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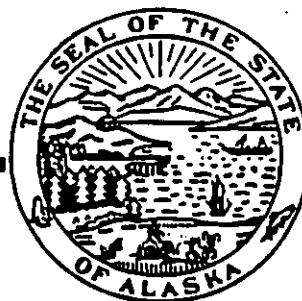


ALASKA ELECTION LAWS

Reprinted from the Alaska Statutes, Title 15

Division of Elections

State of Alaska



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AND
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TITLE 15. ELECTIONS.

Revisor's notes (1971). The provisions in this title were redrafted in 1988 to remove personal pronouns pursuant to sec. 4, ch 58, SLA 1982, and to make other minor word changes.

In 1971 'secretary of state' was changed to 'lieutenant governor throughout the title in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

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- 07. Registration of Voters (15.07.010 - 15.07.200)
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**ALASKA ELECTION LAWS
ALASKA STATUTES**

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Chapter 05. Qualification of Voters.

Section

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11. Qualifications of overseas voters
12. Voter qualification for presidential election
14. Procedures in presidential elections
20. Rules for determining residence of voter
30. Loss and restoration of voting rights
40. Voter disqualification for unsound mind

Collateral references. - 25 Am. Jur. 2d, Elections, Sec. 52-115.

29 C.J.S., Elections, Sec. 14-35.

Women's suffrage amendment to federal or state constitution as affecting pre-existing constitutional or statutory provisions which limited rights or duties to legal or male voters. 157 ALR 461.

Sec. 15.05.010. Voter qualification. A person may vote at any election who

- (1) is a citizen of the United States;
- (2) is 18 years of age or older;
- (3) [Repealed, sec. 38 ch 116 SLA 1972];
- (4) has been a resident of the state and of the election district in which the person seeks to vote for at least 30 days just before the election; and
- (5) [Repealed, sec. 1 ch 15 SLA 1970];
- (6) has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction. (Sec. 1.01 ch 83 SLA 1960; am sec. 1 ch 125 SLA 1962; am sec. 1 ch 80 SLA 1963; am sec. 1 ch 211 SLA 1968; am sec. 1 ch 88 SLA 1969; am sec. 1 ch 15 SLA 1970; am sec. 1 ch 75 SLA 1972; am secs. 1, 38 ch 116 SLA 1972; am secs. 2, 3 ch 197 SLA 1975; am sec. 1 ch 100 SLA 1980)

Cross references. For moving from election district just before election, see AS 15.20.015. For time for registration, see AS 15.07.040.

Effect of amendments. The 1980 amendment substituted "is 18 years of age or older" for "has passed his 18th birthday" in paragraph (2).

Legislative history reports. For report on ch 83, SLA 1960 (CSHB 252), see 1960 House Journal, pp. 139, 140. For report on ch 88, SLA 1969 (HB 100), see 1969 House Journal, p. 443. For report on ch 15, SLA 1970 (CSHB 346), see 1970 House Journal, p. 131. Related House Joint Resolution No. 51 is also reported on p. 131.

Opinions of attorney general. The qualifications of an absentee voter should be determined as of election day rather than the date the ballot is filled in and mailed. 1960 Op. Att'y Gen. No. 21.

NOTES TO DECISIONS

Equal right to vote. A citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. This "equal right to vote" is not absolute; the states have the power to impose voter qualifications, and to regulate access to the franchise in other ways. But, as a general matter, before that right to vote can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

Denial of right must promote compelling state interest. If a challenged statute grants the right to vote to some citizens and denies the franchise to others, the supreme court must

determine whether the exclusions are necessary to promote a compelling state interest. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

There is a difference between bona fide residence requirements and durational residence requirements. The states have the power to require that voters be bona fide residents of the relevant political subdivision. An appropriately defined and uniformly applied requirement of bona fide residence may be necessary to preserve the basic conception of a political community, and therefore could withstand close constitutional scrutiny. But durational residence requirements, representing a separate voting qualification imposed on bona fide residents, must be separately tested by the stringent standard. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

Durational residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on only those persons who have recently exercised that right. Absent a compelling state interest, a state may not burden the right to travel in this way. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

Durational residence laws which classify bona fide residents on the basis of recent travel, penalizing those persons, and only those persons, who have gone from one jurisdiction to another during the qualifying period, directly impinge on the exercise of a fundamental personal right, the right to travel. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

All durational residency requirements are prima facie invalid as in contravention of the equal protection clause because they penalize the right to travel and the right to vote in elections on an equal basis with other citizens in the jurisdiction. The only durational residency requirements that will be countenanced are those which are absolutely necessary for administrative purposes. *State v. Van Dort*, Sup. Ct. Op. No. 844 (File No. 1790), 502 P.2d 453 (1972).

And they must be measured by a strict equal protection test. They are unconstitutional unless the state can demonstrate that such laws are necessary to promote a compelling governmental interest. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

But finding a constitutionally acceptable period is surely a matter of degree. *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); *Marston v. Lewis*, 410 U.S. 679, 93 S. Ct. 1211, 35 L. Ed. 2d 627 (1973).

50-day voter registration cutoffs upheld. The United States supreme court upheld a 50-day voter registration cutoff where the state had offered evidence to establish the need for the 50-day period, given the vagaries and numerous requirements of the state election laws, although the 50-day period approached the outer constitutional limits in this area. *Burns v. Fortson*, 410 U.S. 686, 93 S. Ct. 1209, 35 L. Ed. 2d 633 (1973).

The United States supreme court upheld a 50-day durational voter residency requirement and a 50-day voter registration requirement where the state had demonstrated that 50 days rather than 30 days were necessary to promote the state's important interest in accurate voter lists. *Marston v. Lewis*, 410 U.S. 679, 93 S. Ct. 1211, 35 L. Ed. 2d 627 (1973).

30 days is the maximum permissible residency period in Alaska. *State v. Van Dort*, Sup. Ct. Op. No. 844 (File No. 1790), 502 P.2d 453 (1972). Communication deficiencies within Alaska do not justify a residency requirement of greater than 30 days. *State v. Van Dort*, Sup. Ct. Op. No. 844 (File No. 1790), 502 P.2d 453 (1972).

An alien who is a permanent resident of Alaska may be precluded from voting in state elections. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

Under express language of Alaska Const., art. V, sec. 1, aliens are excluded from voting in the State of Alaska. *Park v. State*, Sup. Ct. Op. No. 1100 (File No. 2307), 528 P.2d 785 (1974).

