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Election Laws

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and statutory provisions. Accordingly, it is uneven in its approach, being too harsh in some instances, too lax in others.

Further progress may not be achieved by enacting a comprehensive statute, using the new disclosure Act as a point of departure. This would require weighty consideration, for many problems beyond the scope of this paper must be taken into account (*e.g.*, the question of the state legislator appearing before a state administrative board; receipt of gifts; disclosure of confidential materials, etc.). Certain other technical problems must also be considered, such as whether the over-all conflict of interest legislation should include municipal and county employees and officials. While the difficulties are many, certain other states have not found them insurmountable. It is hoped that the legislature will extend this basic conflict of interest law by taking far-reaching action in this vital area within the near future.

Edward Perry Johnson

Election Laws

Chapter 24 of the Acts of the West Virginia Legislature¹ makes changes in seven sections of the West Virginia Election Code.² The changes are confined to two areas: purging of the registration rolls and defining the powers and duties of the Secretary of State. The bill becomes effective 90 days from passage or approximately one week before the 1968 primary election on May 14. Therefore, its operation will probably not have any substantial effect, if any, until the general election in November 1968.

Four of the seven amended sections relate to purges of the registration rolls. Before the present amendment, the West Virginia Election Code stated that a voter's registration would be canceled by the clerk of the county court if the voter failed to vote in a period covering two primary and general elections.³ As amended by Chapter 24, this section places an affirmative duty on the

¹ Ch. 24, Acts of the West Virginia Legislature, Reg. Sess. 1968 amends W. VA. CODE ch. 3, art. 2, §§ 3, 9, 11, 16, 22 and 36 and ch. 3, art. 6, § 9 (Michie 1966).

² The 58th Legislature passed six other bills making minor changes in the election laws affecting W. VA. CODE ch. 3, art. 1, §§ 16, 19, 23, and 29; ch. 3, art. 2, § 30; and ch. 3, art. 4, § 20 (Michie 1966).

³ W. VA. CODE ch. 3, art. 2, § 3 (Michie 1966).

clerk of the county court to correct errors in the registration records and purge the rolls of those persons not voting at least once during a period covering two state-wide primary and general elections. This change in effect requires a continuous purging of the registration rolls. Any person removed from the rolls must reregister before voting again. There is some question as to the meaning of the words "two state-wide primary and general elections." This Act adds the word "state-wide" to the language in the former statute. If the words refer to an election throughout the state, then the rolls must be purged of those who did not vote in the preceding two and one-half years. However, if the words refer to an election in which the voters vote for a state-wide officer (e.g. Governor) then there would be only a removal of a voter who did not vote in a four and one-half year period. The plain meaning of the statute would appear to indicate two and one-half years since there are two primary and two general elections in that period in which all the voters participate throughout the state. In most off-year elections the voters elect a U.S. Senator, so a state-wide officer is elected by the voters.

The amended section also provides a definite time of 120 days following each election within which the clerk of the county court *must* perform this duty. By placing an affirmative duty on the clerk and stating a definite time period within which the duty must be performed, the amended section makes a substantial change in the previous statute.

The second important change with respect to the purging of the registration rolls relates to the cancellation of the registration of deceased persons. Before the amendment, the provision provided only that the clerk change the registration rolls on proper proof throughout the year.⁴ As amended, the section again places an affirmative duty on the clerk to cancel the registration of a deceased person within 15 days after receipt of a death certificate from either the state or local registrar of vital statistics. The amended section also *requires* county clerks to check the death certificates received by them since 1964 to assure that these persons have been removed from the registration records. This is to be done prior to September 1, 1968. The clerk must then notify the Secretary of State that he has complied with this section before September 15, 1968.

⁴ W. VA. CODE ch. 3, art. 2, § 22 (Michie 1966).

