15.35. Wilfully Failing or Refusing to Discharge Duty**

Any judge, clerk, chairman or member of an executive committee, collector of taxes, county clerk, sheriff, county judge or judge of an election, president or member of a State Convention, or Secretary of State who wilfully fails or refuses to discharge any duty imposed on him under the law, shall be fined not to exceed five hundred dollars, unless the particular act under some other law is made a felony.

[1925 P.C.]

**Art. 15.36. "Election" Defined**

The term "election" as used in this chapter, means any election, either general, special, or primary, held under authority of law within this State, or within any town, city, district, county, precinct, or any other subdivision within this State for any purpose whatever.

[1925 P.C.]

**Art. 15.36a. Election Officers**

Any officer, election officer or judge, clerk or supervisor of any primary election who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty (\$50.00) Dollars, nor more than One Thousand (\$1,000.00) Dollars, or shall be confined in the county jail for any period not to exceed one year, or shall be punished by both such fine and imprisonment.

[Acts 1933, 43rd Leg., p. 762, ch. 225, § 13.]

**Art. 15.36b. Failure of Election Judge to Make Returns**

Any County Judge, County Chairman or any presiding judge of a precinct election who fails to make the complete official returns as required by this Act, shall be punished by a fine of not less than Fifty (\$50.00) Dollars, nor more than Two Hundred (\$200.00) Dollars, or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment; provided, however, that the failure of any person named herein to make the election returns within the time prescribed by this Act shall not affect the validity of such returns when made.

[Acts 1933, 43rd Leg., p. 769, ch. 228, § 3.]

**SUBCHAPTER D. ILLEGAL VOTING****Art. 15.41. Illegal Voting**

If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any

proposition to be determined by said election, he shall be guilty of a third degree felony.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 6, eff. June 20, 1975.]

**Art. 15.42. Instigating Illegal Voting**

Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be guilty of a felony of the third degree.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 7, eff. June 20, 1975.]

**Art. 15.43. False Swearing**

Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be guilty of a felony of the third degree.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 8, eff. June 20, 1975.]

**Art. 15.44. Inducing Voter to Swear Falsely**

Whoever knowingly and intentionally induces or attempts to induce another person to swear falsely as prohibited in the preceding article, shall be guilty of a felony of the third degree.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 9, eff. June 20, 1975.]

**Art. 15.45. Illegal Voting at Primary**

Any person voting at any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office who is not qualified to vote in the election precinct where he offers to vote at the next State, county or municipal election, or who shall vote more than once at the same or different precincts or polls on the same day, or different days in the same primary election, shall be fined not exceeding five hundred dollars, or be imprisoned in jail not exceeding sixty days, or both.

[1925 P.C.]

**Art. 15.46. Procuring an Illegal Vote**

Whoever shall knowingly procure any illegal vote to be cast at such primary election shall be punished as provided in the preceding article.

[1925 P.C.]

**Art. 15.47. Absentee Voting**

Any person wishing to vote as an absentee voter who shall vote or offer to vote illegally, or in any case or at any place where he is not entitled to vote, or who shall make false representation in any effort to vote, or who shall attempt to vote on any voter

registration certificate issued to a person other than himself, shall be fined not more than one thousand dollars or be imprisoned in the county jail not more than two years or both so fined and imprisoned. This law applies to any and all elections including general, special and primary elections.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

#### Art. 15.48. Falsely Personating Another

Whoever attempts to falsely personate at an election another person, and vote or attempt to vote on the authority of a voter registration certificate not issued to him by the county's registrar of voters, shall be confined in the penitentiary not less than three nor more than five years.

[1925 P.C. Amended by Acts 1981, 67th Leg., p. 3148, ch. 827, § 14, eff. Aug. 31, 1981.]

#### Art. 15.49. Participating in Primary Elections or Conventions of More Than One Party

Whoever votes or offers to vote at either a general primary election or a runoff primary election or participates or offers to participate in a convention of a political party, having voted at either a general primary election or a runoff primary election or participated in a convention of any other party during the same voting year, shall be guilty of a Class A misdemeanor.

[1925 P.C. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 115, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 1926, ch. 723, § 69, eff. Aug. 28, 1967; Acts 1975, 64th Leg., p. 2077, ch. 681, § 10, eff. June 20, 1975.]

#### Art. 15.50. Voting More Than Once

Whoever at a general, special or primary election votes or attempts to vote more than once shall be guilty of a Class A misdemeanor.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 11, eff. June 20, 1975.]

#### Art. 15.51. Using Dummy Ballot

Any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked paper or ballot, if he has one. Any person who gives, receives or secures or is interested in giving or receiving an official ballot or any paper whatever, on which is marked, printed or written the name of any person for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide by which he could

make out his ticket, shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail thirty days.

[1925 P.C.]

