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A History of New Mexico Election Laws

William E. Harper

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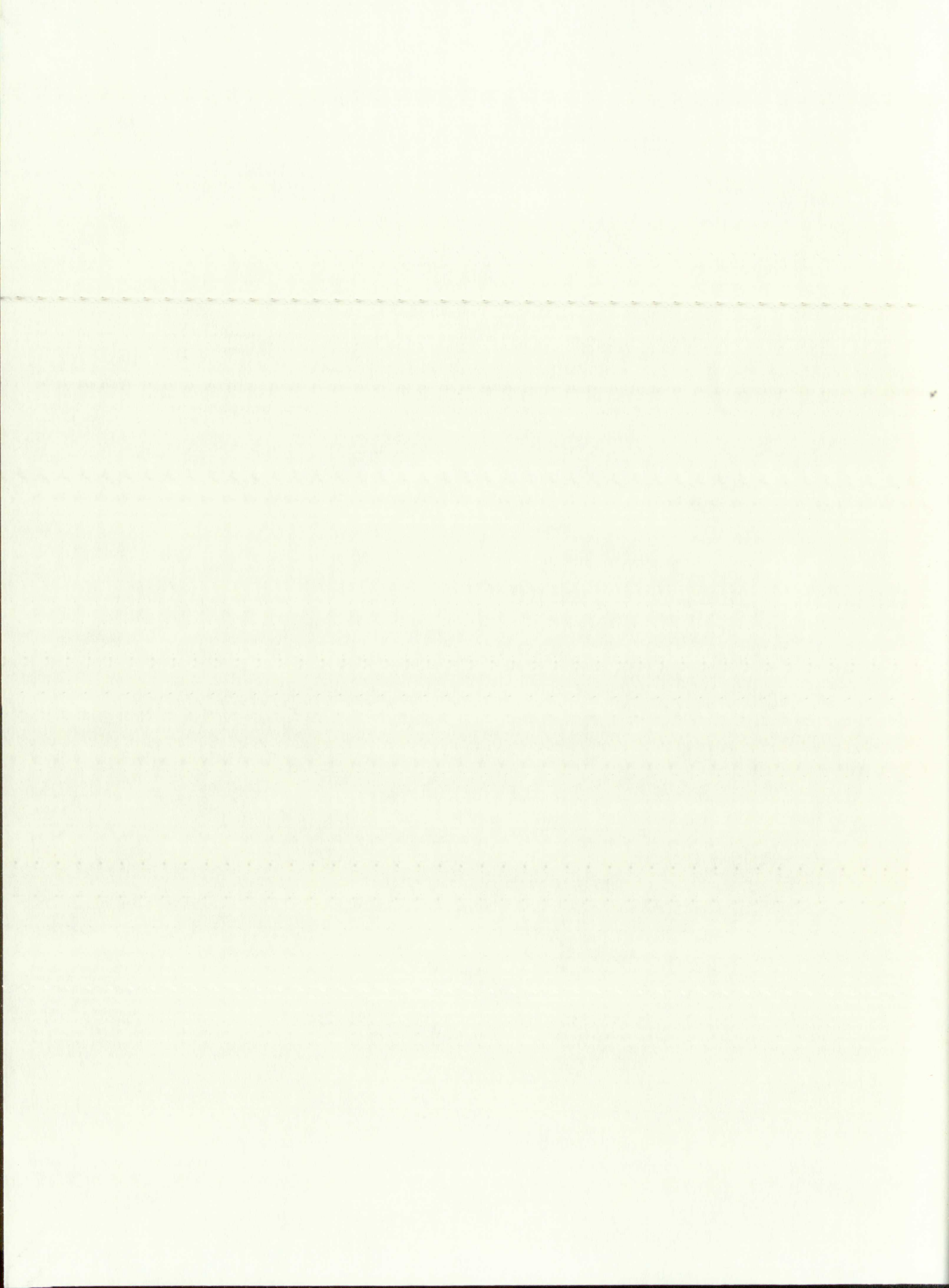
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A HISTORY

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WILLIAM LEE HARPER, A. B.

(Wheaton College)

In Partial Fulfillment for the
Degree of Master of Arts at the
University of New Mexico, 1927.

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CHAPTER I

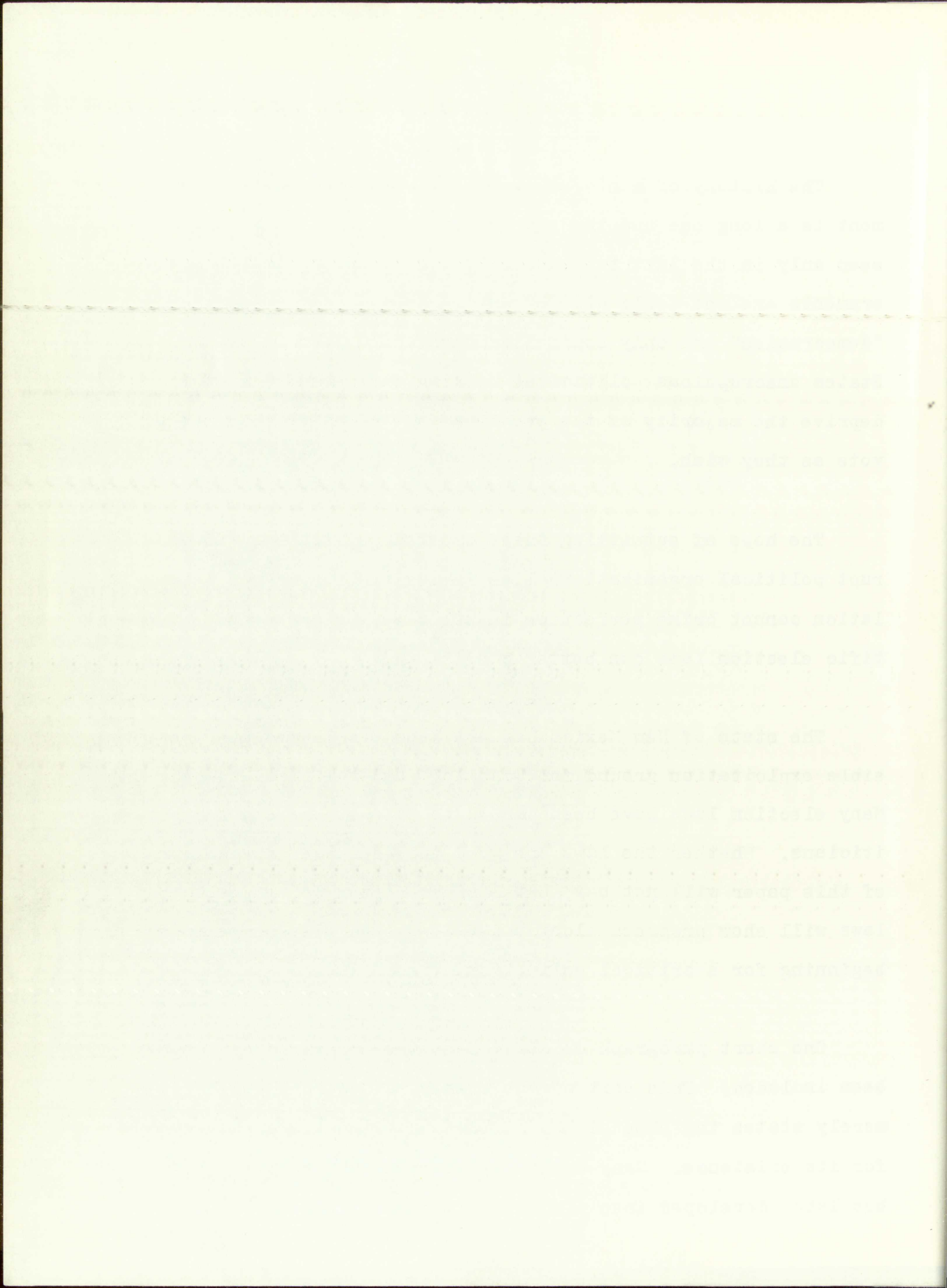
INTRODUCTION

The history of man's struggle for a representative government is a long one and the success of this struggle has been seen only in the last two hundred years. Representative governments are not world wide by any means and many so-called "democracies" are only nominal democracies. Even in the United States unscrupulous politicians seeking their own ends would deprive the majority of the people of the right to vote, or to vote as they wish.

The hope of outwitting these crooked politicians and corrupt political organizations lies in legislation. Even legislation cannot bring perfection in politics, but good and scientific election laws can better conditions.

The state of New Mexico has not been overlooked as a possible exploitation ground for "capital" and political bosses. Many election laws have been passed to out-wit the crooked politicians. Whether the laws are good and adequate, the author of this paper will not say, but a short history of the election laws will show progress along these lines and will serve as a beginning for a critical estimation of such laws.

One short paragraph or section on the origin of office has been included. This part of the thesis is not complete but merely states the name of the office and gives the authority for its existence. Many offices started as appointive ones but later developed into elective offices.



Man's struggle for independence is not finished and the field of politics has much to do each year to bring about a proportional betterment of man's political condition. Credit should be given every man who studies to create better election laws.

The progress and future existence of this great country depends on clean politics more than on any other activity of human society. Politics and government are the keys to better conditions of all kinds. If the point may be continued, the hope of better government lies almost wholly in an election system that honestly draws out the will of the people. Every man can contribute to his own advancement and to the progress of his country by an active interest in the election problems, and the elections proper, of his own locality.

CHAPTER II

THE ORIGIN OF OFFICE

Practically all officers under the Kearney government were appointed. The Kearney Code provided for certain of these officers and from some of these, the present group of officers developed.

Although the Kearney Code speaks of a governor there is no provision made for him. No doubt the governor was appointed by the military governor who had supreme power until the Organic Act of the Congress created a territory out of New Mexico.

An attorney general was provided for and he was to keep his office at the seat of government. His duty was that of circuit attorney in the district in which he resided. (1)

Every prefect was to appoint constables in each county and the number was not to exceed four in each county and their duties were to be established by law. (2)

The territory was divided into three judicial districts and there was to be one judge for each district and in the judicial division there was to be one prefect in each county. This prefect corresponded somewhat to the present probate judge. (3)

-
- Sec. 1. 1. Kearney Code. Attorney General and Circuit Attorneys.
2. Ibid. Constables. Sec. 1.
3. Ibid. Courts and Judicial Powers. Sec. 2, 3.

Even the sheriffs were to be appointed and the governor was to appoint one for each county and his duty was to conserve the peace. (1)

The territorial treasurer and auditor were to keep their office in the seat of government. The auditor was the adjuster of all claims against the state while the treasurer received and kept all the money received by the state. (2)

Each division of the government was to appoint its own clerks.

It is a difficult matter to trace the present offices through the Kearney Code for many were abolished and many were re-created with new names and new duties. The Kearney Code was the beginning of the present judicial system. The prefect's office has been lost to New Mexico and this office was one of the most influential in its day.

The Organic Act of Congress gave a more American form to the government. The governor was appointed by the President of the United States. The governor was also the Commander of the militia and superintendent of Indian affairs in the territory.

The Secretary of Territory was also appointed by the

1. Kearney Code. Sheriffs. Sec. 1, 2.

2. Ibid. Treasury Department. Sec. 1, 2, 3.

President of the United States and his duties were much the same as the present Secretary of State. (1)

The legislative power and authority of this territory was invested in a governor and a legislative assembly; the legislative assembly consisted of a council and a house of representatives. There were thirteen members in the council and twenty-six members in the house of representatives. (2)

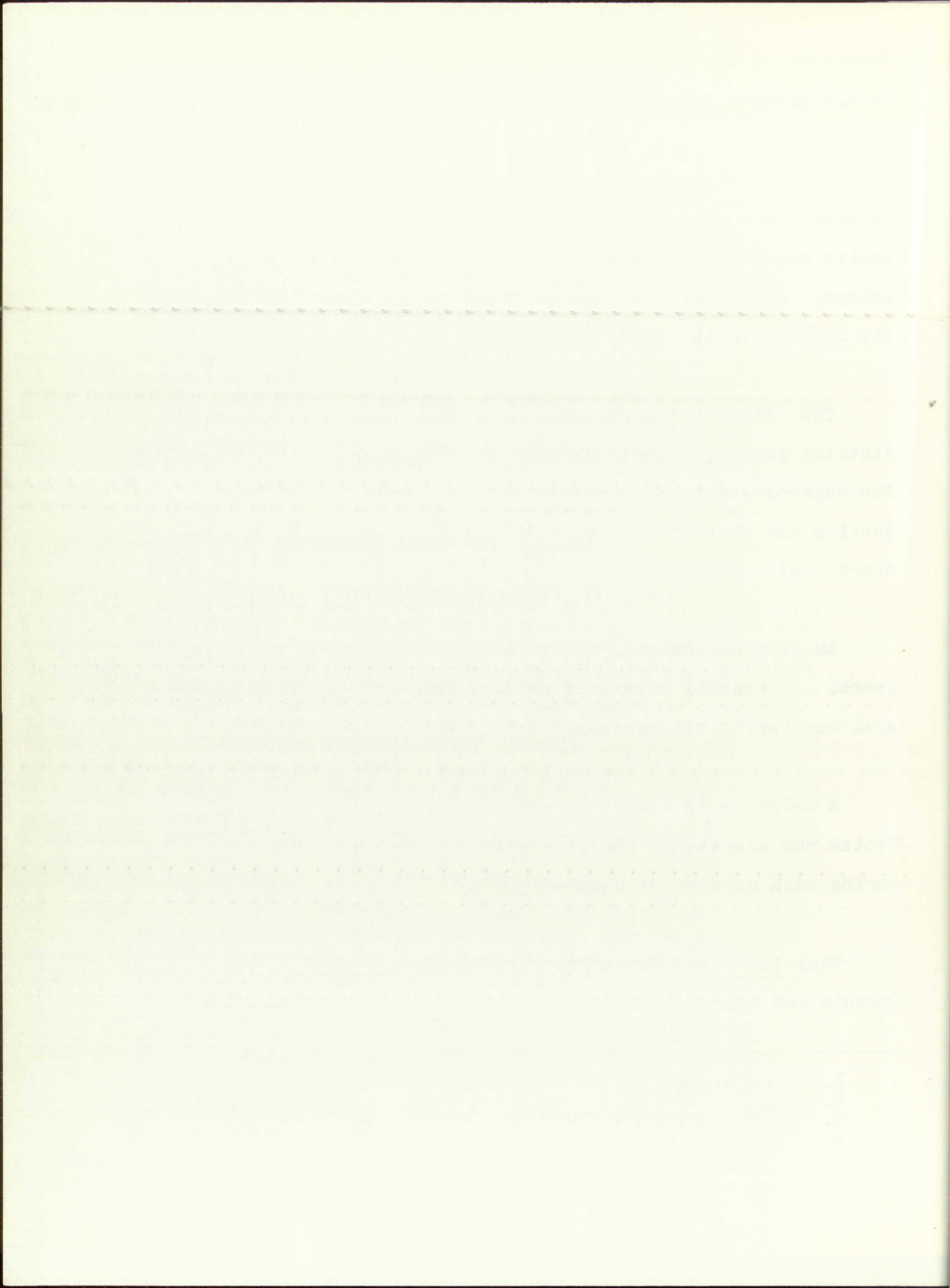
The judicial department consisted of a supreme court, district courts, probate courts, and justices of the peace. The supreme court had three judges, one of which was the chief justice and these judges were to preside over the district court. (3)

An attorney general was to be appointed for a term of four years. A marshall worked¹ in conjunction with the attorney general and served all processes of the said courts. (4)

A delegate to the house of representatives of the United States was elected by the electors of the territory and served during each session of congress. (5)

Thus the chief territory officers were provided for by the Organic Act and these offices continue to exist in most cases.

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1. Organic Act of 1850. Sec. 4.
 2. Ibid. Sec. 5.
 3. Ibid. Sec. 10.
 4. Ibid. Sec. 14.



From time to time the territorial legislature created offices in the territory. Some of these were minor offices which were to be appointive; some were school offices. The two most important were those of Attorney General, which was created in 1858, and the county commissioners who were to be three in number in each county. This board of county commissioners exercised the power of the county as a body politic.

When New Mexico became a state the Constitution provided for the state and county officers, and the following gives an outline of these offices and the authority for their being.

Legislative officials: The senate was to consist of twenty-four members and their term of office was to be for a period of four years. (Article IV. Sections 3, 4.) The house of representatives was to consist of forty-nine members who were to hold their office for two years. (Article IV. Sections 3, 4.)

Executive officials: The chief executive was to be the Governor who was to be elected for four years, and the Governor was the commander-in-chief of the military forces of the state unless such forces were in the service of the President of the United States. The Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Public Instruction, and Commissioner of Public Lands were also in the executive department. (Article V. Section 1.)

Judicial officials: The supreme court was to consist of three justices who were to be elected at the general election and were to serve for a term of eight years. (Article VI. Section 4.)

The state was divided into eight judicial districts and the

judges of the district court were elected for a period of six years. (Article VI. Section 12.) A probate court was to exist in each county and it seems that no judge for such court was provided for, but this office already existed from territorial government. (Article VI. Section 23.) There was to be a county clerk in each county who should serve for a period of time not stated but later provided for and which was four years. (Article VI. Section 103.) Justices of the peace, constables, and police magistrates were to be elected for a period of time to be determined by law. (Article VI. Section 107.) There was to be a district attorney in each judicial district elected for four years. (Article VI. Section 105.) A state corporation was to exist which should consist of three members elected for a term of six years. (Article XI. Sections 145, 146.)

CHAPTER III

ELECTION OFFICERS

In 1851 the legislature of the Territory of New Mexico passed a law that gave the probate judge almost complete power over the conduct of elections. The probate judge issued the local election proclamation, decided the place where the election was to be held, and appointed the election officers. He also prepared and forwarded the poll-books.

Ten days before any county or territory election, the probate judge gave notice, by hand-bills and proclamation, of the election to be held, which notice included the object of the election, the officers to be voted for, and the place of the election. (1)

Probably the greatest power over elections was the power to appoint the election judges. These judges were appointed eight days before the election and were to be men of discretion, honesty, and good character. (2) These judges in conjunction with the probate judge could select the polling place.

Two poll books were to be prepared and furnished by the probate judge, and these books were to be prepared according to prescribed rules. They were to be sent to the judges of the election on the day they were notified of their appointment. (3) The ballot box was to be supplied by the probate judge. (4)

-
1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 8.
 2. Ibid. Sec. 9.
 3. Ibid. Sec. 10.
 4. Ibid. Sec. 23.

This power of the probate judge continued until 1875, when the board of county commissioners was created and the responsibility of election was assumed by them.

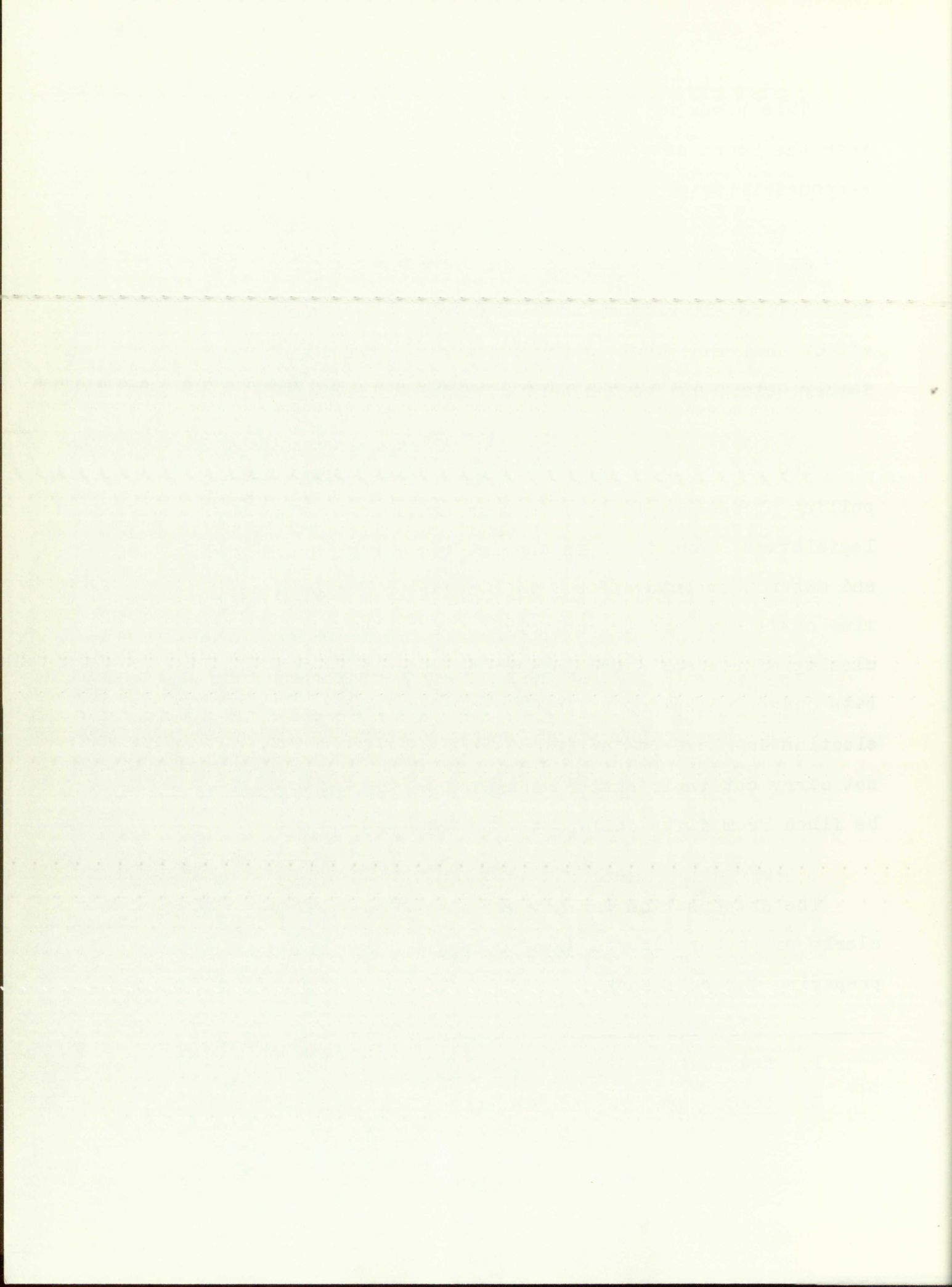
The judges of elections were to take an oath of office before entering on their duties. This oath was to the effect that they would carry out their duties honestly, fairly, etc., and to the best of their abilities. (1)

The judges of election had full authority in the polling places and their duties as provided by the first legislature, were few: to appoint two clerks of election and swear them into office; to keep the polls open from nine until six; and to publicly count the votes after the closing of the polls and forward the results to the probate judge. Election officers were free from arrest on election day, except for criminal offenses. If they did not carry out their duties according to law, they were to be fined from fifty dollars to 200 dollars. (2)

The compensation was not stipulated, except that the clerks of probate courts were to be given one dollar for preparing the poll-books.

1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 12.

2. Ibid. Sec. 13, 14, 16, 44.



In case the probate judge failed to appoint the judges of election, the people of such precinct were to select three qualified men to fill the places, and the election was to be valid. (1)

The Second Session of the First Legislature passed few laws with regard to election officers. The Governor was to draw a legal form and set of rules for the conduct of elections and he was to print and distribute sufficient numbers to inform each election precinct of the prescribed rules for the conduct of elections. All election officers were to adhere to these rules. (2)

Because of confusion in poll-books which no doubt was used to cover miscount, the Legislature of 1853 and 1854 required the clerk of probate to make the poll-book of sufficient size to avoid confusion, and to line two full pages. The book was to contain the oath of office for the election judges; also the certificates to be given the elected candidates. Neglect was punishable by a fine of from three dollars to twenty-five dollars. (3)

If the judge of probate neglected to forward the poll-books to the electorate in sufficient time, he was subject to a fine of from ten dollars to twenty-five dollars for neglect. (4)

1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 15.

2. Ibid. Ch. 29, Sec. 1, 2.

3. Ibid., 1853. Ch. 31, Sec. 5.

4. Ibid. Sec. 7.

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The person appointed to carry the election returns from the electoral precinct to the county seat was to receive five cents per mile for travel, going and coming. (1)

In 1860-1861 more legislation concerning election officers was passed. It was required of the judges of election that the ballot box should be opened and shown to the public before commencing the election, and it should afterward be closed and sealed in the presence of the voters assembled. (2)

At six P. M., the polls should immediately be closed and the ballots counted publicly and certified by the judge of election. The judge should also make certificates of the results and give certified copies to the parties interested, provided the number does not exceed four in number. (3)

If any judge should fail to comply with these provisions he should be tried by the justice of the peace or probate judge in a summary manner and if convicted, should be fined and forfeit the right to vote. (4)

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1. New Mexico. Session Laws, 1853-54. Ch. 31, Sec. 10.
 2. Ibid., 1860-61. Ch. 42, Sec. 1.
 3. Ibid. Sec. 2.
 4. Ibid. Sec. 5, 8.

The person who is to be elected shall be elected by the voters of the county at a general election to be held on the first Tuesday after the first Monday in November, 1911, and the person so elected shall hold office for one year and until his successor is elected.

In 1911 the Legislature enacted an act to amend the constitution of the State of North Carolina, and the act provided that the electors should be elected by the voters of the county at a general election to be held on the first Tuesday after the first Monday in November, 1911, and the person so elected shall hold office for one year and until his successor is elected.

At six P. M. the polls should immediately be closed and the persons counted publicly and certified by the judges of election. The judges should also make certification of the results and give certified copies to the parties interested, provided the number does not exceed four in number.

(5) If any judge should fail to comply with these provisions he should be tried by the justice of the peace or by the judge in a summary manner and if convicted, should be fined and forfeit the right to vote.

1. The Board of Supervisors shall have the right to elect a person to be the clerk of the Board of Supervisors.
2. The Board of Supervisors shall have the right to elect a person to be the treasurer of the Board of Supervisors.
3. The Board of Supervisors shall have the right to elect a person to be the auditor of the Board of Supervisors.
4. The Board of Supervisors shall have the right to elect a person to be the assessor of the Board of Supervisors.

The judges of probate were to designate the most central points in the judicial precincts for the assembling of the people to hold elections. (1)

The Secretary of the Territory was to furnish printed forms of poll-books to the judges of probate at least three months before elections. (2)

The question of compensation was not considered until 1882, when the legislature provided that the judges and clerks of election were to be payed three dollars per day for service in elections, the same to be paid out of the county treasury. (3)

The board of county commissioners was created in 1875 but its power as to elections was established later when the legislature provided that the county commissioners were to appoint the judges of election. There were to be three of these judges, not more than two of the same political party, and the chairman of the county political party was to give a list from which the judges were to be selected. These judges were to be men of honesty, good repute, honor, and integrity. (4)

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1. New Mexico. Session Laws, 1860-61. Ch. 42, Sec. 10.
 2. Ibid., 1867-68. Ch. 26, Sec. 8.
 3. Ibid., 1882. Ch. 37, Sec. 1.
 4. Ibid., 1909. Ch. 105, Sec. 2, 3.

The first of these was the fact that the people to hold elections...

The second of the territory was to be held by the people...

The question of compensation was not considered until 1893, when the legislature provided that the judges and clerks of election were to be paid three dollars per day for service in elections, the same to be paid out of the county treasury. (13)

The board of county commissioners was created in 1873 and its power as to elections was enlarged later when the legislature provided that the county commissioners were to appoint the judges of election. There were to be three of these judges, not more than two of the same political party, and the selection of the county political party was to give a list from which the judges were to be selected. These judges were to be men of honesty, good repute, honor, and integrity. (14)

1. The first of these was the fact that the people to hold elections...

The duty of making election proclamations also fell to the board of county commissioners. They were to make proclamation by placards and in daily and weekly newspapers ten days before election. (1)

The county commissioners were to designate which judge of election should receive the election supplies and ballot box. The political chairman furnished a list of the judges of election from which the clerks of election were to be chosen. The clerks were to be men of character, honesty, and good repute. (2)

Election clerks had to take the same oath of office as did the judges of election. (3)

If the county commissioners failed to appoint judges of election, the voters were to select judges to act in official capacity. (4)

It is interesting to note the way in which the political parties were being given legal notice, but at the same time they were bound by law.

-
1. New Mexico. Session Laws, 1909. Ch. 105, Sec. 1.
 2. Ibid. Sec. 4.
 3. Ibid. Sec. 7.
 4. Ibid. Sec. 9.

Polls were to be open from noon A. M. to six P. M., and as soon as the polls should be closed, the ballots were to be counted in public and then the ballot box and the poll-books sealed and sent by special messenger, express or mail, to the board of county commissioners. One poll-book was to be left in the clerk's office for inspection by the public. A violation was a misdemeanor and punishable by a fine up to 1000 dollars and a jail sentence of from one to six months. (1)

In 1913 the Territory of New Mexico had become a state and the state legislature immediately made more rules with regard to forwarding of poll-books. One such book was to be sent to the Secretary of State. This book was to be properly filled out and certified by the judges of election and was to be sent within twelve hours after the polls closed. The other poll-book was to be filled out properly and certified and sent with the ballots in the sealed ballot box to the county clerk. The clerk was to keep it. (2) In the case of elections for United States Senators, Representatives, district judges, District Attorneys, or members of the legislature, the judge of election was to do likewise. (3)

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1. New Mexico. Session Laws, 1909. Ch. 104, Sec. 12.
 2. Ibid., 1913. Ch. 59, Sec. 3.
 3. Ibid., 1915. Ch. 34, Sec. 1.

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In the case of special elections for constitutional amendments, the board of county commissioners was to appoint judges of election, no more than two of which were to be of the same opinion on the question to be voted on. (1)

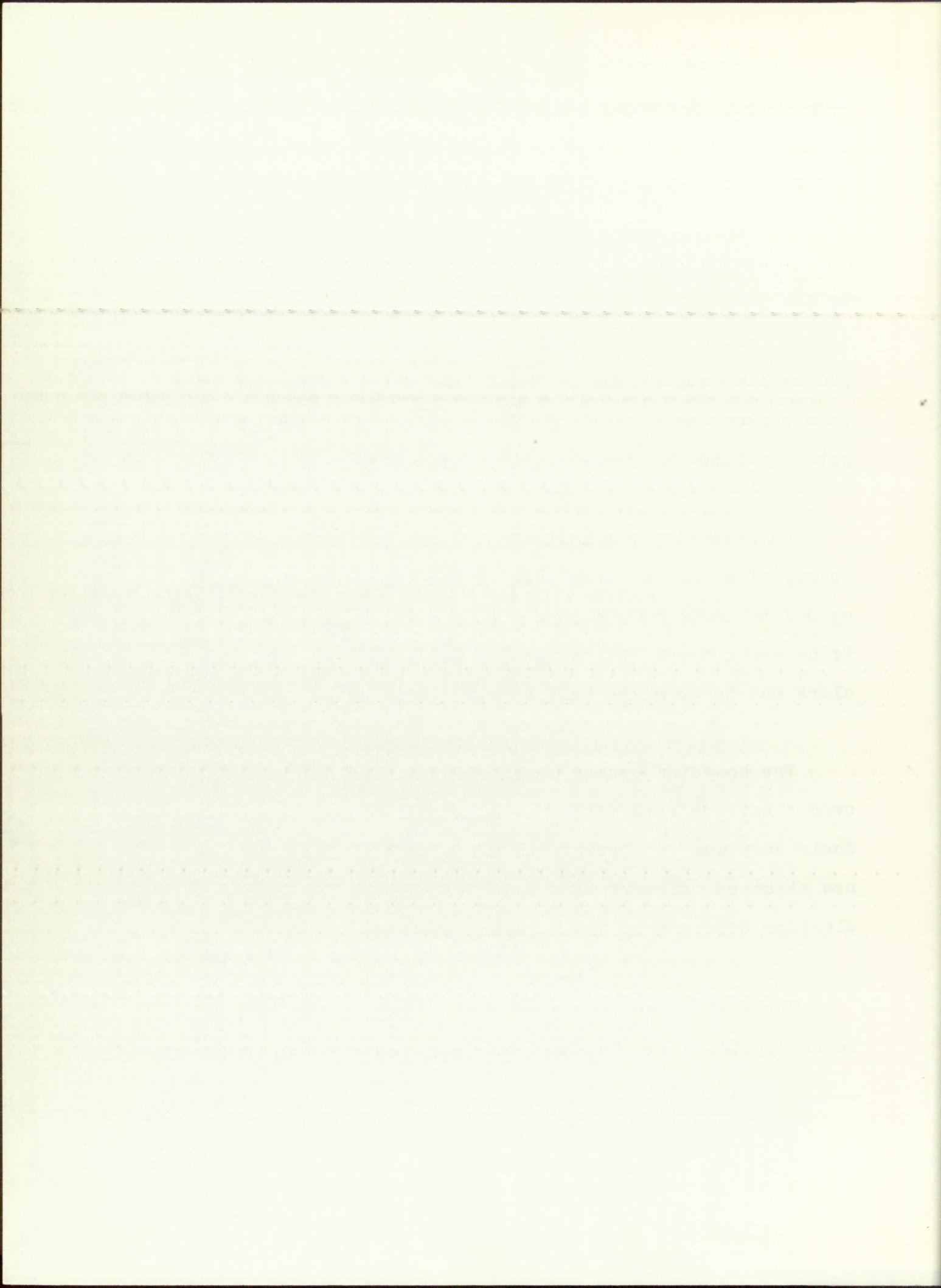
Evidently there was much fraud in elections committed by the judges of election in handling the counted ballots, for in 1919 a law was passed which provided that after the judges had counted the ballots, they should then seal them in a package and sign their names on the packages, then put them into the sealed ballot box. (2)

On receiving the ballots, and the ballot box, the county clerk was to keep them without allowing them to be opened or inspected, except when a re-count was to be held. If no contest was entered in the required time, the county clerk was to burn the ballots with seals unbroken. (3)

The board of county commissioners retained their power over elections even after the laws of 1927 had been passed. Their duty was to appoint all election officials. Several new election officers were added to the regular list of election officers by the 1927 legislature.

