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An Inquiry Into the Operation of the Primary System of New Mexico

Walter L. McNutt

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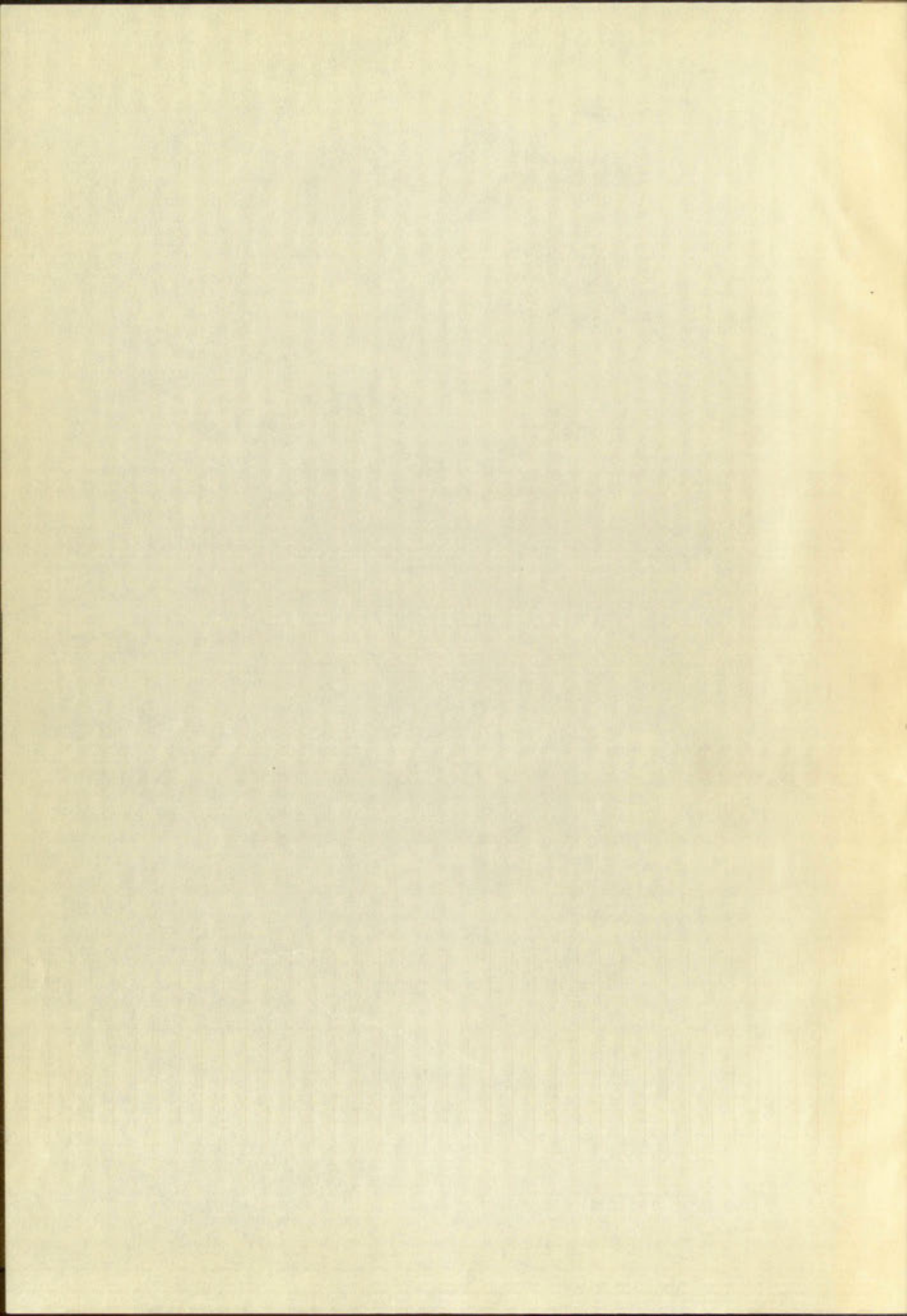
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AN INQUIRY INTO THE OPERATION OF THE
PRIMARY SYSTEM OF NEW MEXICO

A Thesis
Presented to
the Faculty of the Graduate School
University of New Mexico

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Walter L. McNutt
August 1946

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This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

Rance V. Johnson

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November 25, 1946

DATE

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I gratefully acknowledge the assistance of Clyde T. Tingley and Don. L. Dickason for interviews granted during the preparation of this thesis.

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THE
FEDERAL BUREAU OF INVESTIGATION
OF THE
DEPARTMENT OF JUSTICE
WASHINGTON, D. C.
JANUARY 1, 1941
MEMORANDUM FOR THE DIRECTOR
SUBJECT: [Illegible]

11-11-41

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I. THE FUTURE OF THE NATION

The people of the United States are

confronted with a choice between

continued peace and prosperity

or a return to the conditions of

anarchy and civil war.

The only way to avoid this

disaster is to maintain the

unity of the nation.

It is the duty of every citizen

to support the government in this

crisis.

The future of the nation

depends upon the actions of the

people.

Let us stand together and

defend our country.

For the sake of our children

and the future of the nation,

let us stand firm.

Our country is our home.

Let us protect it.

For the sake of our country,

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CHAPTER I

THE PRIMARY LAW IN THE MAKING

The purpose of this thesis is to examine the origin, enactment and operation of the Direct Primary Code of New Mexico. What has been the effect of greater public participation in the selection of candidates? Has there been a change in the quality of individuals who now seek public office? Has the legislation or the legislature improved under the law? What are the interests which are for or against the measure? These inquiries will be pursued in the pages that follow.

Politically speaking, New Mexico is a new state. The people who settled this region were sturdy, rough and ready by heritage and environment. It is an area dominated by strong men and by factions or groups which in turn are led by political bosses. A dynamic campaigner exerts widespread influence over many sections of the state especially among the laboring class. The sparse population enables the seeker of office to round up personally a political following. Individual initiative is still important to success in politics in the state.

The drama of the political campaign has long been an integral part of the lives of a large portion of the population. The temperament of the Spanish-American people lends

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itself readily to the pageantry of campaign politics. This interest results in a large percentage of voters participating in campaigns and elections. Candidates running for office during the heyday of the New Deal made capital of the administrative gifts lavished upon the poorer classes. Political factions dominated party organizations which controlled the many employees on state and county payrolls. All of this tended to make the colorful convention and caucus method of selecting candidates for public office acceptable to most voters until the latter part of the 1930's. The direct primary question was discussed and indeed included in the party platforms since 1930 but there was no concerted support for the proposal.

In her third decade of statehood New Mexico was discarding her adolescence. Her citizens were taking on a new concept of the role to be played by the common man and they began to feel that they too had an interest in the power and purpose of government. They were acquiring political traditions which they had never before experienced. Her people were busy comparing their state government with other states. They followed closely the primaries and elections in other sections of the United States and gradually came to the conclusion that New Mexico laws could be improved and changed to allow greater citizen participation in the selection of

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persons chosen to represent the people.¹

Until the year 1938 nominations of party candidates were held in caucuses and conventions. A caucus was held in each precinct to elect delegates to the county convention. In each county convention delegates were selected to attend the state convention. In some instances county primaries were held but the conduct of such affairs was left entirely to the political party. Conventions were extremely noisy and unwieldy often leaving the delegates in a state of physical and nervous exhaustion. They were ideally suited to the designs of the skillfully maneuvering politicians. There were frequent walkouts by party factions who became disgruntled when their particular and favored candidate lost the nomination. The disappointed groups would then hold a "rump" caucus and both factions would send delegates to the state convention. There was then much bickering as to which faction would be seated.

On July 19, 1938 State Senator Floyd Kennedy of Portales, ardent advocate of a direct primary law, stated in part:

The last few weeks of political hornswoggling climaxed by the greatest farce of them all, the Albuquerque precinct primaries, have done more to make the people of this state primary conscious than anything before in New Mexico.

¹ Gustav Stolper, This Age of Fable (New York: Reynal and Hitchcock, 1942), p. 17.

Reference was made to the defeat of the Tingley forces in Bernalillo County by 7644 to 3287. The losing faction walked out of the county conclave and elected their own delegates to the state convention. At that time Democrats of Bernalillo County held their own party-sponsored precinct primaries to elect delegates to the county convention. Primary rules provided that the ballot be issued by the county chairman. If names printed on the ballot were not satisfactory they could be scratched out and substitutes written in. This placed precinct voting procedure in the hands of the faction in office thus allowing little opportunity for other groups to voice their opinions or to obtain representation in the party assemblies. The Bernalillo primaries were watched carefully by voters throughout the state. This county being the largest in population was able to send the largest delegation to the state convention. Lack of popular participation in nominating candidates caused people to grow more primary conscious and clamor for some legal means to express themselves in selecting the persons who were to represent their particular party in the general election.

There was but the slightest trace of democracy under the convention system of selecting representatives of the people. County conventions were manipulated to the will of the political leaders. Party rules and rules of social propriety were ignored. Candidates and policies were steam-

rolled under the guidance of those in charge of party machinery.

Under the convention system state party machinery was controlled by a coalition of strong county organizations. Obtaining a winning combination in the state was merely a matter of successful bargaining to gain the support of a major number of county leaders.²

In the precinct caucus lay the foundation of organization control. These were strictly controlled by party henchmen and the delegates selected to represent the particular precinct in the county convention were the persons upon whom the stamp of approval had been previously assigned by the party hierarchy. These caucuses were open to the public but the time and place of meeting were often poorly advertised so that public participation was practically nil. Often party factions held precinct meetings at an unknown or early hour, selected their chosen delegates and adjourned before the public was aware that a caucus had been held. Small rooms were often designated meeting places. They would be packed with employees on state and county payrolls who were advised to meet early thus preventing other factions from attending. When "rump" caucuses were held, the contesting delegations to the county convention would find

² Thomas C. Donnelly, Rocky Mountain Politics (Albuquerque: The University of New Mexico Press, 1940), pp. 237-9.

that the certifying committee was also machine picked so that the walkout faction would find that they were still on the outside.

In an editorial in the Albuquerque Journal a suggestion was made that the direct primary system be incorporated in law with a limiting clause of four years. If this proved satisfactory, a permanent law was to be established. This was announced as an attempt to satisfy all factions and at the same time provide an exit whereby the state could rid itself of an unwise situation should the test indicate that the direct primary would be impractical in New Mexico.³

Proponents of direct primary legislation attacked the convention system of selecting candidates. They asserted that many office seekers, engendered by selfish ambitions, controlled the state's affairs for personal reasons. It was believed that this unwholesome influence could be largely eliminated from party councils by the establishment of a direct primary system.

The convention system made it extremely difficult for an individual citizen to exercise influence over the machinery of party government. An editorial in the Albuquerque Tribune pointed out that in the absence of a direct primary or any other rein over the political headmen the voter could do

³ Editorial in The Albuquerque Journal, July 8, 1938.

that the committee would have been more successful in its work if it had been able to obtain more information from the outside.

In an attempt to obtain more information, a suggestion was made that the committee should be given a list of names of persons who had been in contact with the committee. This was approved by the committee, and a list of names was obtained. This was then used by the committee to obtain more information from the outside.

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nothing but stand helplessly by while they battled to see who would take over the government.⁴ Only those closely associated with the leaders of the incumbent party faction would know who a candidate might be until a selected orator presented his name to the convention or caucus for consideration. This flagrant and usual exercise of political power often frustrated the natural inclination of the average citizen to exercise his voting privileges, knowing that nominations were already decided upon and that the most he could do would be to place his inconsequential stamp of approval upon the machine selected candidate.

Democratic party leaders, it was pointed out in the Albuquerque Journal, could not be naive enough to think that the voters were going to elect to office any nominee foisted upon them or that they were not going to rise to protest at the selfish political manipulations of county conventions and selection of controlled delegates to the state nominating convention. "The gang methods . . . would force a state-wide primary where the people have a voice in party affairs and nominations."⁵

The preceding reference was aimed at Mr. John E. Miles in his position as an unannounced but strong gubernatorial candidate, as Democratic State Chairman and salaried

⁴ Editorial in The Albuquerque Tribune, July 8, 1938.

⁵ Editorial in The Albuquerque Journal, July 15, 1938.

employee of the State Tax Commission. It was alleged that Mr. Miles was using his party chairmanship as a whip to bring counties into line for him. His favorable position made it discouraging to other party candidates for the same or other positions and had the effect of drying up the opposition.

The convention system was long the politicians' delight. The boss politicians selected the candidates and the people could take them or leave them. If a voter disapproved his party's manipulations, his only recourse was to bolt the ticket with a protest vote for a candidate of another party who was also picked by the politicians.⁶ A walkout of a political faction in any county was looked upon with relish by the opposing party. If the revolt was widespread a large bloc might be willing to consider a fusion movement.

Editors throughout the state were advocating a direct primary law. This was an expression of a popular demand. Editorializing often is the forerunner of the breaking down of abusive administrative and political practices. This type of legislation was necessary before the citizens of the state could enjoy the full privileges of citizenship.⁷

⁶ News item in the Portales (New Mexico) Tribune, August 2, 1938.

⁷ Editorial in the New Mexico (Santa Fe) Examiner, August 2, 1938.

There were many expressions regarding the farcical conduct of party operated primaries. The movement was fast growing for state-wide primary legislation with the same set-up as in regular elections as to fair presentation of names, registered voting and counting of the ballots. It was felt that a primary law would allow aspirants to office in either of the major parties a chance to get their names on the ballot and to submit their cause to the voters in the primary. The decision as to whether they could run for office would be largely taken from the politicians and placed before the people in the voting booths.

The first organized attempt to sponsor legislation changing the method of nominating candidates for office was undertaken in the regular session of the 1937 Legislature with three versions originating in the assembly's upper chamber. Senators Don. L. Dickason of Bernalillo County and M. H. Tate of Valencia County were co-authors of a state-wide primary bill but it was never reported out of the Judiciary Committee and never reached consideration on the Senate floor. Another plan, a proposal to let the people decide the question by referendum, went through the Senate and was killed in the lower chamber. A third plan, a revised model of the state-wide proposition making it optional by counties, also met defeat.

At this same legislative session proponents of the

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member, Senator Dan. J. Johnson of

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wide primary bill but it was rejected and

Legislative Committee and never reached

Senate floor. Another bill, a

feels the question by referendum, was

and was killed in the House

revised model of the state-wide

optional by counties, cities and

As for state legislative session

proposed primary measure attempted to obtain the backing of Governor Clyde Tingley but he declined to take a stand on the proposal. His legislative advisory committee referred the proposition, a Democratic platform plank, to the Legislature without recommendation.

The judiciary committee reported that it was unable to agree on a direct primary law because the committee was evenly divided against such a measure. The committee pointed out that the argument was made on one side that a direct primary would operate against some voters of the state and on the other side that modern, progressive provisions were needed. Consequently, the entire matter of a direct primary law was submitted to the Legislature without a definite recommendation.⁸

In his administrative message to New Mexico's thirteenth Legislature on January 12, 1937, Governor Tingley expressed the desire that all legislators keep in mind the interest of all groups of New Mexico citizens to the end that none would be deprived of their privilege of citizenship and that no part of any legislation be enacted which would in any way be detrimental to any citizen or groups of citizens.⁹ He thus side-stepped the direct primary question

⁸ News item in The Albuquerque Journal, January 10, 1937.

⁹ News item in The Albuquerque Journal, January 13, 1937.

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 Governor Clyde Rigney but he declined to take a stand on
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In his legislative message to the legislature
 this year the legislature on January 12, 1937, Governor Rigney
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 interests of all groups of the people of the state and
 that none would be deprived of their rights of suffrage
 ship and that no part of any legislation be enacted which
 would in any way be detrimental to any citizen or group of
 citizens. He also emphasized the direct primary question.

8 News Item in the Minneapolis Journal, January 12,
 1937.
 9 News Item in the Minneapolis Journal, January 12,
 1937.

and left it suspended without specific instructions even though he called attention to the fact that it had been incorporated within the policies of the Democratic Party.

On August 5, 1938, State Representative Elmer F. Taylor of San Juan County in a public letter addressed to the Governor advocated a special session of the Legislature to enact a direct primary law. This suggestion received widespread publicity throughout the state and considerable public pressure was brought to bear on state administrative officials clamoring for some action on the measure. On August 10, Governor Clyde Tingley publicly announced that a special legislative session was called for August 22 to consider enactment of a direct primary law.

The calling of the special session was purely a political move on the part of the chief executive. On March 15, 1937, the New Mexico Legislature passed a proposed amendment to the state constitution which provided for a removal of limitations on the number of terms for elective state and county officials.¹⁰ This proposition was later submitted to the vote of the people in a special election. Much public interest was aroused because it involved control of the state Democratic party organization. One faction of the party, the

¹⁰ Thomas C. Donnelly, "The New Mexico Special Election of 1937 on Constitutional Amendments," New Mexico Business Review, 2:164, 1938.

and later in 1937, when a bill was introduced to amend the constitution to provide for a single term of office for the Governor, although the bill was eventually defeated, it was a significant step in the process of reform. In 1938, the Governor, John H. Taylor, of the Democratic Party, was elected for a second term. Taylor's administration was marked by a series of reforms, including the establishment of the State Board of Education and the State Board of Agriculture. In 1940, Taylor was elected for a third term, and in 1942, he was elected for a fourth term. Taylor's tenure as Governor was one of the most successful in the history of the State, and his reforms laid the foundation for the modern State government. In 1944, Taylor was elected for a fifth term, and in 1946, he was elected for a sixth term. Taylor's sixth term was his last, as he died in 1948. His death was a great loss to the State, and his reforms were widely praised. The reforms that Taylor introduced during his tenure as Governor have had a lasting impact on the State, and they are still in effect today.

10. To the Honorable John H. Taylor, Governor of the State of Tennessee, for his many years of service to the State and for his many reforms, the following is a list of the reforms that he introduced during his tenure as Governor:

one under Governor Tingley whose second term was expiring, sponsored the measure. The other two factions, led by Senator Chavez and Congressman John J. Dempsey respectively, pledged themselves to the defeat of the amendment.¹¹ This factional fight over the proposal illustrates the tendency of one-party states to inter-party strife.¹²

In the special election held on September 21, 1937, the amendment was defeated at the polls 56,749 to 34,826.¹³ This defeat of the Tingley sponsored proposal was a definite set-back for the governor who thought that he had built a political organization so strong that he could demand whatever he wanted from the voters and get it. Removal of office tenure limitations would have resulted in a veritable political monopoly in the state in the absence of a primary law which would have given the electorate a chance to express their nomination preferences by ballot.

Political observers credited the calling of the special session to the gubernatorial frustration at having his measures and policies repudiated by the whole state at the special election. The Governor hoped that by sponsoring popular legislation in the form of a direct primary law he might recoup, to some degree, his waning political prestige.

¹¹ Loc. cit.

¹² Ibid., p. 169.

¹³ Ibid., p. 168.

one under Governor Frazier whose record was excellent,
sponsored the measure. The other two factions, led by
Senator Govey and Congressman John J. Fawcett respectively,
pledged themselves to the defeat of the amendment.¹¹ This
factional fight over the proposal illustrated the weakness of
one-party control to later-party control.¹²
In the special election held on September 21, 1933,
the amendment was defeated at the polls 56,799 to 54,322.¹³
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Political observers credited the ceiling of the
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popular legislation in the form of a direct primary law he
might recover, to some degree, his waning political prestige.

11 Ibid., p. 158.
12 Ibid., p. 158.
13 Ibid., p. 158.

At the same time it might deal an embarrassing blow to the organizations of Chavez, Dempsey and Miles, his bitter political opponents.

At once proponents of primary legislation made themselves in evidence. Former Governor Richard C. Dillon, prominent Republican and first governor to serve two terms since statehood, favored passage of the primary law with the emergency clause so that it would be in effect at the fall election. He pointed out that he could see no racial disadvantages in the proposed measure. He further indicated that he had worked actively for a primary bill as early as 1925 when he was a member of the State Senate.

State Senators Don. L. Dickason, Albuquerque, C. C. Royall, Silver City and Representative Elmer F. Taylor collaborated on the preparation of a direct primary bill to be introduced at the special session of the State Legislature. All three had worked for passage of a primary bill at the previous regular legislative session in 1937 only to see their proposal defeated.