Residence. A post office box or private mail service address is clearly not a voter's fixed place of habitation and is therefore insufficient to fix a voter's residence within a voting district. Thus, any voter providing such an address as his or her residence would be ineligible to vote unless he or she provided additional information regarding that voter's residence. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Elmendorf Air Force Base is a bounded area wholly within Senate District H. Thus, merely listing "Elmendorf Air Force Base" is sufficient to fix a voter's residence to a specific locale within District H. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Overseas voters. A voter who actually registered pursuant to AS 15.05.011 may not vote in a state race, but a person living outside the United States is not required to register pursuant to AS 15.05.011, but may vote by absentee ballot in Alaska if that person is otherwise qualified pursuant to this section. Where every questioned absentee voter listed a presumptively valid Alaska residence within District H and was otherwise qualified and no evidence was produced rebutting the presumption of residence, these ballots were properly counted in a state senate election. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Stated in *Green v. State*, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

Collateral references. Validity of statute requiring information as to age, sex, residence, etc., as condition of registration or right to vote. 14 ALR 260.

Extent of power of political party, committee, or officer to exclude persons from participating in its primaries as voters or candidates. 70 ALR 1501; 88 ALR 473; 97 ALR 685; 151 ALR 1121.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration. 76 ALR 1238.

Nonregistration as affecting legality of votes cast by persons otherwise qualified. 101 ALR 567.

Validity of governmental requirement of oath as applied to voters. 18 ALR2d 329.

State voting rights of residents of federal military establishments. 34 ALR2d 1193.

Right of married woman to use maiden surname. 67 ALR3d 1266.

Sec. 15.05.011. Qualifications of overseas voters. (a) A person residing outside the United States may register and vote absentee by qualifying under this section.

(b) Before registering a person under this section, the director shall determine that the person

(1) was domiciled in the state immediately before leaving the United States;

(2) meets the qualifications established in AS 15.05.010(1) and (2);

(3) has not established a domicile in another state, territory, or possession of the United States since leaving this state;

(4) is not registered to vote and has not voted in another state, territory, or possession of the United States since leaving this state;

(5) has a valid passport, card of identity and registration, or other identification issued under the authority of the United States Secretary of State, and identification complying with the requirements of this title.

(c) Lack of a place of abode in the state or lack of intent to return to the state does not disqualify a person who qualifies under (b) of this section.

(d) A person registered under this section may vote in a federal election in this state. (Sec. 2 ch 100 SLA 1980)

NOTES TO DECISIONS

A voter who actually registered pursuant to this section may not vote in a state race, but a person living outside the United States is not required to register pursuant to this section and may vote by absentee ballot in Alaska if that person is otherwise qualified pursuant to AS 15.05.010. Where every questioned absentee voter listed a presumptively valid Alaska residence within District H and was otherwise qualified and no evidence was produced rebutting the presumption of residence, these ballots were properly counted in a state senate election. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Sec. 15.05.012. Voter qualification for presidential election. A person who is otherwise qualified under AS 15.05.010 but who has not been a resident of the

election district in which the person seeks to vote for at least 30 days preceding the date of a presidential election is entitled to register and vote for presidential and vice-presidential candidates. (Sec. 1 ch 69 SLA 1967; am sec. 2 ch 116 SLA 1972)

Sec. 15.05.014. Procedures in presidential elections. In accordance with the Voting Rights Act of 1965 (P.L. 89-110; 79 Stat. 437; 42 U.S.C. 1973 et seq.), as amended, the following procedures apply to elections for the office of President and Vice-President of the United States:

(1) registration and absentee voting procedures, except as otherwise provided in this section, shall be identical to the procedures established in this title;

(2) registration of otherwise qualified persons shall be permitted without regard to a durational residency requirement;

(3) if any citizen who is otherwise qualified to vote in the state for president and vice-president has begun residence in another state after the 30th day preceding the election and, for that reason, does not satisfy the registration requirements of that state, that person shall be allowed to vote for president and vice-president either in person in the precinct in which the person resided immediately before removal, or by absentee ballot as provided in AS 15.20. (Sec. 1 ch 69 SLA 1967; am sec. 3 ch 116 SLA 1972)

Sec. 15.05.016. Fee prohibited. Obsolete.

Revisor's note. This section is obsolete. The voter's certificate is no longer required by AS 15.05.014. That requirement was eliminated by the rewrite of AS 15.05.014 in sec. 3 of ch 116, SLA 1972. This section reads as follows: "No person may receive a fee from a voter for attesting to a voter's certificate required by AS 15.05.014."

Editor's note. The obsolete section derived from sec. 1, ch 69, SLA 1967.

Sec. 15.05.020. Rules for determining residence of voter. For the purpose of determining residence for voting, the place of residence is governed by the following rules:

(1) A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the civil or military service of this state or of the United States or of absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state, or the United States or of the high seas, while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home.

(2) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. If a person resides in one place, but does business in another, the former is the person's place of residence. Temporary construction camps do not constitute a dwelling place.

(3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.

(4) A person does not lose residence if the person leaves home and goes to another country, state or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in any place to which the person comes

without the present intention to establish a permanent dwelling at that place.

(6) A person loses residence in this state if the person votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until again qualifying under AS 15.05.010.

(7) [Repealed, sec. 38 ch 116 SLA 1972.]

(8) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(9) [Repealed, sec. 38 ch 116 SLA 1972.]

(10) The address of a voter as it appears on an official voter registration card is presumptive evidence of the person's voting residence. If the person has changed voting residence, this presumption is negated only by the voter executing an affidavit on a form prepared by the director setting out the new voting residence. (Sec. 1.02 ch 83 SLA 1960; am sec. 2 ch 125 SLA 1962; am secs. 2, 3 ch 136 SLA 1966; am sec. 1 ch 228 SLA 1968; am secs. 4, 38 ch 116 SLA 1972; am secs. 4, 5 ch 197 SLA 1975; am sec. 6 ch 11 SLA 1979; am sec. 3 ch 100 SLA 1980)

Cross references. For discussion of unconstitutionality of basing reapportionment on civilian population within each election district as reported by the census, see note to Alaska Const., art. VI, sec. 3.

Effect of amendments. The 1979 amendment, in paragraph (1), deleted "or" following "of the high seas" near the end of the paragraph and added "or while residing in the Alaska Pioneers' Home" to the end of the paragraph.

The 1980 amendment substituted "director" for "lieutenant governor" near the end of paragraph (10).