Three election judges and three counting judges were to be appointed by the board of county commissioners. The

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1. New Mexico. Session Laws, 1917. Ch. 17, Sec. 2.
 2. Ibid., 1919. Ch. 91, Sec. 1.
 3. Ibid. Sec. 2.



duties of the counting judges consisted of counting the returns from time to time through the day. (1) Also, there were to be three election clerks to assist the election judges and three counting clerks to assist the counting judges. (2)

The newest office created was that of polling clerk which person was to assist all who needed assistance. (3) The chairmen of the dominating political parties were to have one such polling clerk at each precinct but such officer was appointed by the board of county commissioners from a list provided by the chairmen of the political parties.

All election officers were to take oath of office, and were responsible for any breach of such oath.

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1. New Mexico. Senate Bill, 53, 1927. Sec. 314.
 2. Ibid. Sec. 315.
 3. Ibid. Sec. 316.
 4. Ibid. Sec. 329.

CHAPTER IV

CALLING AND CONDUCT OF ELECTIONS

Time of Elections

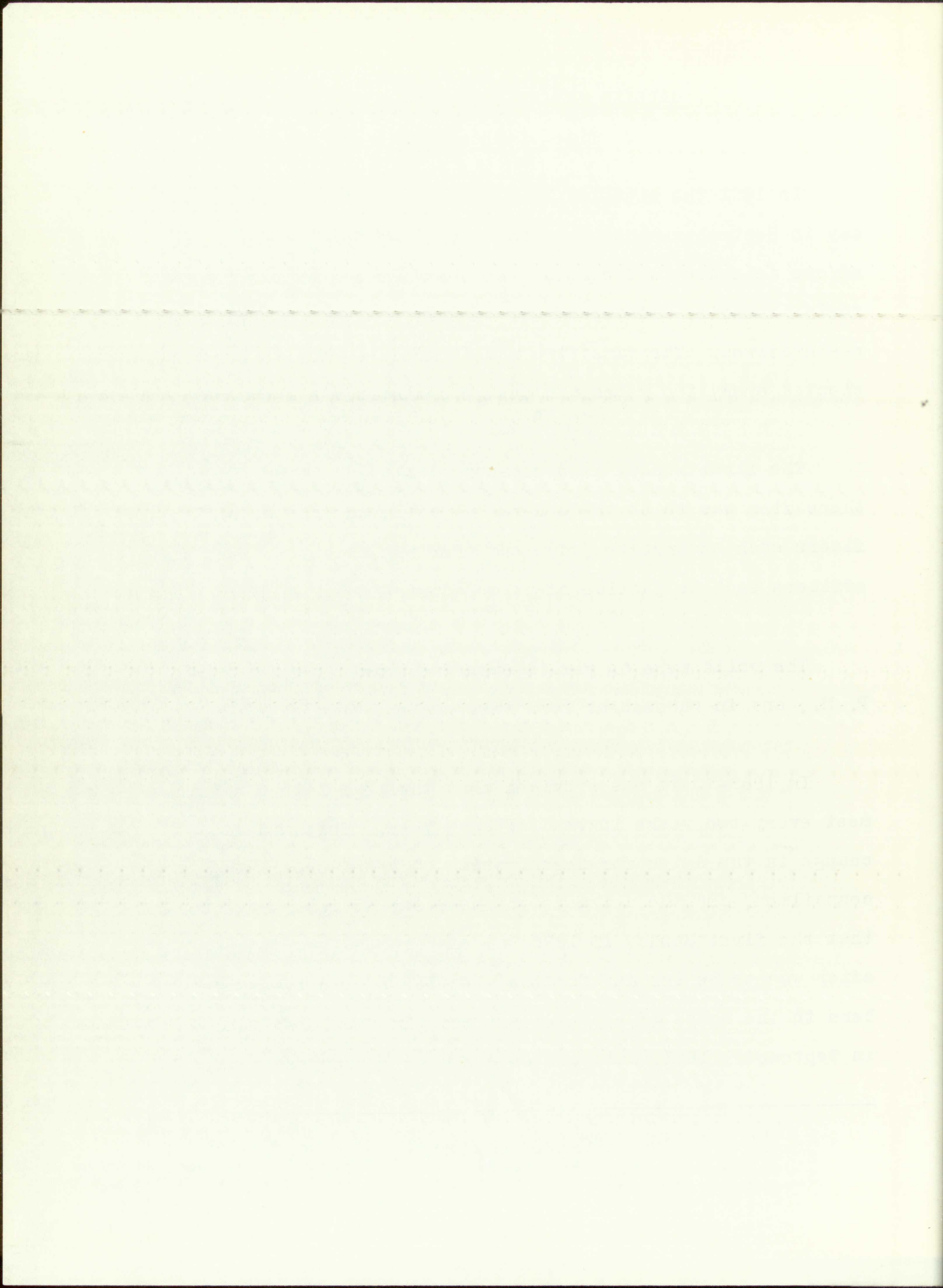
In 1851 the election laws provided that the first Monday in September, 1853, was to be the day for the election of one delegate to Congress, thirteen members of the territorial council, and twenty-six members of the house of representatives. The first two named officers were to be elected every two years and the representatives every year. (1)

The first Monday in September, 1851, and every two years thereafter was to be the general election day for county officers such as probate judge and sheriffs and every year for officers such as justice of peace, constables, and others. (2)

The polls were to remain open from nine A. M. to six P. M., and in subsequent laws this has not been changed. (3)

In 1869-70 it was provided that the legislature should meet every two years instead of each year. This made a change in the dates for the election of representatives, councilmen, and the delegate to congress. It was provided that the first Monday in 1870 and each second year thereafter was to be the day for the election of twenty-six members to the house of representatives. On the first Monday in September, 1871, and each second year thereafter was to

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 1, 3.
 2. Ibid. Ch. 28, Sec. 4, 5.
 3. Ibid. Sec. 16.



be the day for the election of the delegate to congress and the thirteen members of the territorial council. (1)

A law providing for a general election day was passed in 1876. The Tuesday after the first Monday in November was the day set for such elections and every two years after was set as such day. (2)

In 1889 another change in the day for the election of justices of the peace, constables, school directors, and other minor offices was made. The new day was to be the second Monday in January each year and the officer was to take office on the first Monday of February thereafter. (3)

The election laws of 1909 restated the law requiring the election officers to keep the polls open from nine A. M. to six P. M. (4)

On becoming a state it was necessary to set special days for elections on constitutional amendments. Special elections seemed to follow the rule of being held on the third Tuesday of September. This was done in 1919 and in 1921. (5) (6)

1. New Mexico. Session Laws, 1869-70. Ch. 47, Sec.1, 2, 3.

2. Ibid.

3. Ibid., 1875-76. Ch. 25, Sec. 1.

4. Ibid., 1909. Ch. 105, Sec. 12.

5. Ibid., 1919. Ch. 138, Sec. 1.

6. Ibid., 1921. Ch. 138, Sec. 1.



The laws of 1927, although providing an entirely new election code seemed to make very few provisions as to the time of elections. It was implied that the general election day was to continue the same. This general election day was mentioned in section 701 as the Tuesday following the first Monday in September on the even numbered years.

(1)

Notice of election was to be published fifteen days preceeding such election and notice was to be in papers as well as on placards posted in various public places. (2)

The polls were to remain open from nine A. M. until six P. M., as before. (2)

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1. New Mexico. Senate Bill, 53, 1927. Sec. 301.
 2. Ibid. Sec. 701.
 3. Ibid. Sec. 324.

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Place of Elections

The laws of 1851 provided that the old Kearney civil election precincts should be continued until otherwise changed by law. (1)

It was later provided that the place of election should be determined by the probate judge and the election officials selected by him. This provision was made in 1851.

The legislature of 1909 passed a law that the board of county commissioners were to determine the place of election polls, but it was stated that this place was to be where it was most convenient to all. (2)

In a precinct where more than five hundred votes were cast, the county commissioners were to divide such precinct into two election districts and the boundaries were to be specifically designated. (3)

The place of election, as provided for by law previously was left to the county commissioners who were to fix the boundaries of each precinct and were to fix the place of polls. (4)

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 7.
 2. Ibid., 1909. Ch 105, Sec. 5.
 3. Ibid., 1903. Ch. 84, Sec. 1.
 4. Ibid. Senate Bill No. 53, 1927. Sec. 201

One booth for each seventy-five voters was to be provided and such booths were to be arranged as to insure privacy of voting. A rail was to be so placed that people other than the person voting and the election officers could not approach nearer to the booths than fifty feet. The old distance was thirty feet. (1)

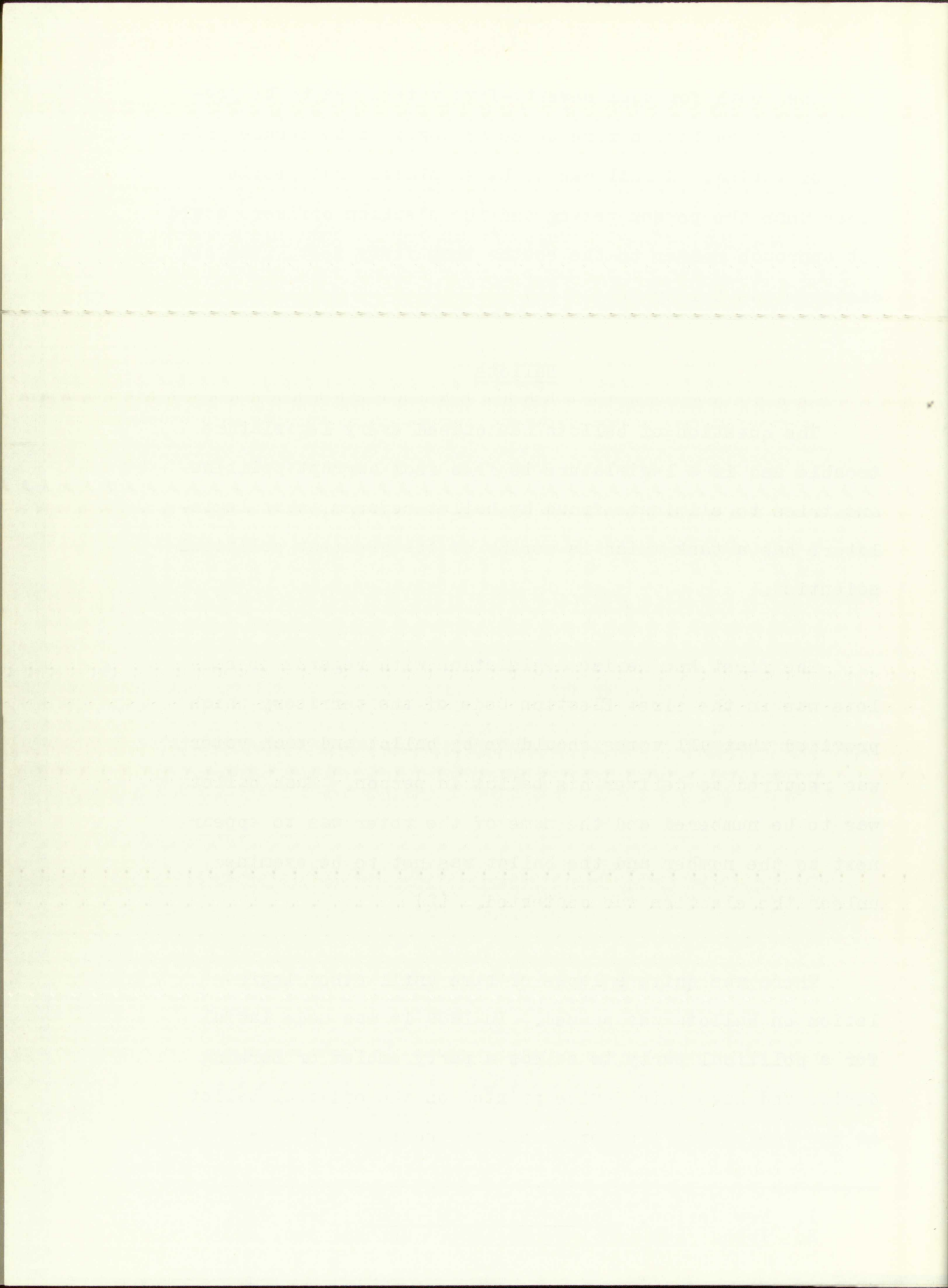
Ballots

The question of ballots has caused every legislature trouble and if a legislature is free from corrupt politics and tries to eliminate fraud by ballot reform, that legislature has a task which is worthy of the greatest political scientist.

The first New Mexico legislation with regards to ballots was in the first Election Code of the territory which provided that all votes should be by ballot and each voter was required to deliver his ballot in person. Each ballot was to be numbered and the name of the voter was to appear next to the number and the ballot was not to be examined unless the election was contested. (2)

There was quite a lapse of time until other legislation on ballots was passed. In 1889 it was made lawful for a political party to select a party emblem or marking device and have this device printed on the official ballot at the top of the list of candidates nominated by such

1. New Mexico. Senate Bill, 53, 1927. Sec. 310.
2. Ibid. Session Laws of 1851. Ch. 28, Sec. 22.



party. After the party had filed this marking device with the county clerk, it was unlawful for any person or party to copy the said mark. However, any voter could add any names that he wished to his official ballot before voting it. (1)

The legislature of 1889 had an inspiration to improve the ballot and quite a bit of work was done. It is well to quote verbatim the law of requirements concerning the ballot: "That hereafter all tickets or ballots used at any general election in this territory, shall be printed on plain white paper, three inches by eight inches or within one fourth of an inch of this size. No ticket shall have any mark or designating device on the back so that the character may be known when folded. If such ticket shall have on its face the mark or designating device provided by the first section of this act, such mark shall be printed at the head of the ticket or ballot, then shall be printed in large black letters the character of such ticket and then shall follow the name or names of the candidates..." No misleading sample ballots were to be printed; that is, with the wrong names on such ballot or with a false designating device on it. (2)

In 1891, section 2 of chapter 135 of the laws of 1889 was amended but such amendment did not affect the nature of

1. New Mexico. Session Laws, 1889. Ch.135, Sec. 1.
2. Ibid. Sec. 2.

the ballot but merely put forth the rules and regulations more clearly. (1)

Evidently the permission to put designating devices and numbers on the ballot was leading to trouble and fraud on the part of the election judges for in 1893 it was made unlawful for any judge or clerk of election to put any designating device on the ballot and the number that was to appear next to the name of the voter casting the ballot was to be left out. (2)

Such designating devices were again permitted in 1903 and each party could choose such marking device and file it with the Secretary of the Territory. The charge for filing was one dollar. The persons providing the ballots were to have the certified designating device printed at the head of the ballot over the list of candidates supported by such party. (3)

After choosing their list of candidates it was unlawful for anyone to circulate tickets or ballots with these official candidates' names appearing thereon. (4)

It became the duty of the county recorder to furnish printed ballots for every election in his county and at

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1. New Mexico. Session Laws, 1891. Ch. 85, Sec. 1.
 2. Ibid., 1893. Ch 76, Sec. 1.
 3. Ibid., 1903. Ch. 59, Sec. 1, 2.
 4. Ibid., 1905. Ch. 127, Sec. 1, 2.

The following are the names of the persons who have been appointed to the various positions in the office of the Secretary of the State of New York.

OFFICE OF THE SECRETARY OF THE STATE

CLERK OF THE SENATE - Mr. J. B. Thompson
CLERK OF THE ASSEMBLY - Mr. J. B. Thompson
CLERK OF THE COMMISSIONERS - Mr. J. B. Thompson

CLERK OF THE SENATE - Mr. J. B. Thompson

CLERK OF THE ASSEMBLY - Mr. J. B. Thompson

CLERK OF THE COMMISSIONERS - Mr. J. B. Thompson

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CLERK OF THE SENATE - Mr. J. B. Thompson

CLERK OF THE ASSEMBLY - Mr. J. B. Thompson

CLERK OF THE COMMISSIONERS - Mr. J. B. Thompson

public expense. On such ballots there was to be printed the certified candidates and the party emblems in the right place and on the back was to be printed "official ballot", election held _____ (date) with the fac-simile signature of the county recorder. The printing and distributing of the ballots was to be under the supervision of the chairmen of the county political committees. (1)

In 1909 the instructions and laws concerning the printing of the ballots were made plainer and stricter: "The county recorder shall furnish printed ballots at the county's expense and on them shall be printed the appropriate names of every candidate whose name has been certified and no person is to accept nomination to more than one office nor from more than one political party. Printing shall be as before and under the supervision of the county political committee chairmen." (2)

The state legislature of 1917 made requirements for the ballot even stricter. This was the first legislation made concerning the ballot after New Mexico had become a state. The important parts of chapter eighty-nine are as follows:

Sec. 1: All ballots are to be printed at public expense of the county except ballots for municipal elections.

Sec. 2: Chairmen of the state political committees shall file emblem of his party with the Secretary of State and

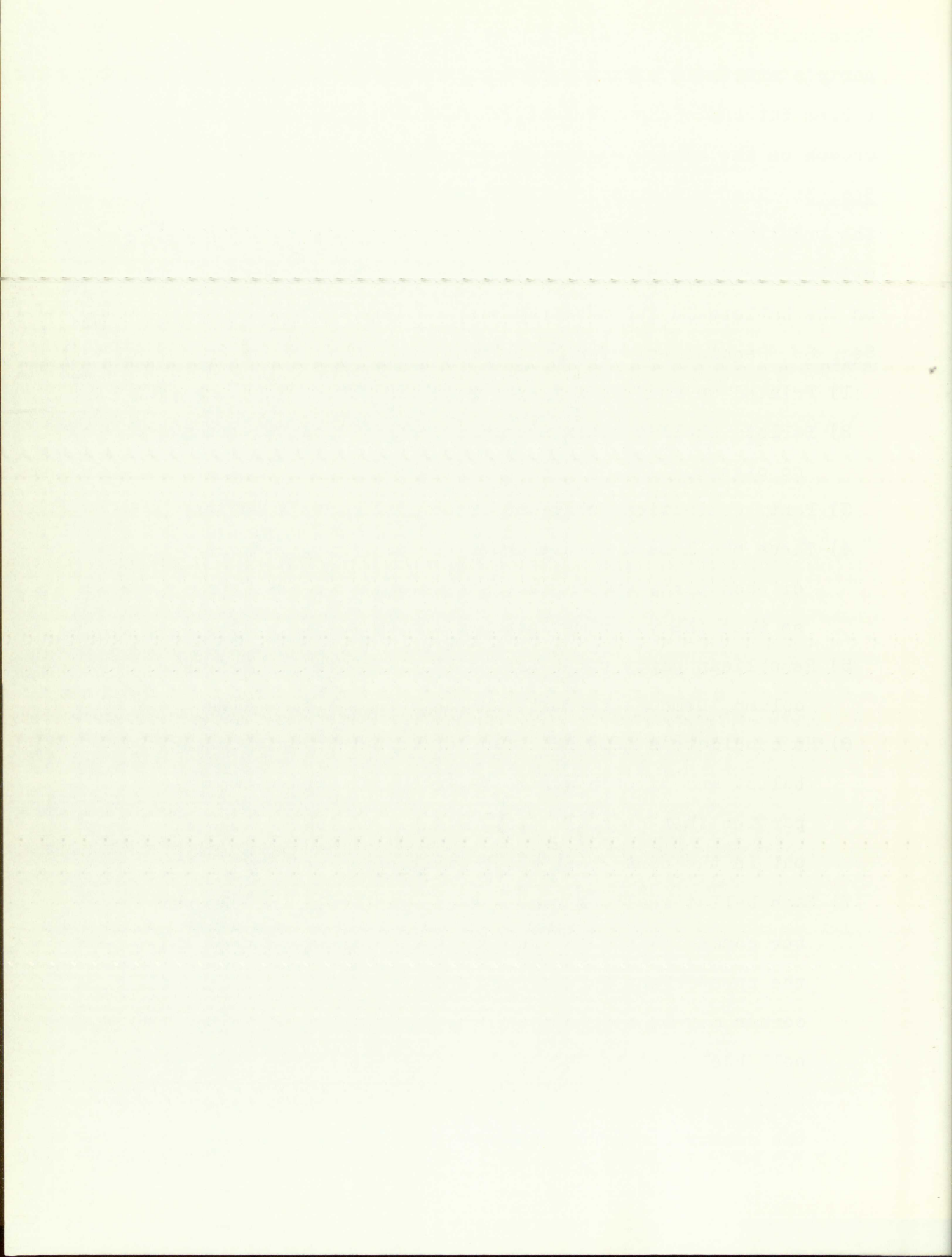
1. New Mexico. Session Laws, 1905. Ch. 127, Sec. 3.
2. Ibid., 1909. Ch. 105, Sec. 18.

this mark or emblem shall be used upon all ballots as that party's emblem in all the state. Parties may change this emblem but any change must be filed, and no party may encroach on the emblem of the other parties.

Sec. 3: When a vacancy occurs before election day after the printing of the ballots then the county clerk must have stickers printed and sent to the election judges to stick on the ballots in the proper place.

Sec. 8: Requirements for ballots:

- 1) Printed on good quality paper, plain white, in black ink.
- 2) Ballots shall contain names of certified candidates and no others.
- 3) Party nominations shall be under that party's emblem.
- 4) There shall be a circle under the designating emblem of each party and a square to the right of each name so that the voter may clearly indicate his choice.
- 5) Republican party names are to be placed on the left hand column, Democratic next, and any others succeeding.
- 6) No candidate's name shall appear more than once on the ballot and if such candidate is the choice of two parties then he shall designate his choice or he will put in the party list which first endorsed him.
- 7) Each ballot shall be numbered consecutively and the number concealed and the number shall also be printed in the upper right hand corner and perforated so that the corner may be torn off and the number entered in the poll book next to the name casting the ballot. On the back of the ballot shall be printed the endorsement of the county clerk "official ballot"-election held_____



(date) and a fac-simile signature of the county clerk.
Only in contested elections shall the concealed number
be revealed to test which way the voter voted.

- 8) Separate ballots shall be furnished for constitutional amendments and shall be as nearly as practicable in the general form herein described.
- 9) Instructions shall be printed across the top of the ballot in both Spanish and English and constitutional amendments proposed shall be printed in both Spanish and English.
- 10) The party emblem adopted according to law in this act shall be printed upon the ballot at the head of the column containing the names of the candidates of the party adopting such emblem, and over the designating name of such party.
- 11) Ballots shall be substantially in the following form:

(Form of Ballot) ----- (Form de Boleta)

Instructions: mark X in the circle under the party name for whose candidates you wish to vote. If you desire to vote for any candidate of any other party place the X in the square to the right of the name of such candidate.

Instructions: Marque X en incirco bajo el nombre de partido, por cuyos candidatos usted desee votar. Si usted desea votar por cualquier candidato de cualquier otro partido ponga una X en (square) a la derecha del nombre de tal candidato.

(here place any state or local questions to be voted on, if ballot is for an election upon a proposed constitutional amendment or other separate question as aforesaid.)

(Aqui ponga cualquiera cuestiones de Estado o locales por las que se va a votar si la boleta es para una eleccion, sobre propuestas constitucionales enmiendas a las mismas,

segun arriba dicho.)

Sec. 9: The county clerk shall deliver one hundred ballots to every fifty votes cast in the last election and any more that may be necessary.

Sec. 10: If there is any omission of names on the ballot, the county clerk must correct it on the ballot or show reason for such omissions.

Sec. 11: Before the opening of the polls the county clerk or city clerk shall cause to be delivered to the judge of election designated to receive ballots in each precinct, the proper number of ballots provided in Sec. 9.

Sec. 12: The board of county commissioners shall provide for each election a sufficient number of booths or compartments which shall be furnished with needed supplies to enable voters to conveniently vote; a place screened from observation where the vote is cast and a guard rail or rope so placed that only persons within such enclosure can approach within fifty feet of the ballot boxes or booths or compartments provided. One booth shall be provided for every seventy-five electors or fraction thereof. No persons other than the judges and clerks of election, and electors receiving and preparing the ballot, and one challenger for each political party whose ticket is printed on the official ballot shall be allowed in the polls.

Another law was passed in 1917 which stated that the Secretary of State was to provide printed ballots for elections on constitutional amendments. The number of ballots supplied to each county was to be twice the number of regis-

tered voters in the county. The county clerk was to deliver the ballots, ballot boxes, and instructions to the judge of election. Only authorized printers could print such ballots and then only on written permission from the Secretary of State. No person was allowed to have any such ballot in his possession unless voting or unless authorized to do so by the authorities. (1)

For instruction in voting on constitutional amendments, the Secretary of State was required to furnish sample ballots which were to be printed exactly like the official ballots except that such ballots were to be on different colored paper and the work "sample" was to be printed on it. No sample ballot could be placed in the ballot box. (2)

The board of county commissioners were to provide private booths at public expense for elections on constitutional amendments. Booths were to be so constructed with table for marking the ballot and so as to insure privacy in marking the ballot. One booth was to be provided for each one hundred voters. (3)

All ballots on proposed constitutional amendments were to have the joint resolution and proposed amendment printed in both English and Spanish and on the ballot two blank

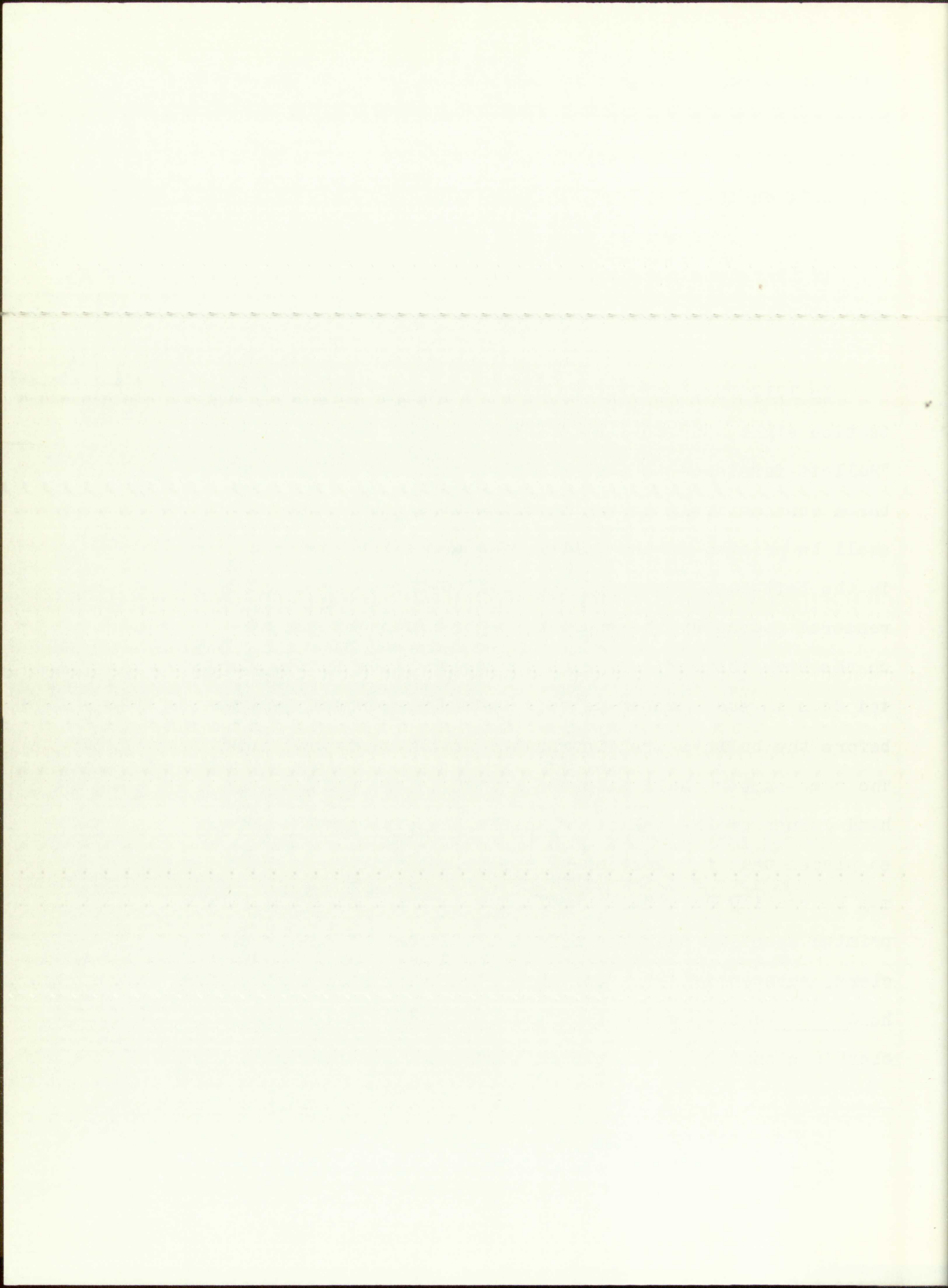
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1. New Mexico. Session Laws of 1917. Ch. 17, Sec. 3.
 2. Ibid. Sec. 4.
 3. Ibid. Sec. 7.

squares; over one square in both English and Spanish was to be printed "For Amendment" and over the other "Against Amendment". An X was to be put in the square representing the elector's choice. (1)

If there was more than one proposed amendment at the same election, each was to be printed on separate ballots. (2)

In 1919 the legislature amended Chapter eighty-nine, Section eight and sub-section seven of the laws of 1917: "Ballots furnished to each election district shall be numbered consecutively beginning with number one. The number shall be printed in the center of a space two inches square in the left-hand corner of each ballot which space shall be rendered opaque by the application of black printer's ink on the back thereof, and such corner shall be folded and pasted down in such manner as effectually to conceal such number, before the ballots are distributed to the election judges. The same number shall also be printed in the upper right hand corner of the ballot, with the diagonal perforated and so placed that the portion of the ballot bearing such number may be readily detached therefrom. Each ballot shall have printed upon its back the official endorsement of the county clerk, substantially as follows: "Official Ballot--Election held _____ (date), and with a fac-simile impression of the clerk's signature. The number appearing upon the ballot shall

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1. New Mexico. Session Laws, 1917. Ch. 17, Sec. 9
 2. Ibid. Sec. 10.
 3. Ibid.



be entered upon the poll book opposite the name of the voter casting such ballot, and the sealing of the upper left hand corner of the ballot shall only be broken in case of contested elections but not unless it shall have become a material question as to how the elector voted. Any person who shall break the seal of such number shall be fined from 100 to 500 dollars or be sentenced from thirty days to six months in the county jail." (1)

In 1923 the law of 1889 with regard to the county clerk providing the ballot was amended to read: "Except as in this act otherwise provided, it shall be the duty of the county clerk to provide printed ballots for every election for public officers in which electors, or any of the electors of the county, participate, and to cause to be printed on the ballot the name of every candidate whose name has been certified to or filed with the county clerk in the manner provided for in this act: Provided, in case of candidates for the same office in groups (as two Republicans for legislature), the county clerk shall cause their names to be printed on such ballot in the order certified. Ballots other than those printed by the respective county clerks, according to the provisions of this act, shall not be cast, counted or canvassed in any election. Nothing in this act contained shall prevent any voter from writing on his ballot the name of any person for whom he desires to vote for any office, in the manner provided, and such vote shall be counted the same as if such name were printed upon the ballot and marked by the voter." (2)

1. New Mexico. Session Laws, 1919. Ch. 141, Sec. 1.
2. Ibid., 1923. Ch. 43. Sec. 2.

The secret ballot provisions remained the same and were not changed by the most recent legislation, 1927. The party emblem was to be filed with the Secretary of State and such emblem was to appear on the ballot at the top of the party ticket. (1)

The general provisions for the size, color, printing, and numbering of ballots were not changed, and remained the same as the requirements provided in Chapter eighty-nine of the laws of 1917, except that the secret number was to be placed in the upper left hand corner of the ballot rather than in the center of the ballot. (2)

The ballot boxes were frequently burned and the requirements made by the 1927 legislature were that such ballot box was to be of galvanized iron and each ballot box was to be furnished with a Yale lock. (3)

Sample ballots were provided for and each precinct was to be provided with sample ballots equal to twenty percent of the official used in such precinct. (4)

Absolute secrecy was maintained in the preparation and casting of ballots. (5)

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1. New Mexico. Senate Bill No. 53, 1927. Sec. 304, 306.
 2. Ibid. Sec. 308.
 3. Ibid. Sec. 321.
 4. Ibid. Sec. 323.