A political storm ensued over the state upon the gubernatorial summons for a special legislative session to consider direct primary legislation. United States Senator Carl Hatch declared that, although he never believed that a statewide direct primary would operate satisfactorily or beneficially in this state, the Democratic platform promise

of a primary should be performed as a prerequisite for maintenance of party responsibility.¹⁴

Representative Concha Ortiz y Pino, youthful woman member of the lower chamber who with her father operated a large sheep and cattle ranch, declared her opposition to a primary system. She indicated a strong sentiment in her district against such a bill. She further averred that the advocates of the proposal were ones whose leadership and political theory were rejected by the majority of the voters. She declared that sponsorship at that time was an attempt at revenge upon those rejectors. Reference was made to the defeat of the Tingley forces in the conventions in July of that year.

United States Senator Dennis Chavez was outspoken in his disappointment of the primary measure. He injected a racial note into the proceedings by declaring that enactment of such a law would be prejudicial to the best interests of the Spanish-American population. At the same time State Senator A. K. Montgomery of Santa Fe, opponent of primary legislation in 1937, reaffirmed his hostility to the proposal.

Opposition to the proposed enactment was quickly organized. The Good Neighbor League was organized in Santa

¹⁴ News item in The Albuquerque Journal, August 12, 1938.

Fe headed by Democratic District Attorney Carmody and Republican Judge Reed Holloman. This league opposed any move toward enactment of primary legislation and predicted that a primary would infuse racial and religious issues into the politics of the state. They quickly organized these clubs in the counties where they could obtain membership and organization.

No one was able to obtain a stand on the primary measure by State Democratic Chairman John E. Miles who was an unannounced candidate for governor. He was generally considered to be in the favored position for nomination at the impending Democratic state convention. There were outcries from all sides, especially from the Republican Party, against his continued silence on the proposed legislation. Because he was a party leader it was thought or expected that he would place himself in a position whereby he would gain prestige throughout the state by approving the bill.

Supporters of a direct primary law met the challenge of the anti-primary Good Neighbor League with the formation of the Direct Primary League headed by Miguel A. Otero, Senior, territorial governor of New Mexico from 1897 to 1906. Having Otero as chairman of the organization was an advantageous move by the exponents of the bill for he represented a considerable political following in the state.

In answer to the claim of the Good Neighbor League

that such legislation would foment racial and religious prejudices, Otero stated:

I have always favored a direct primary. It will not hurt the native people of New Mexico but will hurt only the native politicians of the state. The native people of New Mexico are well qualified by education, their interest in politics and government and by their very tradition to look after themselves. Rather than be hurt by a primary they will be helped, for it will give them an opportunity to express themselves instead of politicians expressing themselves in behalf of their people. I think it is a disgrace for any group of politicians to say that the native population is not ready for a primary.¹⁵

Asked in a statement by Santa Fe District Attorney Dave Carmody if he "had accepted the role of a primary Moses" from Governor Tingley, former Governor Otero asserted that he was "favorable to a direct primary in New Mexico long before young Carmody was born."¹⁶

Otero, chairman of the state-wide Direct Primary League, put forward a Citizens' Lobby Committee chairmanned by H. L. Boyd, Springer banker, as the organization battle front agency. This was assertedly designed as a lobby for the people. In past legislatures there were lobbies from every interest or group in the state except the people as a whole.¹⁷ By this time there were many county organizations

¹⁵ News item in The Albuquerque Journal, August 18, 1938.

¹⁶ News item in The Albuquerque Journal, August 19, 1938.

¹⁷ News item in The Albuquerque Journal, August 20, 1938.

that such legislation is not only a waste of time

proposition, but also a waste of money.

I have always believed that the only way to
solve the problem of the unemployed is to
create more jobs. I believe that the only
way to create more jobs is to increase
the production of goods and services.
I believe that the only way to increase
the production of goods and services is to
invest in the development of new
industries and new technologies.
I believe that the only way to invest
in the development of new industries and
new technologies is to provide the
necessary capital and the necessary
technical assistance.

It is my belief that the only way to

have a successful program is to have a
program that is based on the principles of
the New Deal. I believe that the only
way to have a successful program is to
have a program that is based on the
principles of the New Deal. I believe
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successful program is to have a program
that is based on the principles of the
New Deal. I believe that the only way
to have a successful program is to have
a program that is based on the principles
of the New Deal.

1934	1934
1935	1935
1936	1936
1937	1937

of the Direct Primary League and through these were obtained approximately fifty thousand signatures of persons in favor of enactment of a primary law.

Caravans of anti-primary exponents deluged the capitol from all sections of the state as a result of opposition raised by the Good Neighbor League. On August 24, 1938, the third day of the special session, a parade of demonstrators circled the state house amid much fanfare and speech making. United States Senator Dennis Chavez, who bitterly opposed the proposal, told the throng that the primary idea at that time was conceived in hate and personalities. It was reported that approximately three thousand persons were among the throng.

The first primary bill to be introduced in the special session was offered by Senators Don. L. Dickason, Albuquerque, and C. C. Royall, Silver City, who studied closely the primary codes of other states. The Dickason-Royall proposal was patterned after the primary laws of New Jersey and Arizona, the first being enacted during the governorship of Woodrow Wilson. It provided for the law to be effective in the selection of candidates in October. Sufficient anti-primary strength was displayed in both houses to prevent the proposed primary law from affecting elections for that year. The required two-thirds membership to make the law immediately operative was not realized.

of the Direct Primary League and through these were obtained approximately fifty thousand signatures of persons in favor of enactment of a primary law.

Caravan of anti-primary expenses during the campaign from all sections of the state as a result of opposition raised by the Good Neighbor League. On August 25, 1912, the third day of the special session, a parade of demonstrators attended the state house and much lecture and speech making. United States Senator Dennis Chavez, who bitterly opposed the proposal, told the throng that the primary law was that the was cancelled in haste and imprudently. It was reported that approximately three thousand persons were among the throng.

The first primary bill to be introduced in the special session was offered by Senator Don. L. Dickson, Albuquerque, and C. C. Royall, Silver City, who studied closely the primary codes of other states. The Dickson-Royall proposal was patterned after the primary laws of New Jersey and Arizona, the first being enacted during the governorship of Woodrow Wilson. It provided for the law to be effective in the selection of candidates in October. Guided anti-primary strength was displayed in both houses to prevent the proposed primary law from attaining election for that year. The required two-thirds membership to make the law immediately operative was not realized.

The chief argument raised against the measure becoming effective immediately was the fact that most county conventions had already been held for that election year and nominations for precinct and county offices in those counties had already been made. To nullify the results of the county assemblies in this way would have been a duplication of the nomination process as the parties had already expressed themselves.

Much public action in favor of the proposition was effected throughout the state. The rank and file of people were avid advocates of the proposal and the editors of leading state publications continued their support. Over two-thirds of the qualified voters of Chavez County signed a petition addressed to the State Legislature of New Mexico asking passage of such a law.¹⁸ Other groups and individuals kept pouring their requests into the capitol during the special session to enact the proposed measure.

On the eighth day of the assembly the State Senate passed a state-wide direct primary election bill known as Senate Bill No. 1, by a vote of thirteen to eleven, insufficient to assure immediate effectiveness of the law. It was then forwarded to the House of Representatives for action.

¹⁸ News item in The Roswell (New Mexico) Dispatch, August 29, 1938.

The chief argument advanced in support of the bill is that it will secure the most efficient administration of the public lands. It is claimed that the present system of administration is inefficient and that the bill will provide for a more efficient system. The bill also provides for the appointment of a board of land commissioners, who will be responsible for the management of the public lands. The bill also provides for the appointment of a board of land commissioners, who will be responsible for the management of the public lands.

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August 22, 1902

On the same day a joint session of the Legislature was addressed by United States Senators Hatch and Chavez, United States Representative John J. Dempsey and Democratic State Chairman John E. Miles. Hatch expressed the view that the measure should be passed on the grounds that if properly adjusted to New Mexico politics it would greatly benefit the electorate as a whole. His chief interest in seeing it passed, however, was in the fact that it had been included within the Democratic Party platform as a definite and positive plank. Dempsey, Chavez and Miles each asserted that a workable primary law was needed and that he was a guardian of people's rights which would be impaired by passage of a hasty and poorly prepared measure. The latter three opposed the passage of the Dickason Bill, the intent of which was to make the law operative upon enactment. Politically strong party leaders contemplated the possibility of repealing the primary bill, if enacted, at the following regular session of the State Legislature.

In the event of enactment of the measure, political leaders felt that repeal would be more difficult if the electorate were given an early opportunity of casting their ballots under direct primary procedure. Positions of party and faction favorites, already largely selected in precinct and county caucuses, would be jeopardized. The possibility existed that many might be repudiated by popular reaction

until such time as political machinery became readjusted to the changed situation. The prestige of sponsoring political interests would thus have suffered severely.

The House of Representatives passed the measure, known as the Dickason-Royall Bill, by a vote of twenty-seven to eighteen, a majority insufficient to make the law effective in the 1938 elections. Governor Clyde Tingley signed the bill into law on September 1, 1938, giving New Mexico a direct primary for the elections in 1940.

until such time as political expediency became indicated by
the changed situation. The practice of a passing political
interest would then have followed naturally.

The House of Representatives passed the measure, known
as the Dickman-Royall Bill, by a vote of twenty-seven to
eighteen, a majority insufficient to pass the law without
in the 1938 elections. Governor Charles Tingley signed the
bill into law on September 1, 1938. It was not until
direct primary for the election in 1940.

CHAPTER II

THE LAW

New Mexico's initial primary legislation, cited as "Primary Election Code," was enacted at a special legislative session in August 1938 thereby establishing a direct primary election law for the state. It provides for the nomination by certain political parties of candidates for all elective offices except municipal offices. Stipulations are made for nominative filing procedure, filing fees, form of ballots, expenses and dates for holding primaries. In addition, candidates are required to file a statement of expenditures which are limited by law.¹

In the official formulation and phraseology of the primary law, comparative legislation from laws of the following states was considered: Arizona, Arkansas, California, Florida, Idaho, Indiana, Kansas, Louisiana, Mississippi, Nebraska, Ohio, Tennessee and Texas.²

Candidates under the law are selected only by political parties whose vote at the last general election comprised at least fifteen per cent of the total number of votes cast by all parties for the candidates for governor.

¹ New Mexico Statutes, 1941, Volume 4 (Indianapolis, The Bobbs-Merrill Company, 1942), p. 1251.

² Loc. cit.

THE LAW

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¹ See New Mexico Statutes, 1938, Volume 4 (Indianapolis: The Bobbs-Merrill Company, 1938), p. 1233.
² See, also.

This act applies to the offices of United States Senator, United States Representative, presidential electors, and to all elective state, district, legislative, county and precinct officers who are elected at the general election held biannually upon the first Tuesday after the first Monday in November of each even numbered year. It is not applicable to municipal offices or to special elections held to fill vacancies in the United States Senate or in the United States House of Representatives. According to an interpretation by the attorney general, there is no limitation upon the rights of a political party to nominate whom it may choose under such rules and regulations as it may adopt regarding municipal school board elections since they are excluded from the primary scheme.³

Provision was made for a primary to be held in each county on the second Saturday in September of each even numbered year. This provision was amended in 1943 for reasons that will be explained later and provided for the primary to be held on the first Tuesday after the first Monday in June.⁴ Only qualified registered electors of each political party participating in the primaries are allowed to select party candidates by secret ballot.⁵ This provision

³ New Mexico Statutes, 1941, Cumulative Pocket Supplement, Volume 4 (Indianapolis, The Bobbs-Merrill Company, 1945), p. 291.

⁴ Ibid., p. 292

⁵ New Mexico Statutes, 1941, op. cit., p. 1252.

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the twenty-ninth of the series, the thirtieth of which was

makes of it a "closed" primary law in that only Democrats and Republicans are allowed to vote for members of their respective parties.

It became a designated duty of the governor of the state to issue a public proclamation on the first Monday in July of each even numbered year calling a primary election. (Amended in 1943 from July to April).⁶ Names of the participating political parties and the offices to be filled are included in the governor's proclamation. This information indicates dates on or before which declarations and nominating petitions of candidates must be filed. Complete state coverage and widespread publicity are required for the gubernatorial statement so that there is no doubt that all citizens are aware of the impending election.

A declaration of candidacy must be filed by each candidate at least thirty days before the date of the primary. No person who has changed his party affiliation during the twelve month period prior to the issuance of the proclamation may become a candidate for nomination for any elective office. An individual may become eligible for candidacy in only the political party of which he is a duly registered member. Only those persons who have previously been registered with a political party are prohibited from becoming candidates of

⁶ New Mexico Statutes, 1941, Cumulative Pocket Supplement, op. cit., p. 292.

of precinct No. _____ of the
 County of _____ (here insert the number of precinct)
 State of New Mexico, declare that I am a member of the _____
 (here insert the name of county) (political party)
 Party and desire to become a candidate for nomination for
 the office of _____ at the primary to be held
 (here insert office)
 on the first Tuesday after the first Monday in June, A. D.,
 19____, and I hereby irrevocably authorize and direct the
 officials charged therewith to print on the official ballot
 the name of the candidate receiving the highest number of
 votes for the aforesaid office at said primary as the
 candidate of the said party for said office at the ensuing
 election.

 Declarant

 Post Office Address

"10

At the time the candidate files his declaration for
 candidacy, he must also file a petition for nomination signed
 by registered voters of his political party. Following is an
 example of a nomination petition:

"NOMINATING PETITION

We, the undersigned qualified electors of the State
 of New Mexico and members of the _____
 (here insert name of party)
 Party in said State, do respectfully petition that the name

 10 Ibid., p. 293.

of President
County of
Mexico, and
Party and
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officials
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No. 100
of new
Party in
19__.

of _____ be placed upon the
 (here insert name of declarant)
 official ballot of the said party as a candidate for
 nomination for the office of _____
 (here insert name of the office)
 in the primary to be held on the first Tuesday after the
 first Monday in June, A. D., 19__.

SIGNATURE OF
ELECTOR

POST OFFICE
ADDRESS

COUNTY

all

The number of required signatures varies according to the importance of the office. A petition for a precinct office requires five qualified signers; county offices, twenty-five; judicial district or legislative offices in districts encompassing an area less than the state at large, fifty; for offices from the state at large, five hundred.

Declarations and petitions must be filed by the candidate during a period beginning on the first Tuesday of April of each even-numbered year and ending on the thirtieth day prior to the date of the primary elections. This must be accompanied by a filing fee equivalent to three per cent of the first year's salary of that particular office. Declarations and petitions are filed with the county clerk. For offices filled by the state at large and districts of more

¹¹ Ibid., pp. 293-94.

of _____
(here insert name of contestant)
official ballot of the said party as a candidate for

nomination for the office of _____
(here insert name of the office)
is the primary to be held on the first Tuesday after the

first Monday in June, A.D., 19__.

SIGNATURE OF _____
ELECTION _____
POST OFFICE _____
COUNTY _____

The number of natural persons varies according to
the importance of the office. A petition for a township
office requires five qualified electors; county officers,
twenty-five; judicial district or legislative officers in
districts encompassing an area less than the state at large,
fifty; for officers from the state at large, five hundred.
Declarations and petitions must be filed by the
candidate during a period beginning on the first Tuesday of
April of each even-numbered year and ending on the thirtieth
day prior to the date of the primary election. This must be
accompanied by a filing fee equivalent to three per cent of
the first year's salary of that particular office. Declara-
tions and petitions are filed with the county clerk. For
offices filled by the state at large and districts of more

than a single county the candidate files with the secretary of state. In 1943 the law was amended making it unlawful for any person to enter any county or state filing office prior to 9:00 A. M. on the date of such filing.¹² This was intended to reduce fraudulent and unfair filing tactics, an illustration of which will be described in the next chapter.

Filing fees of candidates consisting of three per cent of the first year's anticipated salary are collected by the treasurer of the county where the declaration is filed. Fees from candidates from the state at large are collected by the secretary of state and then divided among the counties in such proportion as the total vote of each county bears to the total vote of the state for governor at the preceding general election. This money is designated "Primary Election Fund" which is used to defray the cost of county primaries. At the same time the secretary of state submits to the clerk of each county a certified list of all eligible declarants who qualify as candidates for nomination for all state offices other than county. This information is required in the preparation of the official ballot.

The three per cent filing fee is required only where the salary is a definite sum fixed by law. Where compensation is uncertain as in state legislative positions, a filing

¹² Ibid., p. 294.

fee is not necessary. According to an opinion of the attorney general, the fee paid by a candidate for the filing of his declaration of candidacy cannot be returned to him upon his withdrawal.¹³ Compensation for additional duties of an elective office for which there is a stated salary should not be considered in computing the filing fee provided by law.¹⁴

Should the primary election fund be insufficient to defray the expenses involved for holding a primary election in any county, the deficiency is budgeted and paid by the county. The only exception was for deficiencies incurred during the year of 1938 when all shortages were paid by the state from its general fund.¹⁵

Not less than twenty days prior to the date of the primary, each county clerk groups together all candidates for each party and prepares separate ballots. The ballots are numbered, are of uniform size and are printed on white paper in black ink. Across the top is captioned, "OFFICIAL DIRECT PRIMARY ELECTION BALLOT." Underneath is printed the name of the political party, the date of the primary election and the name of the county. Then follow the words, "To vote for a person mark a cross (X) in the square at the right of the

¹³ Ibid., p. 295.

¹⁴ Loc. cit.

¹⁵ New Mexico Statutes, 1941, op. cit., p. 1260

name of each person for whom you desire to vote," succeeded by the designated office in both the English and Spanish languages.¹⁶ Also included are instructions as to the number of persons for whom a choice should be made. Following the designation of office appear the names of the candidates in order of filing. The position of offices thereon are arranged as follows: first, candidates for United States Senator; Congressional candidates; presidential electors; state candidates; legislative candidates; district candidates to be voted on in more than one county; and last, county candidates.¹⁷ All printed material must be in both the English and Spanish languages with the exception of names of candidates. Senate Bill number 265, approved April 13, 1945, empowers the secretary of state to issue a rule or regulation prescribing the form of ballot to be used in primary elections.¹⁸

In each county the board of county commissioners is responsible for appointing election judges and polling clerks on or before the third Monday prior to the date of the primary election. Three election judges and one polling clerk are appointed for each precinct. In the event that more than two hundred votes were cast in a precinct for

¹⁶ Ibid., p. 1256.

¹⁷ Ibid., p. 1257.

¹⁸ Laws of New Mexico, 1945, ch. 124, sec. 8, p. 215.

name of each person for whom the name is to be used.
by the person who is to use the name.
language. 10 Also, the name of the person who is to use the name.
of persons for whom the name is to be used. 11
designation of the person who is to use the name. 12
order of filing. The order of filing is to be determined by the
arrangement as follows: 13
General; Governmental; National; and 14
State. 15
to be used in the name of the person who is to use the name. 16
candidate. 17
English and French. 18
candidate. 19
answers the question of who is to use the name. 20
prescribing the form of the name. 21
elections. 22
in each case the name of the person who is to use the name. 23
responsible for the name. 24
on or before the first meeting of the committee. 25
primary election. 26
clear are and the name of the person who is to use the name. 27
more than two persons who are to use the name. 28

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governor at the preceding election, two clerks are appointed. The duty of the clerk is to assist only those members of their own political party to mark ballots upon a sworn affidavit stating an inability to mark their own without assistance.¹⁹

Election officials will deliver to a voter only the ballot of the party designated as his party affiliation on his affidavit of registration. The write-in method of voting is not permitted so the voter must select candidates from among the names printed on the official ballot. (State ex rel. Van Schoyck versus Board of County Comrs., 46 N. M. 472, 131 Pac. (2nd) 278.)²⁰

The general election laws of the state govern the manner of holding primary elections. The powers, duties and compensation of all election officials are imposed by law. Three days prior to the date of election, each county clerk must furnish proper registration data to all election officials within his particular county for the purpose of assuring that only duly registered electors cast their ballots on election day.

Following the selection of candidates as a result of primary elections, the county and state canvassing boards

¹⁹ New Mexico Statutes, 1941, Cumulative Pocket Supplement, op. cit., pp. 295-96.

²⁰ ibid., p. 296.

Government of the United States of America
The duty of the citizen is to obey the law
which has been enacted by the Congress
and to pay the taxes which are levied
thereon.

It is the duty of the citizen to
support the Government and to
defend the country in case of
war. It is also the duty of the
citizen to vote in the elections
and to participate in the
government of the country.