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Military personnel as a class cannot be deprived of the right to vote, and they cannot be arbitrarily eliminated in a population base used to design an apportionment scheme. Egan v. Hammond, Sup. Ct. Op. Nos. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

Therefore, civilian-military distinction in Alaska Const., art. VI, sec. 3 is unconstitutional. See Egan v. Hammond, Sup. Ct. Op. Nos. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

But some military may be excluded. While the clause of Alaska Const., art. VI, sec. 3 seeking to exclude military as a class is unconstitutional, that is not to say that some military cannot be excluded as a permissible device for limiting the impact of transients and nonresidents on legislative districting. Egan v. Hammond, Sup. Ct. Op. Nos. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

Exclusive use of census requirement for determining civilian population is void. The provision in Alaska Const., art. VI, sec. 3, requiring exclusive use of the census in determining civilian population for reapportionment would not have been enacted independently of the void reference to "civilian population," and therefore also falls. Egan v. Hammond, Sup. Ct. Op. Nos. 815 and 830 (File No. 1711), 502 P.2d 856 (1972).

II. PARAGRAPH (10).

Paragraph (10) does not apply to municipal elections. Miller v. North Pole City Council, Sup. Ct. Op. No. 1129 (File No. 2170), 532 P.2d 1013 (1975).

Post office box or private mail service address is clearly not a voter's fixed place of habitation and is therefore insufficient to fix a voter's residence within a voting district. Thus, any voter providing such an address as his or her residence would be ineligible to vote unless he or she provided additional information regarding that voter's residence. Fischer v. Stout, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Elmendorf Air Force Base is a bounded area wholly within Senate District H. Thus, merely listing "Elmendorf Air Force Base" is sufficient to fix a voter's residence to a specific locale

within District H. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Voter ineligibility because of failure to update official voter residence. A voter who was originally registered outside the district who later moved within the district and never updated his official voter residence address may not vote within the district. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

A voter who moved to a residence outside his existing voting district in 1982 was not entitled to vote in his previous district in 1986. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Disqualification of absentee ballots on basis of oath. Absentee ballots must be returned in a special envelope which contains an oath that the voter is a qualified voter in all respects, which includes a space for the absentee voter to fill in his or her "permanent Alaskan residence." Since the absentee voter oath is a "form prepared by the director" where challenged absentee voters each had indicated on such an envelope oath a residence outside the district, these ballots should not have been counted. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

The federal government's absentee ballot application form is not considered an affidavit of change of residence under paragraph (10) of this section. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

There was no error in counting the votes of absentee voters who reported a nonmilitary permanent residence in a different district. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Where candidate contested a ballot of voter alleged to have registered using a nonexistent address, but no evidence was produced indicating that voter did not reside at her listed address at the time of registering, and the voter did not provide the affidavit required to rebut the presumption of residency provided by paragraph (10), her ballot was properly counted. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Collateral references. Right of persons living in area acquired by federal government to provide housing facilities to persons engaged in national defense activities, to register and vote at elections in state. 142 ALR 430.

State voting rights of residents of military establishments. 34 ALR2d 1193.

Residence of students for voting purposes. 44 ALR3d 797.

Sec. 15.05.030. Loss and restoration of voting rights. (a) A person convicted of a crime that constitutes a felony involving moral turpitude under state law may not vote in a state or a municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07.

(b) The commissioner of corrections shall establish procedures by which a person unconditionally discharged is advised of the voter registration requirements and procedures. (Sec. 1.03 ch 83 SLA 1960; am sec. 4 ch 100 SLA 1980; am sec. 1 ch 85 SLA 1986)

Revisor's notes. Under sec. 48, E.O. 55, "commissioner of corrections" was substituted for "commissioner of health and social services" in 1984 in subsection (b) of this section.

Cross references. For definition of "felony involving moral turpitude," see AS 15.60.010(8); for definition of "unconditional discharge," see AS 15.60.010(32); for effect of judgment of imprisonment in penitentiary, see AS 33.30.310; for effect of sentence to life imprisonment, see AS 33.30.320.

Effect of amendments. The 1986 amendment in subsection (a) following "the date of the" in the first sentence deleted "restoration of voting rights under this section. The right to vote withdrawn under this section is automatically restored upon the" and added the last sentence and at the end of subsection (b) substituted "voter registration requirements and procedures" for "restoration of voting rights withdrawn by a conviction."

Opinions of attorney general. A person is not disqualified from voting pending an appeal of a conviction, see Nov. 7, 1980 Op. Att'y Gen.

Absent an appeal, a person who receives a suspended sentence, or a suspended imposition of sentence is disqualified until his or her unconditional discharge, Nov. 7, 1980 Op. Att'y Gen.

For a list of crimes which constitute felonies involving moral turpitude, see Nov. 7, 1980 Op. Att'y Gen.

Collateral references. Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon disqualification to vote, hold office, practice profession, sit on jury, or the like. 175 ALR 784.

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR2d 1238.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 ALR3d 303.

Sec. 15.05.040. Voter disqualification for unsound mind. A person may not vote if the person has been judicially determined to be of unsound mind unless the disability has been removed. (Sec. 1.04 ch 83 SLA 1960)

Collateral references. Voting rights of persons mentally incapacitated. 80 ALR3d 1116.

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Chapter 07. Registration of Voters.

Section

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Collateral references. 25 Am. Jur. 2d, Elections, secs. 95-115.

29 C.J.S., Election, secs. 36-52.

Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition. 100 ALR 1308.

Nonregistration as affecting legality of votes cast by persons otherwise qualified. 101 ALR 567.

Nonregistration as affecting one's qualification to hold public office. 128 ALR 1117.

Sec. 15.07.010. Registration of voters. The precinct election judges at any election shall allow a person to vote whose name is on the official registration list for that precinct and who is qualified under AS 15.05. A person whose name is not on the official registration list shall be allowed to vote a questioned ballot. (Sec. 2 ch 211 SLA 1968; am sec. 5 ch 116 SLA 1972; am sec. 5 ch 100 SLA 1980)

Effects of amendments. The 1980 amendment substituted "on the official registration list for that precinct" for "registered" near the middle of the first sentence, substituted "15.05.040" for "in the precinct in which he intends to vote" at the end of the first sentence, and added the present second sentence.

Cited in Green v. State, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

Collateral references. Significance of place where one votes or registers to vote on question as to his domicile or residence for other purposes. 107 ALR 448.

Sec. 15.07.020. Registration as a prerequisite. [Repealed, sec. 231 ch 100 SLA 1980.]

Editor's notes. The repealed section derived from sec. 2, ch 211, SLA 1968.

Sec. 15.07.030. Who may register. (a) A person who has the qualifications of a voter as set out in AS 15.05.010(1) - (4), or who will have the qualifications at the succeeding primary or general election, is entitled to be registered as a voter in the precinct in which the person resides.