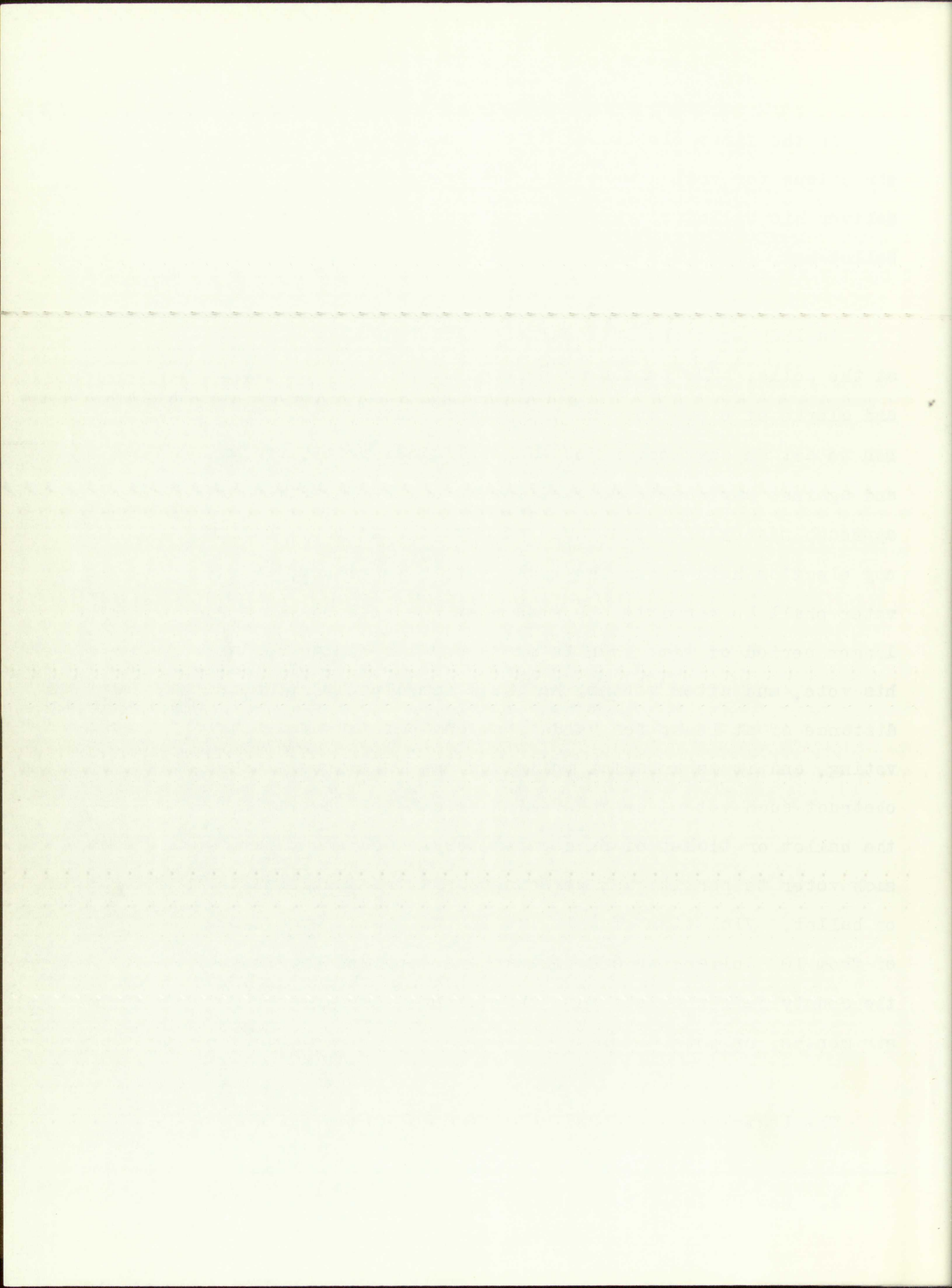
Voting Instructions and Regulations

In the first elections in the territory, the only instructions for voting were that the voter should personally deliver his ballot to the judge who was to put it into the ballot-box. (1)

In 1889 some regulations were made regarding conduct at the polls. "No person or persons other than the judges and clerks of election, and the persons voting, and one person to act as challenger for each political party, or for and against any question voted for, shall be permitted to approach nearer than ten yards of any polling place during any election held under the laws of this territory; and no voter shall be permitted to remain at the polling place a longer period of time than is necessary for him to deposit his vote, and after voting, he shall immediately retire a distance of at least ten yards from any polling place for voting, and it is unlawful to in any way interfere with or obstruct such voter, or to examine or attempt to examine the ballot or ticket of such voter, or to ask or solicit such voter to permit such persons to examine such ticket or ballot. Violation of this law is punishable by a fine of from 100 dollars to 500 dollars and imprisonment in the county jail not less than three months nor more than six months, or both."

The legislature of 1917 made formal legal provision

1. New Mexico. Session Laws of 1851. Ch. 28, Sec. 23.

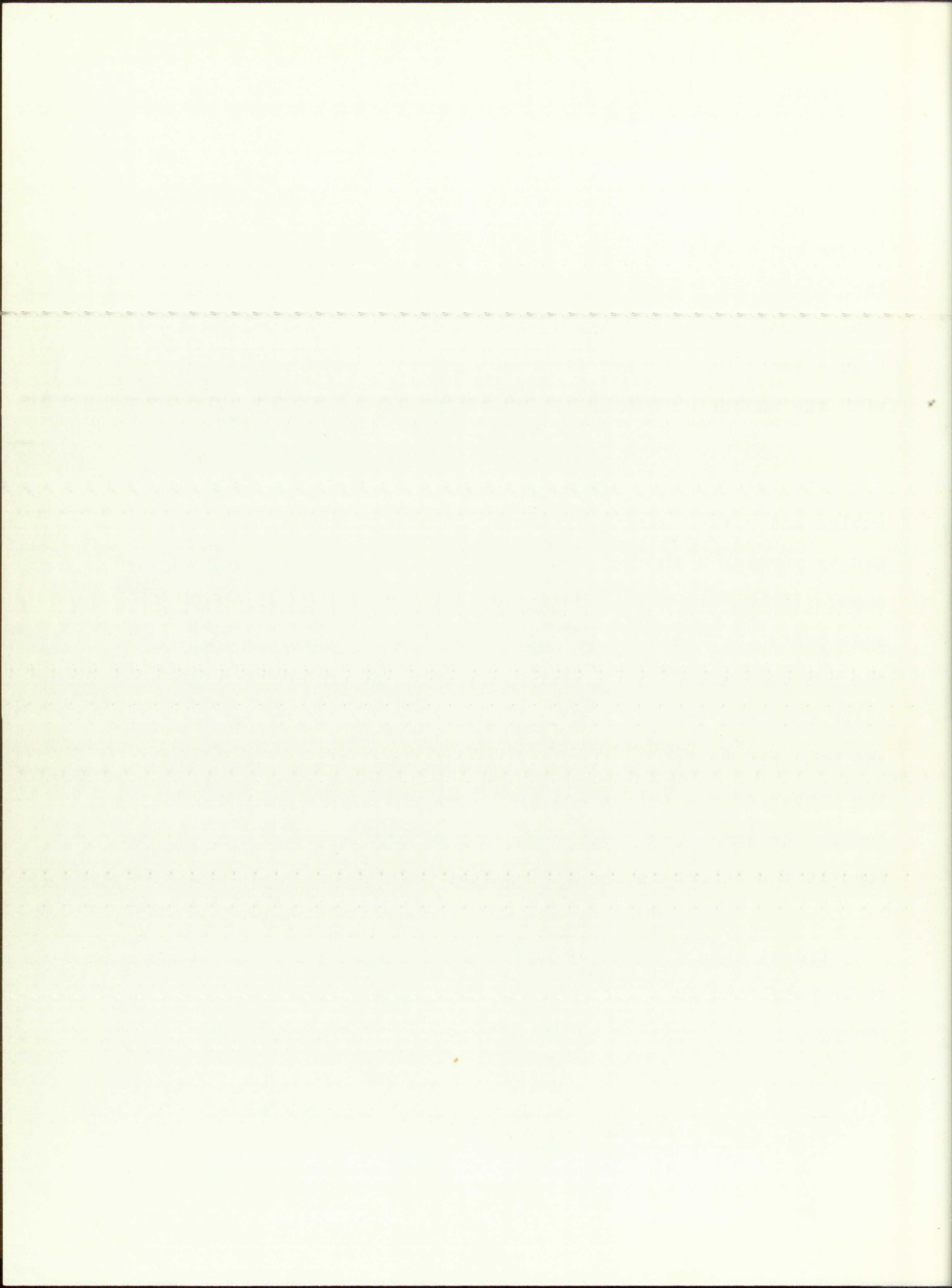


concerning this matter. This, in substance was as follows: The judge of election was to hand the ballot to the voter and the elector was to give his name to the judge, and the judge was to give the name in audible voice, whereupon the challenger could challenge said voter. If no challenge was made, the judge gave the ballot to the voter. Any qualified voter who was not registered could, upon producing evidence, vote. Each elector was to have his name entered upon the poll-book with the number of his ballot opposite his name. (1)

The voter could mark X in the circle under one party emblem and vote a straight ticket, or he could vote for any man by marking X in the square to the right of the candidate's name. If two men were running for the same office in the same party, an X was to be put in the square to the right of the one desired. Any name might be added to any party. The voter then was to fold his ballot so that the number showed and hand his ballot to the judge who was to call his name and the number of his ballot and the clerk entered it on the poll-book. The judge was to take the number off the ballot and deposit the ballot in the ballot box. (2)

Except when assistance was required, only one person was to be permitted in a booth at one time, and no person was to occupy a booth longer than was necessary to mark his ballot. (3)

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1. New Mexico. Session Laws, 1917. Ch. 89, Sec. 13.
 2. Ibid. Sec. 15.
 3. Ibid. Sec. 16.



Any voter spoiling a ballot by accident or mistake, upon returning the same, could receive another in place thereof, and the judge was to return the spoiled ballot to the county clerk.

(1)

Any voter requesting assistance for any reason could choose a qualified voter of the precinct to assist him in voting and the person chosen could go into the booth and assist. The person requiring the assistance was not to reveal his preference of candidates to any other person in the polls or outside the polls, nor was any other person in the polls to offer assistance. The person giving assistance was not to reveal the choice of candidates made. (2)

Only official ballots were to be deposited in the ballot-box. (3)

The Secretary of State was to furnish ten cards of complete instructions for each precinct and these cards were to be used by judges of election to instruct voters in preparing and casting ballots. One card was to be posted in each booth. (4)

No officer of election was to electioneer on election day. No electioneering was to be done at any poll or in the building in which the election was being held. Absolute

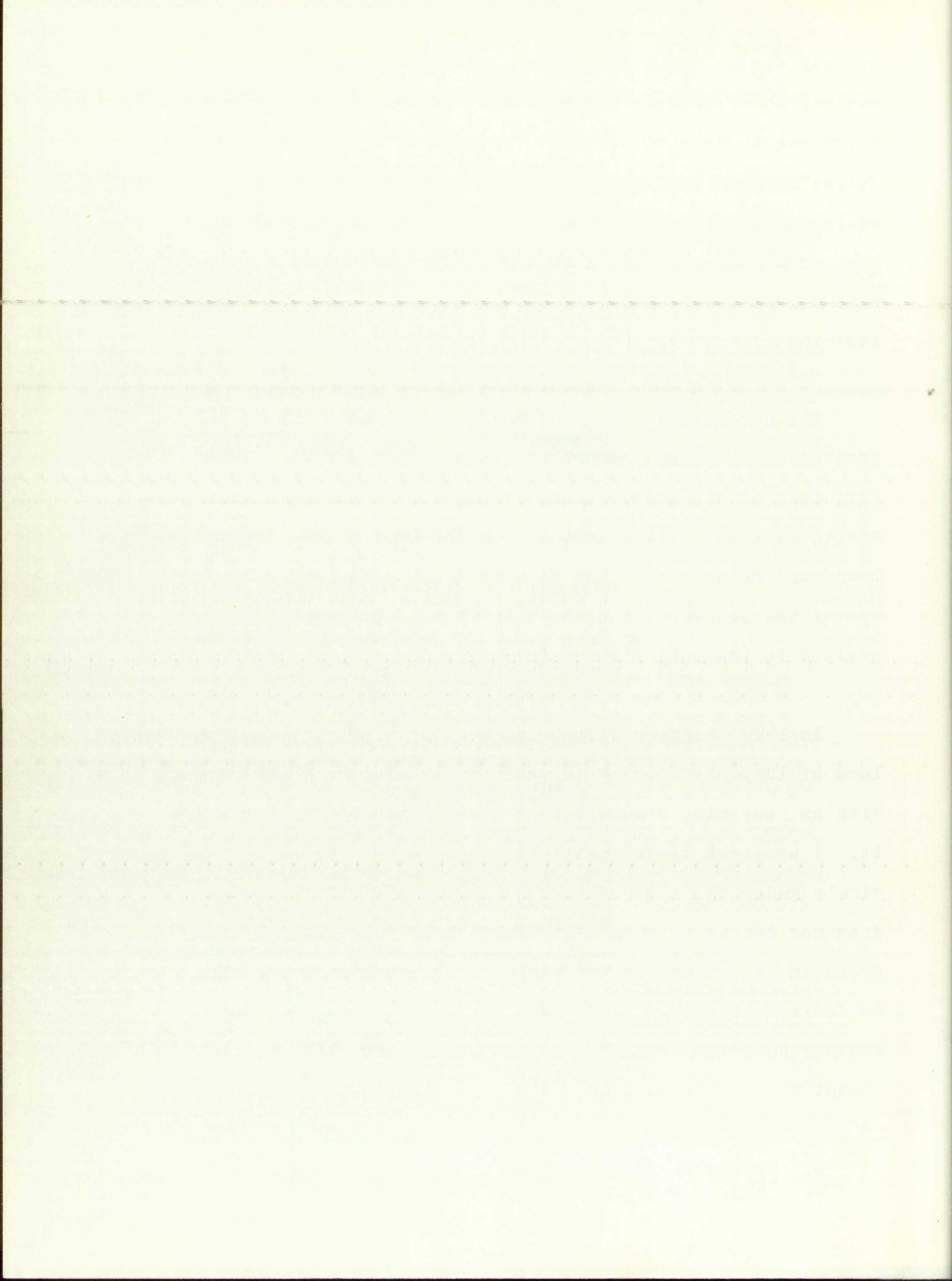
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1. New Mexico. Session Laws, 1917. Ch. 89, Sec. 17.
 2. Ibid. Sec. 18.
 3. Ibid. Sec. 19.
 4. Ibid. Sec. 20.

secrecy was to be preserved in marking ballots. Free passage was not to be obstructed in going to and from the polls. No voter was to receive a ballot from any other person than the judges of election. No ballot was to be carried away from the polls until after closing time. No elector was to place any mark on a ballot by which it might afterward be identified as having been voted by him. After voting the elector was to immediately retire. (1)

The ballot was to be marked by the elector unless he requested assistance, and unless he could satisfy the election officials of his inability to do so. The election officer was to mark the ballot in the presence of the entire election board and return it to the elector who was to return it to one of the judges of the election by whom it was to be deposited in the ballot box. (2)

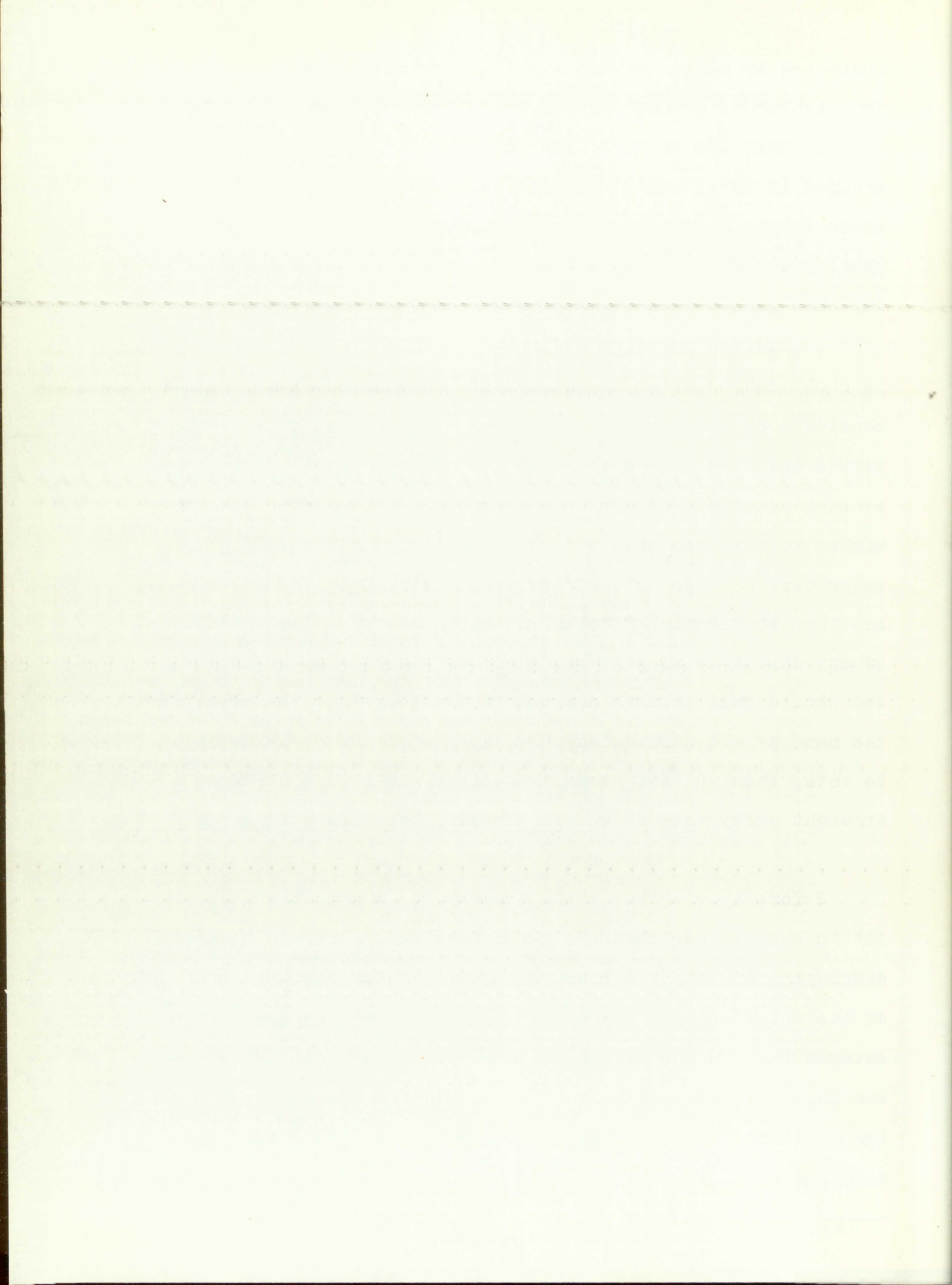
In 1919, Section fifteen of Chapter eighty-nine of the laws of 1917 was amended to read: "The elector shall forthwith on receiving his ballot, retire to the booth to prepare it. A straight ticket shall be marked with a cross in the circle under the name of such party ticket. If the voter does not desire to vote a straight ticket, he shall make a cross in the square to the right of the candidate for whom he desires to vote. If a cross is put in one circle and another square marked, his vote shall be the straight ticket except where otherwise indicated by marks in a square. The

1. New Mexico. Session Laws, 1917. Ch. 89, Sec. 23.
2. Ibid. Ch. 17, Sec. 5.



indicated by marks in a square. The cross may be omitted from the circle and crosses put in the squares to the right of the names. When two or more candidates of the same party are grouped in the ticket on the ballot for the same office, a cross in the square opposite the name of one such candidate shall not be considered a vote for all of the candidates in any such group; but if the voter wishes to vote for one or more candidates for that office of another party or parties, he shall make a cross in the square opposite the name of each candidate of his own party for whom he wishes to vote for that office and also make a cross in the square opposite the name of each candidate of any other party or parties for whom he wishes to vote for that office: Provided, that should the voter mark a cross in the circle at the head of his ticket, and then should mark a cross in the square opposite the name of any candidate of said group of any other party or parties, and should fail to mark a cross in the square at the right of the name of all candidates in such group for whom he desires to vote, then in that event the ballot shall be considered a straight party vote as to all the candidates in said group."

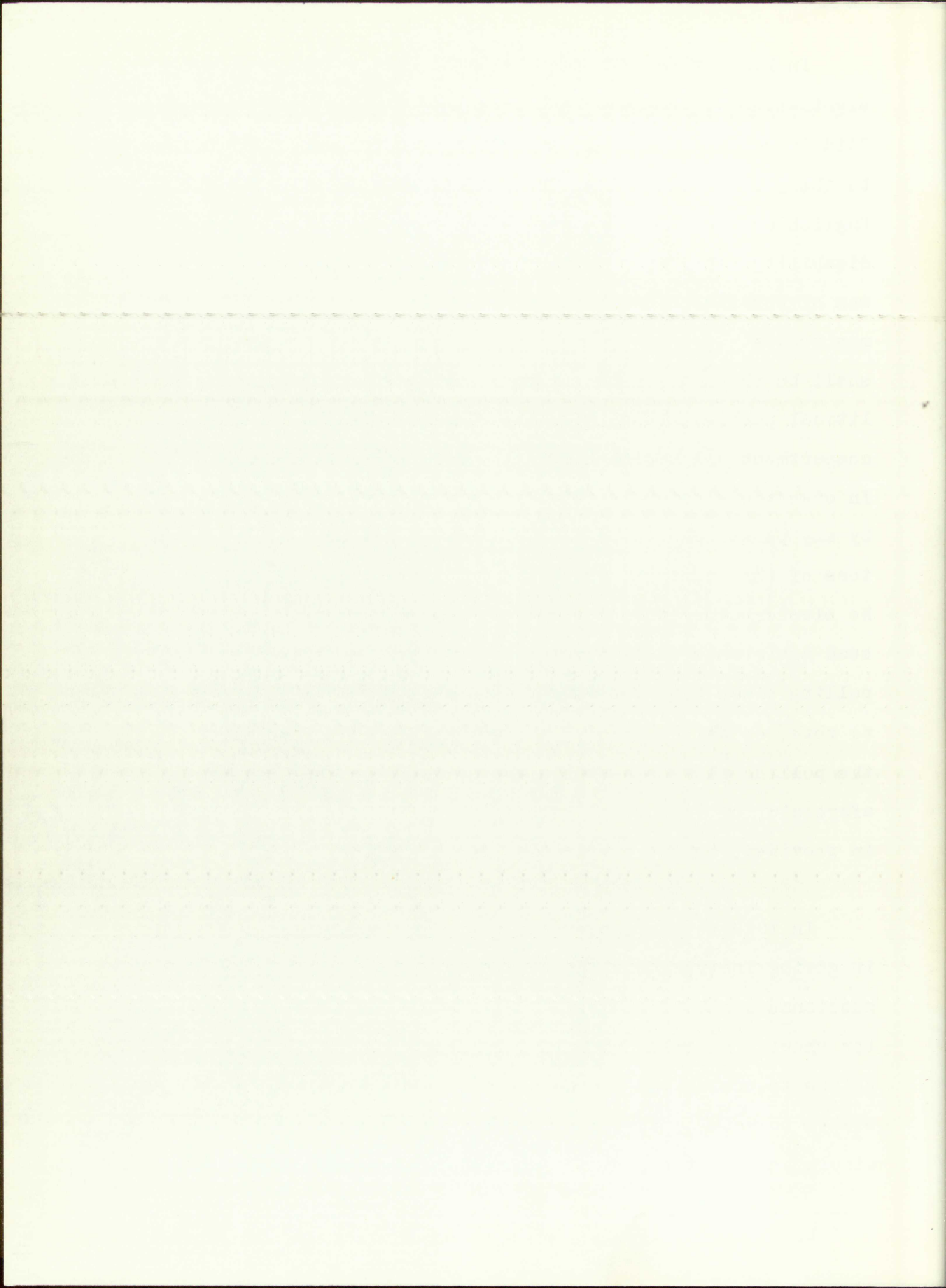
Before leaving the booth the elector was to fold his ballot in such manner that the perforated number showed without displaying any other marks. The judge was to call the name of the voter and the number of his ballot and the clerk then entered them on the poll-book or registration list. The clerk was then to call back "voted" and the judge detached the number slip and put the ballot in the ballot box, and the slip detached was to be destroyed. (1)



In 1921 it was decided that Section eighteen of Chapter eighty-nine of the laws of 1917 needed to be amended to read: "Aid in marking ballots. Any voter who declares under oath, to the judges of election that he cannot read or write the English or Spanish languages, or that by reason of physical disability other than total blindness, or for any other reason of physical disability he is unable to mark his ballot, may request assistance from the officers of election and it shall be the duty of two of such officers, of opposite political parties, to go with the elector into the booth or compartment and assist him in the marking of his ballot. In case the elector is totally blind, he may be assisted by any person chosen by him from any of the qualified electors of the county in which the voting precinct is located. No elector other than the one who may request and receive such assistance shall divulge to any person within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of anyone within the polling place other than the officers or challengers aforesaid, or the person selected by a blind voter, as herein provided, in the preparation of his ballot." (1)

In 1923 it was discovered that more regulation was needed in giving instructions for marking ballots, and this law in substance was as follows: On receipt of his ballot, the elector should forthwith and without leaving the polling place retire to one of the booths and prepare the ballot. If he wished to vote a straight ticket he was to mark an X in the circle beneath the party he desired to support. If the voter

1. New Mexico. Session Laws, 1921. Ch. 92, Sec. 1.



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did not wish to vote a straight ticket then was to mark an X in the square to the right of the candidate's name or was to write the name of any candidate he wished to vote for on the ballot.

Each elector might make crosses in the squares to the right of the candidate's name whom he favored, if he so desired, rather than putting the cross in the circle under the party name he wished to support.

When two or more candidates of the same party were grouped in the ticket on the ballot for the same office and the voter desired to vote a straight ticket, he might put crosses in the squares to the right of the candidate's name, but if the elector voted for more candidates than he was entitled to vote for, then his ballot was not counted.

Upon ballots designed for voting upon proposed constitutional amendments or other questions, the elector was to make an X in the square after the question which indicated for or against such question or amendment. (1)

Before leaving the booth the elector was to fold his ballot in such manner that the number appeared outside thereof, without displaying the marks on the face thereof, and he was to keep it folded until he had voted. The elector was to deliver the folded ballot to the judge who in audible voice announced the name of the elector and the number of his ballot. The clerk was to write opposite the name of such elec-

Spanish were to be furnished each precinct. (1)

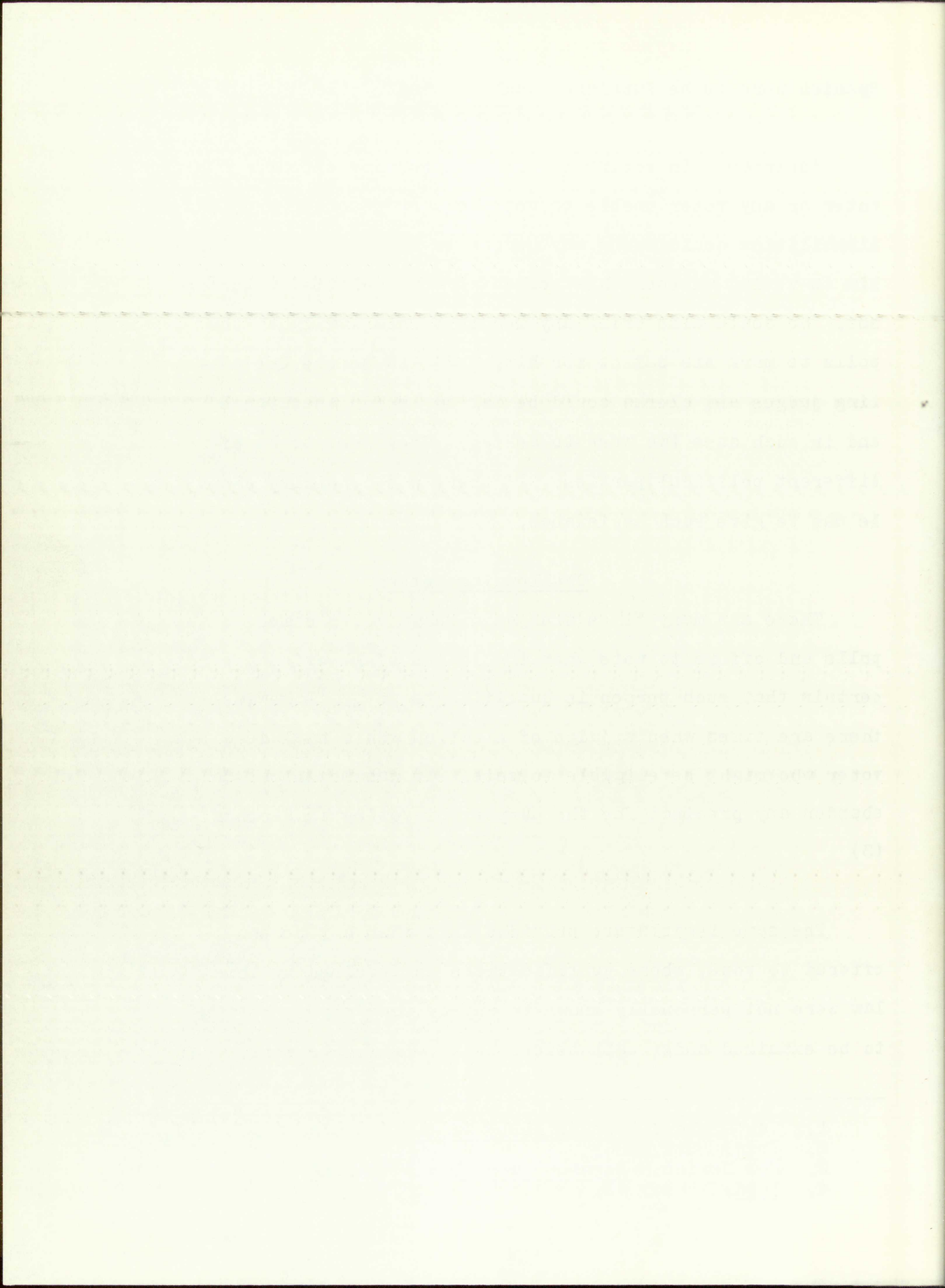
Assistance in voting was changed to some extent. A blind voter or any voter unable to vote because of other physical disabilities could bring any person to the polls to assist him in voting whether this person were a qualified voter or not. He could also bring any member of his family to the polls to mark his ballot for him. (2) As before, the polling judges and clerks could be called on for assistance and in such case two were to assist. They were to be of different political parties. If there was a polling clerk, he was to give such assistance.

Challenging Voters

There are many times that an unknown voter comes to the polls and offers to vote when the judges of election are not certain that such person is qualified to vote. Likewise there are times when a judge of election would exclude a voter who might be eligible to vote. It was not legal to abandon any precinct for the purpose of voting in another. (3)

The same legislature provided that when any person offered to vote, whose qualifications as required by this law were not personally known to any of the judges, he was to be examined under oath before being allowed to vote. (4)

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1. New Mexico. Senate Bill, 53, 1927. Sec. 311.
 2. Ibid. Sec. 326.
 3. New Mexico. Session Laws, 1851. Ch. 28, sec. 18.
 4. Ibid. Sec. 43.



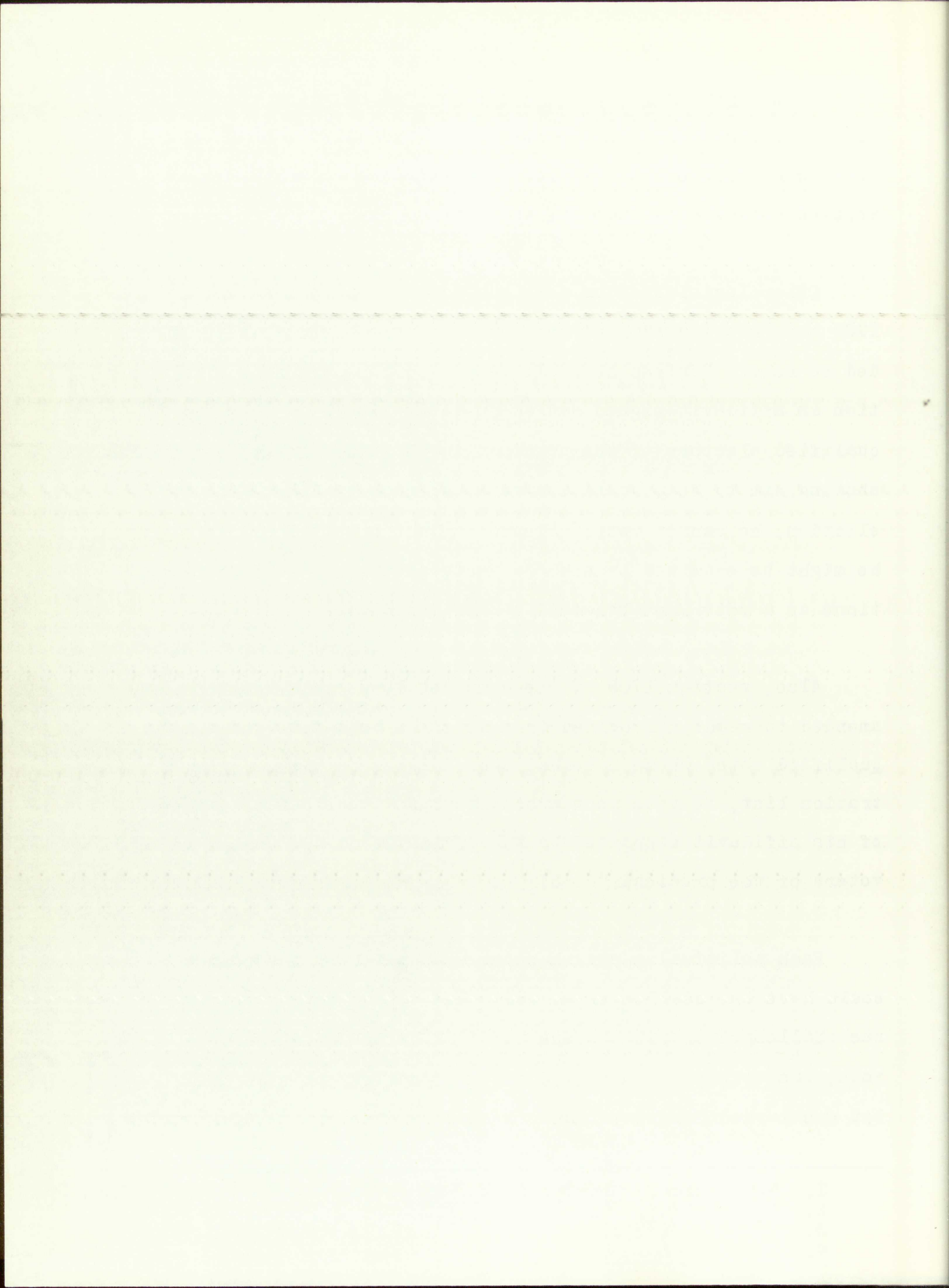
When a person offered to vote and was rejected, his name was to be registered in the poll-book, and all the names of persons he offered to vote for, and the word rejected was written opposite the name of the voter. (1)

Other legislation on this subject was not passed until 1903 when section 1701 of the compiled laws of 1897 was amended to read: "Unless he shall tender to the judges of election an affidavit signed and sworn to by himself and by two qualified electors of the precinct in which he offers to vote, showing him to be a qualified voter of such precinct at such election, he cannot vote. His vote might be challenged and he might be examined by such judges touching his qualifications as a voter notwithstanding his affidavit." (2)

Also, section 1706 of the compiled laws of 1897 was amended to read: "Provided that it shall be lawful for any qualified voter whose name has been omitted from the registration list, to vote upon presentment to the election judges of his affidavit supported by the affidavit of two qualified voters of the precinct." (3)

Each political party whose name appeared on the ballot could have one challenger at the polls. (4) Any voter who was challenged or who was suspected of being unqualified to vote, was allowed to mark and cast his ballot but such ballot was marked "rejected" and the county canvassing board

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 46.
 2. Ibid., 1903. Ch. 64, Sec. 1.
 3. Ibid. Sec. 2.
 4. Ibid. Senate Bill, 53, 1927. Sec. 313.



determined the validity of such ballot. (1)

Absentee Voting: Railroad Men, etc.