The rights of the citizen are
guaranteed by the Constitution
and the laws of the country.
These rights include the right
to life, liberty and property,
the right to a fair trial,
the right to a jury trial,
the right to a speedy trial,
the right to a public trial,
the right to a trial by jury,
the right to a trial by a
competent judge.

It is the duty of the citizen
to respect the rights of others
and to live in peace with
them.

TO THE HONORABLE SENATE OF THE UNITED STATES
AND TO THE HOUSE OF REPRESENTATIVES
OF THE UNITED STATES
IN SENATE
JANUARY 1, 1900

certify to the county clerks the name of each person nominated by each political party. County commissioners comprise the county canvassing board. The state canvassing board is composed of the governor, chief justice and the secretary of state as provided in the New Mexico Constitution, Article 5, Section 2.²¹ The person receiving the highest number of votes of his party at the primary election is the nominee for office. If more than one candidate is to be elected in the general election for the same office and for the same length of term, then the necessary number of candidates to fill the offices are selected from those persons receiving the highest number of votes in the primary. The county clerk arranges to have the names of the accredited and certified candidates placed upon the official ballots which are prepared for the next general election. In the event that two or more candidates have similar names so as to tend to possibly confuse the voters, their occupation and official address are printed in both English and Spanish under the names on the primary ballot. The attorney general invites attention to the requirement that the name of a candidate appear on the general election ballot the same as it appears on the certificate of the state canvassing board.²²

²¹ New Mexico Statutes, 1941, Volume I (Indianapolis: The Bobbs-Merrill Company, 1942), p. 193.

²² New Mexico Statutes, 1941, Cumulative Pocket Supplement, op. cit., p. 298.

If a vacancy exists in the list of candidates of a political party which is entitled to representation at the next general election, the vacancy may be filled by the party committee of the county or the state. This may be done at any time prior to the general election and only in case that the individual concerned was a candidate for nomination in the primary.²³

Separate primary ballots are prepared for each precinct with the precinct candidates contained thereon in a manner similar to the general primary ballots. Each voter, upon reporting to the voting officials on the day of election, is handed a precinct ballot along with the ballot containing the county, state and other candidates. The elector then votes both ballots in the same manner. In accordance with an interpretation of the law by the attorney general, separate ballots are not required for precincts in which no formal declaration of candidacy has been filed.²⁴

Legislation limits campaign expenditures by each candidate at any primary election. The following amounts are maximum authorizations for legitimate campaign expenses exclusive of money spent for necessary personal, travelling or subsistence expenses: for United States Senator, thirty-five hundred dollars; Congress or governor, twenty-five

²³ Loc. cit.

²⁴ Loc. cit.

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Separate primary ballots are prepared for each precinct with the precinct committee members listed in a column adjacent to the general primary ballots. Each voter, upon returning to the voting officials on the day of election, is handed a precinct ballot along with the ballot containing the county, state and other candidates. The elector then votes both ballots in the same manner. It is accordance with an interpretation of the law by the attorney general, separate ballots are not required for precincts in which no formal declaration of candidacy has been filed.²⁴

Legislation limits campaign expenditures by each candidate at any primary election. The following amounts are maximum authorizations for legislative campaign expenses exclusive of money spent for necessary personal, traveling or subsistence expenses: for United States Senator, thirty-five hundred dollars; Congress or Governor, twenty-five

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hundred dollars; Supreme Court judge, one thousand dollars; for any other office for which electors of the state shall vote, fifteen hundred dollars; for district judge, district attorney, state senator or representative, two hundred fifty dollars; and for any other offices for which electors of a county or a subdivision shall vote, two hundred fifty dollars. In an opinion by the attorney general, a candidate is not limited in campaign expenditures for items such as stationery, postage, printing, necessary travelling and subsistence expenses. Advertisements in publications, political cards and banners all constitute printing so a candidate is not limited in expenses incurred regarding these items.²⁵

In the event that a candidate should receive the nomination of a political party and fail to report properly his campaign expenditures, he will be denied the certificate of nomination and his name will not appear on the official ballot at the ensuing general election. A candidate who does not receive the nomination and who fails to properly report his campaign expenses is guilty of a misdemeanor and is subject to a fine of not less than twenty-five and not more than five hundred dollars. If a candidate expends more money or other things of value than allowed by law, he is

²⁵ Ibid., p. 299.

considered guilty of a misdeameanor and fined from one hundred to two thousand dollars and is subject to imprisonment in the county jail for six months to two years.

When tie votes result between any two candidates running in the primary for the same office, the question of who should be determined the winner is decided by lot. The method of settling such a tie is the same as provided by law for a tie at any general election. A committee composed of the two candidates involved, the county chairman of that particular political party, the judge of the district court for that county and the county commissioners will decide the manner in which the decision by lot will be effected. A certificate of nomination will then be issued to the candidate chosen.

Any candidate may demand a recount of votes if he feels that some error or fraud has been committed in counting or tallying the ballots or in recording and certifying the results. If a candidate so desires, he must file his request with the county clerk within five days following the issuance of a certificate of nomination in the case of precinct or county offices and within ten days after the issuance of a certificate of nomination for all other offices. The county clerk will then notify the county commissioners, acting as a canvassing board, who must within a three day period open the ballot boxes of the contested precincts and recount, retally

and recertify the result of the primary election. Candidates who are affected have the right to be present in person or by attorney and with the desired clerical help.

If a recount is for any office other than county or precinct, as for example the office of United States Senator, the county canvassing board will make the recount for each candidate whose office is recounted. Results are then forwarded by the several county recount boards to the state canvassing board which is bound by law to accept the recount tabulation as final.

Following a recount by the county and state canvassing boards, certificates of nomination will be sent to successful candidates in the light of the second counting of the primary ballots. The state canvassing board must meet within twenty days following the primary election if action is demanded due to a requested recount. It must remain in session until a complete canvass of returns from the county boards has been accomplished.

In the state's initial primary in 1940, John J. Dempsey contested the results in the balloting in several counties and demanded a recount. The court maintained that the state canvassing board did not err in declining to throw out all the votes in six precincts in which it was impossible to determine for whom some unregistered voters had cast their ballots. The court further decided that the state board was

correct in taking the stand that under the law they are not entitled to disenfranchise so large a number of voters.

(Reese versus Dempsey, 48 N. M. 485, 153 Pac. (2nd) 127.)²⁶

The election of any candidate to whom a certificate of nomination has been issued may be contested by an unsuccessful candidate. Any defeated candidate may appeal any judgment or decree entered in the contest to the highest state tribunal. Ballots must be preserved by county clerks until it is assured that there are no impending contests or recounts or until contests have been finally determined. Procedure for contests is established from time to time as occasion demands by rules handed down by the Supreme Court of New Mexico which is the legal arbiter in such cases.

The "Primary Election Code," which gave to the state of New Mexico its first primary law, legally provides for a just and equitable distribution of suffrage and citizenship privileges. Any person may file for office if requirements as to declarations of candidacy, filing fees and nominating petitions are observed. Electors, candidates and potential candidates alike are protected by law and have legal recourse in the event that irregularities are proved or suspected. The rough and ready politics of New Mexico has come to feel for the first time the reins of public sponsored legislation.

²⁶ Ibid., p. 300.

CHAPTER III

THE LAW IN OPERATION

On July 1, 1940, Governor John E. Miles issued a formal declaration calling for a primary election for September 14. This was the signal for a rush of hopeful candidates to file for the office of their choice. Governor Miles was the first to file as his notice of candidacy accompanied the official proclamation.

Charges and counter charges of unfair candidacy declarations marred the otherwise serene and official opening of this first state-wide direct primary election campaign. Opening day for filing was the date upon which the governor issued his formal proclamation and extended from July 1 to August 15. Many were waiting in line before registration offices opened hoping to be the first to file for the various offices. According to law the names of candidates were to appear on the primary ballot in the order in which they filed for candidacy.

One Democratic candidate for state land commissioner, Carl Faubion, Quay County Clerk, charged that he was squeezed out of his rightful place at the head of his party's ballot. He declared that he had been first in line for filing and that Santa Fe District Attorney David Carmody was permitted to enter the secretary of state's office and file for several

On July 1, 1944, the following was received from the

Internal Security Division, New York City:

Re New York letter of July 1, 1944, captioned as above.

Enclosed for the Bureau are two copies of a letterhead

memorandum dated July 1, 1944, captioned as above.

Very truly yours,

Special Agent in Charge

Enclosed for the Bureau are two copies of a letterhead

memorandum dated July 1, 1944, captioned as above.

Respectfully,

Special Agent in Charge

Enclosed for the Bureau are two copies of a letterhead

memorandum dated July 1, 1944, captioned as above.

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candidates, including H. R. Rodgers, an opponent of Faubion's.¹ Candidate Faubion protested to the secretary of state who in turn referred the matter to the attorney general. No action resulted from the alleged irregularity except the subsequent nomination of Faubion's opponent.

Considerable interest was manifested regarding the method of placing names of candidates on the primary ballot in the order in which they filed their declarations of candidacy. This requirement appeared to be as fair as any, though in some states laws require that names be listed alphabetically, by rotation or by lot. One editor thought that the voters were going to scan the list of names thoroughly before making a selection. The people had been operating under the convention system for so long that they were expected to welcome the privilege of voting for the person they wanted to see on the party ballot in the general election in November.² It was generally felt that few would be so careless with their own prerogative to exercise their own highly valued judgment as to vote for the first name on the ballot. At the same time the number one position usually carries with it a psychological advantage, especially when candidates are virtually unknown to a large number of voters.

¹ News item in The Albuquerque Journal, July 2, 1940.

² Editorial in The Albuquerque Journal, July 2, 1940

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It was expected that good and bad points would be disclosed as the primary law unveiled itself in operation. One advantage was immediately noted. The man or woman with designs on public office must first inform the people. Within a few days after the opening of the filing period the chief candidates were already in the field. Under the old convention system the voting public would not know the identity of their candidates until the last day of the session. Under that system the candidates compromised with the bosses. Under the primary method, theoretically, the candidates and the people deal with each other.³

At the close of the first official week of New Mexico's first primary in action, there were thirty Democratic names filed for nomination with the secretary of state and not one Republican. State Republican Chairman John Emmons indicated that Republican candidates were intentionally postponing filing for office until after the Democratic national convention. The idea was to allow the incumbent party to publicize its platform and then launch its own policies, being in a position to offer a more imposing platform to the voting public. Republicans were in no rush because their chances were never as favorable as their opponents and party leaders were anxious to see if the

³ Editorial in The Albuquerque Tribune, July 2, 1940.

It was suggested that the committee should be

discharged at the time of the meeting on the 15th.

One advantage was pointed out, that the committee

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Within a few days after the meeting of the 15th, the

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presidential nomination of Wendell Wilkie on the Republican ticket would have any effect in the state. If returning Republican strength had been observed, there would have been no dearth of immediate nomination seekers.

It was expected that Clyde Tingley would announce a formal declaration during this period for the Democratic gubernatorial nomination. As former governor he had been instrumental in the enactment of the primary law. He maintained a verbal barrage at Governor Miles and others who had opposed the law in the making and declared that the ones who were once against it were the first to file under the protection it afforded. Mr. Tingley claimed that no candidate would be favored by having his name at the top of the ballot. He asserted, "It doesn't matter who is first. It's who the people want that counts. They'll know how and when to scratch."⁴

Democratic names included on the official ballot at the general election held on September 14, 1940, indicated that except in a few instances the first candidate named on each primary list was the one favored by the state and county organizations.

It was charged that many candidates had been assisted in their campaign for nomination by payment of monies

⁴ News item in The Albuquerque Journal, July 4, 1940.

directly from the party treasury. This was declared to be a violation of Section 22 of the Primary Election Code which provides that party funds will not be used for any one candidate as against any other party member running for office. It was alleged that Governor John E. Miles, seeking nomination for reelection, had been aided in his campaign by party funds while other candidates had been left to make their own way. It was further charged that certain New Mexico newspapers, favorable to the candidacy of Governor Miles, had received substantial help from the Democratic party treasury. Many county chairmen received campaign funds far in excess of county organizational needs, while other county chairmen who were not assisting individuals favored by the state administration had been left to shift for themselves.⁵

Operation of the primary law brought more forcibly to public attention the practice of assessing the salaries of state employees two per cent for the building up of campaign "slush" funds. Federal employees had recently been freed from that type of coercion by the passage of the Hatch Act. There was no state legislative counterpart to this federal law offering protection to state employees whose positions were dependent upon the party in power. This supplied a

⁵ News item in The Albuquerque Journal, September 1, 1940.

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large sum to be included in the party funds which was to be used for improving the position of the party as a whole. On September 1 and 2, 1940, The Albuquerque Journal published a series of articles to show how the assessment system worked. The editor attempted to portray by photostated copies of endorsed checks that unaccounted sums of money had found their way into the coffers of the state Democratic fund and were being used by Governor Miles to improve his position for nomination as well as others in the state whose candidacy he favored.⁶

As the date for the first primary election drew near, the various party factions used every means at their command to influence the voters to follow certain individuals in the formulation of party tickets. Slates of candidates were advocated over the air, in the newspapers and from the speakers' platform. Voters were urged to cast their ballot for the first name, fourth, or sixth, as the case might be for specified offices.

The vote in the primary was exceedingly light demonstrating the usual public apathy regarding the selection of persons to represent the citizens in state and local government. As usual there was greater voting participation by the Spanish-American population.

⁶ Editorial in The Albuquerque Journal, September 1, 1940.

The primary election and aftermath was replete with the usual charges of coercion, counter-charges, acknowledgements and comments attendant upon any election following a stormy campaign. As usual the winners were contented claiming that the first primary for the state was successful and completely free from irregularities and that the people themselves had made the selections. Only the losers found cause to lament and to charge their opponents with coercion at the polls. Representative John J. Dempsey, loser in the senatorial race against incumbent Senator Dennis Chavez, charged intimidation of voters in the election. Charging "bossism" and "disenfranchisement" of qualified and honest voters, he requested a Federal Bureau of Investigation probe of the reported primary election frauds. He reported that some ballot boxes had not reached county clerks until forty-eight hours after closing of the polls while the law required that they be turned in within twenty-four hours following the end of the voting period. Dempsey claimed, "It was in those boxes that were held out that the big job was done." He further charged that in Santa Fe County a candidate had four hundred ballots printed without the consent of the county clerk and they found their way into the ballot boxes.⁷

John J. Dempsey contested the results in the balloting

⁷ News item in The Albuquerque Journal, September 18, 1940.

The primary election and afterward was explained with the usual charges of corruption, counter-charge, acknowledged, and comments abundant upon any election following a story campaign. As usual the winners were considered clear and that the first prize for the state was successful and completely free from irregularities and that the people themselves had made the selection. Only the losers found cause to lament and to charge their opponents with corruption and the police. Representative John J. Dempsey, known to the successful race against incumbent Senator Dennis Donohue, charged falsification of votes in the election. Charging "boycotts" and "intimidation" of qualified and honest voters, he requested a Federal Bureau of Investigation probe of the reported primary election fraud. He reported that some ballot boxes had not reached county clerks until forty-eight hours after closing of the polls while the law required that they be turned in within twenty-four hours following the end of the voting period. Dempsey stated, "It was in these boxes that were held out that the big job was done." He further charged that in Santa Fe County a candidate had four hundred ballots printed without the consent of the county clerk and they found their way into the ballot boxes.

John J. Dempsey contacted the reporter in the following

in several counties of the state and demanded a recount by the canvassing boards of those particular areas. In the retabulation he gained a few hundred votes which were far from sufficient to offset the majority of his senatorial opponent. It was alleged that many ballots appeared to have been marked by the same person though there was a complete absence of affidavits of assistance to be found in the boxes.⁸

In the state's second direct primary election on September 12, 1942, an extremely light vote was tabulated principally because so many men were out of the state in military service or in war industry. Public time and effort were concentrated on war and on issues that extended far beyond state problems and "politics as usual." The Republican party had no contests, there being but one name entered on their ballot for state offices. Only a complimentary vote was cast thereon. The Democrats as usual had several candidates for nomination on their ticket and nominees were selected after a lively campaign. In general the election was orderly and not marked by vituperative charges and the pyrotechnics which were attendant upon the first primary in 1940.

Most noteworthy event in the second primary was the

⁸ News item in The Albuquerque Journal, September 28, 1940.

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clash between two factions within the Democratic party. One faction under United States Senator Dennis Chavez, who supported Bryan Johnson in the governor's race, bitterly attacked the gubernatorial candidacy of John J. Dempsey. Even though Chavez' term extended for another four years, it was quite possible that should his opponent become governor Dempsey would have sufficient state organization to defeat him in his bid for reelection to the Senate in 1946.

Chavez used three methods of attack on Dempsey. The first was an effort to make Democrats believe that Dempsey was intimately connected with the worst state administration that New Mexico had ever had. The governor of the state at that time was John E. Miles who was completing his second term in office. This attempted smear on the state administration by Chavez represented a direct change of attitude from that of 1940 when he lauded the Miles administration and accepted help from its organization to win the senatorial nomination by a narrow margin from Dempsey. The second was a direct appeal to racial prejudices charging that the Spanish speaking voters were about to lose their only chance for representation in government. The third was an effort to appear as an advocate of clean government which he maintained must be had for the state even at the cost of cutting across party lines at the polls. Subsequently Dempsey won the

class between the factions within the Democratic party. The faction under United States Senator James H. Doolittle supported Bryan Johnson in the governor's race, while the faction under the gubernatorial candidate of John J. Doolittle, even though Doolittle's term expired for another four years, it was quite possible that should his opponent become governor Doolittle would have sufficient state organization to defeat him in his bid for reelection to the Senate in 1906.

Doolittle used three methods of action on Doolittle. The first was an effort to have Doolittle's administration was unfavorably compared with the present administration that New Mexico had ever had. The governor of the state at that time was John W. Miller who was completing his second term in office. This method was used on the state administration by Doolittle represented a direct change of attitude from that of 1900 when he joined the Miller administration and accepted help from the organization to win the nomination of a narrow margin from Doolittle. The second was a direct appeal to racial prejudice warning that the Doolittle supporting voters were about to lose their only hope for representation in government. The third was an effort to appear as an advocate of clean government which he maintained must be had for the state even at the cost of cutting across party lines at the polls. Subsequently Doolittle won the

Democratic nomination for governor.⁹ A week prior to the second primary election Eldo McLaughlin, legislative representative of Division 70, Order of Railway Conductors, released the results of a questionnaire on the primary law sent to candidates in the forthcoming primary. The replies showed a varying reaction with a majority favorable to the system. The questions propounded were in part: (1) Do you favor selection of candidates for public office by direct primary procedure? (2) Will you use your influence to oppose any effort to repeal the primary law? (3) Will you work and vote for improving and strengthening the present primary law? (4) Do you favor judicial jurisdiction over election contests arising under the primary law? Most notable candidates publicly favoring the law were United States Representatives Clinton P. Anderson, John J. Dempsey and candidate for lieutenant governor James B. Jones of Albuquerque, the latter favoring a "run-off" amendment. Several indicated a dislike for the phraseology of the questions and would not answer them. This demonstrated an inner fear of publicly opposing the law.¹⁰

At the first wartime session of New Mexico's State Legislature in January 1943, an attempt was made to repeal

⁹ Editorial in The Las Vegas Optic, September 6, 1942.

¹⁰ News item in The Albuquerque Journal, September 8, 1942.

the law. State Senator J. B. Garcia, Las Lunas Democrat, sponsored the repeal bill on the grounds that it was not suitable in this state. The repeal attempt proved unsuccessful.

Revisions in the direct primary code were effected in the second half of the state's split legislative session. The date for primary elections was changed to the first Tuesday after the first Monday in June whereas the date set originally by law called for primaries to be held on the second Saturday in September of even numbered years. This provided more time for the candidate to organize for the campaign and enabled the voters to better acquaint themselves with the qualifications of those seeking office. Certification of successful candidates was added as well as judicial disposition of recounts in the event of disputed elections.

Balloting in the third direct primary election held on June 6, 1944 was light as was expected during the war years. The campaign was different from previous ones in that the bulk of the campaigning was done by the Republicans instead of the Democrats. Chief interest lay in the lively contest for gubernatorial nomination among Republicans. Governor Dempsey, who was seeking renomination in the Democratic primary, had a woman opponent, Mrs. Edna Peterson. His confidence was reflected by his lack of campaigning as he spent most of the pre-primary period in the nation's capital.