#### Art. 15.52. Illegal Acts While Voting

Any voter who shall show his ballot so as to reveal the vote cast by him, or who marks it otherwise than required by law for identification or who after voting delivers to the precinct judge of election any ballot other than the one delivered to him by the judge at the polling place, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

### SUBCHAPTER E. OFFENSES AFTER ELECTION

#### Art. 15.61. Altering or Destroying Ballots, etc.

If any person shall willfully alter, obliterate, or suppress any ballots, election returns or certificates of election, or shall willfully destroy any ballots or election returns except as permitted by law, he shall be guilty of a third degree felony.

[1925 P.C. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 116, eff. Aug. 23, 1963; Acts 1975, 64th Leg., p. 2078, ch. 681, § 12, eff. June 20, 1975.]

#### Art. 15.62. Messenger Tampering with Ballot

Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same shall be guilty of a felony of the third degree.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 13, eff. June 20, 1975.]

#### Art. 15.63. Failing to Deliver Returns

If any person intrusted with the transmission of an election return, shall wilfully do any act that shall defeat the delivery thereof or shall wilfully neglect to deliver the same as directed by law, he shall be fined not exceeding one thousand dollars.

[1925 P.C.]

#### Art. 15.63a. Immediate Delivery of Returns

Any chairman of a political party or other person or officer violating or failing to comply with any provision of this Act<sup>1</sup> shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$25.00 nor more than \$500.00, or be confined in the County jail not to exceed thirty days, or by both such fine and imprisonment.

[Acts 1929, 41st Leg., p. 570, ch. 275, § 2.]

<sup>1</sup> Section 1 of the 1929 Act was an amendment to Civil Statutes, art. 3124 (now art. 13.24).

**Art. 15.64. Preventing Delivery of Returns**

Whoever shall take away any election return from any person intrusted therewith, either by force or in any other manner, or wilfully do any act that shall defeat the due delivery thereof, as directed by law, shall be fined not exceeding two thousand dollars.

[1925 P.C.]

**Art. 15.65. Failure to Keep Ballot Box**

Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be guilty of a felony of the third degree.

[1925 P.C. Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 14, eff. June 20, 1975.]

**Art. 15.66. County Clerk to Keep Ballot Box**

If any county clerk shall fail, neglect or refuse to keep securely any ballot box containing tickets of election committed to his custody by the presiding officer of any election precinct, he shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in jail not exceeding six months.

[1925 P.C.]

**Art. 15.67. Destruction of Ballots**

If any county clerk or other officer charged with the custody of the ballots cast at an election fails, after the expiration of sixty days from the date of such election, to destroy by burning or shredding all the ballots cast at such election which may have come into his custody, except where a contest or criminal investigation in connection with the election is pending or where ordered by the district court to defer destruction of the ballots, he shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in jail not exceeding six months.

[1925 P.C.; Acts 1963, 58th Leg., p. 1017, ch. 424, § 117. Amended by Acts 1969, 61st Leg., p. 2662, ch. 878, § 38, eff. Sept. 1, 1969.]

SUBCHAPTER F. MISCONDUCT  
AT ELECTIONS

**Art. 15.71. Hiring Vehicle to Convey Voters; Removing Ballots from Polling Place**

Whoever hires any vehicle or hires any person to operate a vehicle for the purpose of conveying vot-

ers to the polling place, or rewards any person in money or other thing of value for procuring a vehicle or a driver for such purpose, shall be fined not exceeding five hundred dollars. This article shall not be construed to prohibit a voter from paying for the services of a vehicle or a driver for the purpose of conveying him to the polling place or to prevent him from allowing other voters to ride in the vehicle with him while he is going to the polling place in order to vote or returning therefrom after having voted.

Whoever wilfully removes any ballots from the polling place, except as permitted by law, shall be fined not exceeding five hundred dollars.

[1925 P.C. Amended by Acts 1963, 58th Leg., p. 1017, ch. 424, § 118, eff. Aug. 23, 1963; Acts 1967, 60th Leg., p. 1926, ch. 723, § 70, eff. Aug. 28, 1967.]

**Art. 15.72. Defacing Election Booth, Etc.**

Any person who, during an election, wilfully defaces or injures an election booth or compartment, or wilfully removes any of the supplies provided for elections, or before the closing of the polls wilfully defaces or destroys any list of candidates to be voted for at an election which has been posted in accordance with law, shall be fined not exceeding five hundred dollars.

[1925 P.C.]

**Art. 15.73. Intimidation or Reprisal Against a Voter**

Whoever knowingly and intentionally harms or threatens to harm another person by an unlawful act or economic reprisal in retaliation for or on account of having voted for or against any candidate or measure or refusing to reveal how he voted is guilty of a felony of the third degree.

[Acts 1975, 64th Leg., p. 2078, ch. 681, § 15, eff. June 20, 1975.]

**Art. 15.74. Inducing Another Person to Make False Statement on Registration Application**

Whoever requests, commands, or attempts to induce another person to make any false statement on any voter registration application shall be guilty of a felony of the third degree.

[Acts 1975, 64th Leg., p. 2078, ch. 681, § 16, eff. June 20, 1975.]

\*



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