As living grew in complexity, new election legislation was created to meet new problems. Absentee voting seemed to be no problem until 1912 when the territory had become a state and then the fact that railroad men were necessarily away from their residence on many voting days created a situation that was met by special laws on the subject.

Any railroad employee, who was a qualified voter when he was necessarily away from his residence at the time of the general election, could vote in any voting precinct in the state on the day of such election if he met with the regulations included in the law. (2) The requirement was that the man should present a certificate signed by his home registration board. (3) The judge of election where the man presented himself to vote was to take the ballot and the certificate and send them to the county clerk of the precinct where the man was a qualified elector. (4) Upon compliance with the provisions of the preceeding sections the voter was to be considered as offering to vote, and voting in the precinct of which he was a qualified voter. (5)

The county clerk in the resident town of such voter was to count such votes and add them to the total to determine the winner of any election. (6)

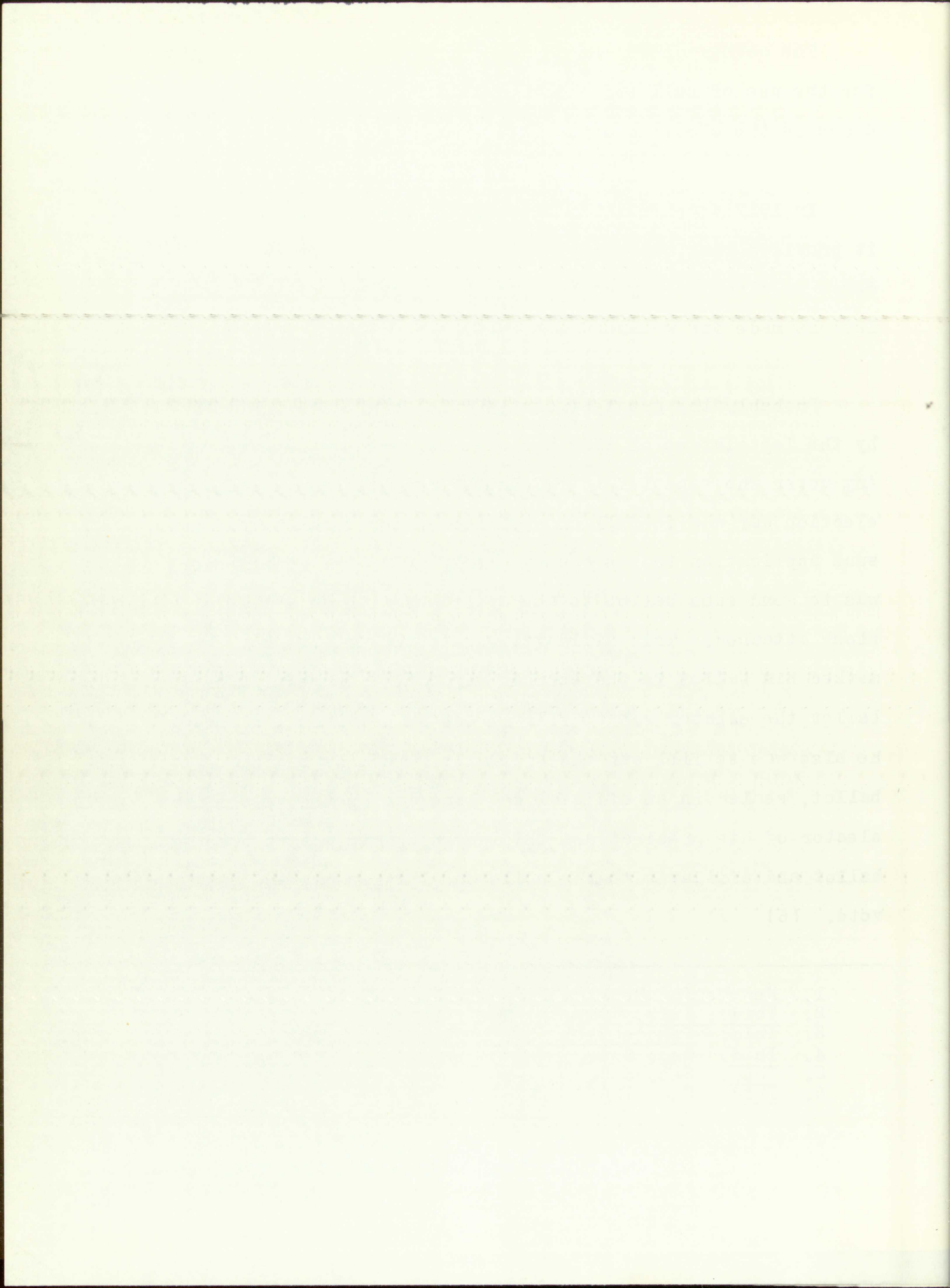
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1. New Mexico. Senate Bill, 53, 1927. Sec. 327.
 2. New Mexico. Session Laws, 1912. Ch. 73, Sec. 1.
 3. Ibid. Sec. 2.
 4. Ibid. Sec. 3.
 5. Ibid. Sec. 4.
 6. Ibid. Sec. 5.

The county clerk was to furnish certificates and ballots for the use of railroad men who would be away from their residence on the election day. (1)

In 1917 a general law on absentee voting was passed and it provided that any person necessarily away from their residence on election day could vote by complying with the regulations made for railroad men. (2)

Probably the greatest change made in conduct of elections by the legislature of 1927 was made concerning absentee voting. Any voter who expected to be absent from his home precinct on election day was to fill an application for a ballot and send such application to the county clerk. (3) The county clerk was to send such ballot to the applicant with an affidavit blank attached. This affidavit was to the effect that the voter marked his ballot in the correct way. (4) On receipt of such ballot the elector was to fill it out as he wished to vote and he also was to fill out the affidavit. (5) He then gave such ballot, sealed in an official envelope, to another qualified elector of his precinct and this second party was to take such ballot and affidavit to the polls on election day and cast the vote. (6)

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1. New Mexico Session Laws, 1912, Ch. 73, Sec. 7.
 2. Ibid., 1917. Ch. 89, Sec. 14.
 3. Ibid. Senate Bill, 53, 1927. Sec. 333.
 4. Ibid. Sec. 334.
 5. Ibid. Sec. 335.
 6. Ibid. Sec. 336.



CHAPTER V

QUALIFICATIONS AND REGISTRATION OF VOTERS

When New Mexico was made a territory in 1850, the first legislature passed several laws concerning the qualifications of voters. Every white male of the United States over twenty-one years of age and a resident in this territory for one year and a resident in the precinct where he voted for three months, was entitled to vote unless he fell in one of the groups specified below. (1)

No person prevented by the Organic Law of the territory, no officer or soldier of the United States army, and no person included in the term "camp follower" was entitled to vote or hold office in the territory. (2)

All persons sentenced for perjury, forgery, incendiarism, coining false money, rape, larceny, or who had been sentenced twice for petty larceny, were forever excluded from the right to vote in this territory. (3)

The laws concerning qualifications of voters were not very elaborate and the third legislature passed more laws on this subject. Every person who was not a native citizen of the United States or an adopted citizen of this territory, who presented himself to vote at any election in this territory, was to be examined by the judges of election in whose precinct he applied to vote, and having proved to the satis-

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 19.
 2. Ibid. Sec. 21.
 3. Ibid. Sec. 63.

QUALIFICATION AND RIGHT TO VOTE

The New York State Constitution provides that every white male of the United States over twenty-one years of age and a resident of this State for one year prior to the election is entitled to vote unless he is one of the classes excluded below: (1)

No person prevented by the original laws of the State from holding office or holding of the United States Army, and no person included in the term "convicted felon" was entitled to vote or hold office in the territory. (2) All persons included in the term "convicted felon" or who had been sentenced to a term of imprisonment for a crime involving moral turpitude were excluded from voting in this territory. (3)

The laws concerning the right of suffrage in this territory were amended by the act of March 1, 1901, which provided that every white male of the United States over twenty-one years of age and a resident of this territory for one year prior to the election was entitled to vote unless he was one of the classes excluded below: (1) No person prevented by the original laws of the State from holding office or holding of the United States Army, and no person included in the term "convicted felon" was entitled to vote or hold office in the territory. (2) All persons included in the term "convicted felon" or who had been sentenced to a term of imprisonment for a crime involving moral turpitude were excluded from voting in this territory. (3)

faction of the said judges that had legal letters of naturalization or of citizenship, he was allowed to vote. (1)

The Pueblo Indians, until they should be declared to have the right to vote by the Congress of the United States, were excluded from the privilege of voting at popular elections. (2)

The payment of a one dollar poll tax had been made a prerequisite to voting, but this was done in spite of the fact that no such territorial law existed, and a law was made in 1893 that poll tax payment was not a prerequisite or qualification of the right to vote. (3)

Section 1647 of the compiled laws of 1897 was amended to read as follows: "No person prevented by the Organic Act of the territory, no officer, or soldier of the United States Army, no person who is an inmate or employee of any government sanitarium or hospital, except regular employees under the civil service laws of the United States, claiming such sanitarium or hospital as their domicile, and no person included in the term "camp follower" of the United States Army shall be entitled to vote or hold office in this territory." (4)

The employees and inmates of the United States hospitals and sanitariums gave rise to another amendment of the above amendment and this in substance was that such employees or inmates could vote if they claimed the territory as their residence before becoming such employee or inmate. (5)

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1. New Mexico. Session Laws, 1853-54. Ch. 31, Sec. 2.
 2. Ibid. Sec. 3.
 3. Ibid., 1893. Ch. 2, Sec. 2.
 4. Ibid., 1907. Ch. 21, Sec. 1.
 5. Ibid., 1909. Ch. 134, Sec. 1.

The question of poll tax came up again in 1909 when Section 1532 of the compiled laws of 1897 was amended to read: "All legal voters, residing in a school district, who have paid their poll tax of the current year in said district, shall be considered qualified voters of said district, entitled to vote therein." (1)

Registration

No registration was necessary to qualify a voter to vote for justices of the peace or constables. (2)

The Board of Registration was created in 1867 and there were a few preliminary regulations made at this time. Probate judges were to appoint three competent persons as a board of registration, thirty days before an election. (3) Only registered voters were to be allowed to vote. (4) This board of registration was to make a list of all qualified voters in the county or precinct. (5)

The board of registration was required to make three alphabetical lists of qualified voters and give one to the judge of election, and two to the judge of probate. (6)

The board of registration was to post five notices of their public meeting and at the meeting hear complaints of those who were not registered or for erroneous registration. Any illegal name on the registration list had to be erased. (7)

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1. New Mexico. Session Laws, 1909. Ch. 95, Sec. 1.
 2. Ibid., 1915. Ch. 16, Sec. 1.
 3. Ibid., 1867. Ch. 8, Sec. 2.
 4. Ibid. Ch. 26, Sec. 1.
 5. Ibid. Sec. 3.
 6. Ibid. Sec. 4.
 7. Ibid. Sec. 6.

On the morning of election the board of registration furnished a certified and signed list of the true voters in the precinct. All names registered as qualified voters could vote and no person whose name was not registered could not vote. (1)

If the board of registration wilfully failed to register a qualified voter, they were subject to a fine and imprisonment. (2)

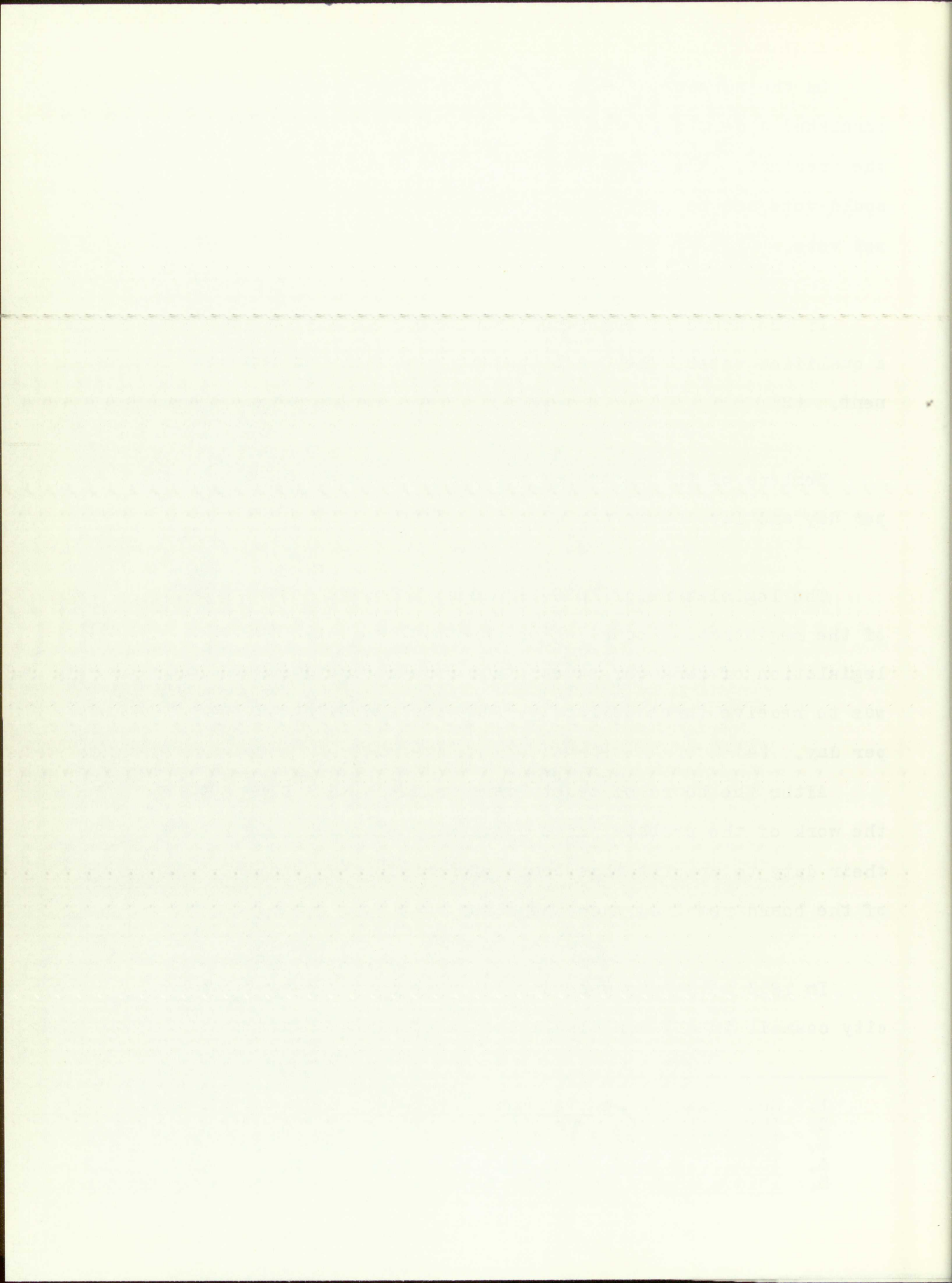
Members of this board of registration were paid one dollar per day and five cents per mile for travel. (3)

The legislature of 1868-69 passed a law for the creation of the registration board which practically duplicated the legislation of 1867-68, except that such registration board was to receive three dollars per day instead of one dollar per day. (4)

After the board of county commissioners took over much of the work of the probate judge concerning elections, it became their duty to appoint this board of registration and the duties of the board remained much the same. (5)

In 1893 a law was passed which made it the duty of the city council in all municipalities to appoint a board of regis-

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1. New Mexico. Session Laws, 1867-68. Ch. 26, Sec. 9, 10.
 2. Ibid., 1867-68. Ch. 26, Sec. 11.
 3. Ibid. Sec. 13.
 4. Ibid., 1868-69. Ch. 49.
 5. Ibid., 1889. Ch. 135, Sec. 12.



tration. This board registered all applicants who applied and brought with them some person to vouch as to their qualifications. Otherwise, duties were not changed in such city boards. (1)

In 1905 the compensation of the board of registration was changed. Board members in precincts where the votes did not exceed 100 in the last election were entitled to three dollars per day and those where the vote exceeded 100 at the last election were to get five dollars per day. (2)

The Election Code of 1927 did not change the procedure of registration to any great extent. The board of county commissioners were to appoint four men of the county as a registration board. These men were to be chosen from a list furnished by the chairmen of the dominant political parties. (3) For their work of registration they were to be paid three dollars per day. (4) While in session, any two members could constitute a quorum provided they were of opposite political parties. (5)

As soon as the registration list was finished by the board of registration, such list was to be sent to the county clerk who was to certify such list and send a copy to the chairmen of the dominant political party. (6) Fourteen days before

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1. New Mexico. Session Laws, 1893. Ch. 63, Sec. 1, 2.
 2. Ibid., 1905. Ch. 40, Sec. 1.
 3. Ibid. Senate Bill No. 53, 1927. Sec. 203.
 4. Ibid. Sec. 231.
 5. Ibid. Sec. 208.
 6. Ibid. Sec. 220.

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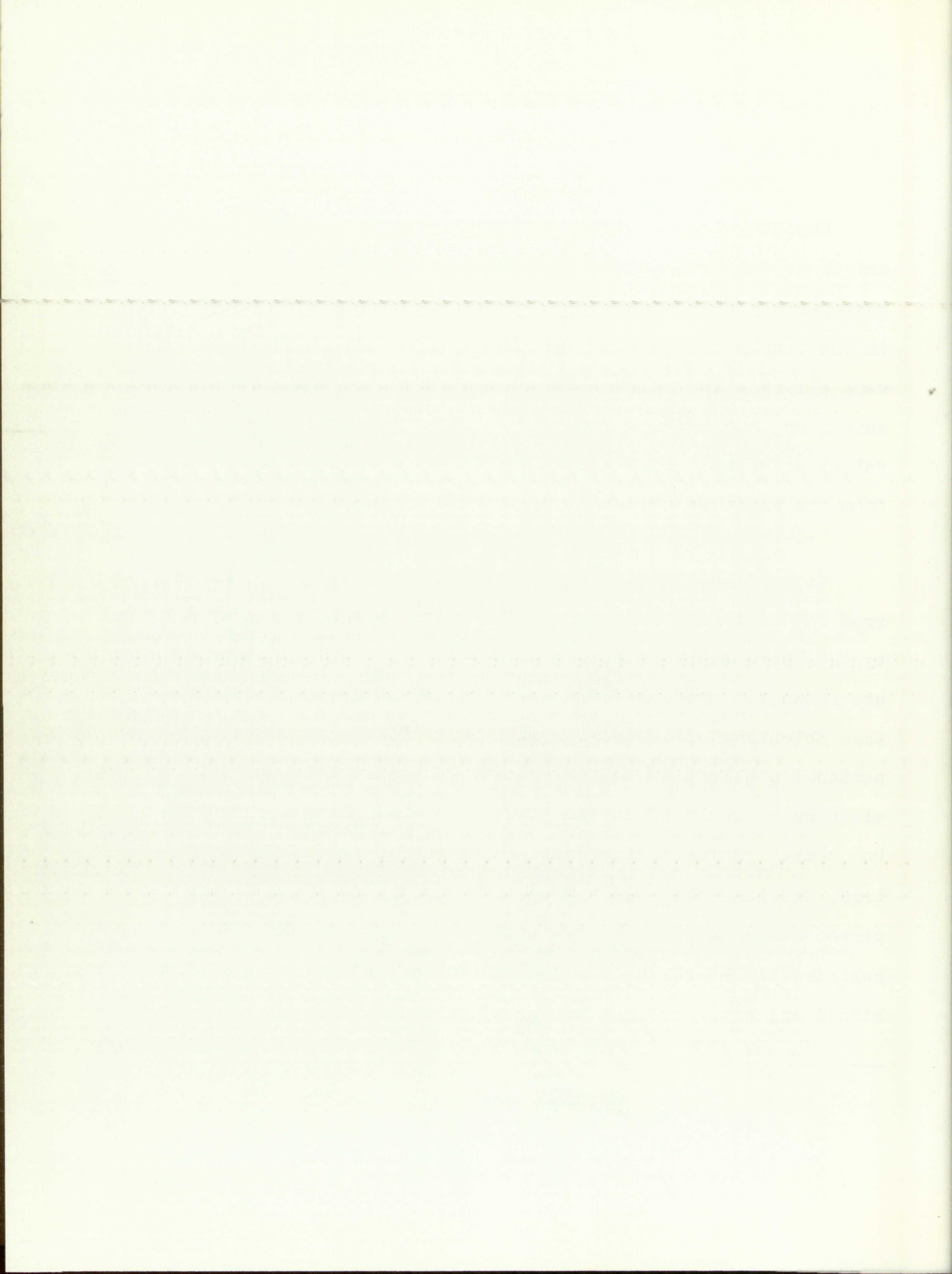
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the election, a final list was to be made and such list was to consist of names not contested, and contested names upheld by court action as qualified electors. (1)

Registration was made an absolute requirement for voting and those who were citizens of the United States, who were twenty-one years of age, who had lived in the state one year, in the county ninety days, and in the precinct thirty days were eligible to register and to vote provided they were of sane mind, and had not been convicted for any infamous or felonious crime. Non-tax-paying Indians were also excluded from the right to register and to vote. (2)

It was made lawful to register in four ways. The names from the last poll book were to be automatically registered by the board of registration, provided that the people were not known to have moved away or died, or to have committed some felonious or infamous crime. (3) Others could vote by personal application on taking oath that they were eligible electors or would be at the time of the next election. (4) One member of the family could register for the other members, provided the said members were qualified. (5) If a person could not personally appear at the session of the registration board, he could register by sending a certificate signed and sworn to that he was a qualified elector. (6)

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1. New Mexico. Senate Bill, 53, 1927. Sec. 229.
 2. Ibid. Sec. 210.
 3. Ibid. Sec. 213.
 4. Ibid. Sec. 214.
 5. Ibid. Sec. 215.
 6. Ibid. Sec. 216.



CHAPTER VI

CANVASSING OF VOTES

The first board of canvassers in the territory of New Mexico was composed of the probate judge and the justice of the peace. This board publicly examined the poll-books and a two-day notice of such examination was to be given. Any person who wished to challenge the legality of any vote could do so.

(1)

The judge of probate as chief of the board of canvassers was to forward the examined poll-books to the Secretary of the Territory within ten days of such examination. (2)

In all senatorial districts, composed of two or more counties, the clerks of all the counties in the district, under the inspection of the judge of probate, were to forward within five days after the election to the judge of probate of the county first appointed to receive returns, a certificate of the number of votes polled for each candidate in the district.

(3)

If the Secretary of Territory failed to receive the returns of any such election within fifteen days after the election, he sent a special messenger to the county failing to make returns with orders to send such returns immediately. (4)

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 17.
 2. Ibid. Sec. 26.
 3. Ibid. Sec. 28.
 4. Ibid. Sec. 29.

Sections thirty, thirty-one, and thirty-two of the law of 1851 provided that the judges of election and clerks of the probate court should forward the returns of any election to the Secretary of the Territory.

Within thirty days after each general election, the Secretary of the Territory, in the presence of the Governor, was to count the number of votes polled in the different counties of the territory for the delegate to Congress, and to give to the person having the highest number of votes, a certificate of election with the seal of the territory. (1)

If two or more persons had an equal number of votes, higher than any other candidate for Congress, the Governor was to give notice of the fact and declare another election within sixty days to run off the tie. (2)

If two or more members of either branch of the legislative assembly had an equal number of votes, it was to be the duty of the Governor, after having ascertained the fact, to order a new election as soon as possible. Thirty days notice was to be given of such election and such election was to be conducted according to the law for general elections. (3)

If there was a tie in any election for the probate judges, sheriffs, justices of the peace, constables, the

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 33.
 2. Ibid. Sec. 34.
 3. Ibid. Sec. 36.

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probate judge of the county in which said tie occurred was to order new elections for said offices. (1)

The judge of probate, as chief of canvassing board, was to forward to the person receiving the highest number of votes, the corresponding certificate of election. (2)

In 1876, the board of county commissioners was given the job of canvassing the votes at the elections and a two day session was allowed in which to do this. (3)

The board of county commissioners, as canvassing board, was to canvass every election returned to them and a refusal to canvass was to be punished by court action. A mandamus was to be used to make such board canvass the vote. (4)

Within six days after any general election, the board of county commissioners was to ascertain the results of such election. They were to carefully examine the poll-books and certificates, and if any certificate was found unsigned, a subpoena was to be issued to the officer neglecting to sign such certificate and the sheriff's fee collected from the delinquent election officer. (5)

It was to be unlawful for any board of county commissioners, acting as canvassing board, to throw out returns of any

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 48.
 2. Ibid., 1853-54. Ch. 31, Sec. 9.
 3. Ibid., 1875-76. Ch. 29, Sec. 44.
 4. Ibid., 1889. Ch. 135, Sec. 13.
 5. Ibid., 1895. Ch. 24, Sec. 1.

election on the grounds that the certificate had not been properly signed or filled out, but the commissioners were to fill it out and could not become "functus officio" until this was done and the results declared. (1) If the board of county commissioners refused to do this, it was to be compelled to do so. (2)

Where the council and house of representatives district was composed of more than one county, the Secretary of the Interior was to canvass the votes as shown by the returns in the same manner as the delegates to congress, and were to issue certificates of election to members of the council and house having the highest number of votes in their respective districts. (3)

After the territory had become a state, a law was passed that all election returns except those for the justice of the peace, constables, asequi commissioners, school directors, and municipal and town officers were to be made directly to the Secretary of State. (4)

It was the duty of the State Canvassing Board, ten days after the election, to meet as a Canvassing Board at the capital of the state, to ascertain the result of any election, general in character, as stated in the proceeding sections. They were to meet from day to day as above stated and continue the work until the canvass was complete. (5)

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1. New Mexico. Session Laws, 1895. Ch. 24, Sec. 4.
 2. Ibid. Sec. 5.
 3. Ibid., 1901. Ch. 48, Sec. 1.
 4. Ibid., 1913. Ch. 59, Sec. 1
 5. Ibid., Sec. 4.

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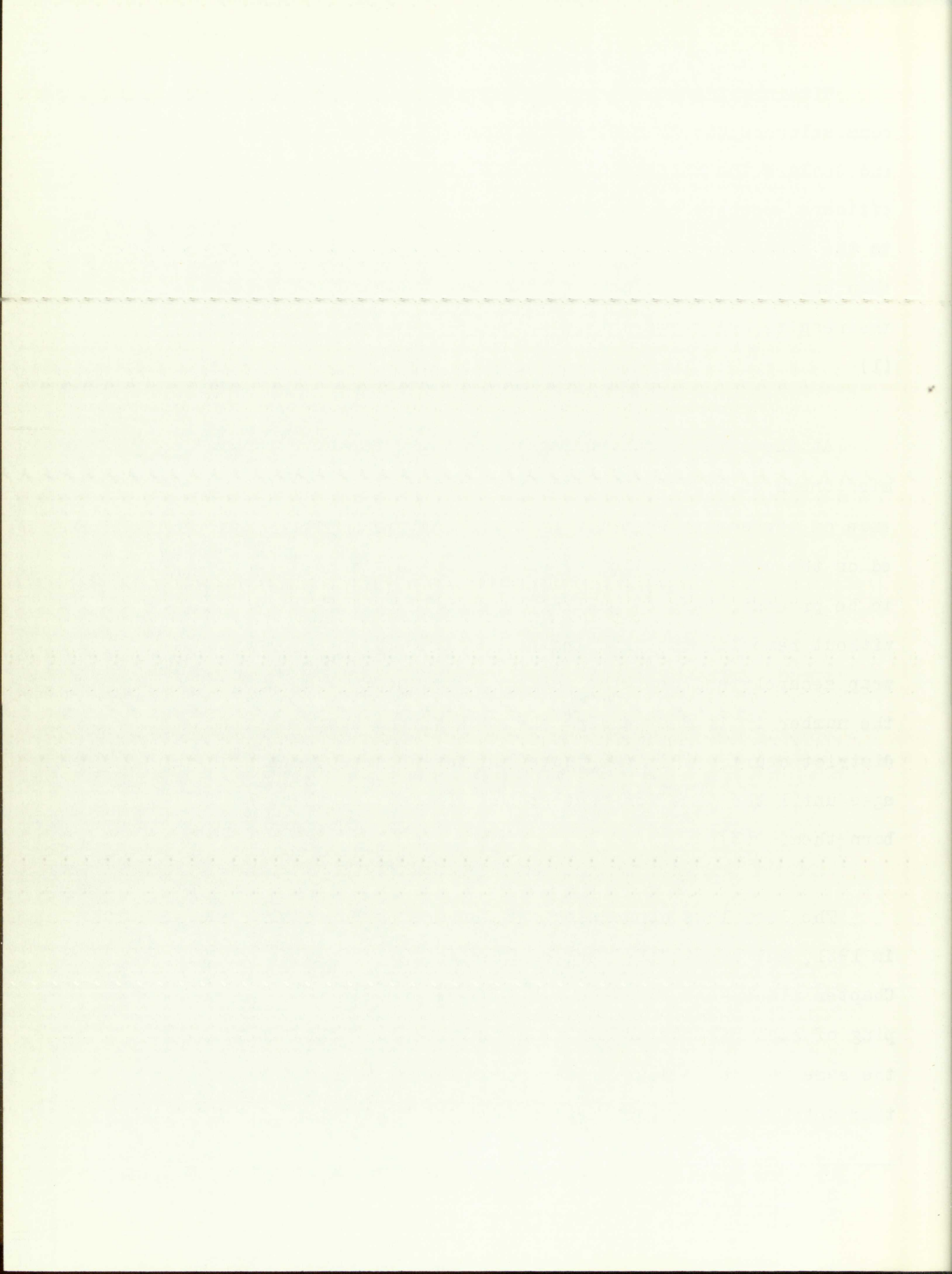
Within six days after the election the board of county commissioners was to meet and canvass the election returns and declare the results of the election as to all county officers, members of the legislature and propositions. As to the election of officers chosen by the electors of more than one county, each county board was to immediately canvass the results and forward them to the State Canvassing Board.

(1)

At the time of canvassing the vote by the county commissioners as provided by law, the county clerk, in the presence of the county chairman of every political party represented on the official ballot of such election, if they desired to be present, were to publicly open said ballot boxes, and without removing the wrapping or breaking the seal, were to wrap securely and seal the package, marking on each package the number in it and sending the same to the judge of the district court. (2) The judge was to preserve these packages until the time for contest had elapsed and then was to burn them. (3)

The last laws concerning the Canvassing Board were passed in 1921, and are in the form of amendments to the law of 1919, Chapter ninety-one, Section two. These provide that the wrapping of such ballots as had been canvassed and the labeling of the same was to be done by the county clerk, who was to keep them until the time for destroying.

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1. New Mexico. Session Laws, 1915. Ch. 34, Sec. 2.
 2. Ibid., 1919. Ch. 91, Sec. 2.
 3. Ibid. Sec. 3.



Canvassing the Votes

In the Election Code of 1927 the process of canvassing the vote was changed to some extent. The judges and clerks of election were to count the votes immediately after the polls closed; but if there were counting judges and counting clerks they were to count the votes in the presence of the other election officers.

(1) The chairman of each dominant political party could appoint a watcher to witness the counting of the votes but this watcher was not allowed to touch any ballot. (2) Results of the election were not to be disclosed before the polls closed. (3)

After the polls closed, all good, spoiled, and rejected ballots, together with all absentee vote envelopes were to be sent to the county clerk and such ballots were to be locked in the ballot box. (4)

Certificates of election results were to be sent to the chairmen of the dominant political parties as soon as results were determined. (5)

The board of county commissioners were to constitute the county canvassing board. Their duties were to correct all errors and omissions in the poll-books. If a question were raised as to how many votes were cast, the district judge, the board of county commissioners and the county clerk were to open the ballot box and re-count the votes. (6)

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| 1. | New Mexico. | Senate Bill No. 53. | Sec. 338. |
| 2. | <u>Ibid.</u> | Sec. 341. | |
| 3. | <u>Ibid.</u> | Sec. 339. | |
| 4. | <u>Ibid.</u> | Sec. 340. | |
| 5. | <u>Ibid.</u> | Sec. 342. | |
| 6. | <u>Ibid.</u> | Sec. 347. | |

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91	92	93	94	95	96	97	98	99	100

In case of a tie vote for some office the two candidates, the chairmen of the political parties affected, and the district judge were to determine a method by which such tie should be settled. (1)

The board of county commissioners could be compelled by court action to canvass any county election. (2)

Seventy-five days after the adjournment of the State Canvassing Board, all ballots were to be destroyed by the county clerk unless the election had been contested. (3)

The State Canvassing Board was to meet on the fourth Monday after each general election and canvass votes for all state officers, Presidential Electors, United States Senators, and Representatives to the United States Congress. (4)

The duties of the State Canvassing Board were much the same as the duties of the county canvassing board, namely: to correct all errors in the poll-books, to fill in any omissions, and to issue certificates of election to the successful candidates. (5)

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1. New Mexico. Senate Bill, No. 53. Sec. 351.
 2. Ibid., 1927. Sec. 352.
 3. Ibid. Sec. 355.
 4. Ibid. Sec. 356.
 5. Ibid. Sec. 357, 358.