Less than half of the registered voters attended the polls to cast their vote. Most of the talk was about the Allied invasion of Europe and little about the election, both of which occurred on the same date. The Democratic vote dropped off from the previous primary election while the Republican vote more than doubled.

Little significance was attached to the gain or decrease in a comparison of party voting strength. Conditions since the 1940 primary were largely reversed regarding political contests which induced voting. The Republicans nominated a strong candidate for governor, Carrol G. Gunderson, Grants merchant and former state legislator, and presented to the public a well-rounded ticket. There was indication that the discord within the Democratic party was not healing and that they did not have a ticket on which to build strength. Governor Dempsey had only nominal opposition but his weakness was shown in several counties, particularly Bernalillo and Grant, where surprisingly heavy balloting was cast for his opponent. The prestige of former Governor John E. Miles suffered a new low when his opponent for land commissioner, Tom Wilson, a political unknown, gave him a close race, rolling up heavy votes in several Democratic counties.

The primary election campaign in June of 1946 was highlighted by two developments. The first was the great number

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of candidates and particularly frenzied campaign activities by them. The second was an apparent lack of interest on the part of voters.

From Washington, Senator Hatch urged renomination of Senator Chavez who was opposed by Governor John J. Dempsey in the senatorial race. Hatch asserted that defeat of Chavez would result in the election of a Republican. Major General Patrick J. Hurley, former secretary of war and later special ambassador to China, was unopposed for the Republican nomination for senator. There appeared to be a general feeling among Republicans that Hurley would have a much better chance of winning over Dempsey than he would over Chavez in the forthcoming general election. Hatch further declared for a return to the convention system of nominating state candidates. He indicated that he had opposed the direct primary since its adoption in 1938. The Senator invited attention to the Democratic primary in which fifty-seven candidates sought nominations to fourteen offices. This was indicative of the confusion which muddled the minds of voters and candidates and confirmed his belief that the state "should scuttle the direct primary and return to the convention system."¹¹

Senator Chavez, always a tough campaign opponent,

¹¹ Associated Press Dispatch, The Albuquerque Journal, June 4, 1946.

of candidates and particularly the second round of voting by them. The second round was an important factor in the part of voters.

From Washington, Senator Charles McNary was reported to have been in the Senate Chamber who was opposed to McNary's nomination in the Senate Chamber. McNary's nomination was opposed in the Senate Chamber. McNary's nomination was opposed in the Senate Chamber.

Patrick J. Murphy, Governor of New York, was reported to have been in the Senate Chamber. McNary's nomination was opposed in the Senate Chamber.

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vigorously attacked John J. Dempsey and his asphalt highway contracts with state and federal government. John E. Miles, unopposed for state land commissioner in the Democratic primary, indorsed Chavez by referring to him as one of the most influential and outstanding senators in the nation.¹²

The Democratic party administered a resounding defeat to the forces of Governor Dempsey in the fourth direct primary election. This was accomplished despite the fact that the Governor had control of the entire state party organization. The overthrow was a vindication for the people in attempting to place the nomination of party representatives more completely in their hands. The result further demonstrated that no matter how strong a party leader might be, the primary is a means whereby concerted action by the voting public can overthrow him.

Results of the balloting in the Democratic primary indicated that the political prestige of Senator Dennis Chavez in the state had not diminished. His victory over Governor Dempsey was indicative of his resourcefulness and astuteness and was equal to that of his political acumen in the campaigns of the past. This was aided quite materially by his pointing out to the native population that they no longer elected governors to office and that to repudiate his

¹² Associated Press Dispatch, The Albuquerque Journal, May 30, 1946.

leadership at the polls would be to toll the death knell of the last great champion of the Spanish speaking population. Senator Chavez successfully appeals to the native votes in continuing his position of dominance in New Mexico politics.

In spite of the numerous candidates seeking office in the primary election held on June 4, 1946, the persons nominated were the ones generally expected to emerge victorious. Senator Chavez will lead the Democratic senatorial race in the 1946 general election against Republican General Hurley. Thomas J. Mabry and John E. Miles are nominated as Democratic candidates for governor and state land commissioner, respectively.

In the fourth direct primary election the chief interest centered in the struggle for nomination for candidacy to the office of United States senator. This was a clash between two political factions within the Democratic party, headed respectively by Chavez and Dempsey. As the years have come and gone during the trial period of the primary law in operation, the dominant position of Senator Dennis Chavez in New Mexico appears stronger with each passing election. His political leadership in state affairs appears well established so long as his Spanish voting constituents remain regular in their voting habits or do not attach themselves to a different political faction.

The law has withstood the onslaught of primary

opponents since 1938 but the original act has been changed little. At each state legislative session repeal attempts have been dealt with successfully. Professional politicians continue their opposition to the measure, especially those from the eastern part of the state where it is commonly felt that their section of New Mexico is not getting its proportionate share of top state positions. Only time will determine the destiny of direct primary nominating procedure in this state.

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CHAPTER IV

PROBLEMS OF THE PRIMARY AND SUGGESTED SOLUTIONS

The nominating procedure is but one aspect of the political party system. One of the chief objectives of any political party is to secure control of the personnel who occupy offices in government. In order to accomplish this goal, parties must offer to the voting public candidates to be approved or rejected. The ordinary voter looks upon the general election as the crucial point in the selection of public representatives. Party leaders and professional politicians, however, are more deeply concerned with the election preliminaries in which a large number of potential party candidates are reduced to one for each elective office.¹

The direct primary procedure evolved during the middle decades of the 1800's. Research has disclosed that it was first used by the Democratic party in 1842 in Crawford County, Pennsylvania. During the early years of its evolution it was known as the "Crawford County Plan."² It was an attempt to circumvent the evils and inconsistencies of

¹ A. N. Christensen and E. M. Kirkpatrick, The People, Politics, and the Politicians (New York: Henry Holt and Company, 1941), p. 300.

² Robert C. Brooks, Political Parties and Electoral Reforms (New York: Harper and Brothers Publishers, 1933), p. 261.

REMARKS OF THE SENATE AND HOUSE OF REPRESENTATIVES

The remaining procedure is not one aspect of the political party system. One of the chief objectives of any political party is to secure control of the government and thereby influence the government. In order to accomplish this goal, parties must first to lay out a policy and then to be approved or rejected. The first step is to lay out a general outline of the party's policy and then to lay out a public representation of the party's policy and then to lay out a political platform, however, and more deeply concerned with the election organization in which a large number of political party candidates are needed to run for office.

Office.

The House primary procedure evolved during the middle decades of the 1800's. Research has disclosed that it was first used by the Democratic party in 1842 in Georgia County, Pennsylvania. During the early years of its evolution it was known as the "Ct. House County Fair". It was an attempt to eliminate the evils and inconveniences of

J. A. G. Johnson and E. A. Johnson, The Senate, House, and the Political Party (New York: Henry Holt and Company, 1911, p. 100).
J. A. G. Johnson, Political Parties and Elections (New York: Henry Holt and Company, 1911, p. 101).

convention nominations by placing the responsibility of selecting candidates upon the sovereign voters themselves. This plan was used by the Democrats in Crawford County until 1850 and was then revived by the Republicans of the same county in 1860.³ Thereafter the plan as a party rule began to spread throughout the counties of most states. In 1903 Wisconsin became the first state to enact state-wide direct primary legislation. During the next twelve years the new idea spread so rapidly that by 1915 thirty-three states had adopted it in some form.⁴ At the present time candidates for public office are nominated by primary elections in forty-six states, the two exceptions being Connecticut and Rhode Island.⁵

Under our closed primary system only the voters legally registered as members of the participating political parties have a voice in the selection of candidates. Certain professional groups, among them public school teachers, often profess no party allegiance and prefer to register as independents. Many men and women prefer to hold themselves aloof from sharing in the mundane affairs of everyday politics. They may resent a public declaration as to how

³ Ibid., p. 262.

⁴ Loc. cit.

⁵ Austin F. Macdonald, American State Government and Administration (New York: Thomas Y. Crowell Company, 1946), p. 88.

they usually vote and the very thought of party organization and regimentation may be repugnant to them. Such individuals prefer the open primary where no test of party allegiance is imposed. At present there are eleven states operating under open primary legislation.⁶

New Mexico voters must submit to a test of party affiliation in order to qualify as electors in primary elections. No person who has changed his party designation within twelve months prior to the primary election may vote in the nominating process. This necessitates a system of strict registration of voters in order to ascertain the identity of qualified primary electors.

Declaration of party affiliation destroys somewhat the sacredness and secrecy of the ballot. In the past enormous stress has been laid upon the right of the voter to a secret ballot and many sorts of devices have been employed to assure continuity of that democratic privilege. After generations of indoctrination in the advantages of secret ballot usage, it is no wonder that many voters resent party tests. This causes many people to intentionally disenfranchise themselves to party declarations. This resentment is not aroused in primaries of the open type. Popular reaction against closed primaries is best expressed by the fact that the number of

⁶ Ibid., p. 90.

they usually vote and the very thought of party organization and registration may be repugnant to them. Such individuals prefer the open primary where no test of party allegiance is imposed. At present there are eleven states operating under open primary legislation.⁶

New Mexico voters must submit to a test of party affiliation in order to qualify as electors in primary elections. No person who has changed his party registration within twelve months prior to the primary election may vote in the nominating process. This necessitates a system of strict registration of voters in order to ascertain the identity of qualified primary electors.

Declaration of party affiliation destroys somewhat the sacredness and secrecy of the ballot. In the past anonymous ballots have been laid upon the right of the voter to a secret ballot and many sorts of devices have been employed to insure continuity of that democratic privilege. After registration of individuals in the advantages of secret ballot voting it is no wonder that many voters resent party tests. This causes many people to intentionally disregard the requirements to party declarations. This resentment is not shared in primaries of the open type. Popular reaction against closed primaries is best expressed by the fact that the number of

states employing open primary measures has increased from two to eleven during the past few years.⁷

Closed primary procedure has the tendency to reduce "party raiding," or at least to impose some barrier upon forays by one party upon the ballots of another. Under the open primary, when a strong candidate comes up for nomination, the voters of the opposing party may throw sufficient votes to his opponent, a much less capable man, to nominate the latter. This practice would be especially tempting to Republicans in New Mexico where they have few contests in the primaries. Since the dominant party in the state would be the one to suffer in any change from closed primary methods, it is not expected that changes are imminent in this regard. Our present system does not alleviate party raiding, however, for many Republicans register as Democrats in order that as official members of the dominant party, they may have a more expressive voice in the selection of candidates for office. The most that can be expected is that this type of guerrilla warfare may be suppressed sufficiently to prevent its occurrence at the last moment in the deciding of doubtful primary contests.⁸

Some dissatisfaction has resulted from the practice by

⁷ Loc. cit.

⁸ Theodore W. Cousins, Politics and Political Organizations in America (New York: The Macmillan Company, 1942), p. 352.

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some candidates of accomplishing and filing several nominating petitions. This attempt to establish a picture of a large political following is looked upon as a superfluous nuisance by the voting public. One petition is sufficient to assure a candidate a place in the primary. In general the enormous mass of petitions received by state and county officers are examined rather perfunctorily. Objections by rival candidates, however, or other information leading to suspicion of forged signatures or to other irregularities may keep names off the primary ballot. Failure to properly count petition signatures cost one candidate a chance at the highest elective office in the state. Gubernatorial candidate Jimmy Caldwell, in the 1946 Democratic primary, filed his declaration of candidacy, nominating petitions and a check to cover required filing fees. The secretary of state refused to file his name as a candidate when it was discovered that there were only four hundred ninety-nine names on the petition whereas the law (Ch. 56, Sec. 809) requires a minimum of five hundred.⁹

New Mexico is one of ten states which combines nominating petitions with fees.¹⁰ Most states make use of the petition method in qualifying individuals for candidacy. The required number varies with the importance of the office

⁹ News item in The Albuquerque Journal, July 12, 1946.

¹⁰ Macdonald, op. cit., p. 89.

and also with the state. Petitions must be supported by the signatures of a given number or a specified percentage of party electors. The number required is so low that it will not interfere with a person who seriously desires to become a party candidate. Illinois, however, specifies that a minimum of one thousand signatures accompany the application for candidacy for the office of governor. In four states, Delaware, Indiana, Oklahoma and West Virginia, a declaration of candidacy is sufficient and requires no petitions or filing fees.¹¹ A few states allow candidates to file with their declarations of candidacy accompanied by either a petition or a fee.

Names on the official ballot in the direct primary elections are entered in the order of filing their respective applications for candidacy and nominating petitions. This is objectionable chiefly because it introduces an unseemly scramble for positions outside the office where such documents are filed. When listed alphabetically, as in many other states, candidates who appear first do so through no effort of their own. Hence certain candidates are handicapped by names starting with letters far down in the alphabet.

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¹¹ See, etc.

listed first on the primary ballot. In offices in which considerable public interest is manifested, as in top state and county positions, machine backed candidates win almost invariably no matter how listed. Persons seeking lesser offices, which are not particularly worth any great amount of political attention, find that the initial spot is the favored one. When a voter is faced with a list of relatively unknown names the first one is usually marked. This natural inclination is counteracted in nearly half of the primary states by rotating the names on the ballot. By this method the name of each candidate for a given office is placed first on an equal number of ballots or in an equal number of counties. Many authorities consider this the most equitable method of filing names for candidacy. The general rule is that the individual seeking office has little chance without the endorsement of party organizations.

In operation, the direct primary law in New Mexico has not led to appreciable changes in the character or ability of persons nominated, neither has it destroyed political bosses or political organizations. Hopes for improved legislation have also proved disappointing. It has led, however, to waste in election administration, in advertising and in printing ballots. There are now two elections instead of one, thereby increasing the complexity of election machinery.

There appears little evidence of improvement in the

qualification of persons now seeking public office. There is now a greater chance for incompetent individuals to occasionally gain office. Under the convention system candidates were selected by organization leaders who considered qualities most acceptable to a majority of the people. This selection had to be attentively made so as to compete favorably with candidates endorsed by the opposing party.

Persons now elected to public office are often more independent than when selected by the controlled clique of a party organization in caucus. They feel that since their candidacy is endorsed by the voting public they can be more responsive to the attitude of the people. Members of the state legislature are less subservient to county and state political leaders and organizations. This is especially true regarding legislators who are independent in business or by profession. This independence when it exists, however, is no indication that improved legislation is the result.

Provisions for producing a balanced ticket are not included in primary procedure except insofar as party machinery exercises its influence. Under the convention system care was exercised to select candidates who represented the various geographical sections of the district and the important racial, religious, and economic elements of the party. On the other hand elections under the primary may

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Persons now elected to public office are often more independent than when selected by the party machine. It is a party organization in essence. They feel that since their candidacy is endorsed by the voting public they can be more responsive to the attitude of the people. Members of the state legislatures are less susceptible to party and state political leaders and organizations. This is especially true regarding legislators who are independent in business or by profession. This independence when it exists, however, is no indication that improved legislation is the result. Provision for providing a balanced budget and included in primary procedure exact transfer in group machinery exercises the influence. Under the convention system care was exercised to select candidates who represented the various geographical sections of the district and the important racial, religious, and economic elements of the party. On the other hand elections under the primary may

leave sections of the state or district and important groups of the electorate out of political consideration. One of the reasons for opposition to the present law in the eastern part of the state is because political leaders from that area believe that their particular section is being neglected in the selection of candidates for state offices. It is quite possible for two strong candidates to a particular office to come from the same section of the state and thus certain regions are denied equal representation. As far as the political parties are concerned, both are equally exposed to the same danger since they operate under the same primary election law.

The state primary code, in general, has caused an increase in popular voting interest. The percentage of voters who participate in direct primary balloting is higher than the percentage that voted for delegates to nominating conventions. There is no way to accurately judge from what section of the population the increase comes. In a survey of this problem in New Jersey the increase was found among the working class of the industrial cities; in other cases among the business and professional population. It could not be determined that popular interest in primary elections showed any tendency to vary according to the wealth, education or economic status of the voters.¹² There is always the

¹² Charles A. Beard, American Government and Politics (New York: The Macmillan Company, 1935), p. 564.

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¹² Charles A. Beard, American Government and Politics (New York: The Macmillan Company, 1937), p. 274.

possibility of upsetting the calculations of the party bosses by a popular trend among the electors. Probably machine control of nominations has been mildly reduced for a political organization must have the support of at least a plurality of voters of the party. Under the convention system a small minority usually controlled the selection of party candidates but the primary provides each voter an opportunity to feel that he has a hand in managing his party's affairs.¹³

The primary allows a more democratic expression from electors. However, it does not supply orators and blatant political leadership to the same degree as conventions, but leadership must be present even in primaries either in the person of the candidate or from some organized political group, very often a minority. This means that under our system primaries cannot escape control of the party. Ashley points out that a state may properly be called democratic only when its citizens have an indirect share in the processes of government. Extensive selection of party and government leaders allows the voting public to develop democracy.¹⁴

The system of plurality voting as practiced under the

¹³ Jeremiah S. Young, John W. Manning, and Joseph I. Arnold, Government of the American People (New York: D. C. Heath and Company, 1940), p. 136.

¹⁴ Roscoe Lewis Ashley, Principles and Policies of American Government (New York: Thomas Nelson and Sons, 1941), p. 130.

law frequently results in the selection of candidates by a small margin, enabling the party bosses to win by concentrating on their picked men. When strong candidates file for the same office, very often political maneuvering decides the contest. If faction A sponsors a likely Anglo candidate, faction B puts a strong native in the field to attract the Spanish-American votes. Faction A counters by also placing a native in the field to split the native vote. Many highly qualified candidates find themselves subjected to this political triangulation. Two Anglo-Americans have little chance against a single native. This operates similarly when conditions are reversed. Throughout the state the native population represents a rather cohesive voting bloc.

There is at present considerable dissatisfaction with the plurality rule which makes possible the nomination of candidates who have been endorsed at the polls by less than a majority of the voters of their party. One alternative to prevent minority nominations is the double primary in which a second "run-off" election is held for all offices in which no candidate receives a majority or a certain fixed percentage of the vote of the party. The electors decide between the two candidates who received the highest number of votes in the first or "free-for-all" primary. Many state leaders, especially in the Democratic party, favor an amending procedure to our present system providing for the double

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nominating process. This would establish a means whereby the final candidates and the ones to represent the parties in the general election would be approved by a majority of the electors in the respective participating parties. Supporters of this plan argue that better qualified candidates would be selected and that a higher type of public official would be attracted to office if he felt assured that he would not be squeezed out by the promiscuous filing of incompetents who are good campaigners but who would have little chance against a well known candidate under the run-off procedure. The double primary system for securing a majority choice is practiced in nine southern states and Utah.¹⁵ It is almost entirely a southern institution, or at least more highly favored in one-party states where the primary is often more important than the general election.

The merits and defects of the system are difficult to determine and are almost entirely a matter of personal opinion. There is no satisfactory way to measure the relative capacities of men selected to office under conventions and primaries. Among others the author of the primary act has been nominated to the state senate under both methods. Many people consider that the primary is more expensive to operate than other nominating systems. This is

¹⁵ Macdonald, op. cit., p. 91.

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true in regard to the expense of the state in conducting two complete elections but there is no way to measure the validity of charges that larger campaign expenditures are involved. There is really no check on the expenses incurred by campaigning candidates especially in this state of separated centers of population and vast distances to be covered. There is still a great advantage to candidates with large campaign funds in spite of the legislative restraint on election expenses.

The primary act allows voters to express themselves twice where before they voted but once. It is the only nominating process established by law whereas the legislative caucus and convention method of selecting party representatives rested upon party rules and customs. The state-wide nominating system is thoroughly official in character and the smallest details are determined by statute. Brooks maintains that this type of legislation has brought about the most sweeping change that has occurred in political party history.¹⁶

Most observers agree that the direct primary has placed a powerful elective weapon in the hands of the voters. When sufficiently aroused the electorate secures control of their respective parties enabling it to cast aside the

¹⁶ Brooks, op. cit., p. 261.