(b) A person qualified under AS 15.05.011 to vote by absentee ballot in a federal election is entitled to be registered as a voter in the election district in which the person resided immediately before departure from the United States. (Sec. 2 ch 211 SLA 1968; am sec. 19 ch 32 SLA 1971; am sec. 6 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added subsection (b).

Collateral references. Right of persons living in area acquired by federal government to provide housing facilities to persons engaged in national defense activities, to register and vote at elections in state. 142 ALR 430.

Sec. 15.07.040. Time for registration. A person who is qualified under AS 15.05.010(1) - (4) is entitled to register at any time throughout the year except that a person under 18 years of age may register at any time within 90 days immediately preceding the person's 18th birthday. (Sec. 2 ch 211 SLA 1968; am sec. 20 ch 32 SLA 1971; am sec. 6 ch 116 SLA 1972; am sec. 7 ch 100 SLA 1980)

Effects of amendments. The 1980 amendment substituted 'a person under 18 years of age may register at any time within 90 days immediately preceding his 18th birthday' for 'no registration will be made for a period of 30 days preceding the election' at the end of the section.

Collateral references. Constitutionality of statutes in relation to registration before voting at election or primary. 91 ALR 349.

Sec. 15.07.050. Registration in person or by mail. Registration may be made in person before a registration official or by mail. (Sec. 2 ch 211 SLA 1968)

Sec. 15.07.060. Required registration information. (a) Each applicant who requests registration or reregistration shall supply the following information under oath:

- (1) name and sex;
- (2) address and other necessary information establishing residence, including the term of residence in the state and in the district, if requested;
- (3) whether the applicant has previously been registered to vote in another jurisdiction, and, if so, the jurisdiction and the address of the previous registration;
- (4) a declaration that the registrant will be 18 years of age or older within 90 days of the date of registration;
- (5) a declaration that the registrant is a citizen of the United States;
- (6) date of application;
- (7) signature or mark.

(b) If the applicant has been previously registered to vote in another jurisdiction, the applicant shall surrender to the registration official any voter registration or identification card or credentials from that jurisdiction the applicant may possess. The director shall notify the chief elections officer in that jurisdiction that the applicant has registered to vote in Alaska, request that jurisdiction to cancel the applicant's voter registration there, and

return the applicant's voter registration or identification card or credentials, if any, to that jurisdiction.

(c) If application for registration is made in person before a registration official, the applicant shall exhibit one form of identification to the official, including but not limited to a driver's license, birth certificate, passport, hunting or fishing license. A registration official who knows the identity of the applicant may waive the identification requirement.

(d) If the applicant requests reregistration, the applicant shall supply under oath any former name under which the applicant was registered to vote in the state. (Sec. 2 ch 211 SLA 1968; am sec. 21 ch 32 SLA 1971; am secs. 6, 7 ch 197 SLA 1975; am sec. 8 ch 100 SLA 1980; am sec. 1 ch 67 SLA 1989)

Effects of amendments. The 1989 amendment, effective August 28, 1989, inserted "including the term of residence in the state and in the district" in paragraph (a)(2); repealed paragraph (a)(3); redesignated former paragraphs (a)(4) - (a)(8) as present paragraphs (a)(3) - (a)(7); and deleted "term of residence in state and election district; and" at the beginning of present paragraph (a)(3).

NOTES TO DECISION

Omission of a voter's complete address is not a "minor" omission. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Where a voter filled out a voter registration application on October 5, 1978, but failed to supply her complete street address as required by this section, and on election day, filled out a second voter registration form, this time including her complete address, her ballot should not be counted. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Applied in *Hammond v. Hickel*. (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (Alaska 1978).

Collateral references. Validity of statute requiring information as to age, sex, residence, etc., as condition of registration or right to vote. 44 ALR 260.

Propriety of test or question asked applicant for registration as voter other than formal questions relating to specific conditions of his right to registration. 76 ALR 1238.

Right of married woman to use maiden surname. 67 ALR3d 1266.

Sec. 15.07.064. Address information required for voter registration. (a) A voter requesting registration or reregistration shall provide the director with sufficient information to determine

(1) the location of the residence of the voter within the district;
(2) the precinct in which the voter is qualified to vote;
(3) the other local or regional election jurisdictions in which the voter is eligible to vote.

(b) In determining the sufficiency of the registration information provided by the voter in an application to register, the director may consider

(1) whether the voter is applying in person, by mail from a location within the state, or by mail from a location outside the state;

(2) the location, size, or density of the population within the municipality, established village, or geographic area in which the voter claims residence;

(3) whether the municipality, established village, or geographic area has been divided into precincts or local or regional election subdivisions;

(4) whether specific locations within the municipality, established village or geographic area have been identified by street name, subdivisions or other commonly known official descriptions; or

(5) other circumstances considered significant by the director.

(c) A voter requesting registration in a municipality or established village that has

been divided into more than one precinct or that includes more than one section of a local or regional election subdivision shall provide the director with information that describes the location of the residence of the voter. In this subsection, the use of a post office box, a postal service center box, a rural route number, general delivery, or other description identified only as a mailing address does not establish the residence of the voter. In addition to the name of the municipality or established village, the voter shall provide the director with information that describes a physical location that may be

(1) a street name, including a number on the street if one exists;

(2) a highway name and mile post number;

(3) a mobile home court and space number;

(4) a boat harbor and slip number;

(5) the name of a subdivision;

(6) the name of a building, institution, military or other reservation for which the location is fixed; or

(7) another descriptive phrase from which the specific physical location or the residence of the voter within the municipality or established village can be determined.

(d) The director is not required to request a voter who claims residence within a municipality or established village to provide the information required under (c) of this section if

(1) the municipality or established village is entirely within a single precinct; and

(2) a local or regional election subdivision is not divided into sections within the boundaries of the municipality or the area of the established village.

(e) The director shall review the information contained within an application by a voter for registration. The director may not reject an application of a voter who qualifies under (d) of this section because the voter provided information in excess of that required to establish qualifications, including excess information qualifying as a mailing address. The director may consider an application for registration within a municipality or established village described in (d) of this section to comply with law based on other information contained in the application, including evidence that

(1) the application was made in person before a voting registrar, election judge, or absentee voting official appointed to serve in the municipality or established village;

(2) the application of a voter registering by mail was postmarked by the postal official in the municipality or established village; or

(3) the application of a voter registering by mail was witnessed by two qualified voters registered to vote in the municipality or established village; and

(4) other information contained in the application does not negate the presumption of residency provided under (a) of this section.