CHAPTER VII

CONTESTED ELECTIONS

The laws concerning contested elections began in 1851 and apparently ended in 1889. In the Election Code of 1851, lengthy consideration was given this subject.

In the case of contested elections, the ballots could be examined when the question arose as to how the elector voted. The examination was to be made by the probate judge, in the presence of the contesting parties, and the judge was to forward his findings to the one in power who determined the legality of the election. (1)

In case any election for sheriff, justice of the peace, or constable were contested, the party contesting was to give eight days notice to the opposing party. The case was to be tried in a summary manner by the probate judge. In case any election for subaltern officers, created by the law, was contested, such contest was to be tried in the probate court. (2)

If an election for probate judge was contested, eight days notice was to be given, the grounds for the contest stated, objections to voters specified, and the contest was to be tried in a district court or by three justices of the peace selected for the occasion by the contesting and opposing parties. (3)

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 22.
 2. Ibid. Sec. 50.
 3. Ibid. Sec. 49.

If a contested election was pending, the person holding the certificate of election was to take possession and discharge the duties of office until the contest was decided. (1)

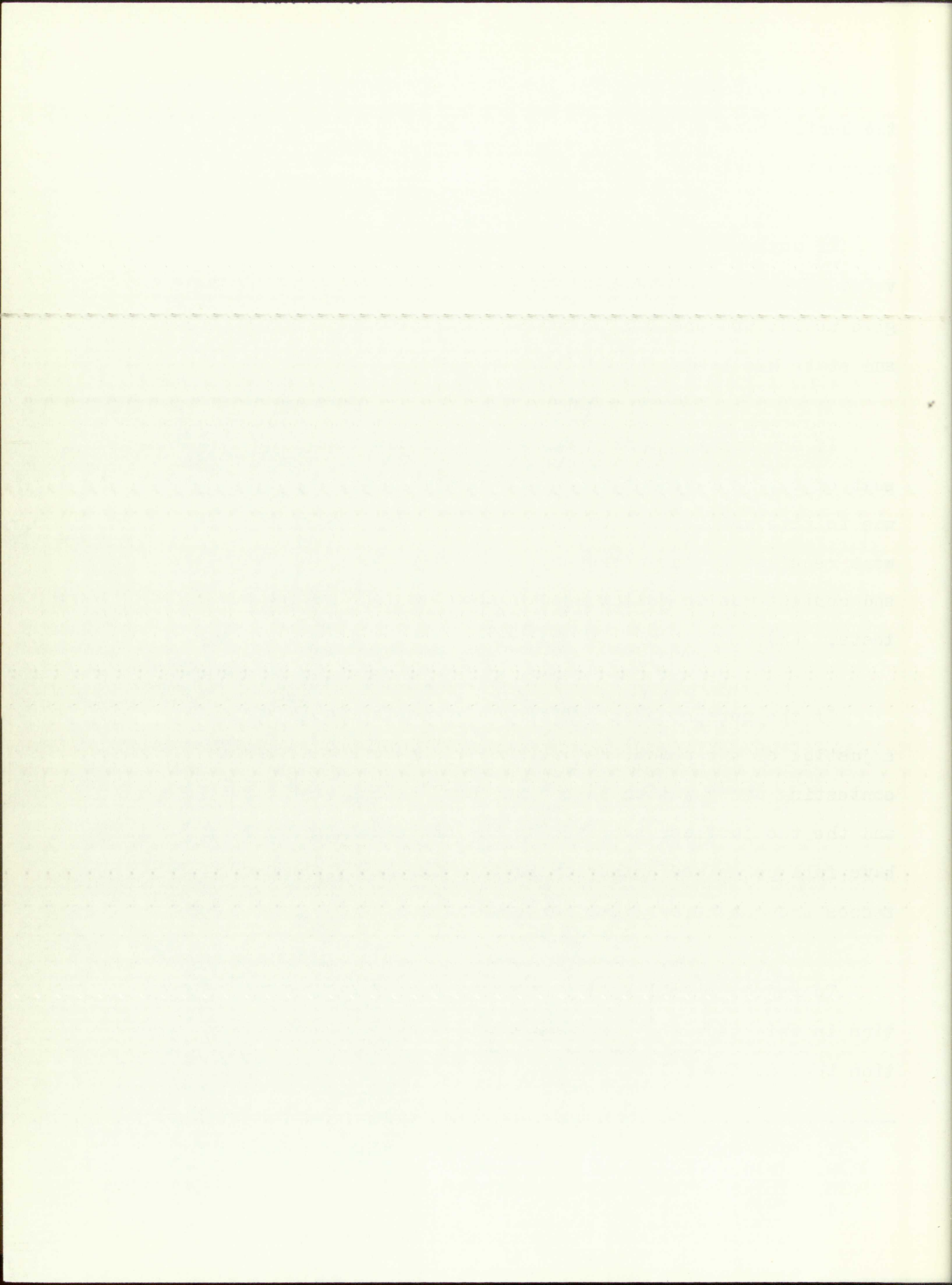
If any candidate in any election desired to contest any votes given to the opposing party, he was given eight days to give notice and specify the names of the voters objected to, and state his basis for contesting. (2)

If any candidate from any county or district contested the seat of any representative or member of the council, said person was to give written notice within thirty days after the returns were received by the Secretary of the Territory. This notice and contest was to follow specified rules much like other contests. (3)

If the person whose office was contested failed to select a justice of the peace, as provided in the previous section, the contesting party was to select another justice of the peace; and the two justices selected by the contesting party were to have full power and authority to take the depositions of witnesses brought before them for examination. (4)

To reject any illegal votes that were polled at any election in this territory, it was not necessary to contest or question them at the polls, but they were to be rejected by the

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 51.
 2. Ibid. Sec. 52.
 3. Ibid. Sec. 54.
 4. Ibid. Sec. 55.



authorities qualified by the law to determine the validity of said elections. (1)

If the person whose seat was contested in either branch of the assembly intended to question the legality of any votes given to the contesting candidate, he was to give notice to the opposite party within eight days after said contest, in the manner prescribed in Section fifty-four. (2)

The justices were to hear all the testimony and certify the same to the president of the council if the seat contested was that of a counselor, and to the speaker of the house of representatives, if the seat was that of a representative. (3)

No testimony was to be received by the justices, or either branch of the territory legislature, from either the contesting or opposing parties, unless it referred to the points specified in the notice. The justices of the peace were to forward to the general assembly a certificate, together with the depositions taken by them, and no others, and the legislative assembly was not to receive any other testimony than that already specified. (4)

The legislature of 1859-1860 passed a law which made it possible for a contestant to demand a jury trial and also a case of contest could be appealed to the district court, provided the contestant could put up sufficient securities to pay court costs. (5)

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 56.
 2. Ibid. Sec. 57.
 3. Ibid. Sec. 60.
 4. Ibid. Sec. 61.
 5. Ibid., 1859-60. Ch. 20, Sec. 1, 2.

All contested elections between county officers were to be decided according to law, in a summary manner, at the first regular term held by the magistrate authorized by law to hear and try the case. (1)

In 1873 it was decided that all contests for the offices of the different counties in this territory were to commence in the district court. The notice of contest was to be filed within thirty days from the day on which the judge of probate counted the votes for the election from which the contest arose. (2)

In the case of a contest over the sheriff's office, the sheriff whose office was contested was not to perform the duties of office until the contest was settled. When such a contest arose, the district judge was to appoint a special officer to perform the duties of the sheriff's office until the contest was settled, and the winner determined. (3)

If the contestant or the contestee applied to the court to continue the cause of contest for another term, the office in question was to be delivered to the adverse party, as entitled to it, and the costs of said contest paid by the losing party. (4)

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1. New Mexico. Session Laws, 1860-61. Ch. 42, Sec. 9.
 2. Ibid., 1873-74. Ch. 29, Sec. 1.
 3. Ibid. Sec. 2.
 4. Ibid. Sec. 4.

In 1875 and 1876 the laws and regulations governing contested elections were further strengthened and expanded. In all cases of contested elections triable in district courts, the notice of contest, when filed and served as provided by law, was to be taken and considered as the only petition and process necessary for the court to acquire jurisdiction. (1)

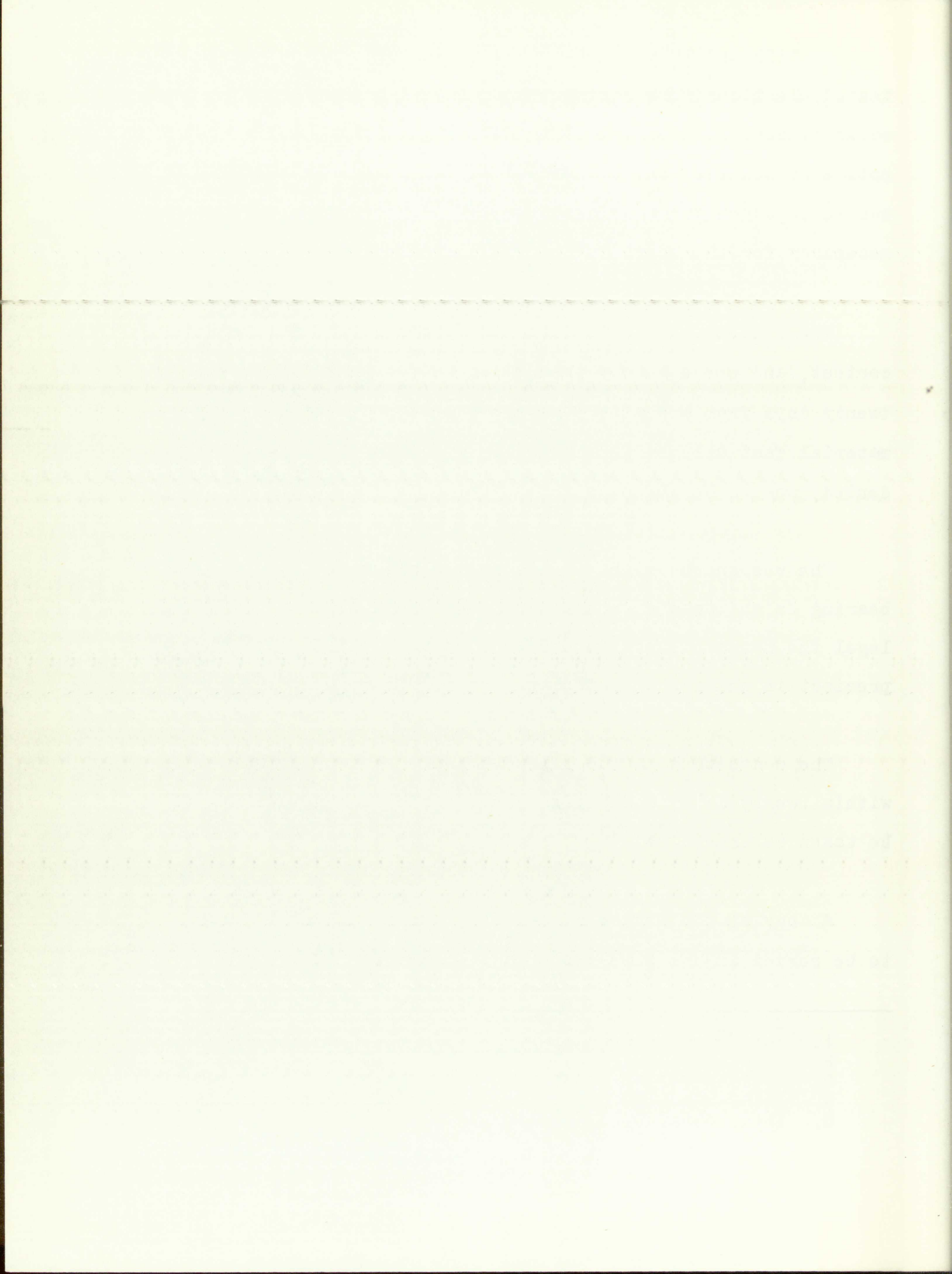
The respondent was to file his answer to the notice of contest, and serve a copy thereof on the contestant within twenty days from and after the service of such notice. Any material fact alleged in the notice of contest, not specially denied, was to be taken as true. (2)

The respondent might in his answer bring up any material bearing on the answer, and if any votes were said to be illegal the names of such voters were to be specified and the precinct in which such votes were cast. (3)

The contestant was to file his reply to any new matter within twenty days, and any such new matter not denied was to be taken as true. (4)

A copy of the notice of contest, answer and reply, was to be served in the same manner as any process of law. (5)

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1. New Mexico. Session Laws, 1875-76. Ch. 26, Sec. 1.
 2. Ibid. Sec. 2.
 3. Ibid. Sec. 3.
 4. Ibid. Sec. 4.
 5. Ibid. Sec. 5.



All issues of law and fact in any such cases of contested election were to be tried before the district judge in the district in which the contest arose. All testimony was to be put in writing and reported to the judge within a time set by him, and this time was not to be more than three months after the service of the last pleading. (1)

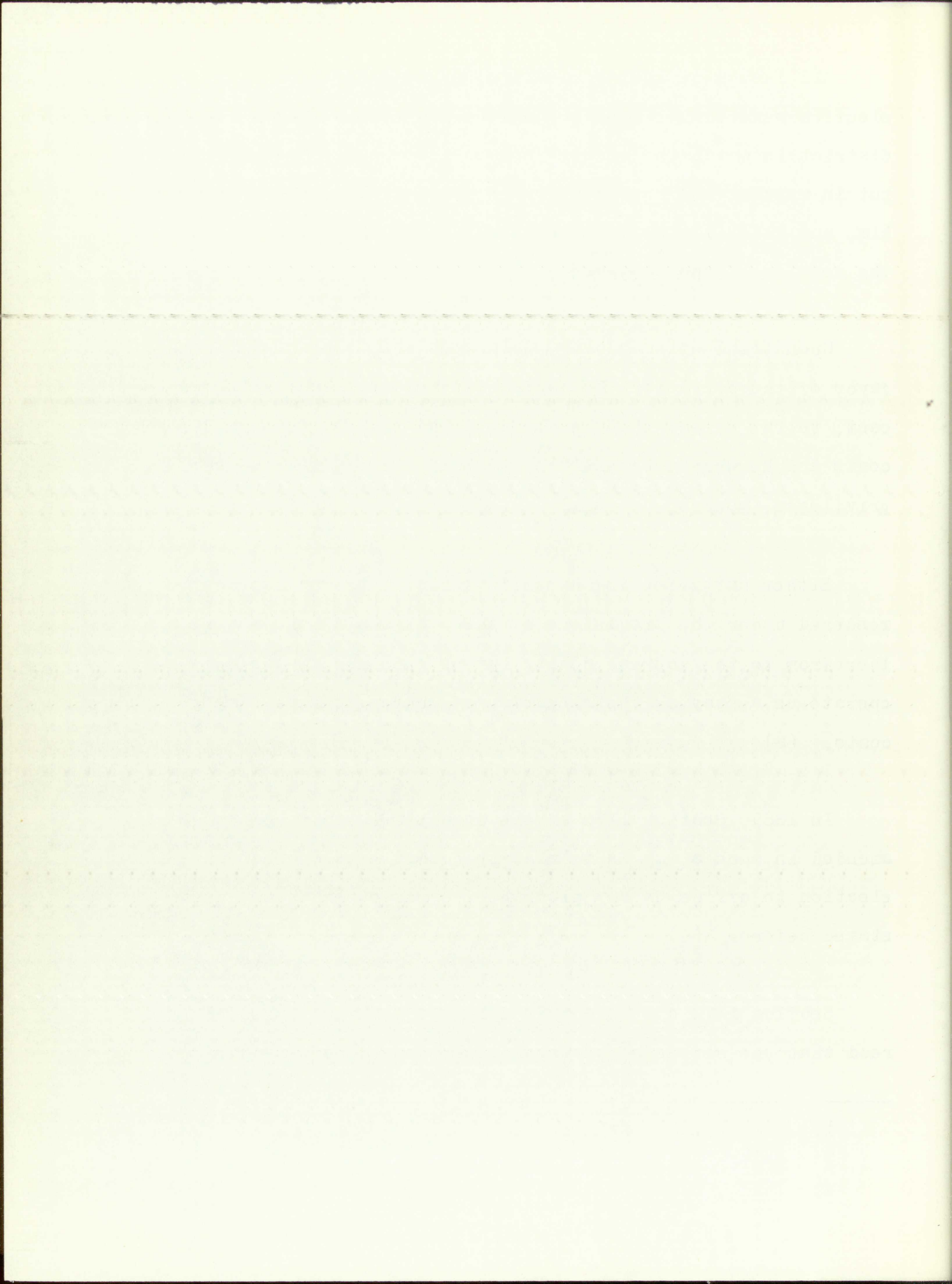
Upon trial of such case, judgement was to be rendered in favor of the party for whom a majority of the legal votes was cast, to the effect that he was entitled to the office and costs and he was to be entitled to hold the office with all the privileges, powers, and emoluments belonging thereto. (2)

Either party feeling himself aggrieved by any judgement rendered under the provisions of this act could make appeal therefrom to the supreme court, but no such appeal was to operate as a stay of the execution of judgement except as to costs. (3)

In 1889, Section 1170 of the compiled laws of 1884 was amended in such a way as to make it possible to contest an election to office on any plausible reason other than those stated before. (4)

Section 1172 of the compiled laws of 1884 was amended to read that the office of representatives could be contested and

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1. New Mexico. Session Laws, 1875-76. Ch. 26, Sec. 6, 7.
 2. Ibid. Sec. 8.
 3. Ibid. Sec. 10.
 4. Ibid., 1889. Ch. 135, Sec. 8.



and notice of such statement was to be set forth giving the grounds for contest and specifying the justices of the peace before whom it was purposed to try such case. (1) The person whose office was being contested could then name the justice whom he preferred to assist in such trial. (2)

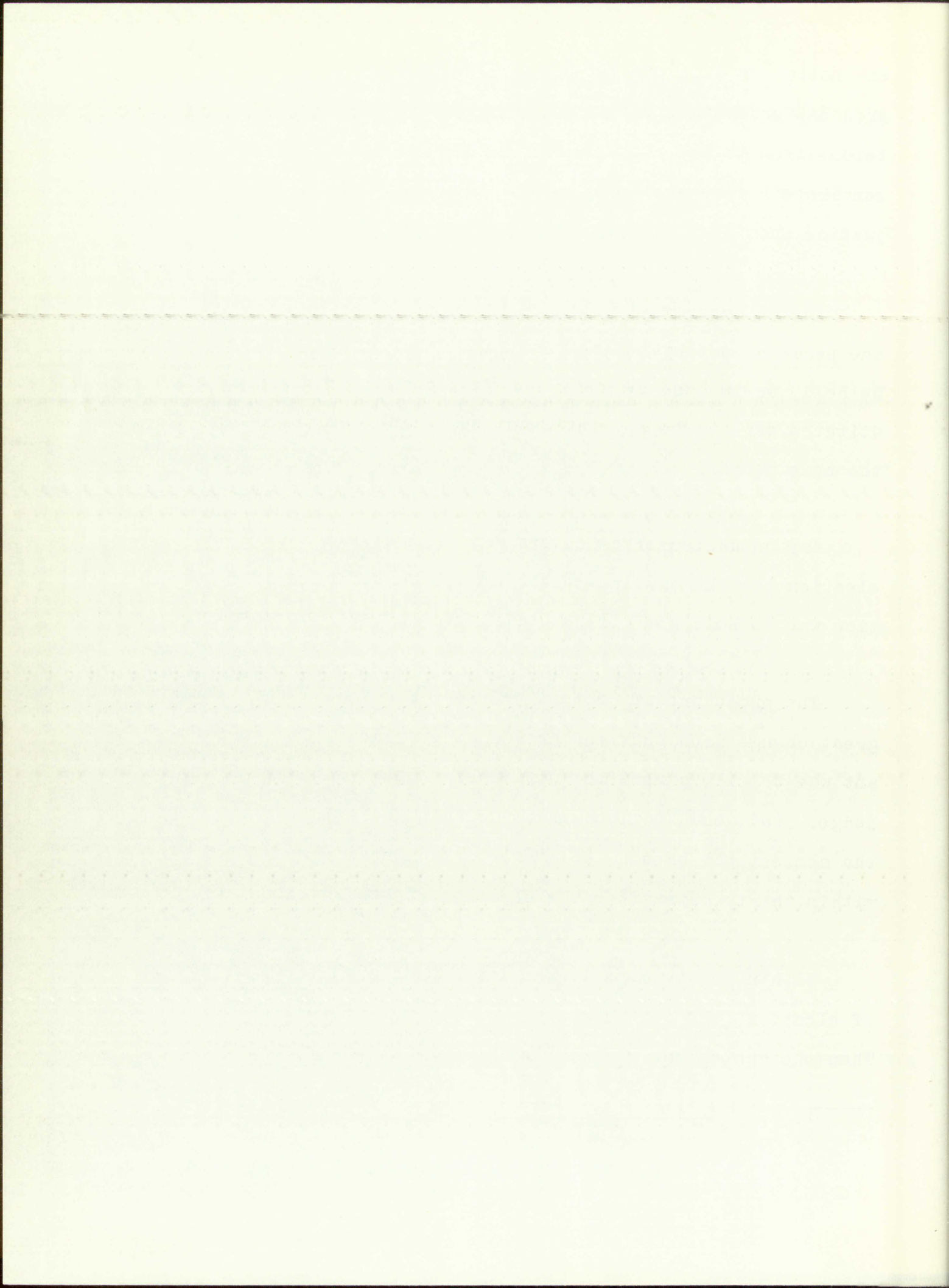
In the case of sickness on the part of any justice of the peace or notary before whom such trial of contest was to be held, or in case of any other just cause for absence, substitutes were to be appointed and the trial was to proceed in the same manner. (3)

Any unsuccessful candidate was allowed to contest an election but the candidate holding the certificate of election was to hold the office until such contest was decided. (4)

The procedure of contest provided for in 1927 was not a great change from previous procedure provided. The contestant was to file a verified notice of contest with the district judge. (5) Such notice was to contain the evidence on which the contest was based. (6) Unless such notice was filed within thirty days after the election it was acted on. (7)

Within twenty days of the service of such verified notice of election, the contestee was to file a verified answer. Then the contestant was to file a verified reply containing

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1. New Mexico. Session Laws, 1889. Ch. 135, Sec. 9.
 2. Ibid. Sec. 10.
 3. Ibid. Sec. 11.
 4. Ibid. Senate Bill, 53, 1927. Sec. 601.
 5. Ibid. Sec. 602.
 6. Ibid. Sec. 604.
 7. Ibid. Sec. 603.



any new grounds for contest. (1)

The trial of contest was to be held in the district court.
(2) No pleadings other than the verified notice of contest,
the verified answer, and the verified reply were to be intro-
duced. (3) Judgement was to be rendered in favor of the per-
son for whom it was proved the highest number of votes were
cast. (4)

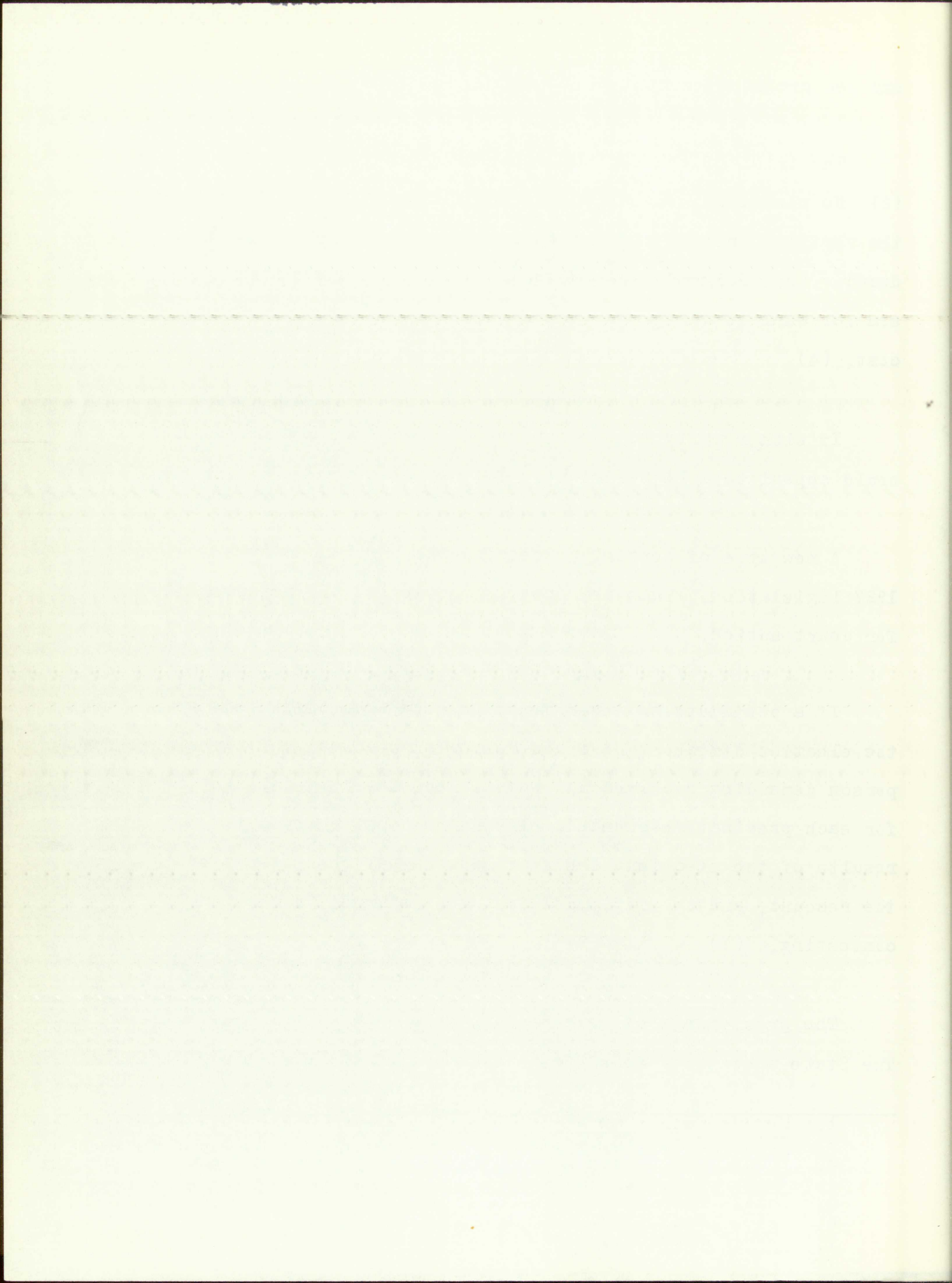
If either party to the contest felt himself aggrieved, he
could appeal to a higher court. (5)

A new type of contest proceeding was introduced by the
1927 legislation. This new type of proceeding did not provide
for court action.

If a candidate believed fraud to have been committed by
the election officers, he could demand a re-count. (6) The
person demanding such recount was to deposit fifty dollars
for each precinct re-counted. If the re-count changed the
results of the election, the state was to pay the expense of
the recount, and the fifty dollars were returned to the man
contesting. (7)

The proceedings of such recount were much as follows:
The State Canvassing Board issued summons to the election

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|----|--------------|---------------------------|----------------|
| 1. | New Mexico. | Senate Bill No. 53, 1927. | Sec. 606, 608. |
| 2. | <u>Ibid.</u> | Sec. 610. | |
| 3. | <u>Ibid.</u> | Sec. 609. | |
| 4. | <u>Ibid.</u> | Sec. 611. | |
| 5. | <u>Ibid.</u> | Sec. 612. | |
| 6. | <u>Ibid.</u> | Sec. 614. | |
| 7. | <u>Ibid.</u> | Sec. 615. | |



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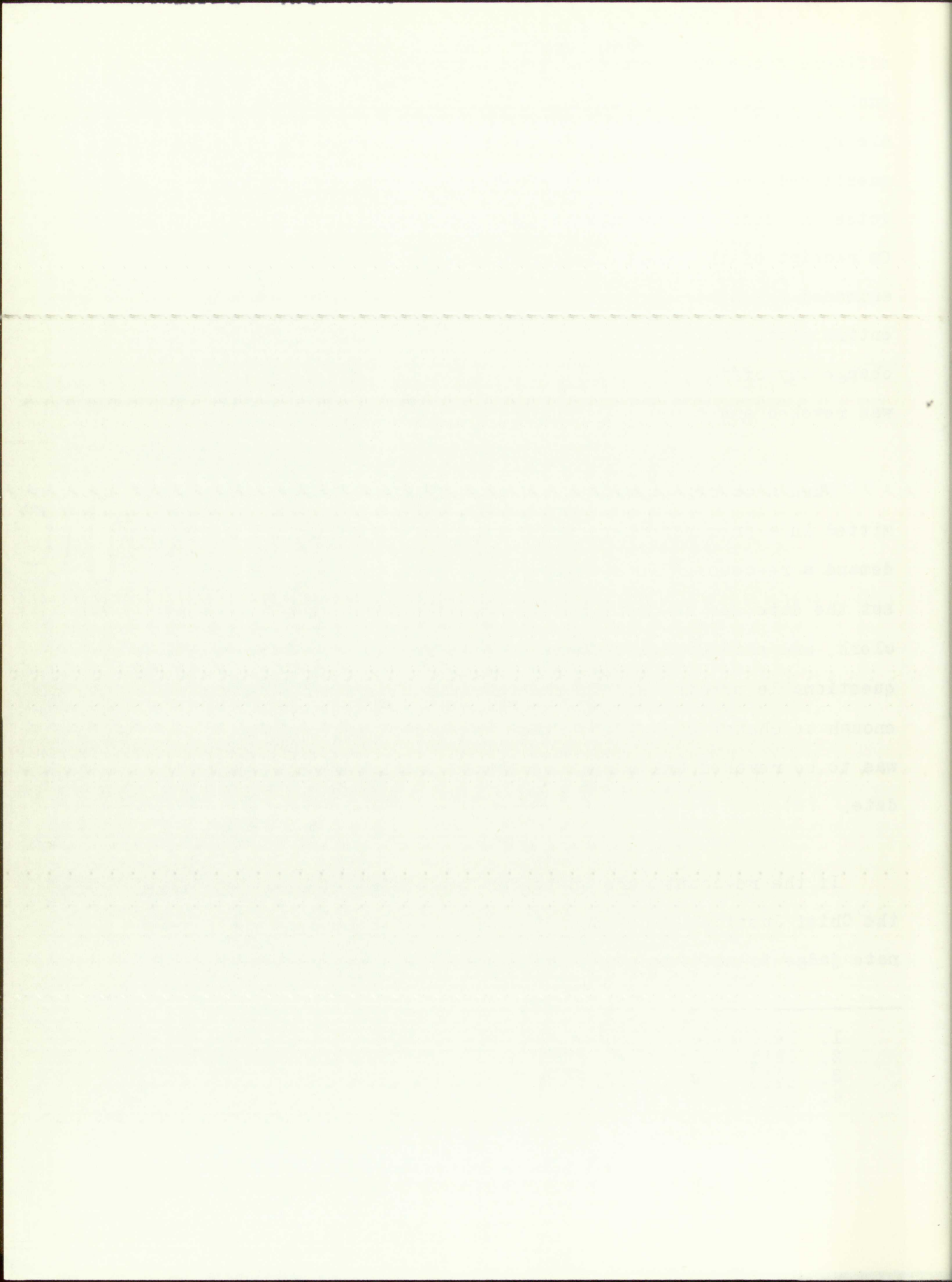
officers whose precinct was doubtful and a date was set for such re-count. On the date set, the district judge, the county clerk, and the election officers in the county of the precinct questioned were to meet in the court house and re-count the votes and send the results to the Secretary of State. (1)

On receipt of the re-counted returns, the Secretary of State summoned the State Canvassing Board and the re-count for the entire state was made. If the results were sufficient to change any office, the certificate of election for such office was revoked and a new one issued to the rightful candidate. (2)

When a county candidate believed fraud to have been committed in a precinct where votes were cast for him, he could demand a re-count. In such case, the district judge was to set the date for re-count and the election officers, the county clerk, and said district judge were to recount the votes in questionable precincts. If the re-count altered the results enough to change any office, then the certificate of election was to be revoked and a new one issued to the rightful candidate. (3)

If the re-count were to be for the office of district judge, the Chief Justice of the Supreme Court was to appoint an alternate judge to act for the judge whose office was contested. (4)

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1. New Mexico. Senate Bill No. 53, 1927. Sec. 616.
 2. Ibid. Sec. 617.
 3. Ibid. Sec. 619.
 4. Ibid. Sec. 621.



CORRUPT LAW PRACTICES

The laws of this subject are given here as they were passed and no subject divisions have been made.