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backroom manipulations of the professional politicians. The lack of interest by the general public is deplorable and increases the problems of a democratic people in nominating capable and wholesome individuals as candidates for office. In explaining how the primary works, Cousens points out that a true test of a nomination system in a democracy should be primarily whether it enables the people to select candidates designated by themselves.¹⁷

Present day party evils will not be cured merely by the promulgation of a new law. The primary act was designed to remedy the defects of the old convention and caucus system. This hope has turned into disillusionment and discouragement on the part of the public for inconsistencies in nominating methods appear as glaring now as before enactment of the law. As long as dozens of offices are filled at a single primary, it is improbable that uniformly good selections will be made from the multiplicity of candidates clamoring for recognition. This apparent weakness in the law and the subsequent confusion on the part of the voting public might be remedied in part by eliminating administrative offices from the elective list. There is no such thing as a Republican or Democratic engineer, state or county school superintendent, auditor, or surveyor. Certainly our schools

¹⁷ Cousens, op. cit., p. 361.

backbone organization of the political system. The
lack of interest by the general public in political and
national issues is a characteristic of a democratic people in a
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must not forget the primary purpose of the system is to
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would be improved if administrators were appointed on merits alone instead of nominated and elected by political standards. Those offices concerned primarily with formulating public policies should be filled by men immediately responsible to the people. In state or county government these legislative and policy-framing matters are managed by a very few men. The formulation of the law is partisan, but its enforcement should be non-partisan. The greatest percentage of elective officials are concerned with the administration of details, the accomplishment of which is not dependent upon partisanship but upon intelligent and efficient execution of the policies handed down from above. "A system that imposes upon the electorate the choice of a mass of officials strengthens the hands of partisan or private interests at the expense of the public."¹⁸ The short ballot would tend to focus public attention upon the important and significant offices to be filled, and perhaps increase the degree of popular control over those offices in which are concentrated governmental power and responsibility.

Professional politicians continue their attacks on the present primary law. At the last regular session of the State Legislature, State Senator Hinkle from Roswell attempted a change in the law by introducing a hybrid bill under which conventions would be held before the regular

¹⁸ Christensen, op. cit., pp. 307-8.

primary elections. This proposal lacked only two votes of being passed in the Senate. Candidates complain that to canvass the entire state during primary campaigns is an arduous and expensive task. Politicians consider that it is much easier when their campaign field is confined to the walls of a convention hall instead of every precinct in the state. In the 1946 primaries the Democrats were without a World War II candidate on their ticket which accentuated the inability to ensure complete and fair representation among all groups and interests. Gilbert Lopez, one of the many persons who sought nomination for the office of lieutenant governor, pointed out the above weakness of his party slate as well as the heavy expenses involved in making two election campaigns. He went so far as to say that the primary would eventually defeat his party.¹⁹

Senator Carl Hatch and Land Commissioner John E. Miles are among Democratic leaders who think that the convention system is the best. In view of this powerful opposition a modification of the law will probably be attempted at the next regular legislative session, inasmuch as outright repeal would be most difficult and unpopular with the voters of the state. It may be that changes will follow along the lines of Colorado's election system, which requires a primary

¹⁹ News item in The Albuquerque Journal, June 9, 1946.

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Senator Carl Hatch and Lead Commissioner John E. White are among Governor's leaders who think that the convention system is the best. In view of this powerful opposition a modification of the law will probably be suggested at the next regular legislative session, however an outright repeal would be most efficient and unopposed with the voters of the state. It may be that changes will follow along the lines of Colorado's election system, which requires a primary

¹² See item in the Albuquerque Journal, Jan. 19, 1930.

candidate to have at least twenty per cent of the vote cast in the pre-primary conventions.

Colorado provides for a direct primary election to be held on the second Tuesday in September on each even numbered year. Pre-primary conventions are held for the purpose of selecting party endorsed candidates to be nominated at the ensuing primary. Only one ballot is taken on candidates for each office to be filled and within the jurisdiction of the seated assembly. Every candidate who receives twenty per cent or more of the votes of the accredited delegates becomes a candidate on the primary ballot.²⁰ It is possible that five candidates be nominated for each office at any nominating convention. Candidates selected are placed on the direct primary ballot in the order of the vote received. Each person designated must file a written acceptance with the county clerk or secretary of state within seven days following the adjournment of the convention. To be eligible for assembly designation a person must have been affiliated with the political party holding the assembly for a period of a year or more prior to being selected. A party, to be eligible to hold assemblies for the purpose of designating party candidates for nomination must have polled ten per cent or more of the total vote cast for its candidate for governor

²⁰ Annotated Election Laws of the State of Colorado, Article I, Subdivision 4, Paragraph 22.

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²⁰ Revised Election Laws of the State of Colorado, Article I, Subdivision 4, Paragraph 25.

at the last preceding general election.²¹

Candidates for nomination at primary elections may also be designated by petition.²² Any petition in the case of a candidate for an office greater than county must be signed by at least three hundred duly qualified electors who reside in the political subdivision for which the officer is to be elected. In the case of other offices the signatures of one hundred electors are required. These conditions are amendable by the proviso that no petition requires more signers than ten per cent of the gubernatorial votes cast by the party at the preceding election in such political district. Each petition must contain the acceptance of the candidate for the office to be filled. When completed the petition is filed with the secretary of state in the case of offices of subdivisions greater than a county; for all other offices, with the exception of municipal or city, the petition is filed with the county clerk; in the case of municipal or city candidates, it is filed with the city clerk. All petitions must be filed not more than sixty nor less than forty-five days prior to the ensuing primary. Candidates selected by petition for any office follow assembly candidates and are placed on the direct primary ballot in alphabetical order.²³

²¹ Ibid., Paragraph 20.

²² Ibid., Paragraph 24.

²³ Ibid., Paragraph 22.

The election laws of Colorado allow "write-in" nominations. Any voter, instead of voting for a candidate whose name appears on the party ballot, is entitled to vote for any other eligible person who is a member of his political party by writing the name of his choice in the blank space following the printed names of candidates. In order for a "write-in" candidate to become the nominee of a party he must receive at least the number of votes in the primary as is required to become designated as a candidate by petition.

Each political party entitled to participate in any direct primary election has a separate party ticket making the primary a closed type. Only those electors registered as members of a particular party are allowed to vote. The provisions of party affiliation are more lenient in Colorado than in many other states, including New Mexico. Any voter may change his party affiliation up to and including the tenth day prior to the date of the primary. A voter who contends that an error has been made in recording his party membership may change his party designation at the polls on election day providing that he signs an affidavit requesting a change of party affiliation.²⁴

Party nominees are those individuals who receive a

²⁴ Ibid., Paragraph 30.

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Party business are those individuals who receive a
party business card.

plurality of the votes cast in the primary election. If two or more candidates are tied for the same office, the tie is determined by the candidates involved. If they fail to agree upon the method of deciding the winner, it is then determined by lot.

Candidates for public office who do not wish to affiliate with a political party may be nominated otherwise than by a direct primary election. A certificate of nomination is prepared containing the name of the candidate and designates, in not more than five words, the political or other name which the signers select. The certificate is signed by legal voters, not necessarily registered, residing in the affected political district or subdivision. Three hundred signatures must be obtained for offices to be filled by the voters of the entire state; one hundred for county and district offices; and fifty for town, precinct, ward or other division. The candidate concerned must acknowledge his acceptance of the nomination before the certificate is filed with the secretary of state, county or city clerk. When it is properly executed, acknowledged and filed, the name of the candidate certified will have his name entered on the general election ballot in the general election.²⁵

At the next regular New Mexico legislative session

²⁵ Ibid., Paragraph 47.

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Candidates for public office who do not wish to
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upon a district primary election. A certificate of nomination
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signature, is not valid until filed with the political party
other than which the candidate is elected. The certificate is
signed by legal voters, and necessarily witnessed, returned
in the district political division or subdivision. These
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election ballot in the general election.

At the next regular New Mexico Legislative session

there is likelihood of an attempt to introduce a measure which will be patterned after the primary law of Nebraska in which each political party endorses two candidates for each office. Following the first and second choices of the party organization any person may file. Pre-primary conventions are held to select the party favorites who must receive at least twenty-five per cent of the vote cast in the nominating assembly to qualify as a candidate in the primary. The two candidates who receive the endorsement of their pre-primary convention have their names printed at the top of the primary ballot, the one receiving the highest endorsing vote listed first. An explanatory note follows stating that each is endorsed by the party indicated on the ballot. All other candidates are rotated in order so that the position of the names on the ballot is changed in each office division for each election district.²⁶

According to judicial interpretation the liberal construction of the Nebraska primary law is to further the real will of the electors as distinguished from that of candidates, would-be candidates or political organizations. It provides a relatively simple manner by which a person may become a candidate for office, either on his own initiative, or by petition.

²⁶ Annotated Election Laws of the State of Nebraska, Section 32-1139.

There is a possibility that the... which will be... which each... others... organizations... are not... least... assembly... candidates... construction... matter... first... expressed... candidates... names... each... 36

According to... attention of the... will of the... dates, would be... provided a... become a... or by...

Candidates nominated by petition must obtain at least one thousand signatures for state offices; two hundred for city, county or district; and fifty for township, precinct or ward. No more than one fourth of the signatures of the total number of voters are required on any petition when the nomination is for an office to be filled by electors of a county, city, township, precinct, village or ward. This procedure provides a method by which a candidate, not entitled to have his name placed on the primary ballot, may have his name entered on the general election ballot. Prior to the filing of the petition a filing fee must be submitted to the city, county, or state treasurer. Following are the amounts required for the various offices: United States senator, fifty dollars; state offices and United States representatives, ten dollars; city and county offices, five dollars.

A candidate is not entitled to have his name placed on the primary ballot unless his party polled at least five per cent of the entire vote at the last general election. This does not apply to candidates of a newly formed party. Nebraska laws permit voters to "write-in" the names of persons which do not appear on the primary ballot either as convention endorsed candidates or as candidates by petition.²⁷ Any qualified elector may vote in the primary if he is

²⁷ Ibid., Section 32-1164.

Candidates nominated by petition must obtain at least one thousand signatures for state officers and hundred for city, county or district; and fifty for township, precinct or ward. No more than one fourth of the signatures of the total number of voters are required on any petition when the number of voters is for an office to be filled by election of a county, city, township, precinct, village or ward. This requirement provides a method by which a candidate, not entitled to have his name placed on the primary ballot, may have his name entered on the general election ballot. Prior to the filing of the petition a filing fee must be deposited in the city, county, or state treasurer. Following are the amounts required for the various offices: United States senator, fifty dollars; state officers and United States representatives, ten dollars; city and county officers, five dollars. A candidate is not entitled to have his name placed on the primary ballot unless his party polled at least 10 per cent of the entire vote at the last general election. This does not apply to candidates of a newly formed party. Nebraska law permits voters to "write-in" the names of persons which do not appear on the primary ballot either at a convention endorsed candidates or as candidates by petition. Any qualified elector may vote in the primary if he is

registered as a member of the political party for which he requests a ballot. This closed type nominating election is considered necessary in the proper operation of the primary law. If a voter fails to register in stating his party affiliation, he must accomplish an affidavit giving the reasons why he did not register. This process is so complicated that it discourages shifting from one party membership to another.

The candidate receiving the greatest number of votes in the primary is nominated as the party candidate for that particular office. No person may be certified as a party candidate unless he receives five per cent or more of the entire party vote cast at the primary election. Tie votes are determined by lot, procedure of which is supervised by the respective canvassing boards. Primary procedure in Nebraska and Colorado is a virtual return to the old convention system as the party endorsed candidates possess a most favorable position.

It is expected that impending legislative changes in New Mexico election laws will either effect an outright repeal of the primary code and return the convention system or amend and modify the present law, possibly along the lines of the Colorado and Nebraska codes. The first possibility is unlikely since the electorate would strenuously oppose any measure which might remove from them the privilege of

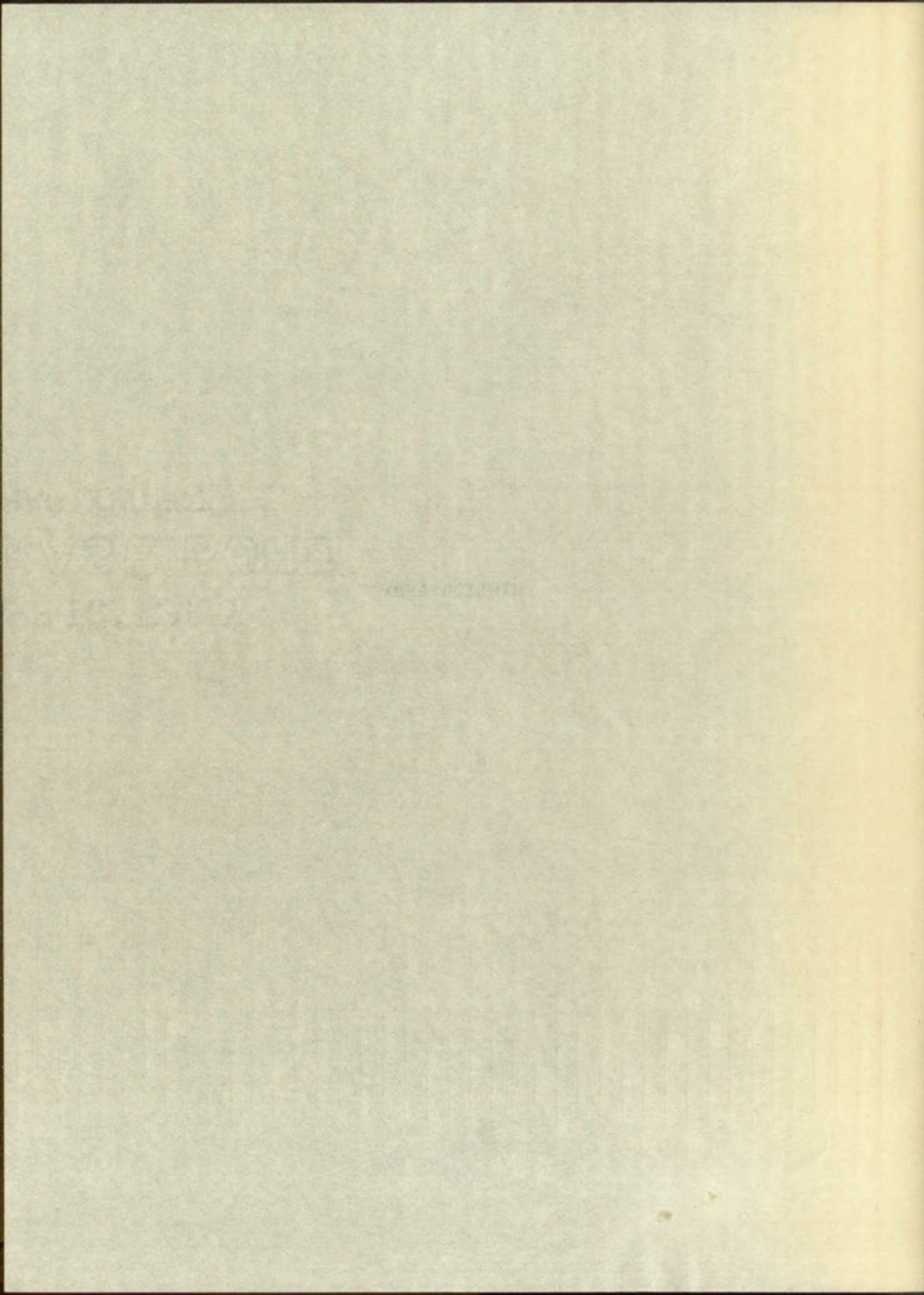
selecting party candidates. It is more likely that strongly supported bills will be introduced at the next legislature which will provide for pre-primary conventions and "run-off" primary elections.

It appears doubtful that the law has had the effect of weakening party organization. The Democrats have remained the dominant party since enactment of the primary code. There seems to be little evidence of the Republican party gaining or losing appreciably as a result of the passage of the act. Factions within the Democratic party continue to dominate county and state offices, and its leaders continue their opposition to the law. Campaigns continue to be settled in the rough and ready manner which has long characterized New Mexico politics.

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It appears doubtful that the law has had the effect of weakening party organization. The legislative body remained the dominant party since enactment of the primary code. There seems to be little evidence of the Republican party gaining or losing respectability as a result of the passage of the act. Faction within the Democratic party continues to dominate county and state offices, and the leaders continue their opposition to the law. Campaigns continue to be carried in the rough and ready manner which has long characterized New Mexico politics.

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APPENDIX

WILLIAM
E. BOND
1871

NEW MEXICO STATUTES 1941 ANNOTATED

CHAPTER 56 ARTICLE 8 SECTIONS 56-801--56-828

REVISED THROUGH AUGUST 1945

PRIMARY ELECTION CODE

SECTION

- 56-801. Short title.
- 56-802. Nominations to be made by primary election.
- 56-803. Persons entitled to vote.
- 56-804. Political parties to which act applies.
- 56-805. Offices to which act applies--Municipal offices and elections to fill vacancies excluded.
- 56-806. Definitions.
- 56-807. Time of holding primary.
- 56-808. Notice of primary--Proclamation--Contents--Publication.
- 56-809. Who may become candidates--Declaration of candidacy--Nominating petitions--Time and place of filing.
- 56-810. Filing fees--Distribution of fees--Primary election fund--List of candidates.
- 56-811. Ballots.
- 56-812. Appointment of judges, clerks, watchers, assistance to voters.
- 56-813. General election laws govern--Enforcement of act--Eligibility of voters--Registration lists.
- 56-814. Voting--Registration.
- 56-815. Canvassing--Certificates of nomination to candidates--Certified to county clerks.
- 56-816. Candidates with similar names--Occupation and address included on ballot.
- 56-817. Vacancy occurring after primary--Method of filling.
- 56-818. Deficiency in primary election fund.
- 56-819. Precinct ballot.
- 56-822. Failure to file report--Penalty--"Itemized statement" defined.
- 56-823. Limitation on campaign expenditures.
- 56-824. Excessive expenditures--Penalty--Computation of things other than money.
- 56-825. Tie vote--Determination by lot.
- 56-826. Recount.
- 56-827. Violation of act--Penalty.
- 56-828. Contest of primary elections.

NEW MEXICO STATUTES 1941 AMENDED
 CHAPTER 56 ARTICLE 3 SECTIONS 56-801--56-828
 REVISED THROUGH AUGUST 1947
 PRIMARY ELECTION CODE

SECTION	
56-801.	Short title.
56-802.	Nominations to be made by primary election.
56-803.	Persons entitled to vote.
56-804.	Political parties to which not applied.
56-805.	Offices to which not applied--Municipal officers and elections to fill vacancies excluded.
56-806.	Definitions.
56-807.	Time of holding primary.
56-808.	Notice of primary--Proclamation--Contents--Publication.
56-809.	Who may become candidates--Declaration of candidacy--Nominating petitions--Time and place of filing.
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56-811.	Ballots.
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56-813.	General election laws govern--Enforcement of act--Eligibility of voters--Registration lists.
56-814.	Voting--Registration.
56-815.	Canvassing--Certificates of nomination to candidates--Certified to county clerk.
56-816.	Candidates with similar names--Occupation and address included on ballot.
56-817.	Vacancy occurring after primary--Method of filling.
56-818.	Deficiency in primary election fund.
56-819.	Precinct ballot.
56-820.	Failure to file report--Penalty--"Itemized statement" defined.
56-821.	Limitation on campaign expenditures.
56-822.	Excessive expenditures--Penalty--Competition of things other than money.
56-823.	The vote--Determination by lot.
56-824.	Recount.
56-825.	Violation of act--Penalty.
56-826.	Consent of primary elections.

56-801. Short title.--This act shall be known and may be cited as "Primary Election Code." (Laws 1938 S.S., ch. 2, sec. 1, p. 3.)

Title of Act.--An act to establish a direct primary for the state of New Mexico; to provide for the nomination by certain political parties of candidates for all elective offices, except for municipal offices and to fill vacancies; to provide the procedure for calling and holding such primary elections; to provide procedure for candidates for nominations to file therefor and get their names on primary ballot; to provide for filing fees to be paid by each candidate filing for nomination at each primary election; to provide for the form of ballots to be used at the primary elections; to provide for the expenses of such primary elections; to provide how such primary election shall be called and held and fixing date for such primary election in 1938; providing for the expenses of holding such primary election for 1938; excepting from the 1938 primary election nomination of candidates for offices for which candidates have already been nominated under the laws of this state; to provide for appropriation and expenditure of all fees collected and to pay expenses of primary elections; requiring candidates to file statement of expenses and expenditures; providing penalties for failure to file such statement; limiting amount of expenditures of candidates; providing penalties for exceeding such limits; prohibiting party committees from using money in its treasury or any contributions in behalf of any candidate in primary; providing penalties for filing false report; providing for recount with procedure and providing penalty for failure of election officials and others to perform duties. (Laws 1938 S.S., ch. 2.)