(f) A voter who resides in a building, institution, military or other reservation may establish residency for voting purposes by naming that place instead of naming a municipality or established village. In this subsection the use of a post office box, a postal service center box, a rural route number, general delivery, or other description qualifying as a mailing address does not establish the residence of the voter. The director is not required to request a voter who claims residence by naming the building, institution, military or other reservation to provide the information required under (c) of this section if

(1) the physical location of the place named in the application is fixed; and

(2) the place named in the application is contained within the boundaries of a single precinct.

(g) In this section "established village" has the meaning given in AS 04.21.080. (Sec. 1 ch 115 SLA 1990)

Sec. 15.07.065. Exchange of voter registration information. [Repealed, sec. 231 ch 100 SLA 1980.]

Editor's notes. The repealed section derived from sec. 8, ch 197, SLA 1975.

Sec. 15.07.070. Procedure for registration. (a) The director may adopt regulations under the Administrative Procedure Act (AS 44.62) relating to the registration of voters consistent with the requirements of this section.

(b) To register by mail the director or the area election supervisor shall furnish, upon request, and at no cost to the voter, forms prepared by the director on which the registration information required under AS 15.07.060 shall be inserted by the voter, or by a person on behalf of the voter if the voter is physically incapacitated. The forms shall be executed before a notary public, a commissioned officer of the armed forces including the National Guard, a district judge or magistrate, a United States postal official, or other person qualified to administer oaths. If none of the officials listed in this subsection is reasonably accessible, the person shall have the forms witnessed by two persons over the age of 18 years, and, in addition, shall provide the certification required by AS 09.63.020. The director may require proof of identification of the applicant as required by regulations adopted by the director under the Administrative Procedure Act (AS 44.62). Upon receipt and approval of the completed registration forms the director or the election supervisor shall forward to the voter an acknowledgment in the form of a registration card, and the voter's name shall immediately be placed on the master register located in the office of the director and on the district register located in the office of the election supervisor. If the registration is denied, the voter shall immediately be informed in writing by certified or registered letter that registration was denied and the reason for denial.

(c) The names of persons submitting completed registration forms by mail that are received by the director or election supervisor at least 30 days before the next election shall be placed on the official registration list for that election. The name of a person submitting a completed registration form by mail that was not received by the director or election supervisor before the 30-day requirement may not be placed on the official registration list for the next election but shall be placed on the master register after that election.

(d) Qualified voters may register in person before a registration official at any time throughout the year, except that a person registering within 30 days preceding an election may not vote at that election. Upon receipt and approval of the registration forms the director or the election supervisor shall forward to the voter an acknowledgment in the form of a registration card and the voter's name shall immediately be placed on the master register located in the office of the director and on the district register located in the office of the election supervisor. Names of persons registering 30 or more days before an election shall be placed on the official registration list for that election.

(e) [Repealed, sec. 38 ch 116 SLA 1972.]

(f) Incomplete or inaccurate registration forms may not be accepted and shall be reexecuted. The date of registration shall be the date of reexecution before a registration official or the date the application is received by the director or election supervisor if the application for registration is by mail.

(g) The director shall provide voter registration forms prepared under (b) of this section to the Department of Public Safety for distribution to the public under AS 28.05.045. (Sec. 2 ch 211 SLA 1968; am sec. 8 ch 71 SLA 1972; am secs. 7, 38 ch 116 SLA 1972; am sec. 9 ch 100 SLA 1980; am sec. 62 ch 6 SLA 1984; am sec. 2 ch 47 SLA

1989; am secs. 2, 3 ch 67 SLA 1989)

Effects of amendments. The 1984 amendment made a series of technical and internal reference changes in subsection (b). The first 1989 amendment, effective August 24, 1989, added subsection (g). The second 1989 amendment, effective August 28, 1989, in subsection (c), substituted "that are received by the director or election supervisor" for "which are postmarked" in the first sentence and "that was not received by the director or election supervisor" for "which was not postmarked" in the second sentence; and, in subsection (f), substituted "date the application is received by the director or election supervisor" for "postmark date" in the second sentence.

NOTES TO DECISIONS

Subsection (b) contravened. Where an absentee ballot application was not witnessed or attested, the registration contravened subsection (b) and was therefore invalid. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Witnessing not required to update current registration. Where voter clearly stated on the absentee ballot application that she wished merely to update her current registration, no witnessing was required. Without proof that voter was not officially registered at the time she filed her absentee ballot application, her vote was correctly counted. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

No affirmative duty to inquire as to change of name. There appears to be no affirmative duty on the part of the lieutenant governor [now director] or other election officials to inquire as to whether a change of name has occurred. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

The failure of the lieutenant governor [now director] to notify recently married women of the necessity of advising him of their change of names under AS 15.07.090(a) did not constitute malconduct. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Collateral references. Validity of governmental requirement of oath as applied to voters. 18 ALR2d 329.

Sec. 15.07.080. Registration officials to serve during the 1968 primary and general election. [Repealed, sec. 38 ch 116 SLA 1972.]

Editor's notes. The repealed section derived from Sec 2, ch 211, SLA 1968.

Sec. 15.07.081. Registration officials. The director shall appoint one or more registration officials to serve in each precinct polling place in all elections during the hours the polling places are open. An election clerk or election judge appointed under AS 15.10 may also serve as a registration official. If more than one registration official is appointed to serve in a polling place, each political party shall be represented. (Sec. 1 ch 197 SLA 1975; am sec. 10 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, deleted "municipal, primary, and general" following "in all" near the middle of the first sentence, deleted the former second sentence, which read: "Registration officials serve without compensation," and substituted "each political party" for "the major political parties" near the end of the section.

Sec. 15.07.090. Voting after change of name; registration; amendment or transfer of registration. (a) A voter whose name is changed by marriage or court order may vote under the previous name, but a voter who desires to use a new name shall vote a questioned ballot.

(b) A voter shall reregister if the voter's registration is cancelled for failure to vote in prior elections as provided in AS 15.07.130. The reregistration may not be made later than 30 days preceding an election.

(c) The director shall transfer the registration of a voter from one precinct to another within an election district when requested by the voter. The request shall be made 30 or more days before the election day. The director shall transfer the registration of a voter from one election district to another when requested by the voter. The voter must reside in the new election district for at least 30 days in order to vote.

(d) A person who claims to be a registered voter, but for whom no evidence of registration in the precinct can be found, shall be granted the right to vote in the same manner as that of a questioned voter and the ballot shall be treated in the same manner. The ballot shall be considered to be a "questioned ballot" and shall be so designated. The director or the director's representative shall determine whether the voter is registered in the election district before counting the ballot. A voter who has failed to obtain a transfer as provided in (c) of this section shall vote a "questioned ballot" in the precinct in which the voter resides. (Sec. 2 ch 211 SLA 1968; am secs. 8, 9 ch 116 SLA 1972; am secs. 1, 2 ch 38 SLA 1974; am secs. 9 - 11 ch 197 SLA 1975; am secs. 11, 12 ch 100 SLA 1980; am sec. 32 ch 59 SLA 1982; am sec. 4 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted "shall vote a questioned ballot" for "the voter shall notify the director not later than 30 days preceding an election so that the registration may be amended to reflect the change" and made related grammatical changes in subsection (a).