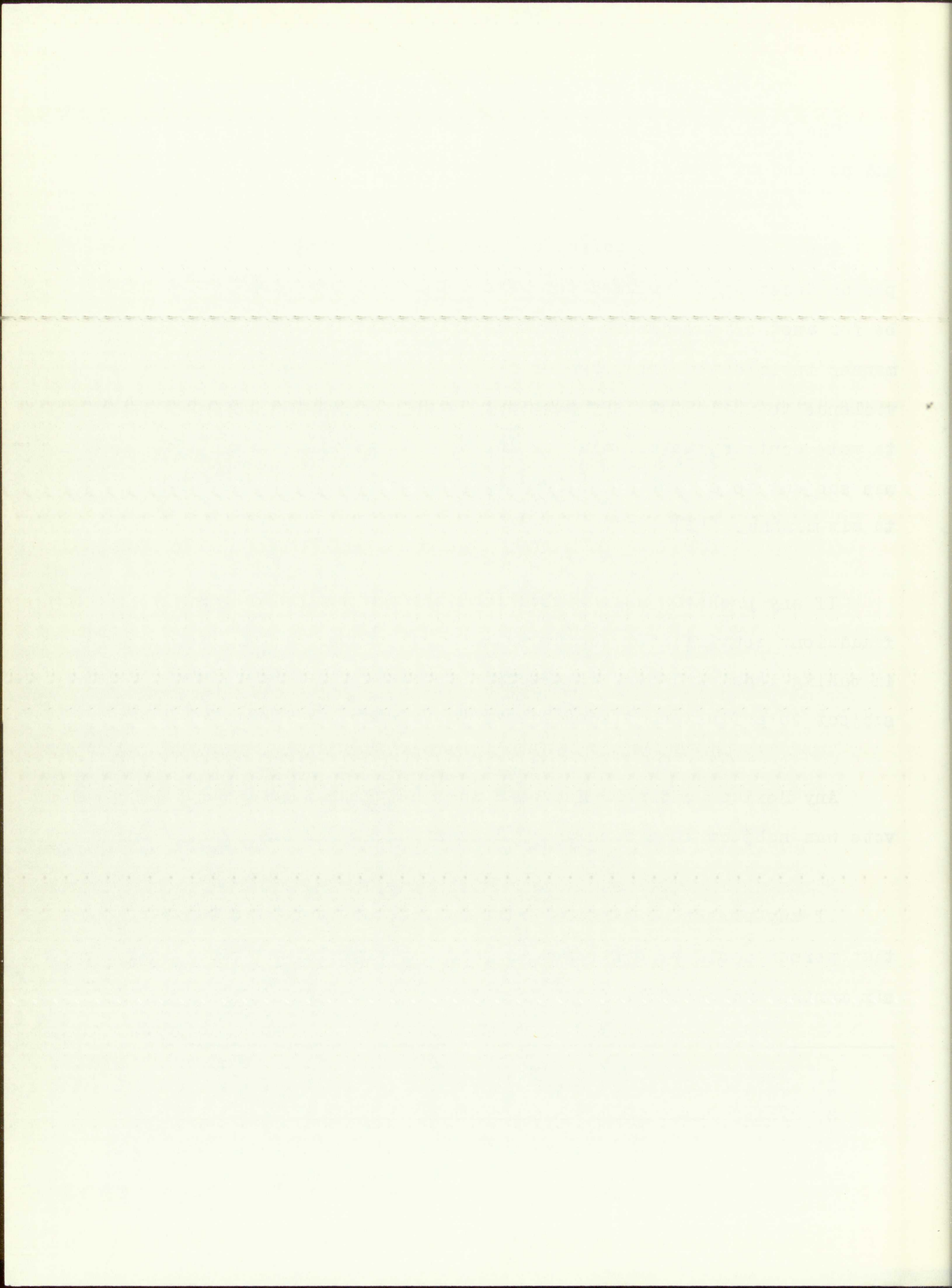
The first law was passed by the first legislature. If any person deceived or seduced any voter declaring the election to be for another purpose than what it in reality was, or in any manner intimidated any judge or clerk of election, or used violence to intimidate any person in order to get that person to vote contrary to his wish or not to vote at all, that person was subject to a fine up to 300 dollars and a jail sentence up to six months. (1)

If any probate judge failed to discharge his duties or gave fraudulent certificates, or rejected legal votes, or any fraud in making legal and correct election returns, that judge was subject to a fine and disqualification to serve as judge. (2)

Any Mexican citizen who voted when he was not qualified to vote was subject to a fine and jail sentence up to one year. (3)

If any person received a bribe to vote or to refuse to vote, that person could be sentenced to jail for a period not less than six months and could be fined from fifty dollars up. (4).

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 24.
 2. Ibid. Sec. 37.
 3. Ibid. Sec. 38.
 4. Ibid. Sec. 39.



Any qualified voter who voted or offered to vote more than once at any election held and any person that by any species of fraud or deception prevents a qualified person from voting according to his own free will and opinion, on conviction shall be fined from five dollars to fifty dollars.
(1)

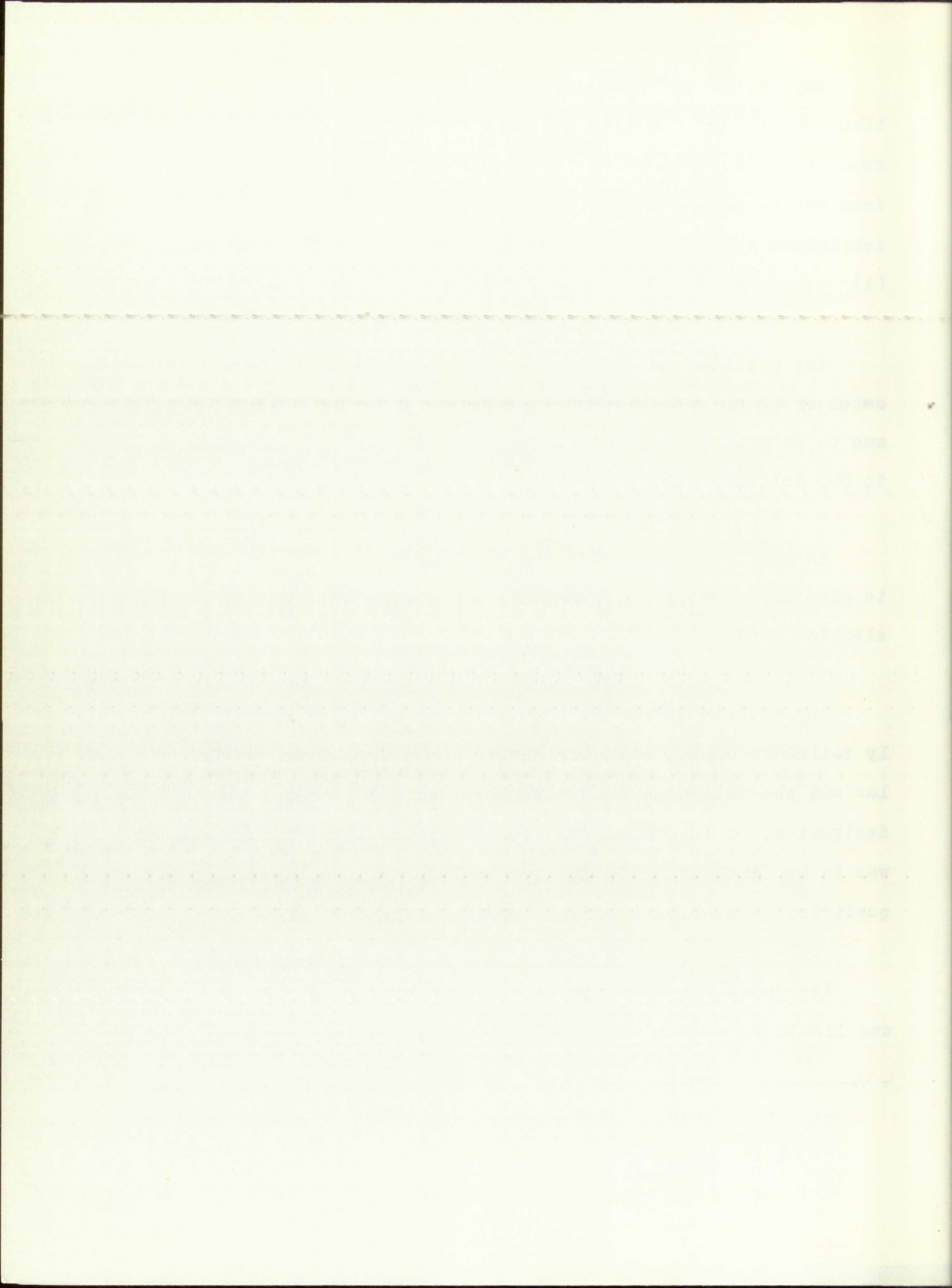
Any probate judge who gave false or fraudulent certificates or in any way prevented a popular vote from being had, was to be guilty of fraud and could be fined from 200 dollars to 500 dollars. (2)

In 1861 a law was made which gave any person the right to give information and prosecute any fraud discovered at any election. (3)

Any probate judge who knowingly, ignorantly, or maliciously failed to comply with the duties imposed upon him by this law and who failed to count the votes at the time and place designated, or in any manner misrepresented the popular vote, was to be fined from 500 dollars to 1000 dollars, and was disqualified from holding offices in the territory. (4)

Any judge who permitted an unregistered person to vote was liable to a fine up to 500 dollars and a jail sentence. (5)

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1. New Mexico. Session Laws, 1851. Ch. 28, Sec. 40.
 2. Ibid., 1853-54. Ch. 31, Sec. 8.
 3. Ibid., 1860-61. Ch. 42, Sec. 7.
 4. Ibid. Sec. 11.
 5. Ibid., 1867-68. Ch. 26, Sec. 12.



By 1880 it had been discovered or rather considered that the sale of intoxicating liquors on election day was a hindrance to popular vote and a law was made which made sale of liquor on election day unlawful. (1)

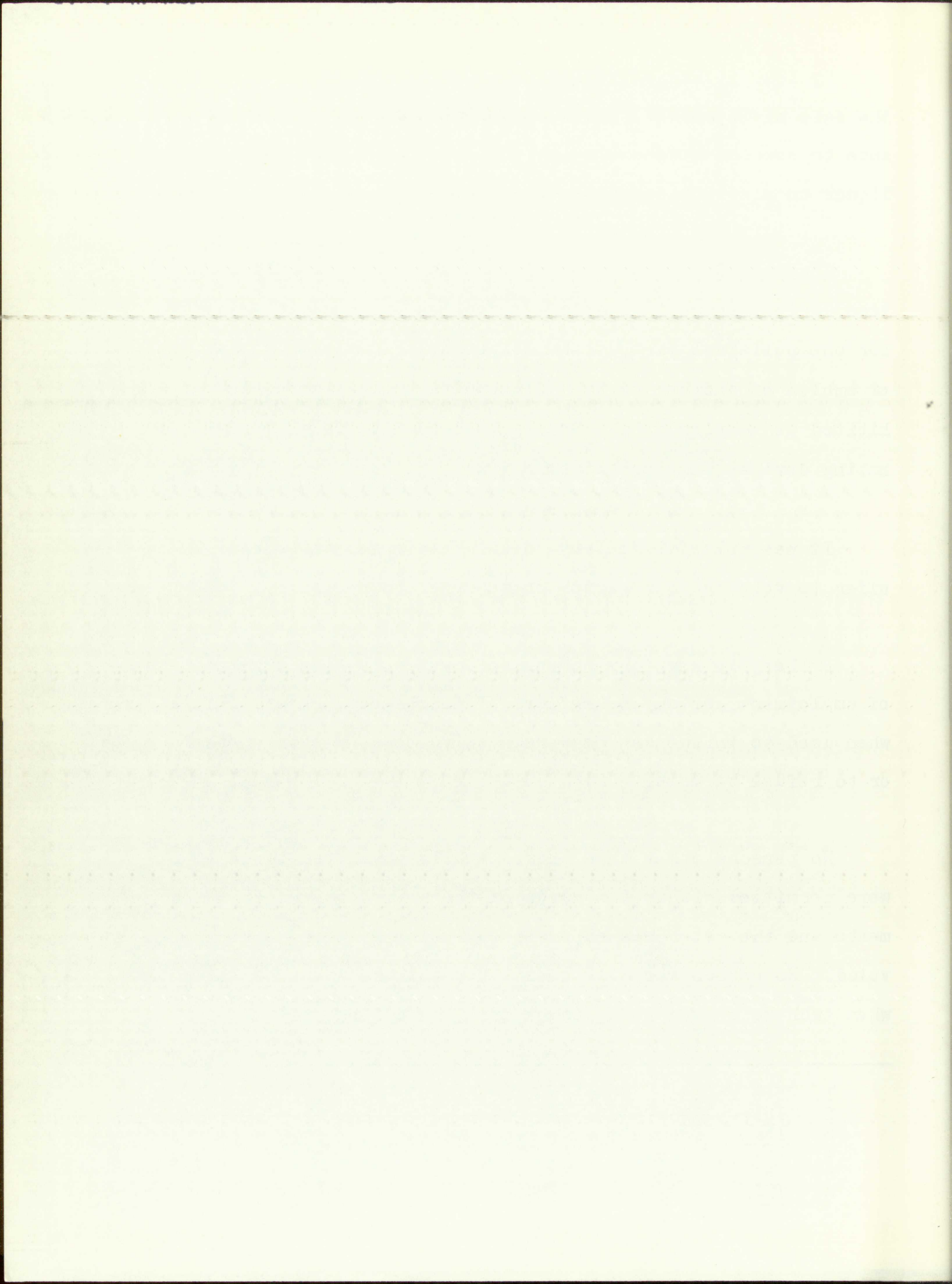
Chapter 135 of the laws of 1889 went farther into legislation against corrupt practices. Section one made it unlawful for one political party to infringe on the designating device or emblem of another party. Misleading ballots were also prohibited as samples. (2) Sample ballots with false designating devices were prohibited. (3)

It was unlawful for any unqualified voter to vote or to offer to vote or to register or to offer to register. (4)

Bribery in any form, threat of menace or discharge, offers of employment, or any other form of inducement was prohibited when used to influence any person to vote one way or another or to refuse to vote. (5)

No persons other than those legally permitted to do so, were permitted within ten yards of the voting booths or compartments and the voter was supposed to retire as soon as he had voted. No person was allowed to obstruct the way of a voter when such voter was going to or from the polls. (6)

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1. New Mexico. Session Laws, 1880, Ch. 22, Sec. 1.
 2. Ibid., 1889. Ch. 135, Sec.
 3. Ibid. Sec. 2.
 4. Ibid. Sec. 3.
 5. Ibid. Sec. 4.
 6. Ibid. Sec. 5.



In 1905 a law was passed which made it a felony for the county recorder to fail to supply official ballots for every county election. (1)

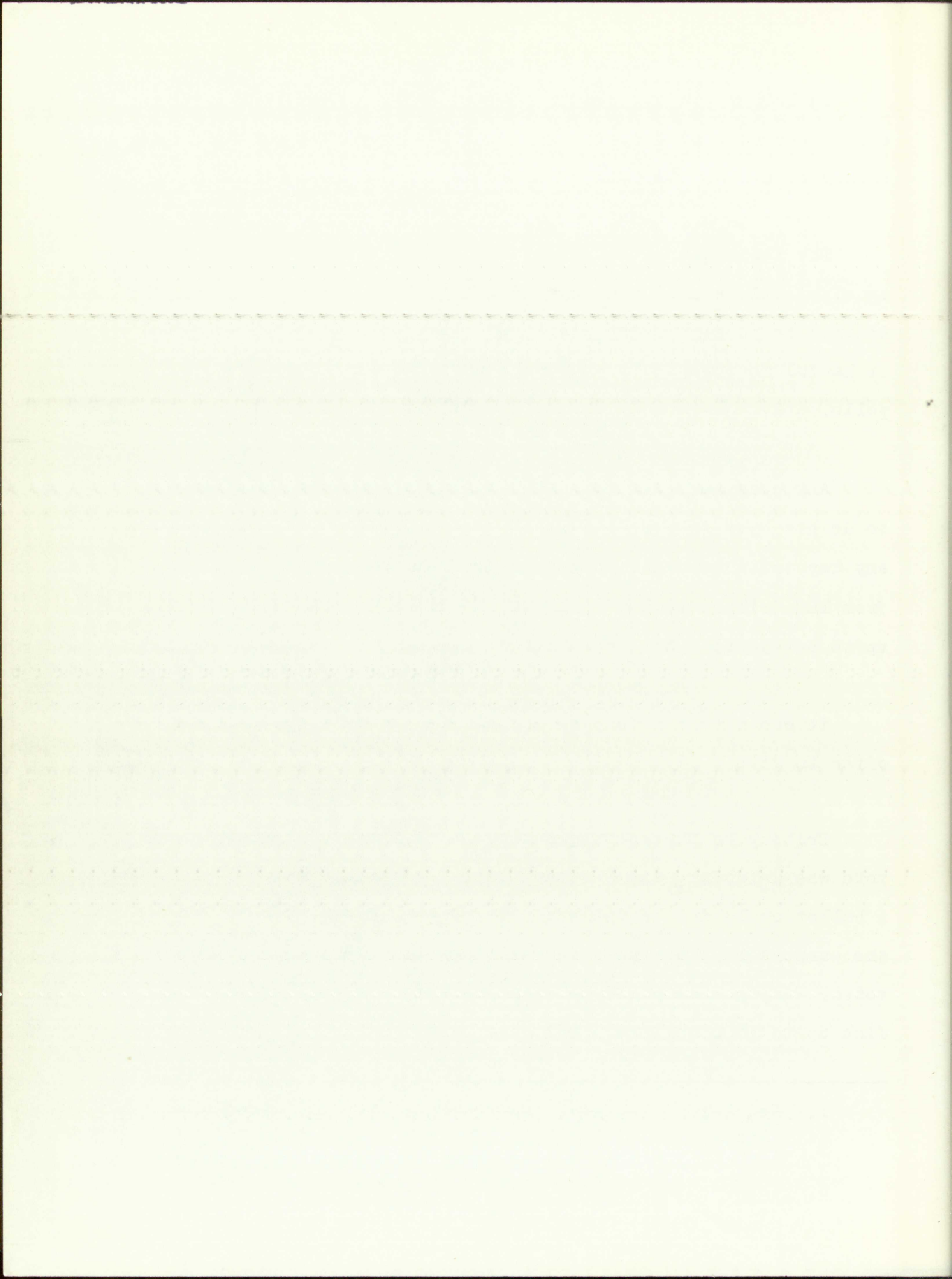
The legislature in 1909 passed several laws for the cleaning up of elections. It was made unlawful to exclude any person who desired to vote from the polls, but this was not meant to make it lawful for people to approach more than ten yards from the polls. (2)

Any judge of election who wilfully or maliciously failed to do his duty or who wilfully miscounted the votes, or who in any way tried to avoid making proper returns, was to be fined from 100 dollars to 1000 dollars and might be sentenced to jail up to one year. (3)

It was unlawful for any unqualified voter to vote or to offer to vote. (4)

Bribery or threat of discharge to influence a person's vote was unlawful, and also any threat of menace was unlawful. A ballot could not be violently taken away from a person for the purpose of changing such ballot or to see how such person voted. Any person guilty of such actions was subject to a fine up to 1000 dollars. (5)

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1. New Mexico. Session Laws, 1905. Ch. 127, Sec. 4.
 2. Ibid., 1909. Ch. 105, Sec. 6.
 3. Ibid. Sec. 8.
 4. Ibid. Sec. 10.
 5. Ibid. Sec. 11.



Any qualified voter who voted twice or offered to vote twice was subject to a fine or imprisonment. (1)

Any person deceiving the people or threatening a judge or clerk of election or who violently kept people away from the polls or who forced a voter to vote contrary to his wish was subject to a fine up to 500 dollars and a jail sentence up to two years. (2)

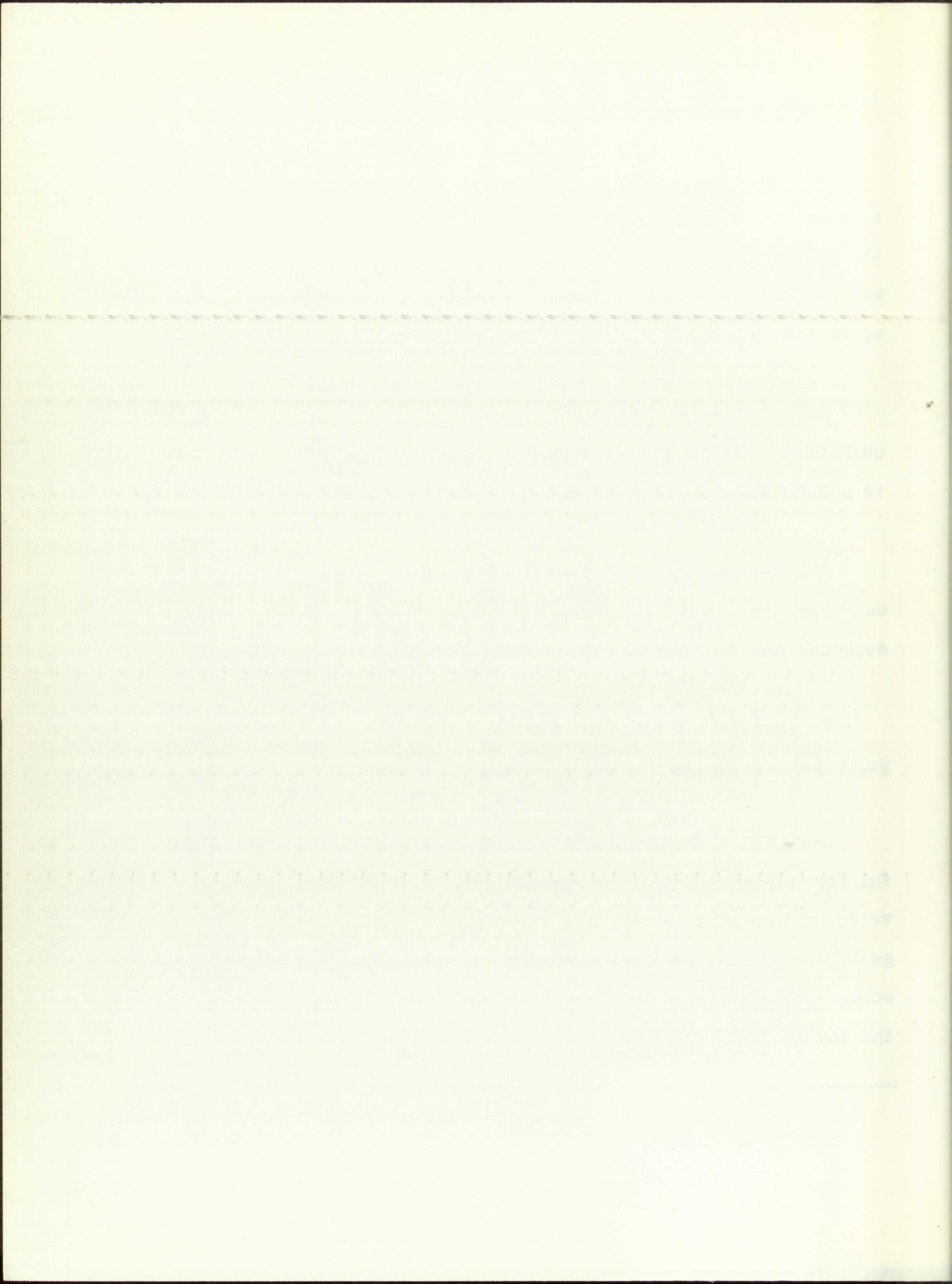
Any challenger who challenged a voter who was known to be qualified, was guilty of a misdemeanor and was to be fined up to 500 dollars to which could be added a jail sentence. (3)

Any person who wilfully violated any provision of this act where the punishment was not stated, was guilty of a misdemeanor and was subject to a fine or imprisonment. (4)

No sheriff was allowed to let his prisoners go to the polls and vote. (5)

The 1912 legislature passed a law which made it unlawful for any employer or corporation to try to influence the votes of his employees. And any employee was entitled to go to the polls and vote even when it interfered with his work. The employer was to allow two hours at some time of the day to the employee to go to the polls to vote. (6)

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1. New Mexico. Session Laws, 1909. Ch. 105, Sec. 14.
 2. Ibid. Sec. 13.
 3. Ibid. Sec. 15.
 4. Ibid. Sec. 16.
 5. Ibid. Sec. 17.
 6. Ibid., 1912. Ch. 15, Sec. 1, 2.



Chapter 63 of the laws of 1912 is here given in substance:

Sec. 1: The following persons shall be deemed guilty of bribery and on conviction shall pay a fine of from fifty to 500 dollars and imprisonment from two months to six months: 1) persons who offer a bribe to a person to vote in a certain way, 2) persons who offer bribes to persons to keep them from voting, 3) persons who receive bribes, 4) persons who shall advance money to be used as bribes.

Sec. 2: Every officer or employer who shall intimidate, or oppress any employee or any other person with intent to influence his vote shall be fined up to 1000 dollars, or be given a jail sentence up to six months.

Sec. 3: No corporation or company can use money or threat of discharge to attempt to make a person vote in one way or the other.

Sec. 4: Any person who shall use force, threat, duress, or impede any person in voting shall be punished by a fine up to 500 dollars and a jail sentence up to one year.

Sec. 5: It is unlawful to vote under an assumed name for the purpose of voting twice and violations of this are termed felony.

Sec. 6: Candidates cannot spend for electioneering purposes more than one tenth of one year's salary, but this amount does not include traveling expenses.

Sec. 7: Candidates must file with the officer authorized to give election certificates a list of expenditures made for nomination and all promises made and all obligations assumed.

Sec. 8: Persons failing to comply with section seven shall be guilty of misdemeanor and fined up to 500 dollars.

Sec. 9: Every two or more persons who shall be selected to

spend money in electioneering for or against any candidate, ticket, or law shall be called a political committee.

Sec. 10: Every political committee shall appoint a treasurer to handle all money received and spent by such political committee and no money is to be spent by the political committee unless it has gone through the hands of the treasurer.

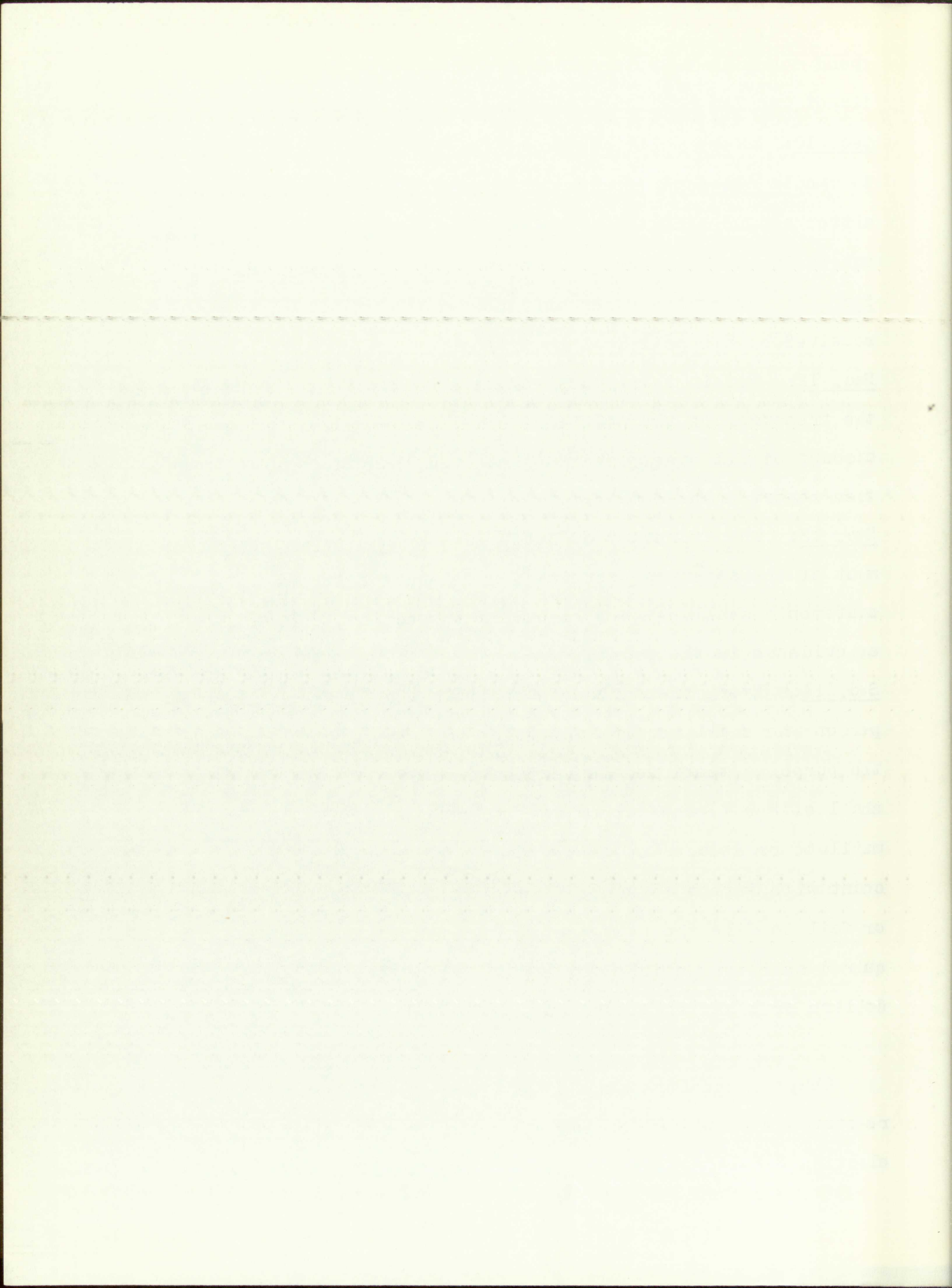
Sec. 11: Every treasurer must keep check of all money used or received by his political committee.

Sec. 12: Within thirty days of an election (after such election) the treasurer of the political committee shall file a detailed account of all money used and received, and if none is so used then report must be made.

Sec. 13: The Secretary of State must keep a duplicate statement of the accounts provided for in section twelve and such statements shall be open to public inspection, and can be used as evidence in the courts.

Sec. 14: Every treasurer of a political committee, and every person who shall receive any money to be applied to and for the purposes mentioned in section nine of this act and who shall either 1) neglect or fail to keep a correct copy, 2) mutilate or deface, or destroy any such book or books of account with intent to conceal any fact disclosed thereby, 3) or fail to file the statement and account within the time required shall be punished by a fine from fifty dollars to 500 dollars or a jail sentence up to six months.

Chapter seventy-three of the laws of 1912, Section eight re-stated a previous act to the effect that if any officers of election permitted any person to vote without certificate or



refused to perform the duties stated in the said chapter, such officers were guilty of misdemeanor and subject to a fine of 1000 dollars. (1)

It was also considered a misdemeanor if the election officers failed to comply with the law. This law was repeated in 1915. (2) (3)

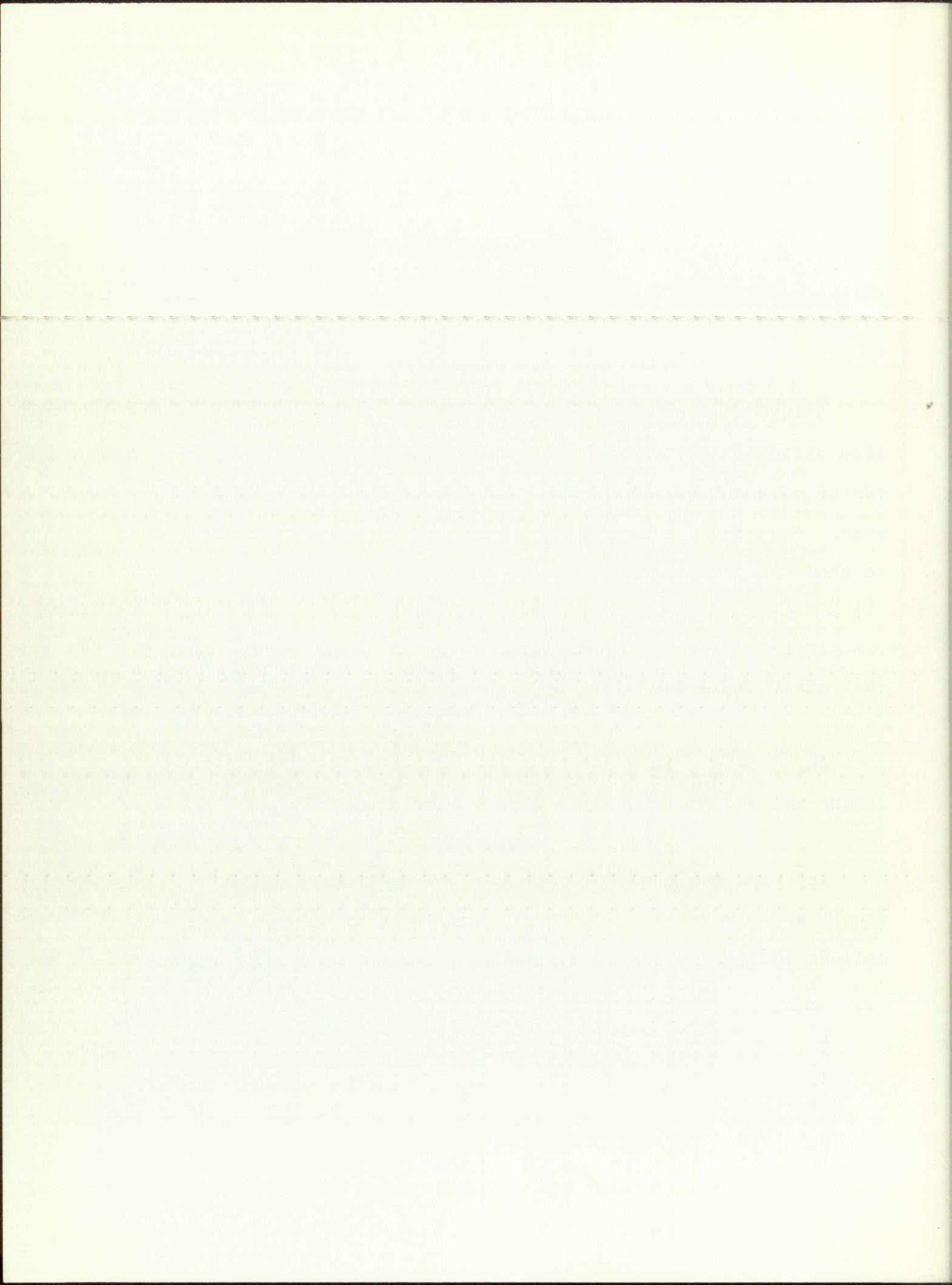
A curb was put on the election officials in 1917. No election official was to attempt to influence the vote of any elector or make any suggestion to such elector as to how he should vote. The official was to explain what to do for the elector to show his preference. (4)

In 1917 it was made unlawful to print any false ballot that might mislead any of the voters. (5)

Any fraud as to nomination certificates was considered a felony and was punishable by a jail sentence. (6)

Any person who wilfully removed or destroyed election supplies or instruction placards was guilty of misdemeanor and was to be punished by a fine or jail sentence. (7)

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1. New Mexico. Session Laws, 1912. Ch. 73, Sec. 8.
 2. Ibid., 1913. Ch. 59, Sec. 5.
 3. Ibid., 1915. Ch. 34, Sec. 4.
 4. Ibid., 1917. Ch. 17, Sec. 6.
 5. Ibid. Ch. 89, Sec. 8a.
 6. Ibid. Ch. 89, Sec. 21.
 7. Ibid. Sec. 22.