Comparative Legislation. Primary elections:

Ariz.	Code 1939 secs. 55-1001--55-1024.
Ark.	Digest of Stat. 1937, secs. 4705-4751.
Cal.	Deering's Codes 1939, Election Code, secs. 5800-5810.
Fla.	Comp. Gen. Laws 1927, secs. 355-428.
Idaho.	Code 1932, secs. 33-601--33-648.
Ind.	Burns' Stat. 1933, secs. 29-501--29-560.
Kans.	Gen. Stat. 1935, secs. 25-201--25-229.
La.	Dart's Stat., secs. 2651 et seq.
Miss.	Code 1930, secs. 5864-5919.
Nebr.	Comp. Stat. 1929, secs. 2438-2539.
Ohio.	Page's Gen. Code, secs. 4785-67--4785-97.
Tenn.	Williams' Ann. Code, secs. 2227.1-2227.41.
Tex.	Vernon's Stat. 1936, arts. 3100-3167.

56-802. Nominations to be made by primary election.--All candidates for elective offices in the state of New Mexico to which this act applies shall be nominated by political parties to which this act applies at a primary election, wherein all of the qualified registered electors of such political party or parties shall be eligible to vote, and the candidates of the political parties for the offices to which this act applies shall not be otherwise selected or nominated. (Laws 1938 S.S., ch. 2, sec. 2, p. 3.)

56-803. Persons entitled to vote.--At any and all primary elections held in the state of New Mexico, or in any subdivision thereof, under the provisions of this act, all qualified registered electors of the state belonging to any political party participating in such primary election entitled to vote at the next ensuing general election shall be entitled to and shall have the right to vote, and no such qualified registered elector of the state shall be denied the right to freely vote or in any manner hindered in freely voting at such primary election by reason of lack of education or possession of property, or by reason of race, descent or religion or by reason of the lack of ability to read, write or speak any language. (Laws 1938 S.S., ch. 2, sec. 3, p. 3.)

56-804. Political parties to which act applies.--This act shall apply to all political parties for any of whose candidates there was cast at the last general election held preceding the time of the holding of such primary election, as many as fifteen per centum (15%) of the total number of votes cast for the candidates for governor by all parties at such preceding general election. (Laws 1938 S.S., ch. 2, sec. 4, p. 3.)

56-805. Offices to which act applies--Municipal offices and elections to fill vacancies excluded.--This act shall apply to the offices of United States senator, representative in the Congress of the United States, presidential electors, and to all elective state, district, legislative, county and precinct officers in this state who are elected at the general election now held biannually upon the first Tuesday after the first Monday in November of each even numbered year. This act shall not apply to city, town and village offices, and it shall not apply to special elections to fill vacancies in the offices of United States senator, representative in the Congress of the United States, or in any state, district, county or precinct offices to which this act applies. Nomination of candidates to fill vacancies and nomination of candidates to all offices to which this act

25-802. Nominations to be made by primary election.--All candidates for elective offices in the state of New Mexico shall be nominated by primary election, except that candidates for the office of justice of the peace shall be nominated by election held in the precinct in which they reside. All of the qualified registered voters of each precinct party or parties shall be eligible to vote, and the candidate of the political parties for the offices to which this act applies shall not be otherwise selected or nominated. (Laws 1938 S.C., ch. 2, sec. 2, p. 1.)

25-803. Persons entitled to vote.--No person shall participate in the election of New Mexico, or in any sub-division thereof, under the provisions of this act, unless he is a qualified elector of the state belonging to any political party participating in such primary election, entitled to vote at the next ensuing general election, and he shall have the right to vote, and no person shall be entitled to vote at the state shall be entitled to vote at the primary election by reason of race or ethnicity or possession of property, or by reason of race, descent or religion or by reason of the fact of being a native-born citizen of the United States. (Laws 1938 S.C., ch. 2, sec. 3, p. 1.)

25-804. Political parties to select and qualify.--This act shall apply to all political parties for any of whose candidates there was held at the last general election held preceding the time of the holding of such primary election, as many as fifteen per centum (15%) of the total number of votes cast for the candidates for governor by all parties at such preceding general election. (Laws 1938 S.C., ch. 2, sec. 4, p. 1.)

25-805. Offices to which act applies.--This act shall apply to the offices of the United States, presidential electors, and to all elective state, district, legislative, county and precinct officers in this state who are elected at the general election held annually upon the first Tuesday after the first Monday in November of each year. This act shall not apply to city, town and village officers, and it shall not apply to special elections for the offices in the cities of United States senator, representative in the Congress of the United States, or in any state, district, county or precinct offices to which this act applies. Nomination of candidates in this act shall not nomination of candidates to all offices to which this act

does not apply and nomination of candidates for all offices by all political parties not coming under the provisions of this act shall be made as now is or as may hereafter be provided by law. (Laws 1938 S.S., ch. 2, sec. 5, p. 3.)

56-806. Definitions.--The word "primary" as used in this act shall mean the primary election provided by this act.

The words "election" or "general election" as used in this act shall mean the general election held biannually on the first Tuesday after the first Monday in November in each even numbered year.

The words "special elections" as used in this act shall mean all other elections than general elections as herein defined and primary elections.

The word "precinct" as used in this act shall mean voting place or voting district, whether one (1) or more, in precincts as the word "precinct" is used in the general election laws of this state.

The words "precinct officers" as used in this act shall mean the elective officers of the various precincts in each county of this state. (Laws 1938 S.S., ch. 2, sec. 6, p. 3.)

56-807. Time of holding primary.--A primary shall be held in each county in this state on the first Tuesday after the first Monday in June of each even numbered year, at which the qualified, registered electors of each political party participating in such primary shall select, by secret ballot, the candidates of each such party for all offices to which this act applies. (Laws 1938 S.S., ch. 2, sec. 7, p. 3; 1943, ch. 36, sec. 1, p. 136.)

Title of Act.--As amended in 1943.--An act relating to primary elections; fixing the dates for holding primary elections and for issuing proclamations therefor; requiring the filing of declarations of candidacy and petitions for nomination, fixing the forms thereof, and the time and manner of filing thereof; providing that a voter may vote at primary elections only for candidates of the party with which his affidavit of registration shows him to be affiliated; permitting assistance to be given to voters at said elections; providing for issuance of certificates of nomination to successful candidates; requiring the names of nominees to be certified to county clerks for inclusion upon ballots to be cast at general elections; requiring county clerks to print names so certified upon general election ballots; providing for payment of election expenses; limiting expenditures of candidates; providing for contests in primary elections and appeals therefrom to the Supreme Court; providing for disqualification of trial judges in

does not apply and nomination of candidates for all offices by all political parties not coming under the provisions of this act shall be made as now is or as may hereafter be provided by law. (Laws 1933 S.B., ch. 2, sec. 2, p. 1.)

75-806. Definitions.--The word "primary" as used in this act shall mean the primary election provided by this act. The words "election" or "general election" as used in this act shall mean the general election held biennially on the first Tuesday after the first Monday in November in each even numbered year.

The words "special elections" as used in this act shall mean all other elections than general elections as herein defined and primary elections.

The word "precinct" as used in this act shall mean voting place or voting district, whether one (1) or more, in accordance with the word "precinct" as used in the general election laws of this state.

The words "electoral officers" as used in this act shall mean the elective officers of the various precincts in each county of this state. (Laws 1933 S.B., ch. 2, sec. 4, p. 3.)

75-807. Time of holding primary.--A primary shall be held in each county in this state on the first Tuesday after the first Monday in June of each even numbered year. At which time the qualified, registered electors of each political party participating in such primary shall select or nominal elect the candidates of each such party for all offices to which this act applies. (Laws 1933 S.B., ch. 2, sec. 5, p. 3.)

Title of Act.--As amended in 1943,--An act relating to primary elections; fixing the date for holding primary elections and for issuing proclamations therefor; requiring the filing of declarations of candidacy and petitions for nomination; fixing the time thereof; and the time and manner of filing thereof; providing that a voter may vote at primary elections only for candidates of the party with which his affidavit of registration shows him to be affiliated; permitting assistance to be given to voters at such elections; providing for issuance of certificates of nomination to successful candidates; requiring the names of nominees to be certified to county clerks for inclusion upon ballots to be cast at general elections; requiring county clerks to print names so certified upon general election ballots; providing for payment of election expenses; limiting expenditures of candidates; providing for contest in primary elections and appeals therefrom to the Supreme Court; providing for disqualification of trial judges in

primary election contests; amending sections 7, 8, 9, 12, 14, 15, 18, 25 and 26, all of chapter 2, Special Session of 1938, being, respectively, sections 56-807, 56-808, 56-809, 56-812, 56-814, 56-815, 56-818, 56-823 and 56-826, all of the Compilation of 1941; repealing sections 20 and 21 of chapter 2 of the 1938 Special Session Laws and all former acts in conflict herewith. (Laws 1943, ch. 86.)

56-808. Notice of primary--Proclamation--Contents--Publication.--It shall be the duty of the governor of the state of New Mexico, by public proclamation issued by him and filed with the secretary of state of the state of New Mexico on the first Monday in April of each even numbered year, to call a primary election to be held in each county and precinct in the state of New Mexico on the first Tuesday after the first Monday in June of such even numbered year, and he shall state in said proclamation the names of the political parties to which the primary shall apply, together with the offices for which each such political party shall nominate candidates, and such proclamation shall also contain the date on or before which the declarations and nominating petitions of candidates for such nominations shall be filed, and the offices wherein such declarations and petitions shall be filed, in order to entitle the candidate for such nomination to have his name printed upon the official ballot of his party at such primary. The proclamation shall be forthwith published for five (5) consecutive days in at least four (4) daily newspapers of general circulation in this state. The secretary of state shall forthwith upon the receipt of such proclamation mail a certified copy by registered mail to the county clerk of each county in this state. It shall be the duty of the county clerk of each county in this state to forthwith cause such proclamation to be published in some newspaper of general circulation printed and published in such county once each week for two (2) consecutive weeks. Such proclamation so published by the county clerk shall be printed and published in both the English and Spanish languages. If there be no newspaper of general circulation published in any county, the county clerk of such county shall forthwith cause a copy of said proclamation printed in both the English and the Spanish languages to be posted in six (6) public places in said county. Provided, however, that the failure of the county clerk to perform such duties shall not invalidate any primary election in such county or in any precinct thereof. Any county clerk in this state who shall fail to publish or post such proclamation, as required herein, shall be deemed guilty of malfeasance in office, and shall be subject to removal in a proper proceeding for that purpose. (Laws 1938 S.S., ch. 2, sec. 8, p. 3; 1943, ch. 86, sec. 2, p. 136.)

56-809. Who may become candidates--Declaration of candidacy--Nominating petitions--Time and place of filing.--No person shall become a candidate for nomination for any office who has changed his party affiliation within twelve (12) months prior to the issuance of the proclamation herein required by the governor of the state of New Mexico.

No person shall become a candidate for nomination of any political party except the party with which such person shall be shown to be a member by his affidavit of registration.

Any person desiring to become a candidate of any political party participating in the primary for any office shall, during the period commencing at 9:00 a. m. of the first Tuesday of April of each even numbered year and ending at 5:00 p. m. on the thirtieth (30th) day before the date of said primary, file a declaration of candidacy, which declaration of candidacy shall be substantially in the following form:

"DECLARATION OF CANDIDACY

I _____, a qualified elector of
(here insert candidate's name)
precinct No. _____ of the
(here insert the number of precinct)
County of _____, State of New
(here insert the name of the county)
Mexico, declare that I am a member of the _____
Party and desire to
(here insert name of political party)
become a candidate for nomination for the office of _____
at the primary to be held on the first
(here insert office)
Tuesday after the first Monday in June, A.D. 19____, and I
hereby irrevocably authorize and direct the officials
charged therewith to print on the official ballot the name
of the candidate receiving the highest number of votes for
the aforesaid office at said primary as the candidate of the
said party for said office at the ensuing general election.

Declarant.

Post Office Address."

If two (2) candidates seek nomination for the same office where the terms of service are of different lengths of time, such declarations shall state whether declarant is a

75-309. The new persons candidates--Registration of candidates--
any--Registration of candidates--Time and place of filing--
person shall become a candidate for nomination for any
office who has changed his party affiliation within twelve
(12) months prior to the issuance of the proclamation
is required by the Governor of the State of New Mexico.
No person shall become a candidate for nomination of any
political party except the party with which such person
shall be shown to be a member by the affidavit of registration.

Any person desiring to become a candidate of any political
party period ending in the primary for any office shall,
during the period commencing at 9:00 a. m. of the first
Tuesday of April of each even numbered year and ending at
5:00 p. m. on the thirtieth (30th) day before the date of
said primary, file a declaration of candidacy with the
clerk of the county in which he is a resident.

DECLARATION OF CANDIDACY

I, _____
(here insert candidate's name)
precinct No. _____
of the _____
(here insert the number of precinct)
County of _____
(here insert the name of the county)
Mexico, declare that I am a member of the
_____ Party and desire to
(here insert name of political party)
become a candidate for nomination for the office of _____
at the primary to be held on the first
(here insert office)
Tuesday after the first Monday in June, A.D. 19____, and I
hereby irrevocably authorize and direct the officials
charged therewith to print on the official ballot the name
of the candidate receiving the highest number of votes for
the aforesaid office at said primary as the candidate of the
said party for said office at the ensuing general election.

Witness my hand and seal of office.

Post Office Address: _____

If two (2) candidates seek nomination for the same office
where the terms of service are of different lengths of time,
such declaration shall state whether declaration is a

candidate for nomination for the longer or shorter term and such fact shall be so designated upon the primary ballot in both the English and Spanish languages.

At the time of filing such declaration, such candidate shall file therewith a petition for nomination signed by qualified electors who are members of his political party, which nominating petition shall be substantially in the following form:

"NOMINATING PETITION

We, the undersigned qualified electors of the State of New Mexico and members of the _____

(here insert name of the Party)

Party in said State, do respectfully petition that the name of _____ be placed upon the official

(here insert name of declarant)

ballot of the said party as a candidate for nomination for the office of _____ at the primary

(here insert name of the office)

to be held on the first Tuesday after the first Monday in June, A.D. 19__.

SIGNATURE OF
ELECTOR

POST OFFICE
ADDRESS

COUNTY

_____ "

Such nominating petition shall be signed in ink. If for precinct offices, such nominating petition shall be signed by at least five (5) qualified electors of the precinct in which such declarant is a candidate. If for county offices, the same shall be signed by at least twenty-five (25) qualified electors of the county wherein such declarant is seeking nomination. If for judicial district or legislative offices in districts comprising a less area than the state at large, such petition shall be signed by at least fifty (50) qualified electors of the district, whether said district is comprised of one county or more than one county. If for offices elected from the state at large, such petitions shall be signed by at least five hundred (500) qualified electors of the state, Provided, however, that the term "qualified electors" as used herein, shall mean qualified electors who are registered as members of the political party for which such candidate seeks such nomination. More than one nominating petition may be filed, but each shall be in the form provided and the aggregate number of signatures

candidate for nomination for the longer or shorter term and such fact shall be so designated upon the primary ballot in both the English and Spanish languages. At the time of filing such declaration, each candidate shall file therewith a petition for nomination signed by qualified electors who are members of his political party, which nominating petition shall be substantially in the following form:

"NOMINATING PETITION"

We, the undersigned qualified electors of the State of New Mexico and members of the _____ (here insert name of the party) Party in said State, do respectfully petition that the name of _____ (here insert name of declarant) be placed upon the official ballot of the said party as a candidate for nomination for _____ (here insert name of the office) at the primary to be held on the first Tuesday after the first Monday in June, A.D. 19__.

SIGNATURE OF ELECTOR	POST OFFICE ADDRESS	COUNTY
_____	_____	_____
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Such nominating petition shall be signed in ink. If for precinct officers, such nominating petition shall be signed by at least five (5) qualified electors of the precinct in which such declarant is a candidate. If for county officers, the same shall be signed by at least twenty-five (25) qualified electors of the county wherein such declarant is seeking nomination. If for judicial district or legislative offices in districts comprising a less area than the state at large, such petition shall be signed by at least fifty (50) qualified electors of the district, whether said district is comprised of one county or more than one county. If for offices elected from the state at large, such petitions shall be signed by at least five hundred (500) qualified electors of the state. Provided, however, that the term "qualified electors" as used herein, shall mean qualified electors who are registered as members of the political party for which such candidate seeks such nomination. More than one nominating petition may be filed, and each shall be in the form provided and the aggregate number of signatures

shall be not less than the number above required. Such declarations and petitions shall in the case of precinct and county offices and legislative offices filled by one county be filed with the county clerk of the county wherein such declarant seeks office. For offices filled by the state at large and districts comprising more than one county, such declaration of candidacy and petition shall be filed with the secretary of state.

Each declaration of candidacy, with its supporting petitions for nomination, shall be delivered in person for filing by the candidate therein named or in person by another acting solely in such candidate's behalf; and neither the county clerk nor the secretary of state shall, at any time, receive for filing from any one individual, more than one declaration of candidacy, with its supporting petitions for nomination.

Prior to 9:00 a.m. on the first Tuesday of April of each even numbered year, neither any county clerk nor the secretary of state shall: (a) receive for filing or file any declaration of candidacy or petition for nomination; (b) or permit such declaration of candidacy, with its supporting petitions for nomination, or any person bearing or attempting to deliver the same for filing, to enter, be or remain in his or her office prior to 9:00 a.m. of said day. (Laws 1938 S.S., ch. 2, sec. 9, p. 3; 1943, ch. 86, sec. 3, p. 136.)

56-810. Filing fees--Distribution of fees--Primary election fund--List of candidates.--Such declarations and petitions to be entitled to be filed shall be accompanied by a fee of three per centum (3%) of the first year's salary of said office.

All fees collected from candidates for precinct offices, county offices, and legislative offices comprising one (1) county shall be remitted to the county treasurer of the county where the declaration is filed. All fees collected from candidates for district offices filled by more than one (1) county shall be divided as hereinafter provided and remitted to the county treasurer of each county comprising the district. All other fees collected by the secretary of state shall be divided between the counties of the state as hereinafter provided and remitted to the county treasurer of each county. All such funds in the hands of the county treasurer shall be designated "Primary Election Fund." Such funds shall be used for defraying the expenses of the primary election in the respective counties. If the fees so collected are not sufficient to defray all expenses of such primary election, any balance required shall be paid by the various counties as in the case of general elections. Any

money left in such fund after paying the expenses of any and each primary election shall remain in such fund for use at the ensuing primary elections as the same may be needed.

The county clerk and the secretary of state upon receipt of the declaration and petition required hereunder accompanied by the required filing fee, shall if such declarant is eligible to hold the office for which he seeks nomination under the Constitution and laws of the state of New Mexico receive and file such declaration and petition.

The secretary of state, within five (5) days after the time for filing declarations of candidacy has expired, shall transmit by registered mail a certified list of all candidates for nomination for congressional and state offices, including legislative and district offices, to the county clerk of each county, together with the order and date of filing of the declaration of candidacy of each candidate. The secretary of state shall at the same time remit to each county treasurer such proportion of the filing fees received from the candidates for district and state offices as the total vote of such county at the preceding general election for governor bears to the total vote of the state for governor at such election. (Laws 1938 S.S., ch. 2, sec. 10, p. 3.)

56-811. Ballots.--Not less than twenty (20) days before the date of the primary, the county clerk of each county shall group all the candidates for each party by themselves and prepare at once, in writing, a separate ballot for each party, and have such ballots for each party printed in the following manner:

The ballots for each party shall be numbered as provided by law for the numbering of ballots to be used at the general election, and shall be uniform in size, and shall be on white paper and printed in black ink. Across the head of each ballot shall be printed in plain black type, "OFFICIAL DIRECT PRIMARY ELECTION BALLOT." On the next line shall be printed the name of the political party and the date of the primary election, and below that shall be printed the name of the county in which the ballot is to be used. Then shall follow the words, "To vote for a person, mark a cross (x) in the square at the right of the name of each person for whom you desire to vote."