NOTES TO DECISIONS

A voter votes "under the previous name" whenever the voter is positively identified as the registered individual and lists on the ballot his or her previous name even though he or she signs his or her current name. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

No affirmative duty to inquire as to change of name. There appears to be no affirmative duty on the part of the lieutenant governor [now director] or other election officials to inquire as to whether a change of name has occurred. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

The failure of the lieutenant governor [now director] to notify recently married women of the necessity of advising him of their change of names under subsection (a) did not constitute malconduct. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

There is no constitutional requirement of precinct residency, and there is clear statutory authorization for persons claiming to be registered voters to vote a questioned ballot if there is no evidence of registration in the precinct in which the voter seeks to vote. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Cross-precinct voting authorized. Cross-precinct voting which occurs when a voter registered in one precinct votes a questioned ballot in a different precinct in the same election district is authorized by statute. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Waiver of challenges to validity of cross-district voting. Challenges to the validity of cross-district voting, which occurs when a voter registered in one district casts a questioned ballot in a different district, are waived if not raised before the ballots are separated and commingled. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Applied in *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Sec. 15.07.100. Registration officials. (a) The director shall appoint one or more registration officials in each precinct. When more than one registration official is appointed to serve in a precinct, each political party shall be represented. However, any precinct containing more than 250 voters must have at least two registration officials, one from each

political party. The registration official shall be a qualified state voter and shall take an oath to honestly, faithfully and promptly perform the duties of the office.

(b) Training for registration officials shall be provided by the director. On the completion of training, the director may require that officials demonstrate their competence by a test or other method.

(c) A registration official serves at the pleasure of the director. Each registration official shall be periodically evaluated by the director based on the completeness of the registration forms, timely filing of registration forms, and the voter registration activity attributed to the registration official.

(d) A registration official shall transmit completed voter registration forms to the election supervisor within five days following completion by the voter. (Sec. 2 ch 211 SLA 1968; am sec. 13 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of subsection (a), deleted "major" preceding "political party" near the middle of the second sentence and near the end of the third sentence in subsection (a), added the present fourth sentence in subsection (a), and added subsections (b)-(d).

Sec. 15.07.110. Payment for registration. The director shall pay each registration official serving between elections a sum set by regulation adopted by the director which may not exceed \$1 for each registration or change of registration personally made by the registration official. The director may not pay a registration official for voter registration forms postmarked later than five days following completion by the voter. (Sec. 2 ch 211 SLA 1968; am sec. 3 ch 38 SLA 1974; am sec. 14 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section.

Sec. 15.07.120. Custody of registers. A master register shall at all times remain in the custody of the director. The person who is the area election supervisor shall likewise maintain a register of all voters within the precincts of the area election district that person supervises. (Sec. 2 ch 211 SLA 1968; am sec. 15 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the end of the first sentence.

Sec. 15.07.125. Official registration list. The director shall prepare an official registration list for each election consisting of all names appearing on the master register 30 days before the election. A list of persons eligible to vote in each precinct at that election shall be prepared from the official registration list. (Sec. 16 ch 100 SLA 1980)

Sec. 15.07.130. Elimination of excess names. (a) At the close of each calendar year the area election supervisor shall examine the register.

(b) When a registered voter has not reregistered or has not indicated in writing a desire to remain registered as provided in this subsection within the preceding two years or has not voted in a local, regional school board, primary, special or general election at least once in two consecutive calendar years, the voter shall be advised by mail sent to the voter's last known address that registration will be cancelled unless the voter indicates within 90 days on forms furnished by the director a desire to remain registered.

(c) The director shall obtain from the office of vital statistics a certified list of all residents over 18 years of age who have died or who have been presumptively declared dead. The director shall cancel the registration of all deceased voters. (Sec. 2 ch 211 SLA

1968; am sec. 22 ch 32 SLA 1971; am sec. 4 ch 38 SLA 1974; am secs. 17, 18 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment, in subsection (b), substituted the language beginning "reregistered or has not indicated" and ending "primary, special" for "voted in either a primary," "two" for "four" preceding "consecutive calendar years," and "director" for "lieutenant governor" in the first and second sentences and "a certified list of" for "death certificates and presumptive death certificates for" in the first sentence.

Editor's notes. AS 15.07.135 and AS 15.07.137 were originally enacted as subsections (d) and (e), respectively, of this section but were renumbered by the revisor of statutes pursuant to AS 01.05.031.

Legislative history report. For report on ch 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

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Applied in Willis v. Thomas, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Collateral references. Remedy and procedure for purging voter's registration lists. 96 ALR 1035.

Sec. 15.07.135. Cancellation of registration of convicted persons. The director shall make reasonable efforts to obtain the names of persons convicted of a felony involving moral turpitude. The director shall cancel the registration of a person convicted of a felony involving moral turpitude. Upon presenting proof that the person is unconditionally discharged from custody, the person may register. The director shall make reasonable efforts to verify the unconditional discharge of persons applying for registration under this section. (Sec. 19 ch 100 SLA 1980; am sec. 2 ch 85 SLA 1986)

Revisor's notes. Enacted as AS 15.07.130(d). Renumbered in 1980.

Cross references. For voter disqualification for felony conviction, see AS 15.05.030; for definition of "felony involving moral turpitude," see AS 15.60.010(8); for definition of "unconditional discharge," see 15.60.010(32).

Effect of amendments. The 1986 amendment substituted "Cancellation" for "Suspension" in the catchline and rewrote this section.

Collateral references. Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon disqualification to vote, hold office, practice profession, sit on jury, or the like. 175 ALR 784.

What constitutes "conviction" within constitutional or statutory provision disfranchising one convicted of crime. 36 ALR2d 1238.

Effect of conviction under federal law, or law of another state or county, on right to vote or hold public office. 39 ALR3d 303.

Sec. 15.07.137. Voting information from municipalities. Within 60 days after each election held in a municipality, the municipal clerk shall certify and send to the director the official registration list containing the names, residence addresses, and voter numbers of all persons voting in each precinct in that election. The names of the persons who voted in the municipal election shall be indicated on the official registration list sent to the director by the municipal clerk. (Sec. 19 ch 100 SLA 1980)

Revisor's Notes. Enacted as AS 15.07.130(e). Renumbered in 1980.