Two further changes relating to purging of the registration rolls are made by this Act. Biennial and quadrennial checkups as required by the election laws⁵ must be completed at least 60 days before the state-wide primary election. Presently no time limit is specified within which these checkups must be completed.⁶ Another change in the present law,⁷ provides that the poll books shall be preserved until the clerk complies with the requirement of removing within 120 days following each state-wide election from the rolls the names of those who have not voted once during the previous stated number of elections.

The second area which is affected by this Act is the powers and duties of the Secretary of State as the chief registration official of the state. The bill amended the present code⁸ to require the Secretary of State to inform registration officials of rules and regulations promulgated by him as provided for in that section. The amended section also gives the Secretary of State the express power to issue of subpoena duces tecum to compel the production of registration records and other pertinent evidence. If such a subpoena is disobeyed, the Secretary of State is given the discretionary power to invoke the aid of the circuit court to compel compliance with the subpoena. The amendment will also permit the removal of the registration records from the custody of the county court in compliance with the issuance of a subpoena duces tecum by the Secretary of State.

The final section⁹ amended by this Act makes willful refusal or neglect of duty by a registration official of rules and regulations promulgated by the Secretary of State a misdemeanor punishable by fine or imprisonment or both.

This Act generally makes formerly *implied* duties and powers of both the county clerks and the Secretary of State *express*. The electorate can compel the performance of these express duties by obtaining a writ of mandamus.¹⁰ Therefore, in the final analysis, the public can enforce the recently amended election laws. The language of the statutes is basically clear. There should be little

⁵ See W. VA. CODE ch. 3, art. 2, § 21 (Michie 1966).

⁶ W. VA. CODE ch. 3, art. 2, § 11 (Michie 1966).

⁷ W. VA. CODE ch. 3, art. 6, § 9 (Michie 1966).

⁸ W. VA. CODE ch. 3, art. 2, § 9 (Michie 1966).

⁹ W. VA. CODE ch. 3, ch. 3, art. 2, § 26 2, § 26 (Michie 1966).

¹⁰ W. VA. CODE ch. 3, art. 1, § 45 (Michie 1966).

difficulty in interpreting the amendments for those who conscientiously wish to comply with the amended election laws.

The best feature of this Act appears to be the provision which requires the county clerks to certify to the Secretary of State that they have complied with the section requiring purging from the rolls the names of those voters who died between 1964 and 1968.¹¹ The intent and purpose behind the enactment of these amendments could be furthered if the Secretary of State would promulgate a regulation (as he has the statutory power to do) that the county clerks certify to him that they have complied with all the duties imposed on them under the West Virginia Election Code each time such a duty arises.

This Act strives to achieve a faster, more effective purge of the registration rolls. Continuous purging of the rolls appears to be a desirable goal.¹² The latent function of the bill seems to be to reduce the opportunities for election frauds by limiting the registration rolls to live, active, qualified voters. Whether the opportunities for election frauds will be diminished by this bill depends on conscientious compliance with the statutes by the clerk of each county court and vigorous enforcement of the election laws by the Secretary of State, under the watchful eye of the public armed with the writ of mandamus.

James Edward Seibert

Implied Consent—Highway Safety

Accidents on the high speed highways of today are taking a prohibitive toll of the driving population. In 1966, there were 52,500 deaths and 1,900,000 disabling injuries resulting from motor vehicle accidents, an increase of over 7 per cent compared with 1965.¹ It has been stated that "more than twice the number of American deaths have been due to automobile accidents during the twentieth century than were due to all the wars since the Declaration of Independence."² Studies show that from 50 per cent to 70 per cent of all fatal accidents involve a driver who has been

¹¹ W. VA. CODE ch. 3, art. 2, § 22 (Michie 1966).

¹² See 22 WASH. & LEE L. REV. 320 (1965).

¹ TRAFFIC SAFETY MARCH 1967 EDITION 9, National Safety Council.

² MAGEE AND BICKELHAUPT, GENERAL INSURANCE 442 (7th ed. 1964).