Thereafter, beginning at the top, shall appear in both the English and Spanish languages the designated office. To the extreme right of the same line shall be printed the words "vote for," then the words "one," "two" or a spelled number designating how many persons under each head are to be voted for. Following and below the designation of office shall be printed the name of each candidate for that office, with a square directly opposite and to the right of said name,

money left in such fund after paying the expenses of any and each primary election shall remain in such fund for use at the ensuing primary elections at the same rate as provided. The county clerk and the secretary of state upon receipt of the declaration and petition registered heretofore authorized by the required filing fee, shall if such declaration is eligible to hold the office for which he seeks nomination under the Constitution and laws of the State of New Mexico receive and file such declaration and petition. The secretary of state, within five (5) days after the time for filing declarations of candidacy has expired, shall transmit by registered mail a certified list of all candidates for nomination for congressional and state offices, including legislative and district offices, to the county clerk of each county, together with the order and date of filing of the declaration of candidacy of each candidate. The secretary of state shall at the same time remit to each county treasurer such proportion of the filing fees received from the candidates for district and state offices as the total vote of such county at the preceding general election for governor bears to the total vote of the State for governor at such election. (Laws 1938 S.B., ch. 2, sec. 10, p. 1.)

§5-611. Ballots.—Not less than twenty (20) days before the date of the primary, the county clerk of each county shall group all the candidates for each party by themselves and prepare at once, in writing, a separate ballot for each party, and have such ballots for each party printed in the following manner: The ballot for each party shall be numbered as provided by law for the numbering of ballots to be used at the general election, and shall be uniform in size, and shall be on white paper and printed in black ink. Across the head of each ballot shall be printed in plain black type, "DIRECT PRIMARY ELECTION BALLOT". On the next line shall be printed the name of the political party and the date of the primary election, and below that shall be printed the name of the county in which the ballot is to be used. Then shall follow the words, "To vote for a person, mark a cross (x) in the square at the right of the name of each person for whom you desire to vote." Thereafter, beginning at the top, shall appear in both the English and Spanish languages the designated offices, to the extreme right of the same line shall be printed the words "vote for," then the words "one," "two" or a Spanish number designating how many persons under each head are to be voted for. Following and below the designation of office shall be printed the name of each candidate for that office, with a separate directly opposite and to the right of said name.

wherein the voter may make his cross (x). The names of candidates shall be printed on an equal margin one under another in the order of filing as herein provided, and the squares following each name shall be not more than one-sixth ($1/6$) of an inch apart.

The name of each office for which a candidate or candidates are to be nominated with the names of the candidates for that office shall be separated from the following name of office and list of candidates by a heavy black line to designate each position clearly. The position of offices on the ballot shall be arranged as follows: first, candidates for United States senator; next, Congressional candidates; next, presidential electors; next, state candidates to be voted upon by the state at large in the order certified by the secretary of state; next, legislative candidates; next, other district candidates to be voted on in more than one (1) county; next, county candidates.

The names of the candidates for each office upon the ballot, shall be arranged and printed upon the ballot in the order in which said candidates filed their declaration of candidacy for nomination. The secretary of state shall certify to the county clerk of each county the order in which the names of the candidates for nomination for each state office shall appear upon the ballot. There shall be no other printing or distinguishing mark on the ballot, except as herein provided. Sample ballots shall be printed and furnished as provided for at general elections. The official ballot for use at primary elections shall bear on the back thereof the facsimile signature of the county clerk and the words in bold, black type "OFFICIAL BALLOT."

All words and phrases directed to be printed on said ballot shall be printed in their proper places in both the Spanish and English languages except names of candidates. (Laws 1938 S.S., ch. 2, sec. 11, p. 3.)

56-812. Appointment of judges, clerks, watchers, assistance to voters.--It shall be the duty of the board of county commissioners in each county in this state on or before the third Monday next preceding said primary to appoint three (3) election judges for each precinct in the county and to appoint a polling clerk for each precinct for each party participating in said primary. In those precincts where more than two hundred (200) votes were cast for governor at the last preceding election, said board of county commissioners shall appoint three (3) counting judges and two (2) counting clerks for each precinct. All such judges and clerks shall be appointed in the same manner and on the same recommendation and receive the same compensation and perform the same duties as provided by law for such judges

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and clerks at the general election, except that the clerks appointed from each political party shall assist only the members of his own party requiring assistance to mark their ballot; and then only after such party member has signed and sworn to an affidavit stating his inability to mark his own ballot without assistance and the precinct counting officials of each party shall assist in counting the ballots cast for the candidates of all the parties participating in said primary; and, provided, further, that the said county commissioners shall appoint an additional polling clerk for each precinct in said county for any political party participating in such primary when such clerk has been selected and his appointment requested in writing, signed by a majority of all the candidates for such party's nomination for county offices in said county, and the majority of the county candidates for each political party may also select, in writing, watchers at the polls for each precinct. (Laws 1938 S.S. ch. 2, sec. 12, p. 3; 1943, ch. 86, sec. 4, p. 136.)

56-813. General election laws govern--Enforcement of Act--
Eligibility of voters--Registration lists.--Such primary election shall be held, the voters shall vote therein, the method of voting shall be followed, the votes counted and canvassed, and the returns made in the same manner as by law provided for general elections except as herein otherwise provided or inconsistent with the provisions of this act; and such primary elections shall in all respects conform to the laws governing general elections, except as herein otherwise provided. All provisions of law governing general elections in this state not in conflict herewith, are hereby made applicable to and shall govern primary elections. The powers and duties conferred or imposed by law upon boards and judges and clerks of elections, canvassing boards and other public officials in connection with general elections, are conferred and imposed upon all such officers of primary elections and shall be exercised by them in connection with primary elections, except as otherwise herein provided or in conflict herewith.

The district courts of this state and the judges thereof in vacation shall have jurisdiction to enforce the provisions of this act by injunction, mandamus, prohibition or other proper remedy.

At said primary every qualified registered elector in this state shall be eligible to vote for the nomination of the candidates of the party to which he belongs, if such party is participating in such primary, and for the purpose of determining such eligibility the registration books for the current year as then made up and delivered to the election officials shall govern.

and clerks at the general election, except that the clerk appointed from each political party shall assist only the members of his own party requesting assistance to mark their ballot; and then only after such party member has signed and sworn to an affidavit stating his inability to mark his own ballot without assistance and the precinct returning officials of each party shall assist in counting the ballots cast for the candidates of all the parties participating in said primary; and, provided, further, that the said county commissioners shall appoint an additional polling clerk for each precinct in said county for any political party participating in such primary when such clerk has been selected and his appointment requested in writing, signed by a majority of all the candidates for such party's nomination for county offices in said county, and the majority of the county candidates for each political party may also request, in writing, watchers at the polls for each precinct. (Laws 1928, c. 11, § 2, sec. 12, p. 3; 1925, ch. 38, sec. 4, p. 130.)

§ 2-217. General election laws govern--Provisions of act--
election shall be held, the voters shall vote therein, the
 method of voting shall be followed, the votes counted and canvassed, and the returns made in the same manner as by law provided for general elections except as herein otherwise provided or inconsistent with the provisions of this act; and such primary elections shall in all respects conform to the laws governing general elections, except as herein otherwise provided. All provisions of law governing general elections in this state not in conflict herewith are hereby made applicable to and shall govern primary elections. The powers and duties conferred or imposed by law upon judges and judges and clerks of elections, canvassing boards and other public officials in connection with general elections are conferred and imposed upon all such officers of primary elections and shall be exercised by them in connection with primary elections, except as otherwise herein provided or in conflict herewith.

The district courts of this state and the judges thereof in vacation shall have jurisdiction to enforce the provisions of this act by injunction, mandamus, prohibition or other proper remedy.

At said primary every qualified registered elector in this state shall be eligible to vote for the nomination of the candidates of the party to which he belongs, if such party is participating in such primary, and for the purpose of determining such eligibility the registration books for the current year as then made up and delivered to the election officials shall govern.

The county clerk of each county shall make up at least three (3) days before such primary election and furnish to all election officials in his county to be used at such primary election such copies of registration books as required by the Election Code of this state to be furnished to the election officials at a general election in this state. (Laws 1938 S.S., ch. 2, sec. 13, p. 3.)

56-814. Voting--Registration.--When a voter presents himself for voting at any primary the election officials shall deliver to him only the ballot of the party designated by such voter as his party affiliation on his affidavit of registration, and when voted such ballot shall be deposited by the judges in the ballot box.

No person whose party affiliation is not shown on said affidavit of registration, as provided by the registration laws of this state, shall be permitted to vote at any primary election and no person at any primary election shall be permitted to receive a ballot of any party other than that so designated on his affidavit of registration. The provisions of this section shall be mandatory. (Laws 1938 S.S., ch. 2, sec. 14, p. 3; 1943, ch. 86, sec. 5, p. 136.)

56-815. Canvassing--Certificates of nomination to candidates--Certified to county clerks.--The county and state canvassing boards shall canvass and certify the results of each party primary election and shall issue certificates of nomination to the successful candidates of each party participating in the primary, as and in the same manner required to be done at all general elections, the county canvassing board within six (6) days and the state canvassing board within fifteen (15) days after the primary; provided, however, that each of the said canvassing boards shall continue in session until each has fully completed the duties upon it imposed herein and by the General Election Code.

Upon the completion of its canvass, the county canvassing board shall certify to the county clerk the name of each person nominated by each political party as its candidate for each precinct or county office to be filled at the ensuing general election; and said county canvassing board shall issue its certificate of nomination to each such person, as the nominee of his party for the office to which he was nominated in said primary.

Upon the completion of its canvass, the state canvassing board shall certify to each county clerk in the state the name of each person who shall have been nominated in said primary as a candidate for each state office to be filled at the ensuing election, and shall likewise certify to the county clerk of each county situate within any voting dis-

The county clerk of each county shall make up at least three (3) days before each primary election and transmit all election officials in his county to be held at each primary election copies of registration books as required by the Election Code of this state to be furnished to the election officials at a general election in this state. (laws 1933 S.B. ch. 2, sec. 13, p. 3.)

30-814. Primary--Registration.--When a voter presents himself for voting at any primary the election officials shall deliver to him only the ballot of the party designated by such voter as his party affiliation on his affidavit of registration, and when voted such ballot shall be deposited by the judges in the ballot box.

No person whose party affiliation is not shown on said affidavit of registration, as provided by the registration laws of this state, shall be permitted to vote at any primary election and no person so not primary election shall be permitted to receive a ballot of any party other than that so designated on his affidavit of registration. (laws 1933 S.B. ch. 2, sec. 14, p. 12 1947, ch. 86, sec. 2, p. 136.)

30-815. Counting--Certification of candidates to general election--Ballot to county clerk.--The county and state canvassing board shall canvass and certify the results of each party primary election and shall issue certificates of nomination to the successful candidates of each party party signing in the primary, as and in the case cannot returned to be done at all general elections, the county canvassing board within six (6) days and the state canvassing board within fifteen (15) days after the primary; provided, however, that each of the said canvassing boards shall continue in session until each has fully completed the duties upon it imposed herein and by the General Election Code.

Upon the completion of the canvass, the county canvassing board shall certify to the county clerk the name of each person nominated by each political party as its candidate for each precinct or county office to be filled at the next general election; and said county canvassing board shall issue its certificate of nomination to each such person, as the nominee of his party for the office to which he was nominated in said primary.

Upon the completion of its canvass, the state canvassing board shall certify to each county clerk in the state the name of each person who shall have been nominated in said primary as a candidate for each state office to be filled at the ensuing election, and shall likewise certify to the county clerk of each county state within any voting dis-

strict comprising more than one county, the name of each person who shall have been nominated in said primary by each of the political parties participating therein, as a candidate for each of the offices to be filled at the ensuing general election by the voters of said voting districts; and said state canvassing board shall issue its certificate of nomination to each such person, as the nominee of his party for the office to which he was nominated in said primary.

And the county clerk, upon the official ballots to be cast at the ensuing general election, shall place the names, so certified to him as aforesaid, as candidates for the respective offices and of the respective parties as shown in said certificates.

The person receiving the highest number of votes of his party at such primary for any office shall be the nominee of his party for such office. If more than one (1) candidate is to be elected at the general election for the same office for the same length of term, the full number of candidates necessary to fill such offices at such general election receiving the highest number of votes cast by their party at such primary shall be the party nominees for such offices. It shall be the duty of the officials charged by law with printing the ballots for the ensuing general election to place the name or names of the person or persons, so certified to the county clerk as in this section provided, as receiving the highest number of votes of his party in said primary upon the official ballot to be used in the general election, as candidates of his or their party for the office for which such person or persons were candidates for nomination in the primary. Any person defeated in said primary as a candidate for a nomination by any party shall not have his or her name printed upon the official ballot at the general election as a candidate for the same or any other office at said election, unless selected by his political party committee to fill a vacancy, as hereinafter provided. (Laws 1938 S.S., ch. 2, sec. 15, p. 3; 1943, ch. 86, sec. 6, p. 136.)

56-816. Candidates with similar names--Occupation and address included on ballot.--In the preparation of the primary ballots herein provided for, if it appear that the name of two (2) or more candidates for any office to be voted upon at said primary are the same or are so similar as to tend to confuse the voter as to their identity, the occupation and post-office address of each such candidates shall be printed in the English and Spanish languages immediately under such candidate's name on said primary ballot. (Laws 1938 S.S., ch. 2, sec. 16, p. 3.)

56-817. Vacancy occurring after primary--Method of filling.--If after a primary election for any cause there shall be a vacancy in the list of candidates of a political party entitled to representation on the official ballot necessary to fill all the offices provided for by law at the ensuing general election, such vacancy may be filled by the political party committee of the state or county, as the case may be, by filing the name of its candidate for such office within twenty (20) days after such primary with the officer with whom nominating petitions are to be filed, and when so filed, the name shall be placed upon the official ballot for the ensuing general election as the party's candidate for such office. Any vacancy thereafter occurring may be filled in like manner by the party committee at any time before the official ballots are printed. If a vacancy occur after the ballots are printed, the name of the person so selected as a candidate to fill such vacancy may be placed on said ballot by pasting the printed name of such candidate so selected and filed over the name of the candidate whose vacancy he fills on the official ballot. (Laws 1938 S.S., ch. 2, sec. 17, p. 3.)

56-818. Deficiency in primary election fund.--In the event the fund by this act created be insufficient to pay the expenses of the primary in any county, the deficiency shall be budgeted and paid by the county in the same manner as the expenses of a general election are budgeted and paid. (Laws 1938 S.S., ch. 2, sec. 18, p. 3; 1943, ch. 86, sec. 7, p. 136.)

56-819. Precinct ballot.--It shall be the duty of the county commissioners at the time of the preparation of the general state and county ballot for a primary to prepare for each precinct a separate ballot, substantially in the form provided for the general primary ballot, on which shall be in like manner printed the candidates for precinct offices who have filed a declaration of candidacy and petition as in this act provided, and which said ballot shall be distributed to the election officials at the same time and with the election supplies for each precinct, and the provisions of this act shall in all things apply to such precinct primary. One (1) precinct party ballot shall be handed each voter along with the ballot containing state, county and other candidates herein provided for and shall be voted in the same manner. (Laws 1938 S.S., ch. 2, sec. 19, p. 3.)

56-822. Failure to file report--Penalty--"Itemized statement" defined.--A candidate receiving the nomination of a political party and failing or refusing to file a full and

56-817. Vacancy declared after primary--Method of filling.--If after a primary election for any county there shall be a vacancy in the list of candidates of a political party entitled to representation on the official ballot, necessary to fill all the offices provided for by law at the ensuing general election, such vacancy may be filled by the political party committee of the state or territory, as the case may be, by filing the name of its candidate for such office within twenty (20) days after such primary with the officer with whom nominating petitions are to be filed, and when so filed, the name shall be placed upon the official ballot for the ensuing general election as the party's candidate for such office. Any vacancy characterizing a district for such office may be filled in like manner by the party committee at any time before the official ballot is printed. If a vacancy occurs after the ballot is printed, the name of the person so selected as a candidate to fill such vacancy may be placed on said ballot by passing the printed name of such candidate to selected and filed over the name of the candidate whose vacancy he fills on the official ballot. (Laws 1938 S.S., ch. 2, sec. 17, p. 3.)

56-818. Ballotancy in primary election fund.--In the event the fund by law set created by legislation to pay the expenses of the primary in any county, the district shall be budgeted and paid by the county in the same manner as the expenses of a general election are budgeted and paid. (Laws 1938 S.S., ch. 2, sec. 18, p. 3; 1947, ch. 2, sec. 1, p. 136.)

56-819. Precinct ballot.--It shall be the duty of the county commissioners at the time of the preparation of the general state and county ballot for a primary to prepare for each precinct a separate ballot, substantially in the form provided for the general primary ballot, on which shall be in like manner printed the candidates for precinct offices who have filed a declaration of candidacy and petition as in this act provided, and which said ballot shall be distributed to the election officials at the same time and with the election supplies for each precinct, and the provisions of this act shall in all things apply to such precinct primary. One (1) precinct party ballot shall be handed each voter along with the ballot containing state, county and other candidates herein provided for and shall be voted in the same manner. (Laws 1938 S.S., ch. 2, sec. 19, p. 3.)

56-820. Failure to file report--Penalty.--A candidate receiving the nomination of a political party and failing or refusing to file a full and

complete report as required by the preceding section, shall not receive the certificate of nomination and have his name printed on the official ballot at the ensuing general election until such report is filed. Any candidate who failed to receive the nomination and who refuses or fails to file such report, shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

By an "itemized statement" shall be meant that when a candidate has a class of like expenditures, he shall not list them under one item, but shall state each item separately. Each item of printing shall be set out by itself, and each advertisement in a newspaper shall be specifically set forth, with the cost thereof, and in like manner all candidates' reports shall show in detail every transaction. (Laws 1938 S.S., ch. 2, sec. 24, p. 3.)

56-823. Limitation on campaign expenditures.--Candidates for nomination at any primary election shall be limited in amount of expenditures for the said primary election to the following amounts respectively, exclusive of any sums of money expended for necessary personal, traveling or subsistence expenses: for United States senator, not exceeding thirty-five hundred dollars (\$3500.00); for members of Congress or governor, not exceeding twenty-five hundred dollars (\$2500.00); for Supreme Court judge, not exceeding one thousand dollars (\$1000.00); for any other office for which the electors of the entire state shall vote, not exceeding fifteen hundred dollars (\$1500.00); for district judge, district attorney or state senator, not exceeding two hundred and fifty dollars (\$250.00); for state representative, not exceeding two hundred and fifty dollars (\$250.00); for any office for which the electors of a county or a subdivision of a county shall vote, other than state representatives, not exceeding two hundred and fifty dollars (\$250.00). (Laws 1938 S.S., ch. 2, sec. 25, p. 3; 1943, ch. 86, sec. 8, p. 136.)

56-824. Excessive expenditures--Penalty--Computation of things other than money.--Any candidate who expends more money or other things of value than set forth in the preceding section, shall be guilty of a misdemeanor, and shall be fined not less than one hundred dollars (\$100.00) nor more than two thousand dollars (\$2000.00), and be imprisoned in the county jail for not less than six (6) months nor more than two (2) years. When any other thing of value than money is expended or used, in behalf of any candidate, it shall be considered as money at its fair cash value. (Laws 1938 S.S., ch. 2, sec. 26, p. 3.)

56-825. Tie vote--Determination by lot.--In the event of a tie between any two (2) candidates running at said primary for the nomination for the same office, such tie and the question of who should be elected and be the candidate of his party at the ensuing general election, shall be determined by lot and the method and procedure for so settling such tie by lot shall be the same as now or hereafter provided by law for a tie at any general election. (Laws 1938 S.S., ch. 2, sec. 27, p. 3.)

56-826. Recount.--Any candidate of any party for nomination to any office to which this act applies, having reason to believe that any error or fraud has been committed by the election officials of any precinct in counting or tallying the ballots or certifying the results thereof, whereby the results of the election in such precinct were not correctly determined or certified, shall have the right to have the ballots cast in such precinct for and against such candidate recounted and the result in such precinct redeclared and recertified, if such candidate so considering himself aggrieved as hereinabove set out, shall within five (5) days after the issuance of the certificates of nomination in the case of precinct or county offices and within ten (10) days after the issuance of the certificate of nomination in the case of all other offices, file with the county clerk who shall immediately notify the members of the board of county commissioners, acting as a canvassing board, his petition therefor, setting forth the particular precinct or precincts in the county in which such error or fraud was committed, accompanied with the sum of ten dollars (\$10.00) for each precinct in which such recount is sought, all monies so paid in shall be placed in the "primary election fund."