Sec. 15.07.140. General administrative supervision by director. The director shall provide general administrative supervision over the registration and reregistration of voters. The director shall, no later than 40 days before any election, arrange to have the list of registered voters of the precinct publicly displayed. The director shall instruct registration

officials to post the list of registered voters in a number of locations calculated to obtain maximum recognition. Upon request by the mayor or manager of a municipality the director shall furnish registration information for all precincts all or part of which are within the boundaries of the local government unit. (Sec. 2 ch 211 SLA 1968; am sec. 10 ch 116 SLA 1972; am sec. 20 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section.

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Exception to time requirement for 1978 election. In an order issued on October 20, 1978, in appeal from summary judgment in an election contest, the supreme court held that the lieutenant governor [now director] was authorized to post the names of all registered voters, and to conduct the staff training programs, required by this section, as late as 10 days before the 1978 general election, to be held November 7, 1978. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.07.150. Appeals from denial of registration. When a person is refused registration by a registration official, the official shall at the time of the refusal give to the registration applicant, in writing, the reason or reasons for the refusal. The person shall have the right to an immediate appeal to the area election supervisor, which appeal may be taken informally, and either verbally or in writing. When a voter is refused registration by an area election supervisor the action shall be reviewed by the superior court of the judicial district; the area election supervisor shall file a petition with the superior court for a judicial determination. If the petition is filed within 45 days before the date of a statewide election, the petition shall be given precedence over other matters pending before the court. (Sec. 2 ch 211 SLA 1968)

Sec. 15.07.160. Unlawful action. (a) Except as provided in AS 15.07.135, a registration official may not refuse to register a person who is qualified to vote under provisions of AS 15.05.010(1) - (4).

(b) A person knowingly lacking the qualifications of a voter may not register under AS 15.07.030 to vote.

(c) [Repealed, sec. 231 ch 100 SLA 1980.] (Sec. 2 ch 211 SLA 1968; am sec. 23 ch 32 SLA 1971; am sec. 231 ch 100 SLA 1980; am secs. 3, 4 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment at the beginning of subsection (a) substituted "Except as provided in AS 15.07.135, if" for "If" and rewrote subsection (b).

Sec. 15.07.170. False statements. An applicant for registration or reregistration may not make a material statement which is false, knowing it to be false. (Sec. 2 ch 211 SLA 1968; am sec. 1 ch 31 SLA 1969)

Legislative history reports. For report on ch 31, SLA 1969 (HB 29), see 1969 House Journal, p. 78.

Sec. 15.07.180. Fees prohibited. A registration official may not accept a fee from an applicant applying for registration. (Sec. 2 ch 211 SLA 1968)

Collateral references. Constitutionality, construction, and application of constitutional or statutory provisions which make payment of poll tax condition of right to vote. 139 ALR 561.

Sec. 15.07.190. Violations. A person who violates AS 15.07.170 or 15.07.180 is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one

year, or by a fine of not more than \$1,000, or by both. (Sec. 2 ch 211 SLA 1968; am sec. 2 ch 31 SLA 1969)

Legislative history reports. For report on ch 31, SLA 1969 (HB 29), see 1969 House Journal, p. 78.

Sec. 15.07.200. Registration supervision. The registration program is under the supervision of the director in accordance with AS 15.10.105. (Sec. 2 ch 211 SLA 1968; am sec. 11 ch 116 SLA 1972; am sec. 21 ch 100 SLA 1980; am sec. 33 ch 59 SLA 1982)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor."

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Cited in *Green v. State*, Sup. Ct. Op. No. 592 (File No. 1177), 462 P.2d 994 (1969).

Chapter 10. Election Districts and Officials.

Section

10. Precinct boundaries initially established
20. Precinct boundaries and polling places modified by director
30. Uniform precinct boundaries required for state and local elections
40. Restriction on precinct boundary modification
50. General duty and standard for precinct boundary modification
70. Precinct boundary identification
80. Dates for designating precinct boundary
90. Notice of precinct boundary designation and modification
100. Judicial review of precinct boundary
105. Administration of elections
107. Staff training
110. Appointment of election supervisors
120. Appointment of election board
125. Appointment of additional election boards
130. Appointment of clerks
140. Appointment of counters
150. Appointment of nominees for judges and clerks
170. Appointment and privileges of watchers
180. Appointment of party representatives for state ballot counting review

Collateral references. 25 Am. Jur. 2d, Elections, secs. 12-15, 39-51.

29 C.J.S., Elections, secs. 53-65.

Result of election as affected by lack of title or by defective title of election officers. 1 ALR 1535.

Punishment of election officers for contempt. 64 ALR 1019.

Power of election officers to withdraw or change their returns. 168 ALR 855.

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR 2d 1385.

Sec. 15.10.010. Precinct boundaries initially established. The state is divided into the election precincts as established for the general election of October 1958, or as subsequently amended as prescribed by law, and shall remain so divided until the precinct boundaries are modified, or the precinct is abolished or a precinct is established as required by the provisions of this title. (Sec. 2.01 ch 83 SLA 1960)

Sec. 15.10.020. Precinct boundaries and polling places modified by director. (a) The director shall have the exclusive power to modify the boundary of a precinct and to establish or abolish a precinct and polling place in the state by regulations adopted under the Administrative Procedure Act (AS 44.62).

(b) Whenever possible, the director shall send written notice of any change in a precinct boundary or polling place to each affected registered voter in the precinct. (Sec. 2.02 ch 83 SLA 1960; am sec. 22 ch 100 SLA 1980; am sec. 5 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, added subsection (b).

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Reference to Administrative Procedure Act intentional. The reference to the Administrative Procedure Act (AS 44.62) was intentional and reflected the legislature's desire to make the A.P.A. requirements mandatory. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The legislature intended that certain regulations pertaining to statewide elections and promulgated by the lieutenant governor should be subjected to the safeguard requirements of the Administrative Procedure Act (AS 44.62). *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Sec. 15.10.030. Uniform precinct boundaries required for state and local elections. The precinct boundaries established by the director shall be the boundaries for both state and local elections. The director by regulation adopted under the Administrative Procedure Act (AS 44.62) may authorize the combining, consolidation, or altering of precinct boundaries for local elections. (Sec. 2.03 ch 83 SLA 1960; am sec. 4 ch 136 SLA 1966; am sec. 23 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" where it appears near the middle of the first sentence and at the beginning of the second sentence.