No election official was allowed to electioneer on election day and no electioneering was to be done in the polls, or in the building in which the polls were located. Absolute secrecy in voting was to be preserved. No voter was to receive a ballot from any other person than the judge of election and immediately on voting the elector was to retire. (1)

Any false swearing on any provision of this act was to be considered perjury and was punishable by a fine and jail sentence. (2)

It was unlawful for any unqualified person to vote or to offer to vote or to register or to offer to register. It was unlawful for any person to vote or register in the name of another person. No person was to bet, solicit, procure, aid, induce, or attempt to do any of these things to get a person to vote or register who was not qualified. A person who did any of these acts was liable to a fine and imprisonment. (3)

In 1919 and 1921 other laws were made to outlaw corrupt practices.

Any person who, without lawful authority, opened or inspected any package of ballots or conspired to do so with others was subject to a penitentiary sentence of eighteen months. (4)

The above law was amended in 1921 to the effect that

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1. New Mexico. Session Laws, 1917. Ch. 89, Sec. 23.
 2. Ibid. Sec. 24.
 3. Ibid. Sec. 25.
 4. Ibid., 1919. Ch. 91. Sec. 4.

such law should specify the county clerk as well as any other person and the sentence was raised to a possible five years. (1)

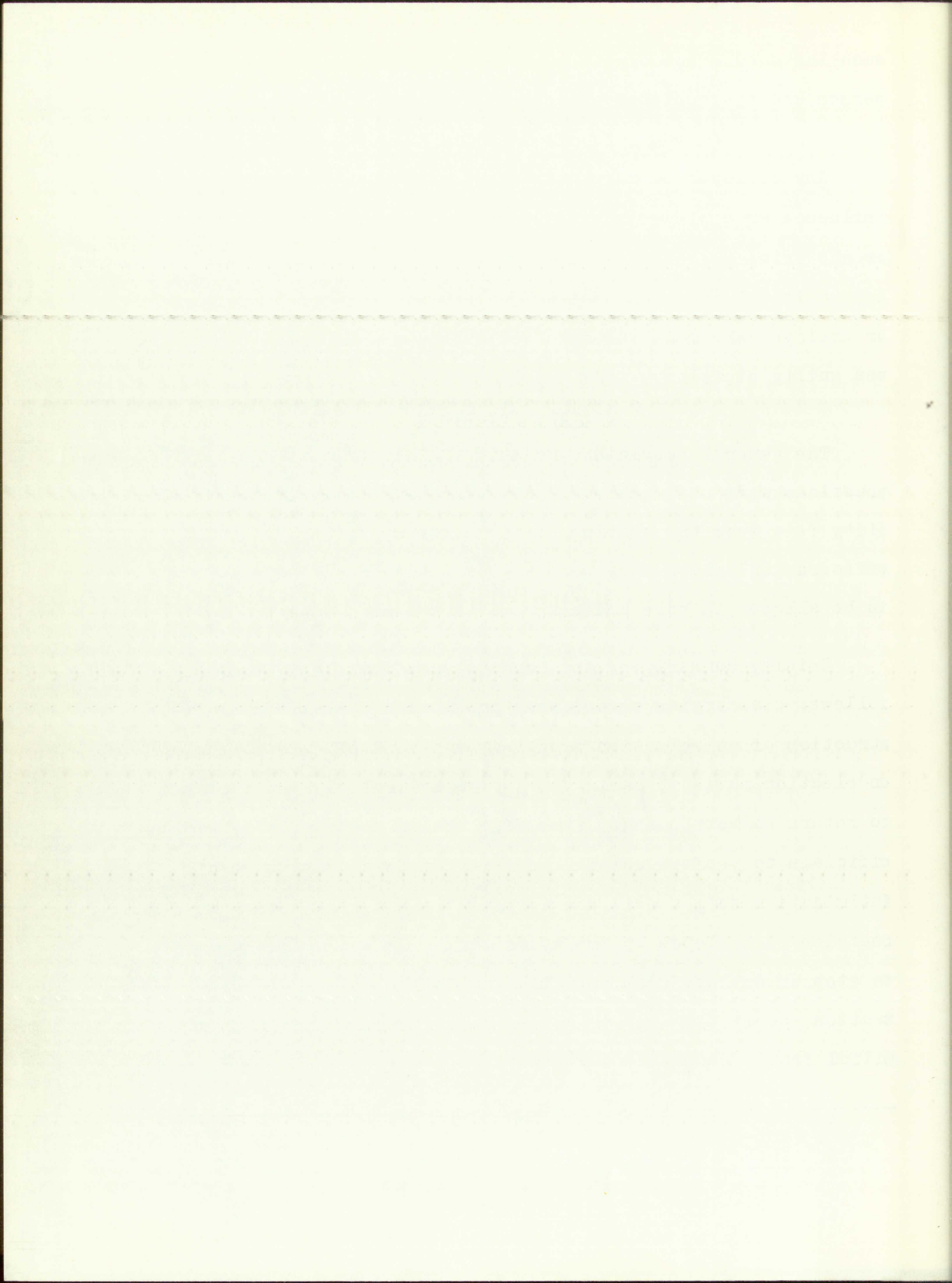
Any employer or agent of a corporation who attempted to influence an employee's vote by threat, or bribe of any sort, or who tried to keep his employees from entering actively into any political campaign, was subject to a fine. (2) Any person or employer who made rules to get around any of these provisions was guilty of felony. (3)

Corrupt Practices

The general provisions made in 1927 to prevent corrupt practices were not numerous. All persons were to be kept back fifty feet from the polling places unless they were election officers, or unless they were voting. (4) No prisoners were to be allowed to vote under any circumstance. (5)

Briefly summarized, the corrupt practices acts were as follows: falsifying or defacing an election certificate, destruction of any election supplies, any kind of false swearing on election matters, making of any false certificate, failure to return ballot boxes on time, failure on the part of election officials to perform duties, any kind of fraud, any type of intimidation to get a person to vote against his desire, any coercion of employes by employers, any rule by employers made to stop an employe from political activity, any false registration, permitting any false registration or voting, and any wilful fraud connected with elections. (6)

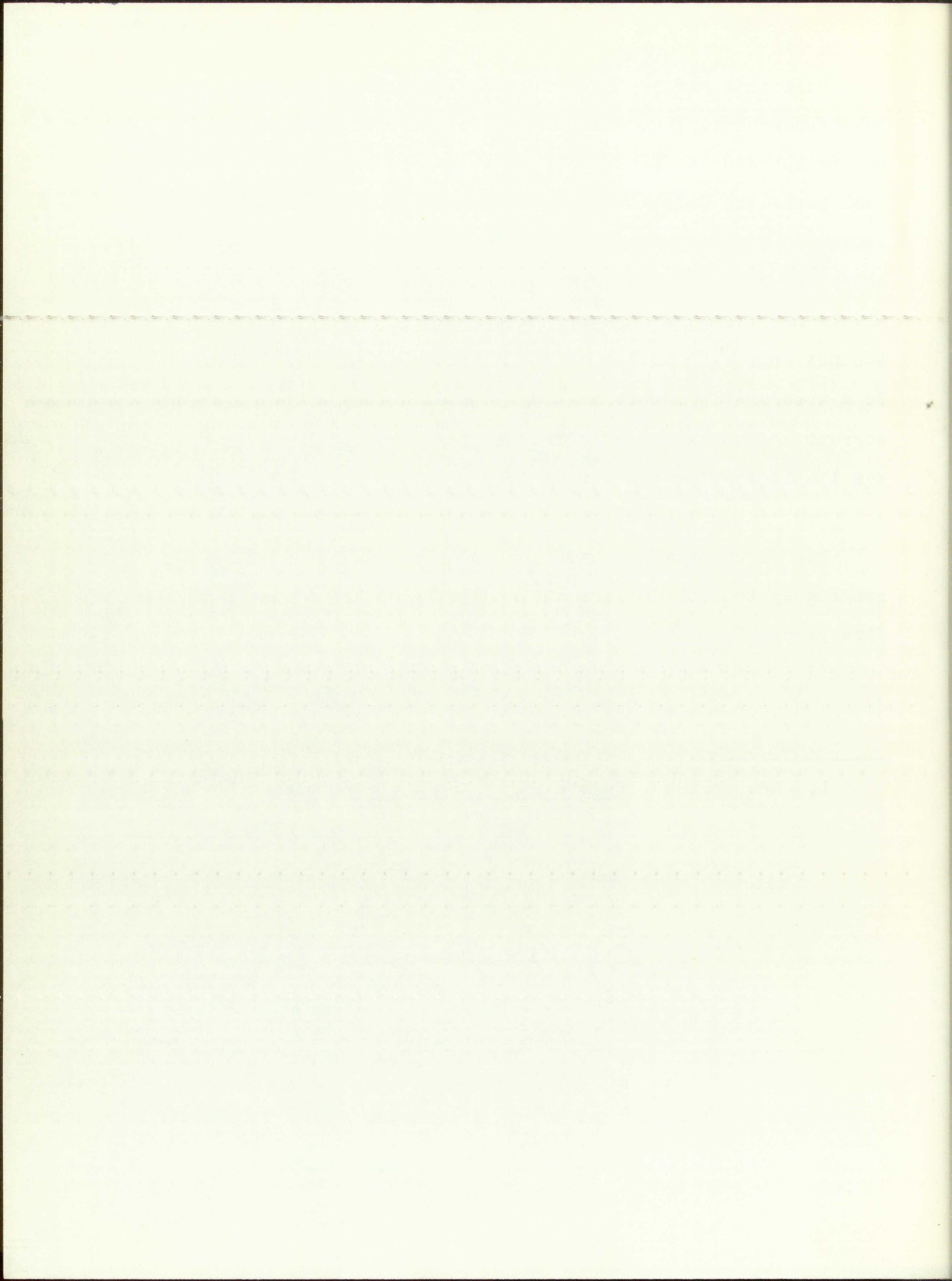
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1. New Mexico. Session Laws, 1921. Ch. 107, Sec. 3.
 2. Ibid. Ch. 132, Sec. 1.
 3. Ibid. Sec. 2.
 4. Ibid. Senate Bill, No. 53, 1927. Sec. 50.
 5. Ibid. Sec. 503.
 6. Ibid. Sec. 504-523.



Political parties were to have a treasurer who was to take and disburse all funds of such political party. No candidate was to spend more than one-tenth of one year's salary for political activity, but this amount did not include traveling expenses. Party treasurers were to keep a detailed account of all money received and spent and of all obligations made for elections. If such a record of election funds and expenses was not kept, the treasurer was liable to fine or imprisonment. If a treasurer's report were defaced or destroyed to cover up corrupt and unlawful expenditures, the person doing such act was liable to fine and imprisonment. (1)

The offenses mentioned above were punishable by fines ranging up to 1000 dollars and penitentiary sentences up to five years.

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1. New Mexico. Senate Bill, No 53, 1927. Sec. 706-713.



CHAPTER XI

THE CONSTITUTION AND ELECTIONS

The constitution of a state is a higher order of law than ordinary law for such constitution gives law the reason for existence and sets certain restrictions on laws that may be passed.

Article XXII of the constitution gives the schedule and certain other miscellaneous necessities for statehood. As touching elections the following is an outline.

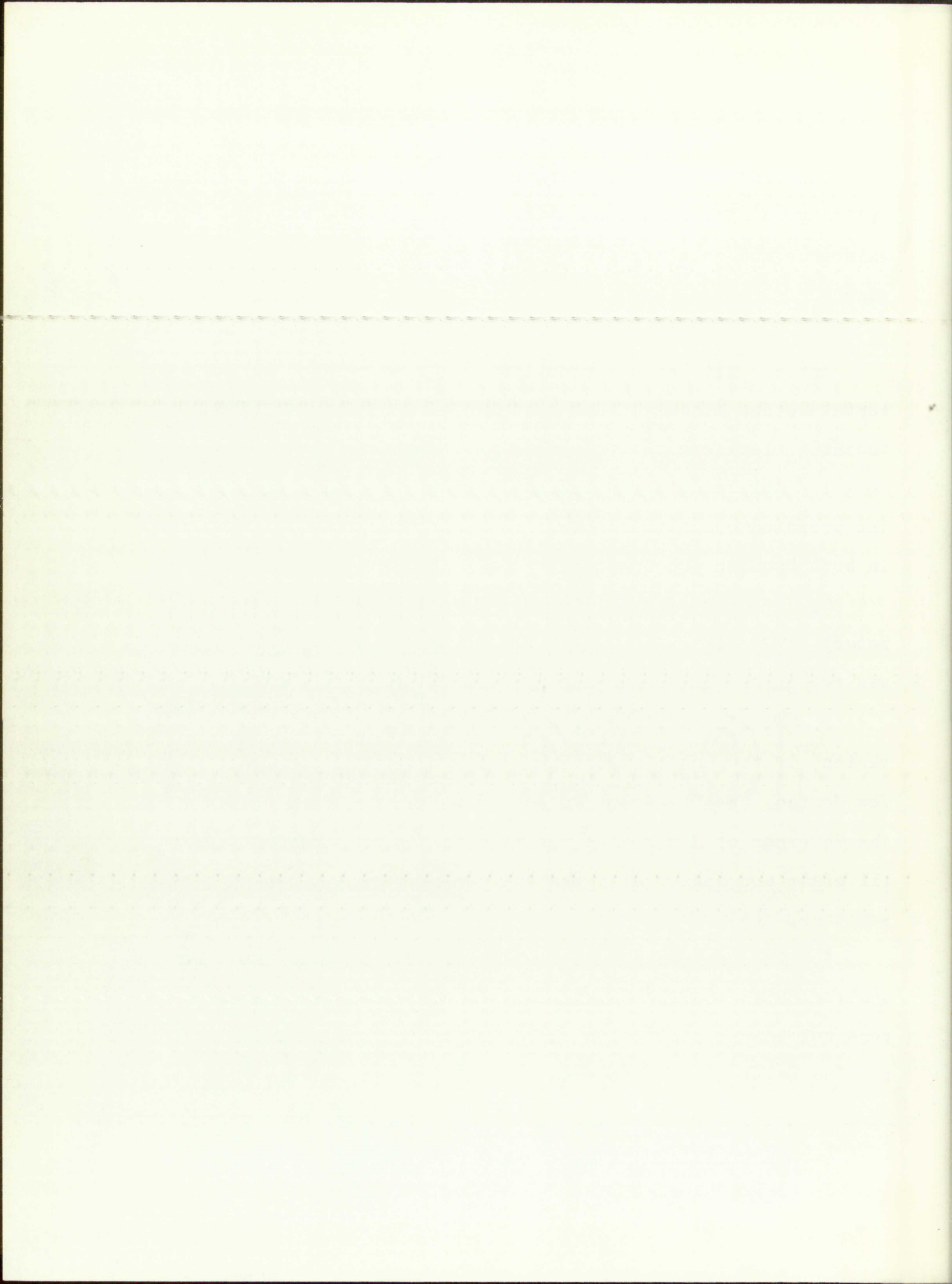
1. All ballots for the election on the ratification of the proposed constitution were to be printed with instructions in both Spanish and English. (1)

2. Returns of such election were to be sent to the Secretary of Territory who, with the Governor and Chief Justice, was to canvass the votes and declare the results. (2)

3. Within thirty days after the election on the constitution, if the constitution was ratified by the people of New Mexico, the President and Congress of the United States, the Governor of New Mexico was to proclaim an election for all state and county officers and for representatives and senators. (3)

4. The most important section of this article was that section which provided that all laws of the territory which were not inconsistent with the constitution and which were not inconsistent with the constitution and which were in

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1. Constitution of New Mexico. Article XXII, Sec. 14.
 2. Ibid. Sec. 15.
 3. Ibid. Sec. 17, 20.



force at the time of the passing of the constitution were to remain in force until changed by the legislature. (1)

Other parts of the constitution bearing directly on elections are in substance as follows:

All elections are to be free and open, and no power, civil or military, is to interfere to prevent the free exercise of the right of suffrage. (2)

All male citizens of the United States who are twenty-one years of age and who have resided in New Mexico one year, in the county ninety days, and the precinct thirty days is entitled to vote. (3)

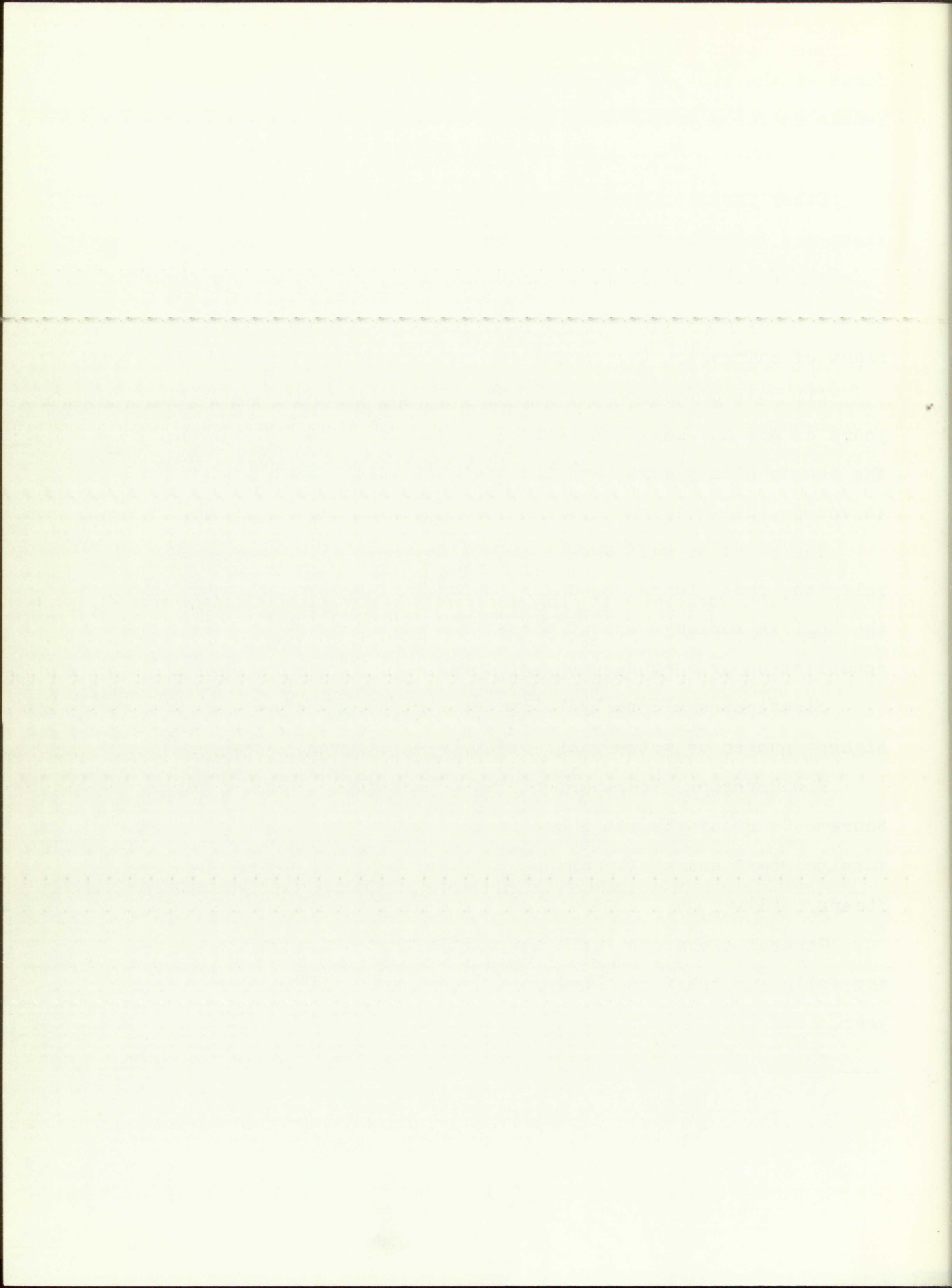
The right of suffrage is not to be restricted because of religion, race, language, color, or inability to read or write the English language except where otherwise provided by the constitution or a subsequent amendment. (4)

Elections shall be by ballot and the person receiving the highest number of votes shall be declared elected. (5)

The Governor, Secretary of State, and Chief Justice of the Supreme Court of the state are to constitute the State Canvassing Board and shall canvass all elections for state officers. (6)

General elections shall be held in this state on the Tuesday following the first Monday in November in each even numbered year. (7)

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1. Constitution of New Mexico. Article XXII, Sec. 4.
 2. Ibid. Article II, Sec. 8.
 3. Ibid. Article VII, Sec. 1.
 4. Ibid. Article VII, Sec. 3.
 5. Ibid. Sec. 5.
 6. Ibid. Article V, Sec. 2.
 7. Ibid. Article XX, Sec. 6.

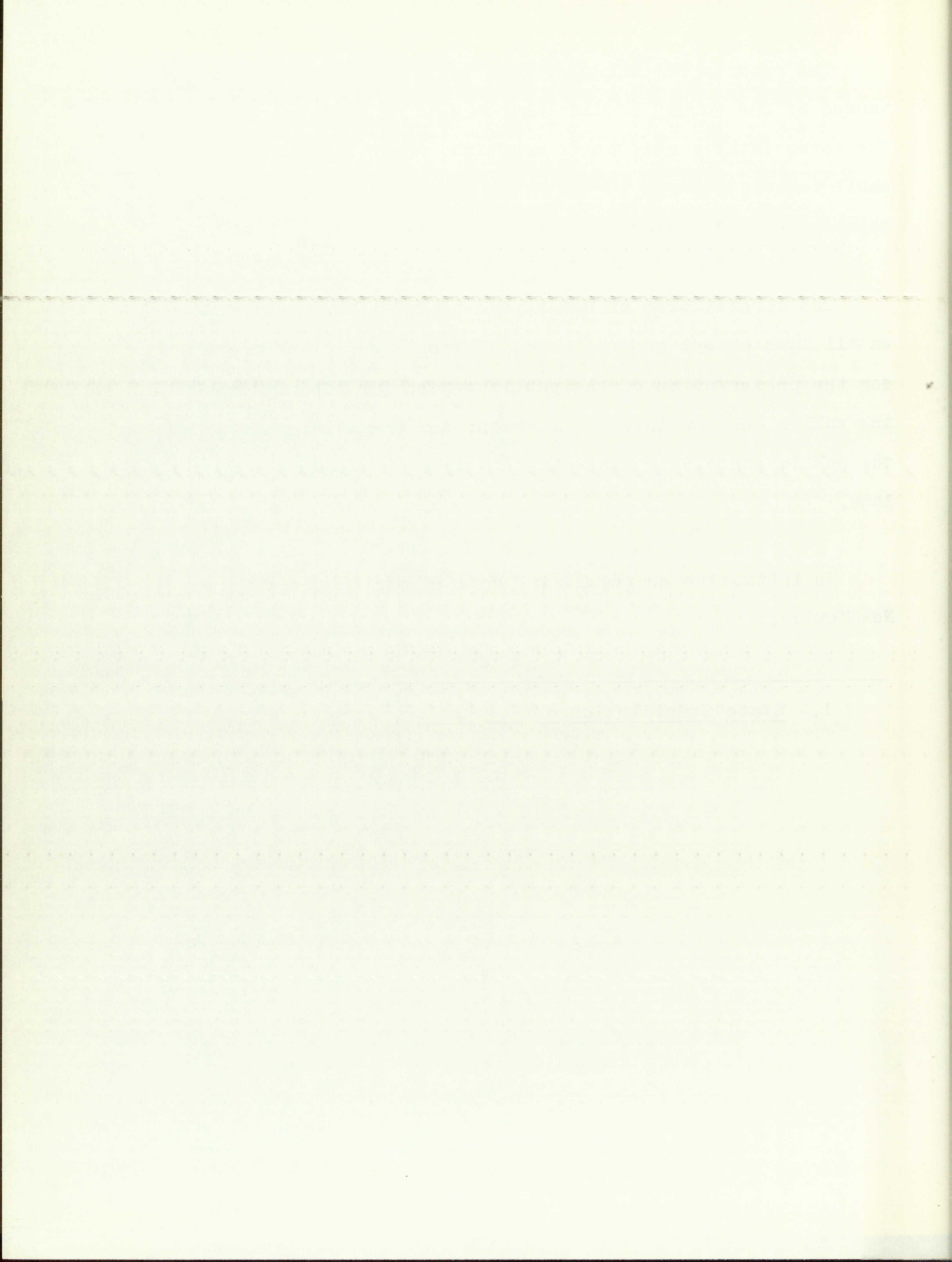


The returns for all elections for officers shall be canvassed by the county canvassing board of each county as to the votes in their respective counties. Such county board shall forward returns to the State Board who shall canvass the total votes and declare the results. (1)

The constitution of New Mexico provides for a referendum on all laws except general appropriation laws; laws providing for the preservation of the public peace; for the payment of the public debt or interest thereon; for the maintenance of the public schools or state institutions; or local and special laws.

No initiative or recall is provided for in the state of New Mexico.

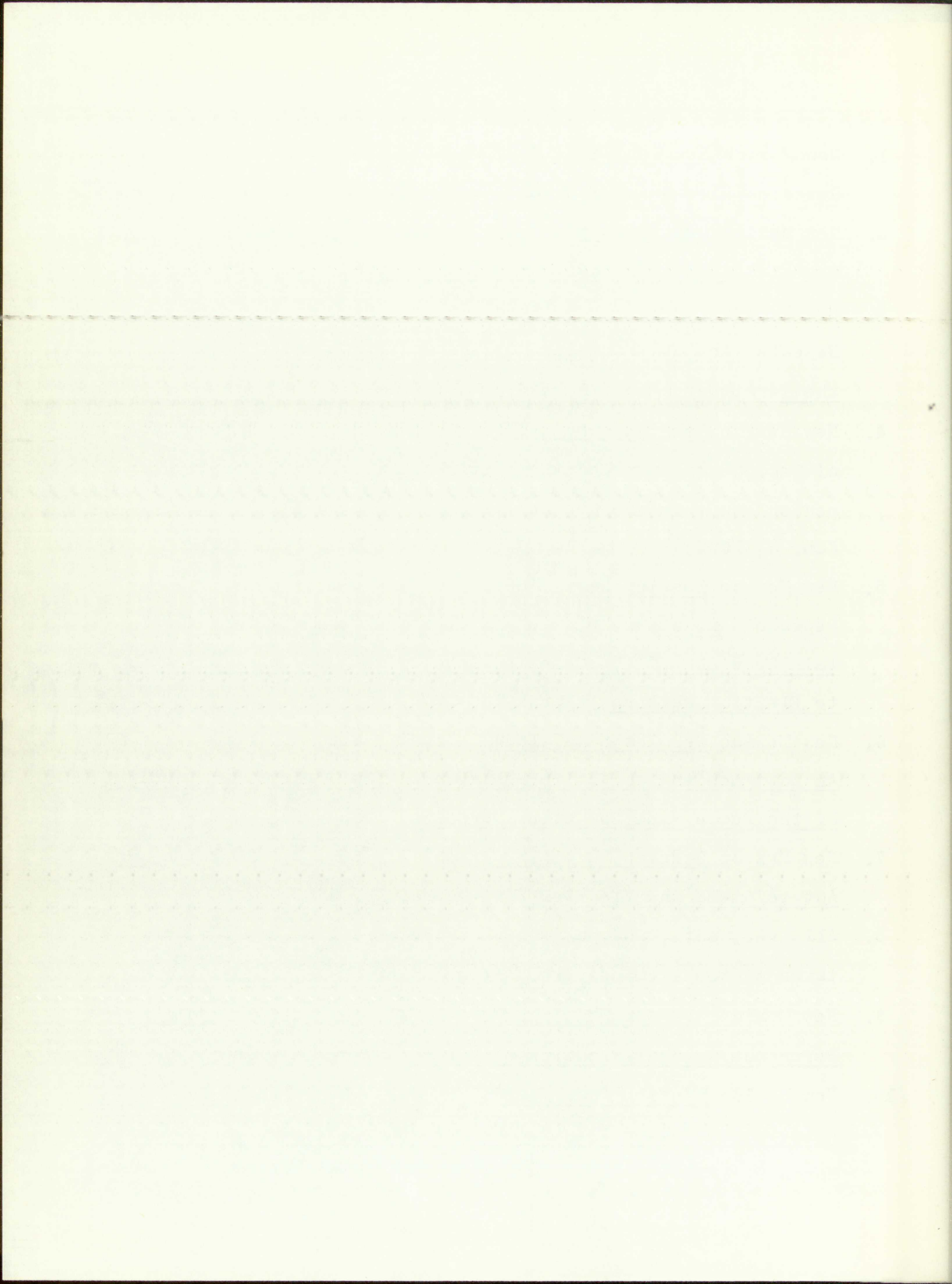
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1. State Constitution of New Mexico, Article XX, Sec. 7.