It shall thereupon be the duty of the board of county commissioners acting as a canvassing board, within three (3) days thereafter, to open the ballot boxes of said precinct and recount and retally and recertify the result of the primary in said precinct, as to the particular office effected, and the result of said recount shall be certified by said board of county commissioners acting as a canvassing board. All candidates affected by such recount shall at all times, have the right to be present at such recount in person and by attorney and such clerical help as he may desire for his own use.

In the event of a recount of ballots cast for any office other than a county or precinct office, the said board of county commissioners, acting as a canvassing board, shall certify the number of ballots cast for each candidate whose office is so recounted in said county as shown by the said recount to the state canvassing board, and the state canvass-

ing board shall be bound thereby. This provision shall be mandatory, and may be enforced by mandamus.

It shall be the duty of the state canvassing board to issue its certificate of nomination as to all offices other than county or precinct offices in accordance with the result of said recount, and for the purpose of examining the returns, the state canvassing board shall meet within twenty (20) days after said election and shall canvass the returns of such recount made by the several county canvassing boards as hereinabove provided.

In the event notice is filed with such state canvassing board that the certification as to the recount of ballots has not been returned from any county, it shall be the duty of the state canvassing board to remain in session, adjourning from day to day until the returns from such county is before it, and for this purpose may employ messengers to procure said returns and return them to it when, in its judgement, such messenger is necessary. Such state canvassing board shall certify the result as shown by the returns from the several counties as amended by such recount. (Laws 1938 S.S., ch. 2, sec. 28, p. 3; 1943, ch. 86, sec. 9, p. 136.)

56-827. Violation of Act--Penalty.--If any judge or clerk of a direct primary election or other officers or persons on whom any duty is enjoined by this law shall be guilty of any wilful neglect of such duty or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of five hundred dollars (\$500.00), or by confinement in the penitentiary for not less than one (1) year or more than two (2) years, or by both such fine and imprisonment. (Laws 1938 S.S., ch. 2, sec. 29, p. 3.)

56-828. Contest of primary elections.--(a) Right to Contest--Procedure.--Any unsuccessful candidate for nomination for any public office at any primary election, to which primary elections apply, may contest the election of the candidate to whom certificate of nomination has been issued. The procedure for such contests shall be in accordance with such rules as may from time to time be established by the Supreme Court of New Mexico under its rule-making power.

(b) Right of Appeal to Supreme Court Granted.--An appeal shall lie from any judgment or decree entered in such contest proceeding to the Supreme Court of the state of New Mexico within the time and in accordance with such rules as may from time to time be established by the Supreme Court of New Mexico under its rule-making power.

that board shall be bound thereby. This provision shall be mandatory, and may be enforced by mandamus. It shall be the duty of the state canvassing board to certify the qualifications of nominees as to all offices other than county or precinct offices in accordance with the result of said returns, and for the purpose of examining the returns, the state canvassing board shall meet within twenty (20) days after said election and shall examine the returns of each precinct made by the several county canvassing boards as hereinabove provided.

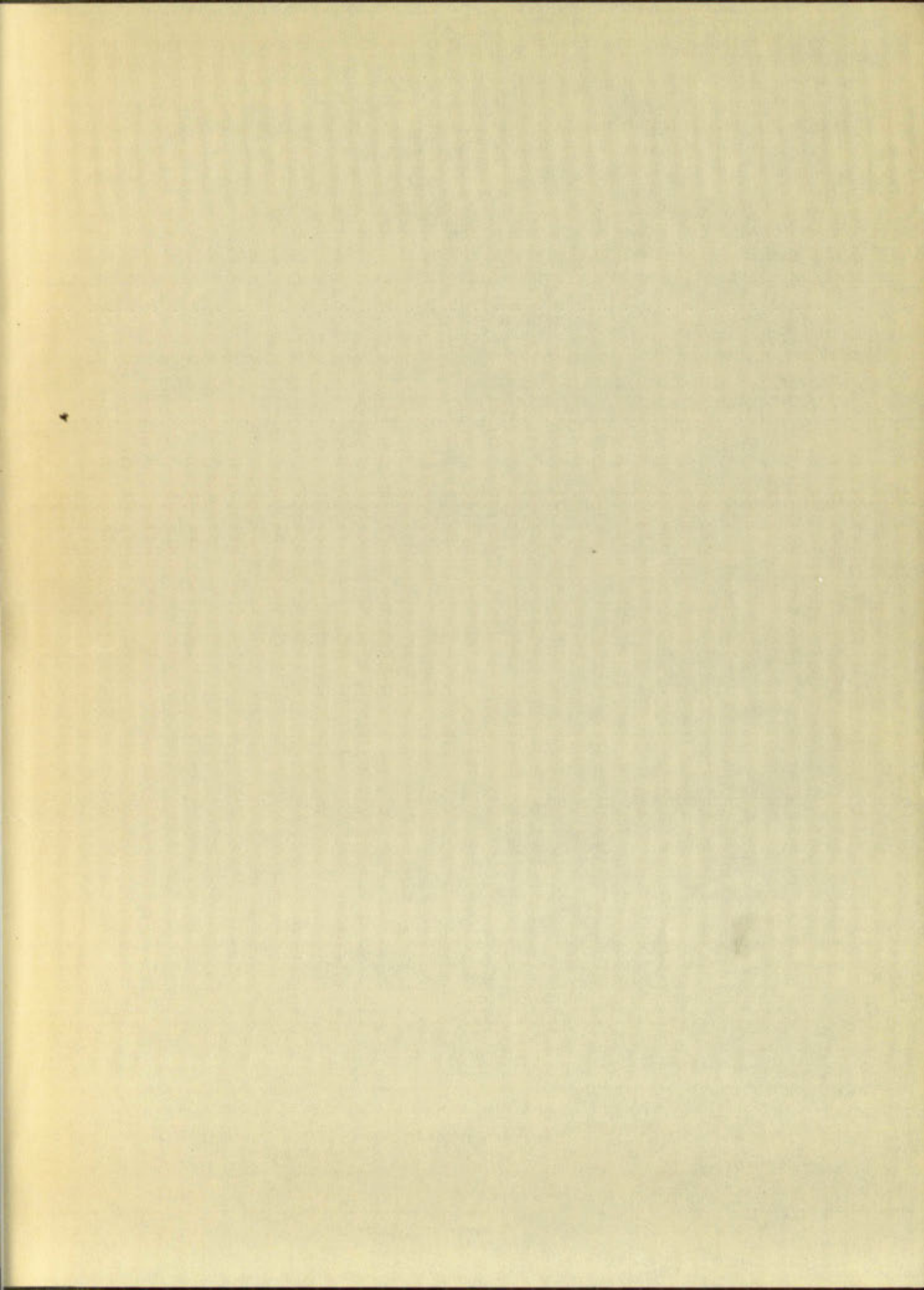
In the event notice is filed with such state canvassing board that the certification as to the results of election has not been returned from any county, it shall be the duty of the state canvassing board to continue in session until the return is received from such county, and for this purpose may employ necessary personnel, and for this purpose and return then to it when it is procured, such personnel is necessary. Such state canvassing board shall certify the result as shown by the returns from the several counties as amended by such returns, (Law 1936 S.B., ch. 8, sec. 68, p. 1183, ch. 52, sec. 2, p. 136.)

56-827. Violation of Act--Penalty.--If any judge or clerk of a district primary election or other election or person on whom any duty is enjoined by this law shall be guilty of any willful neglect of such duty or of any corrupt conduct in the discharge of the same, such judge, clerk, officer or other person shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of five hundred dollars (\$500.00), or by imprisonment in the penitentiary for not less than one (1) year or more than two (2) years, or by both such fine and imprisonment. (Law 1936 S.B., ch. 2, sec. 29, p. 3.)

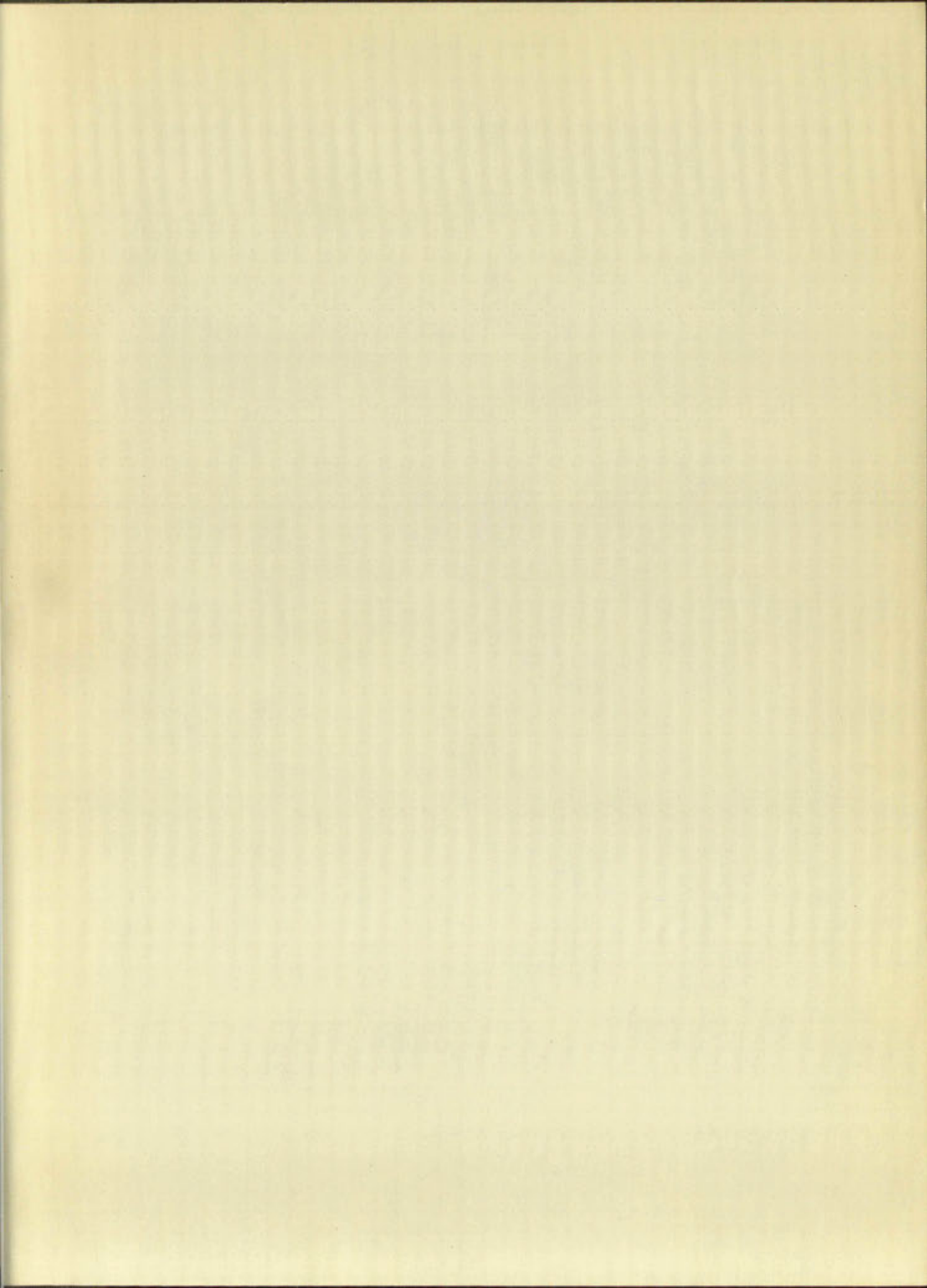
56-828. Contest of primary elections.--(a) Right to contest--Procedure.--Any unsuccessful candidate for nomination for any public office at any primary election, or who may, may elections apply, may contest the election of the candidate to whom certificate of nomination has been issued. The procedure for such contests shall be in accordance with such rules as may from time to time be established by the Supreme Court of New Mexico under its rule-making power. (b) Right of appeal to Supreme Court limited.--An appeal shall lie from any judgment or decree entered in such contest proceeding to the Supreme Court of the state of New Mexico within the time and in accordance with such rules as may from time to time be established by the Supreme Court of New Mexico under its rule-making power.

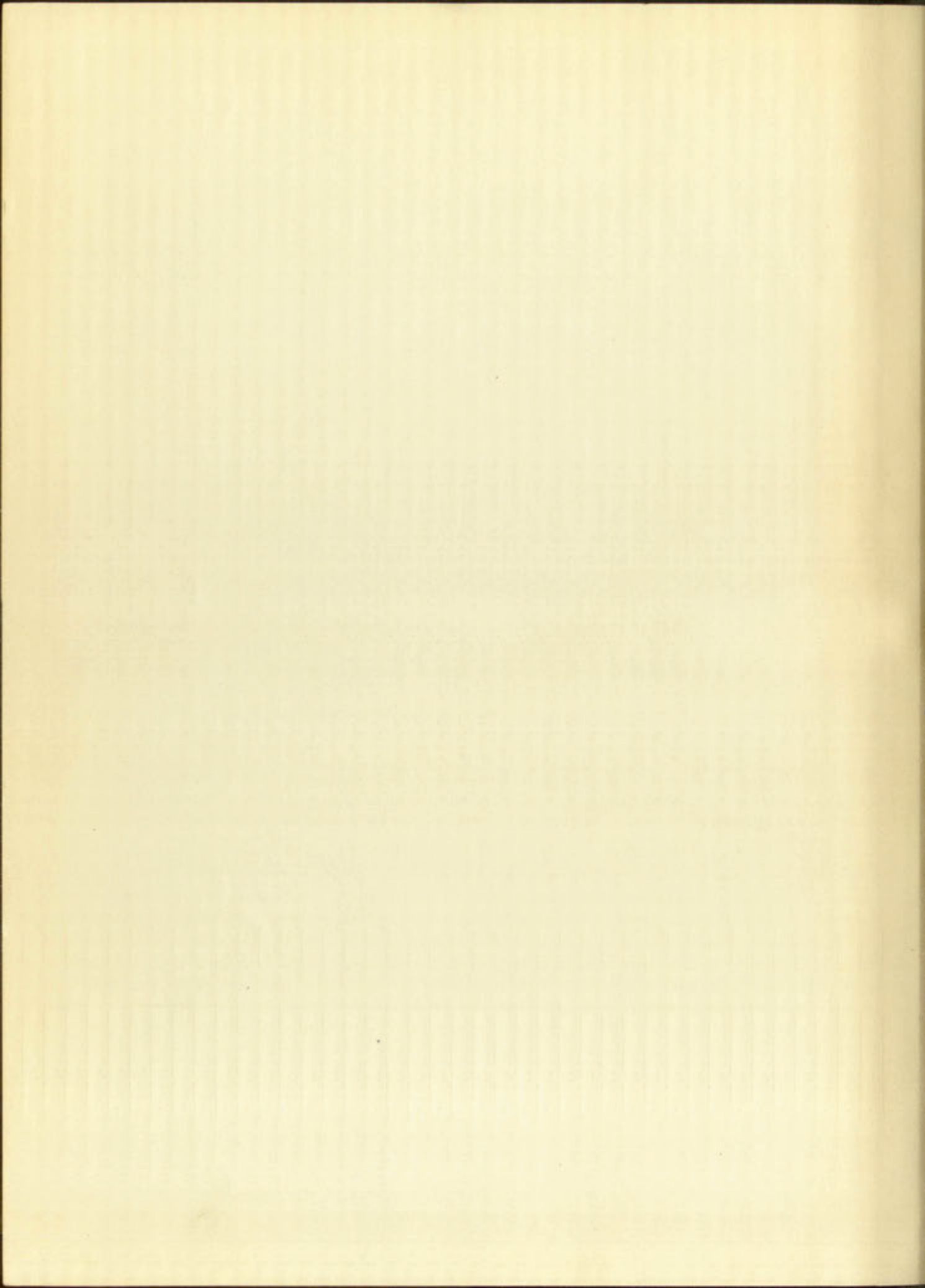
(c) Preservation of Ballots.--Either the contestant or contestee, within the time provided by law for the preservation of ballots may give notice by registered mail to the county clerk of those counties wherein he wishes the ballots preserved that a contest is pending in a designated court, and thereupon it shall be the duty of such county clerk to preserve the ballots of all precincts and election districts named in the notice of contest and answer until said contest shall have been finally determined.

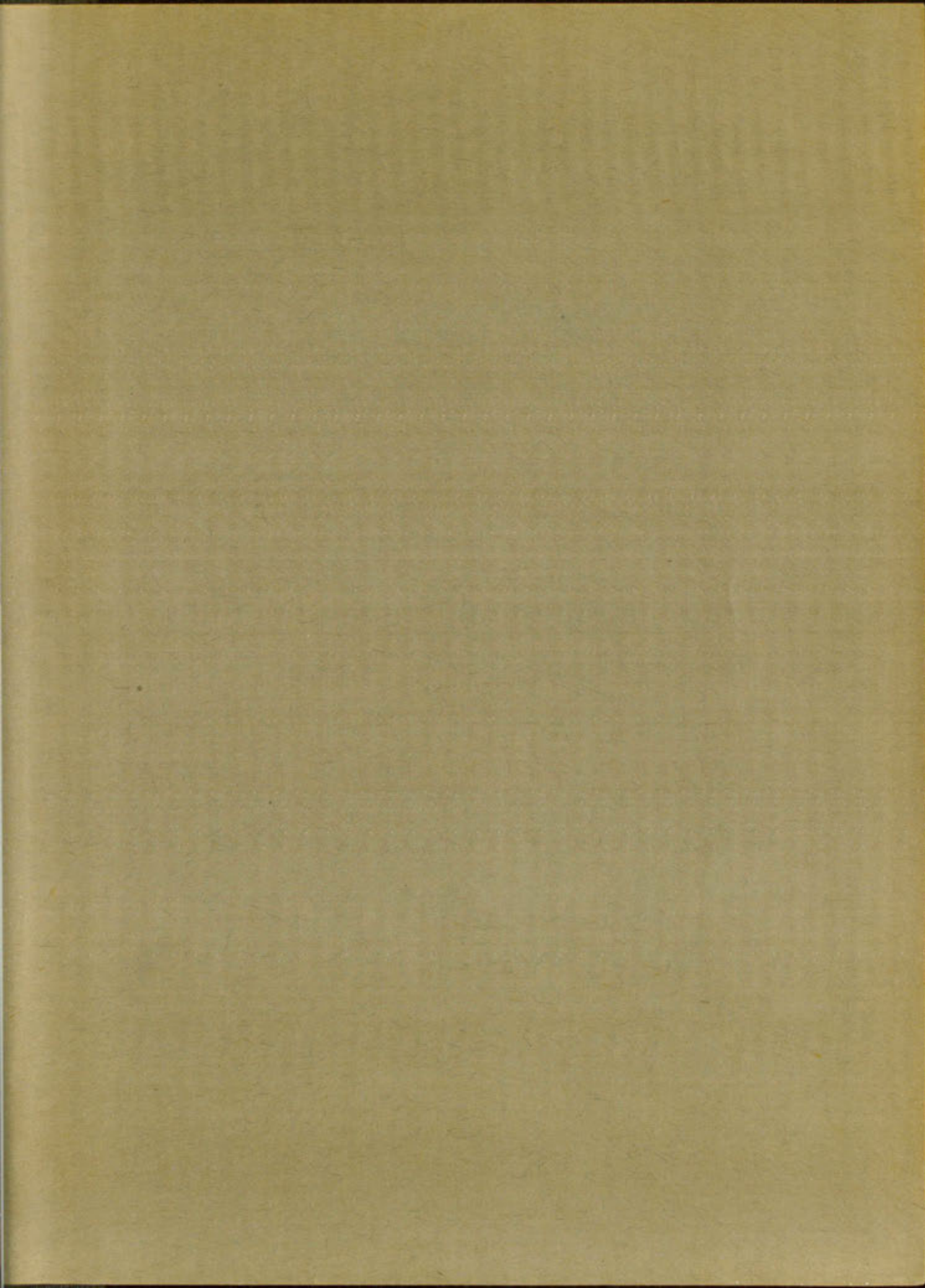
(d) Disqualification of Trial Judge.--Any election contest shall be an action or proceeding within the meaning of section 1, chapter 67, Laws of 1941, being section 19-508 New Mexico Compilation of 1941, and any acts amendatory thereof. Any affidavit of disqualification shall be filed on or before the date when answer is required to be filed as provided by rules established by the Supreme Court of New Mexico. (Laws 1943, ch. 86, sec. 10, p. 136.)



B.T.







IMPORTANT!

Special care should be taken to prevent loss or damage of this volume. If lost or damaged, it must be paid for at the current rate of typing.

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