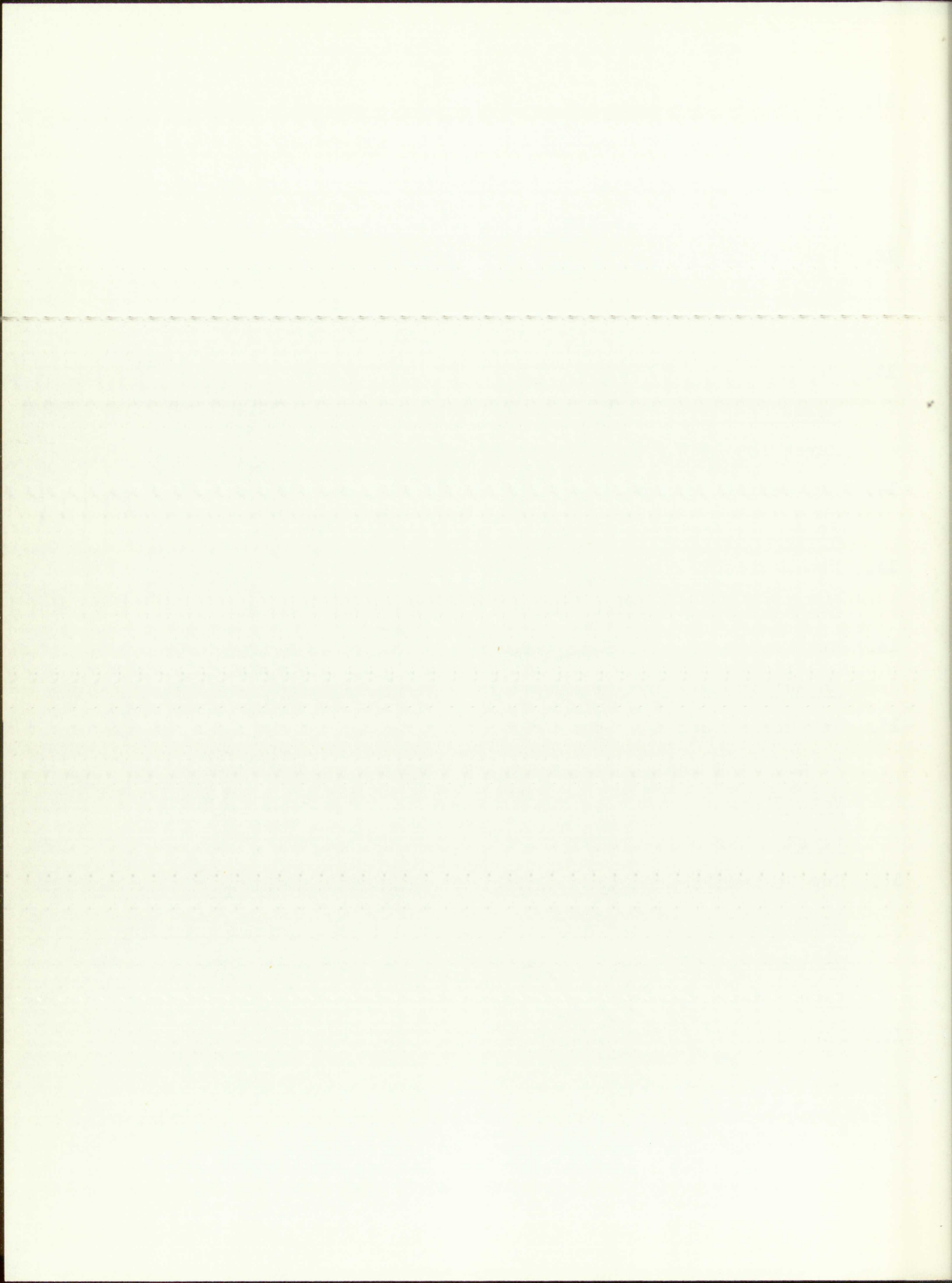
CHAPTER X

REPEALS

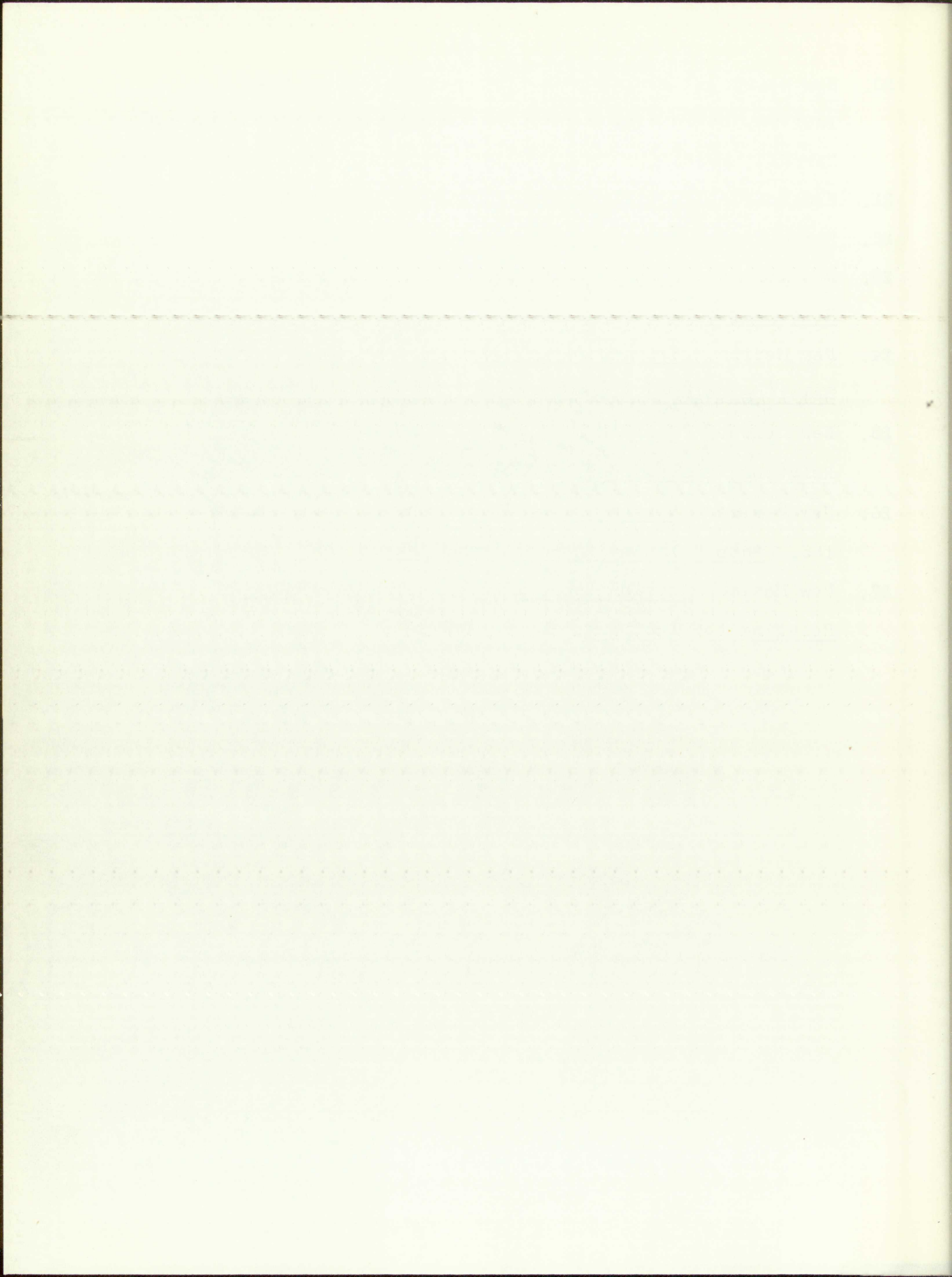
1. New Mexico Session Laws, 1851, Ch. 28, Sec. 31.
Repealed Election Laws, Feb. 16, 1854.
2. New Mexico Session Laws, 1854, Ch. 31, Sec. 4, 23.
Repealed An Act Amending the Election Laws, Feb. 10, 1855.
3. New Mexico Session Laws, 1868, Ch. 31, Sec. 4, 23.
Repealed An Act Providing for the Registration of Voters of the Territory, Feb. 28, 1889.
4. New Mexico Session Laws, 1891. Ch. 57, Sec. 4, and so much of Sec. 36 as provided that "it shall be illegal for any person to vote who has not paid his poll tax." Repealed Jan. 5, 1893.
5. New Mexico Session Laws, 1889. Ch. 135, Sec. 4.6.3.
Repealed An Act in Relation to Elections and to Amend Certain Sections of the Compiled Laws of New Mexico Relating to Election Matters, March 18, 1909.
6. New Mexico Session Laws, 1889. Ch. 17, Sec. 4. Repealed An Act Amending an Act in Relation to the Election of Justices of the Peace, and for Other Purposes, March 18, 1909.
7. New Mexico Session Laws, 1905. Ch. 17, Sec. 3. Repealed An Act to Amend the Election Laws, March 18, 1909.
8. All laws, acts, and parts of acts requiring a person to pay taxes or to be tax-payers. Repealed March 18, 1909.
9. New Mexico Session Laws, 1907. Ch. 21. Repealed An Act in Reference to Qualification of Voters, March 18, 1909.
10. New Mexico Session Laws, 1913. Ch. 59. Repealed An Act Relative to Making Election Returns to the Secretary of State, March 9, 1915.



11. New Mexico Session Laws, 1903. Ch. 84, Sec. 1. Repealed An Act Authorizing Boards of County Commissioners to Establish Election Districts in Precincts Casting over Five Hundred Votes, March 13, 1917.
12. New Mexico Session Laws, 1909. Ch. 105, Sec. 6, 10, 18. Repealed An Act to Regulate Elections and to Provide for Non-Partisan Election Boards, March 13, 1917.
13. New Mexico Session Laws, 1891. Ch. 85. Repealed An Act to Amend Chapter 135, Laws 1889, in Relation to Elections, March 13, 1917.
14. New Mexico Session Laws, 1905. Ch. 127, Sec. 2. Repealed An Act to Amend the Election Laws, March 13, 1917.
15. New Mexico Session Laws, 1893. Ch. 76. Repealed An Act in Relation to Elections, March 13, 1917.
16. New Mexico Session Laws, 1889. Ch. 135, Sec. 5. Repealed An Act in Relation to Elections, March 13, 1917.
17. New Mexico Session Laws, 1912. Ch. 73, Sec. 1, 2, 3, 4, 5, 6, 7, 8. Repealed An Act Providing That Railroad Employees May Vote Elsewhere than in the Precinct in which They are Registered, March 13, 1917.
18. New Mexico Session Laws, 1919. Ch. 110. Repealed An Act to Amend Section 15, Chapter 89, of the Acts of the Third Legislature of New Mexico, 1917, Being An Act Relating to Elections, March 7, 1923.
19. New Mexico Session Laws, 1911. Ch. 126. Repealed An Act to Provide for the Payment of Past and Future Election Expenses, March 7, 1923.



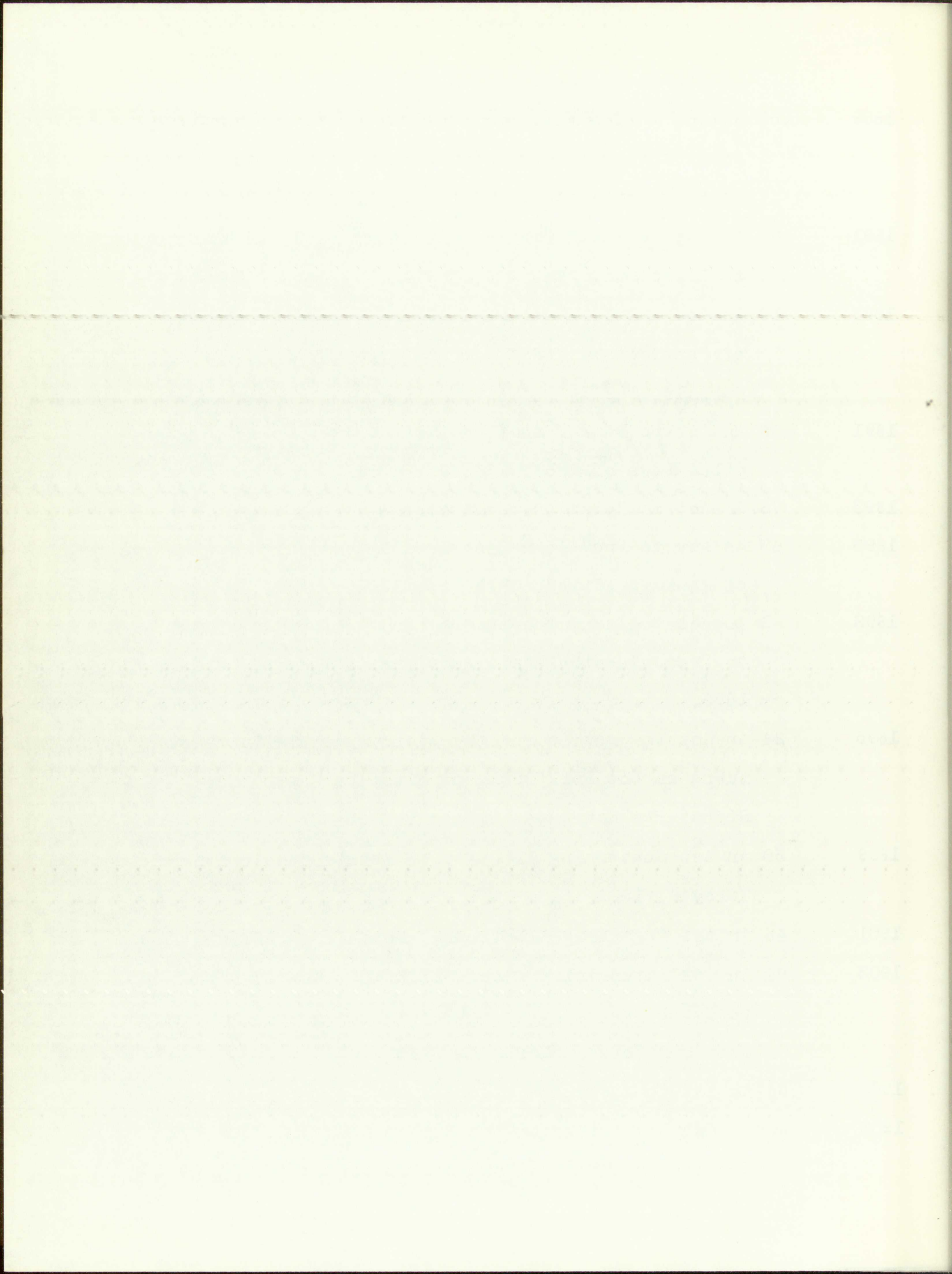
20. New Mexico, All laws relating to poll tax except that such laws may be in effect until back poll tax is paid, Repealed March 7, 1925.
21. New Mexico. Compiled Laws, 1915, Sec. 1203.
22. New Mexico. Compiled Laws, 1915. Sec. 1963 to 2080.
23. New Mexico. Session Laws, 1915. Ch. 27, 34, 41. Acts Relating to Elections. March 1927.
24. New Mexico. Session Laws, 1917. Ch. 17, 89. Acts Relating to Elections. March 1927.
25. New Mexico. Session Laws, 1919. Ch. 91, 141. Acts Relating to Elections. March 1927.
26. New Mexico. Session Laws, 1921. Ch. 92, 107, 132, and 155. Acts Relating to Elections. March, 1927.
27. New Mexico, Session Laws, 1923. Ch. 15, 43. Acts Relating to Elections. March 1927.



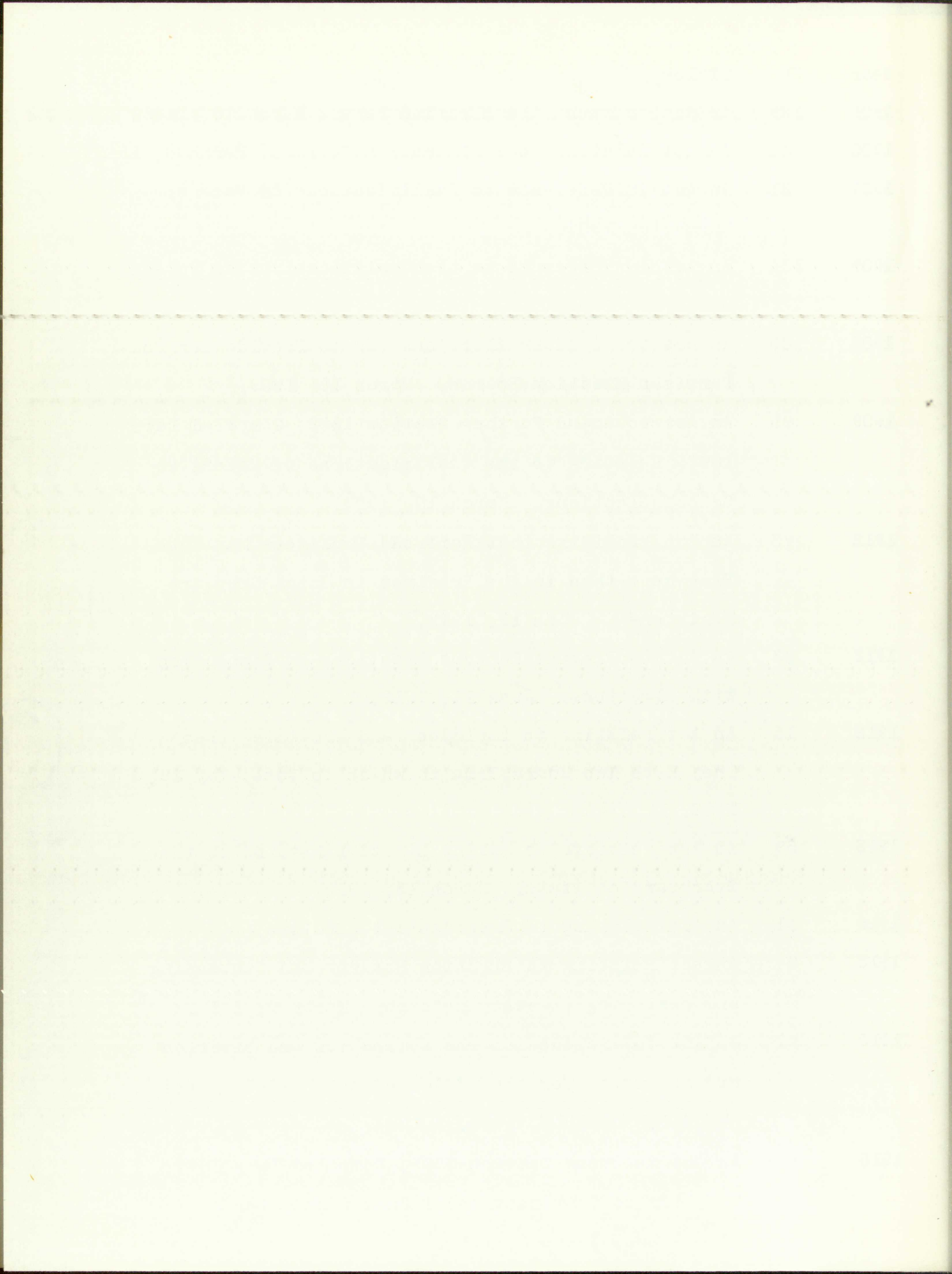
Laws Passed by the New Mexico Legislature Relating to
Elections

Year	Ch.	
1851	28	Election Laws. July 20, 1851
1851-52	29	An Act to Amend the Election Laws. Jan. 9, 1852.
1853-54	31	An Act Amending the Election Laws Passed July 20, 1851. Feb. 16, 1854.
1854-55	30	An Act Repealing Section 4 of an Act to Amend the Election Law, Approved Feb. 16, 1854. Feb. 10, 1855.
1859-60	21	An Act to Regulate the Trial in Cases of Contested Elections. Jan 27, 1860.
1860-61	42	An Act to Amend the Election Laws, Jan 31, 1861.
1867	32	An Act Providing for Election of Sheriff in Case of Vacancy. Jan 31, 1867.
1867-68	26	An Act Providing for the Registration of Voters of the Territory. Jan. 30, 1868.
1868-69	49	An Act Amending an Act Providing for the Registration of the Voters, Approved Jan.30, 1868.
1869-70	47	An Act Changing the Elections and Sessions of the Legislative Assembly...in Accordance with the Provisions of the Act of Congress, Approved March 3, 1869. Feb. 3, 1870.
1873-74	29	An Act with Reference to Contested Elections of the Offices of the Different Counties of this Territory. Dec. 23, 1873.
1875-76	25	An Act Amending the Law with Reference to the Time of Holding Elections. Jan 11, 1876.
188-	22	An Act Prohibiting the Sale of Spirituous Liquors on Election Day. Feb. 6, 1880.
1882	37	An Act to Allow a Compensation to Judges and Clerks

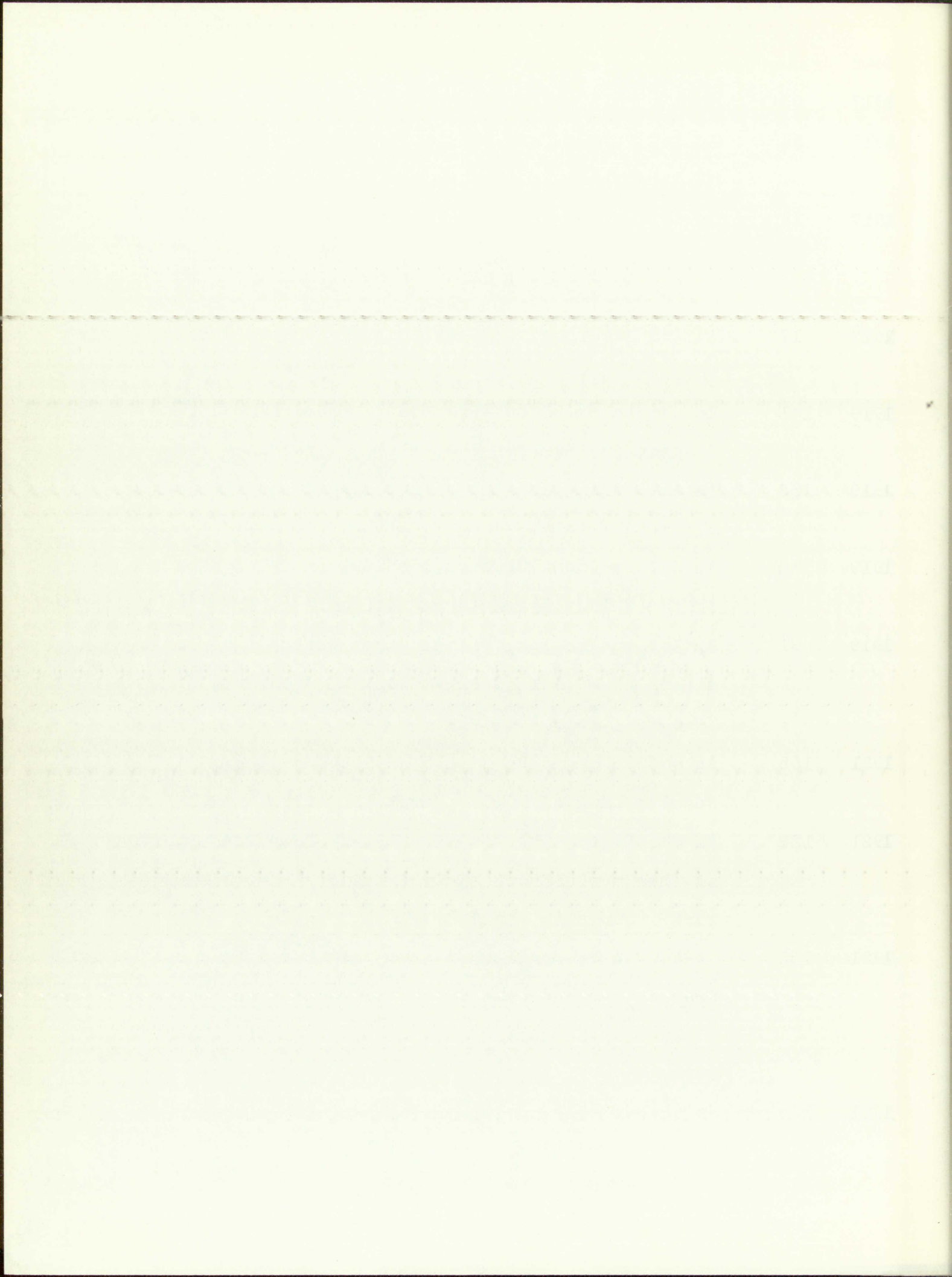
Year.	Ch.	Titles
		of Election. Feb. 25, 1882.
1889	135	An Act in Relation to Elections and to Amend Certain Sections of the Compiled Laws of New Mexico Relating to Election Matters. Feb. 28, 1889.
1891	85	An Act to Amend Chapter 135, Laws 1889, in Relation to Elections. Feb. 26, 1891
1891	17	An Act Amending an Act in Relation to the Election of Justices of the Peace, and for other Purposes. Feb. 10, 1891
1891	6	An Act to Repeal Section 1140, Title 12, of the Compiled Laws of 1884. Jan 31, 1891.
1893	76	An Act in Relation to Elections. Feb. 23, 1893.
1893	63	An Act to Provide a System of Registration for Voters of Municipalities. Feb. 23, 1893.
1893	2	An Act to Amend Chapter 25 and 77, Laws 1891, and to Prescribe the Qualifications of Voters. Jan 5, 1893.
1895	24	An Act to Provide for the Signing of Election Returns on the Poll Books of Election Where Such Signatures Have Been Omitted. Feb. 21, 1895.
1899	30	An Act Concerning Election of County Commissioners. Marcy 9, 1899.
1901	48	An Act Regarding Elections. March 19, 1901.
1903	84	An Act Authorizing Boards of County Commissioners to Establish Election Districts in Precincts Casting over 500 Votes. March 17, 1903.
1903	64	An Act to Amend the Election Law. March 14, 1903
1903	59	An Act Providing for the Registration and Use of Emblems or Devices upon Ballots for Voters. March 14, 1903.



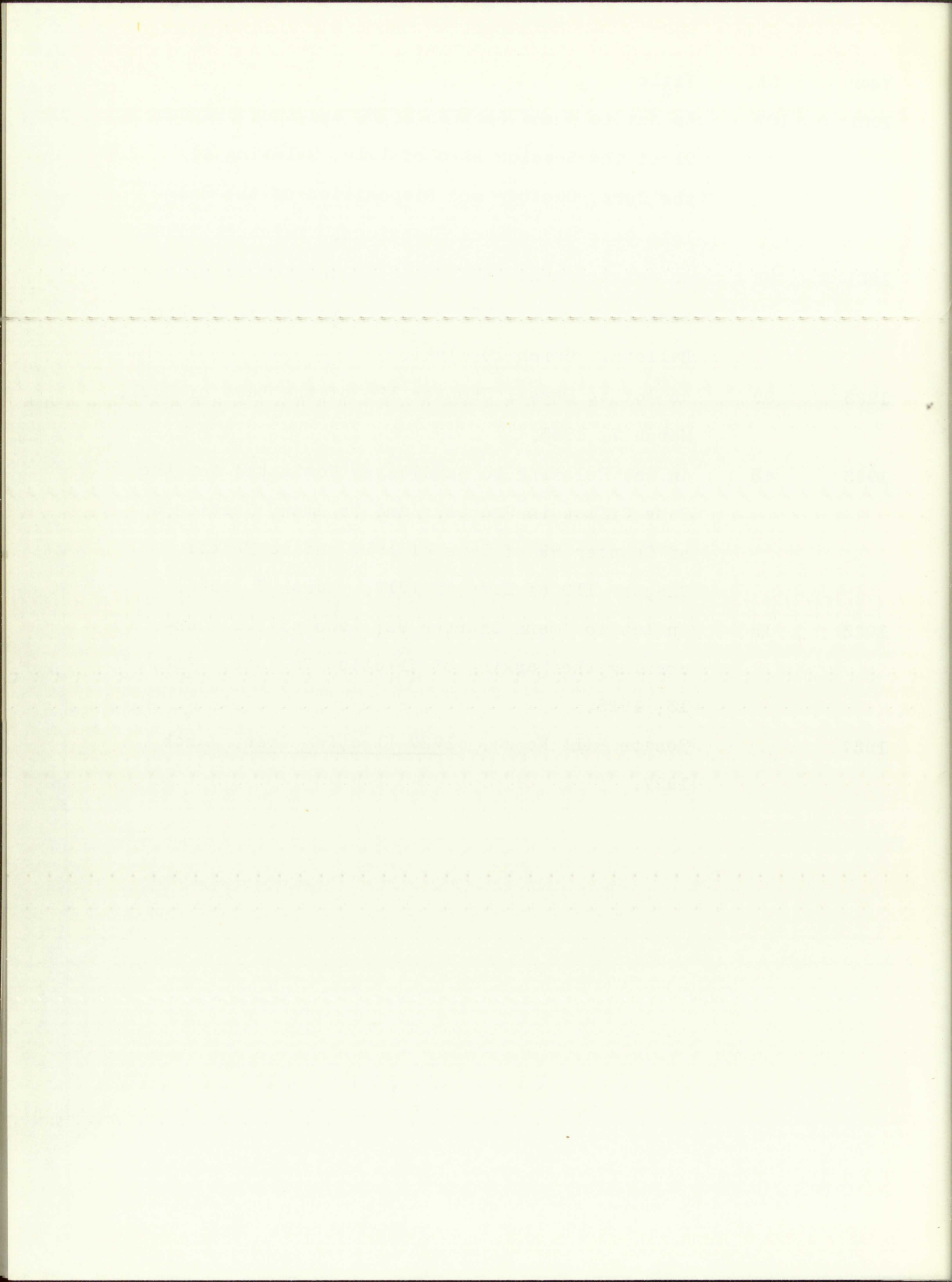
Year	Ch.	Titles
1905	127	An Act to Amend the Election Laws. March 16, 1905.
1905	40	An Act Relating to Registration Boards, March 8, 1905.
1907	21	An Act in Reference to Qualifications of Voters. March 16, 1907.
1909	134	An Act in Reference to the Qualifications of Voters. March 18, 1909.
1909	105	An Act to Regulate Elections and to Provide for Non- Partisan Election Boards. March 18, 1909.
1909	95	An Act to Amend Further Section 1532, Compiled Laws 1897, Relating to the Qualifications of Voters at School Elections. March 18, 1909.
1912	73	An Act Providing that Railroad Employees May Vote Elsewhere than in the Precinct in Which They Are Registered. June 11, 1912.
1912	63	An Act to Prevent Corrupt Practices in Connection With Elections. June 11, 1912.
1912	15	An Act Relating to Employees and Providing that They Have Two Hours Time in which to Vote. May 29, 1912.
1913	59	An Act Relative to Making Election Returns to the Secretary of State. March 15, 1913.
1915	41	An Act Relating to Presidential Electors.
1915	34	An Act Relating to Election Returns and Canvassing and Declaring Election Returns. March 9, 1915.
1915	27	An Act to Provide for the Nomination and Election of Candidates for the Office of the United States Senator. March 8, 1915.
1916	16	An Act to Amend Section 3225, Compiled Laws 1897, Relating to Compensation of Judges and Clerks of Elections. March 2, 1915.



Year	Ch.	Titles
1917	89	An Act Relating to Elections. March 13, 1917.
1917	54	An Act Fixing the Time for Voting on Constitutional Amendments. March 12, 1917.
1917	19	An Act Fixing the Time for Holding the Election on the Proposed Amendment to the Constitution. March 5, 1917.
1917	17	An Act Relating to Elections upon Proposed Constitutional Amendments. March 5, 1917.
1919	141	An Act to Amend Sub-Section 7 of Section 8 of Chapter 89, Session Laws 1917. March 17, 1919.
1919	138	An Act Fixing the Time for Voting upon Constitutional Amendments... March 17, 1919.
1919	110	An Act to Amend Section 15, Chapter 89 of the Acts of the Third Legislature. March 17, 1919.
1919	91	An Act to Provide for the Care, Custody and Disposition of Ballots Cast at General Elections. March 15, 1919.
1921	155	An Act to Amend Section 3 of Chapter 27 of the Session Laws of 1915. March 12, 1921.
1921	138	An Act Fixing the Time for Voting Upon Constitutional Amendments Proposed by the Fifty State Legislature. March 12, 1921.
1921	132	An Act to Preserve the Purity of Elections and Protect the Exercise of the Right of Franchise by Electors. Repealing Any Act in Conflict. March 11, 1921.
1921	126	An Act to Provide for the Payment of Past and Future Election Expenses. March 11, 1921.

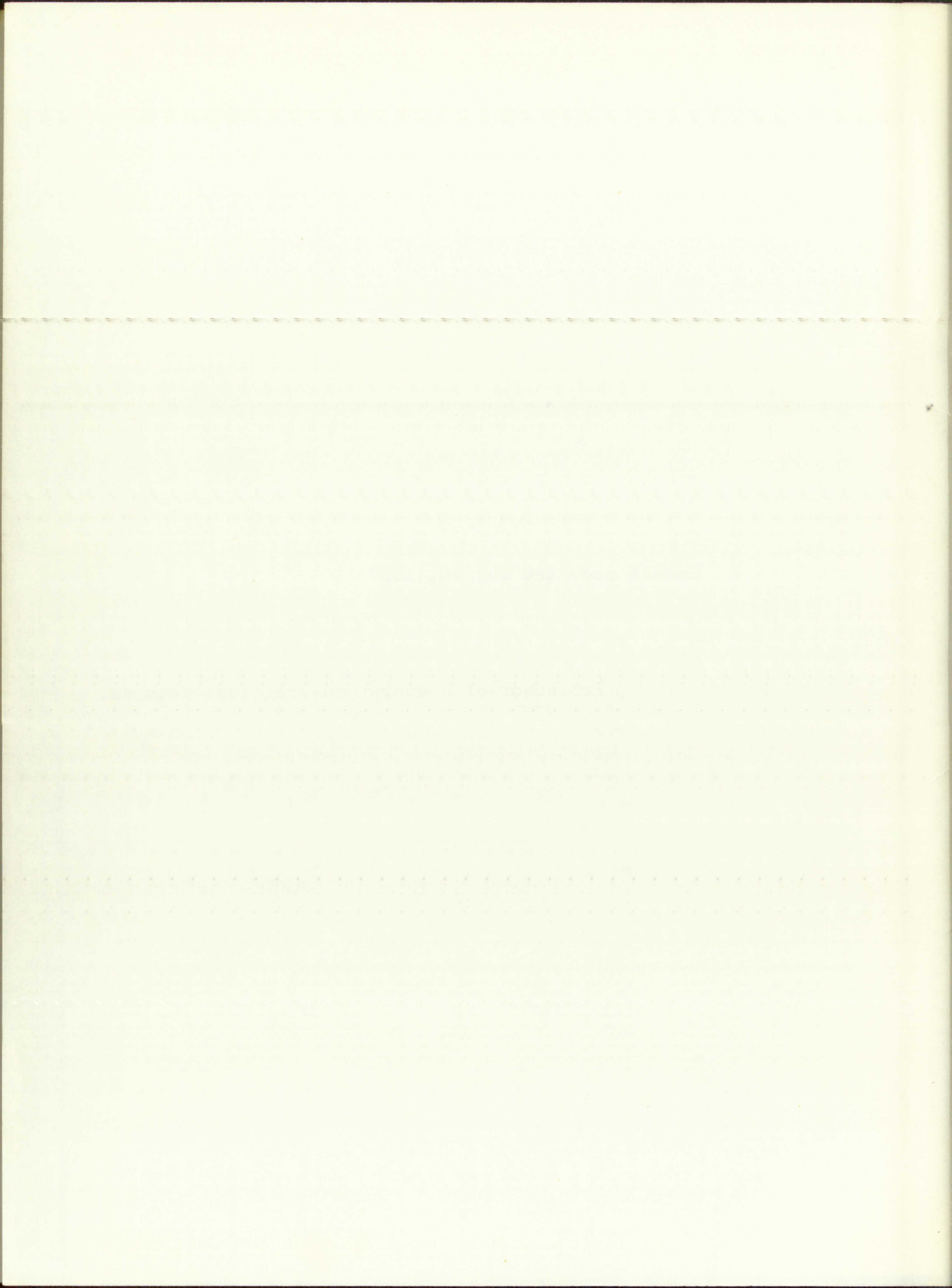


Year	Ch.	Title
1921	107	An Act to Amend Section 2, 3, and 4 of Chapter 91 of the Session Laws of 1919, Relating to the Care, Custody and Disposition of the Ballots Cast at General Elections. March 11, 1921.
1921	92	An Act to Amend Section 18 of Chapter 89 of the Session Laws of 1917, Relative to Aid in Marking Ballots. March 10, 1921.
1923	89	An Act to Repeal Chapter 126 of the Laws of 1921. March 7, 1923.
1923	43	An Act Relating to Candidates Nominated for the Same Office in Groups; and to Amend Section 6 of Chapter 89 of Laws of 1917 and to Repeal Chapter 110 of Laws of 1919. March 7, 1923.
1923	15	An Act to Amend Chapter 92, Laws of 1921 Concerning the Marking of Election Ballots. Feb. 13, 1923.
1927		Senate Bill No 53. <u>1927 Election Code</u> . March 1927.



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Professor of History and Political Science.



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