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Administrative Procedure Act applicable to regulations. The legislature demonstrated in this section its intention that executive regulations pertaining to state elections be subjected to the safeguards of the Administrative Procedure Act (AS 44.62). *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

References to Administrative Procedure Act in section and AS 15.15.010 are similar. The wording of the reference to the Administrative Procedure Act (AS 44.62) in this section is quite similar to that used in AS 15.15.010. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The only difference between the operational portions of this section and AS 15.15.010 is that in the former, the verb "may" follows the clause referring to the Administrative Procedure Act (AS 44.62) while in the latter, it precedes the clause referring to the Administrative Procedure Act. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Sec. 15.10.040. Restriction on precinct boundary modification. A precinct may not include territory lying within more than one election district. Whenever practicable, precinct boundaries shall conform to municipal boundaries. (Sec. 2.04 ch 83 SLA 1960; am sec. 12 ch 197 SLA 1975)

Sec. 15.10.050. General duty and standard for precinct boundary modification. The director shall modify the boundary of a precinct, and shall establish or abolish a precinct if the action serves the convenience of the voters and assures the efficient administration of election laws. (Sec. 2.05 ch 83 SLA 190; am sec. 24 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.10.060. Specific duty and standard for precinct boundary modification. [Repealed, sec. 38 ch 116 SLA 1972.]

Editor's notes. The repealed section derived from sec. 2.06, ch 63, SLA 1960; sec. 20, ch 69, SLA 1970.

Sec. 15.10.070. Precinct boundary identification. Each precinct shall be given an appropriate name or number and be clearly defined so the boundaries can be readily determined. (Sec. 2.07 ch 83 SLA 1960)

Sec. 15.10.080. Dates for designating precinct boundary. The director shall designate boundaries of an election precinct which has been established or modified, not later than 40 days before an election. (Sec. 2.08 ch 83 SLA 1960; am sec. 3 ch 125 SLA 1962; am sec. 25 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.10.090. Notice of precinct boundary designation and modification. The director shall give full public notice when precinct boundaries are designated and when the boundaries of a precinct are modified or when a precinct is established or abolished. Public notice shall include, but is not limited to, the publication on three different days in a daily newspaper of general circulation, if such a newspaper is published in the election district where the precinct is located, by posting written notice in three conspicuous places in the designated precinct, and by notification to appropriate municipal clerks. (Sec. 2.09 ch 83 SLA 1960; am sec. 26 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, deleted "and" preceding "by posting" near the end of the section, and added "and by notification to appropriate municipal clerks" at the end of the section.

Sec. 15.10.100. Judicial review of precinct boundary. Any person aggrieved by a determination of precinct boundaries by the director may bring a civil action to have the determination reviewed in the superior court. If the action receives final determination within 40 days before the election, the director may not make the required modification in precinct boundaries until immediately after the election. (Sec. 2.10 ch 83 SLA 1960; am sec. 21 ch 69 SLA 1970; am sec. 27 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" where it appears near the middle of the first sentence and near the middle of the second sentence, and substitutes "40" for "15" near the middle of the second sentence.

Sec. 15.10.105. Administration of elections. (a) The lieutenant governor shall control and supervise the division of elections. The lieutenant governor shall appoint a director of elections. The director shall act for the lieutenant governor in the supervision of central and regional election offices, the employment and training of election personnel, and the administration of all state elections as well as those municipal elections which the state is required to conduct. The director serves at the pleasure of the lieutenant governor.

(b) It is essential that the nonpartisan nature, integrity, credibility and impartiality of the administration of elections be maintained. The director of elections and the full-time members of the director's staff may not join, support or otherwise participate in a partisan political organization, faction or activity, including but not limited to the

making of political contributions. The director of elections and the full-time members of the director's staff may not hold or campaign for elective office, be an officer of a political party or member or officer of a political committee, permit their name to be used, or make any contributions, in support of or in opposition to a candidate or a ballot proposition or question, participate in any way in a national, state or local election campaign or lobby or employ or assist a lobbyist. However, this subsection does not restrict the director of elections or the full-time members of the director's staff from expressing private opinion, registering as to party, or voting. (Sec. 13 ch 197 SLA 1975; am sec. 28 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added the present first sentence in subsection (a), substituted "The director shall" for "To" at the beginning of the present third sentence, and substituted "serves at the pleasure of the lieutenant governor" for "of elections shall also assist the lieutenant governor in the administration of voter registration program and the modification of precinct boundaries" at the end of the last sentence.

Sec. 15.10.107. Staff training. The director shall, before each primary election in even-numbered years, provide for a comprehensive training program for election officials, both the full-time members of the staff of the division of elections and those who are appointed as election board judges, clerks and counters under AS 15.10.120 - 15.10.150 and other temporary election employees. (Sec. 13 ch 197 SLA 1975; am sec. 29 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, deleted "at least annually, and in any event not later than 30 days" following "shall" near the beginning of the section, and deleted "and general" preceding "election" near the beginning of the section.

Sec. 15.10.110. Appointment of election supervisors. The director shall appoint election supervisors, including one in each of the municipalities of Juneau, Anchorage, Fairbanks and Nome, to assist in the administration of elections in the election districts designated by the director. The director may appoint as an election supervisor a person who is a qualified voter in the area over which the person has jurisdiction and who does not hold an office in a political party. An election supervisor is entitled to receive compensation in an amount that is comparable to that received for similar state employment as determined by the director. (Sec. 2.11 ch 83 SLA 1960; am sec. 4 ch 125 SLA 1962; am sec. 5 ch 26 SLA 1966; am sec. 5 ch 136 SLA 1966; am sec. 22 ch 69 SLA 1970; am sec. 12 ch 116 SLA 1972; am sec. 5 ch 38 SLA 1974; am sec. 30 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" wherever it appears in the section.

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.10.120. Appointment of election board. The election supervisors shall appoint within their district an election board, composed of three judges, for each precinct. The judges shall, to the extent possible, be appointed from among the qualified voters of each of the precincts for which they are appointed. One judge shall be designated chairman and be primarily responsible for the administration of the election in the precinct. If no clerks are appointed for the precinct, the other two judges shall perform the duties of clerks of the election. No more than two judges

may be of the same political party. When appointments to the election board have been accepted, the election supervisor shall notify the director of the name and full local mailing address of the designated chairman and other judges of the election board in each precinct. Election boards in local government unit elections shall be appointed by the appropriate local government unit for all local elections. (Sec. 2.12 ch 83 SLA 1960; am sec. 6 ch 136 SLA 1966; am sec. 2 ch 228 SLA 1968; am sec. 31 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment divided the former first sentence into the present first and second sentences, added "The judges shall, to the extent possible, be appointed" to the beginning of the present second sentence, and substituted "director" for "lieutenant governor" near the middle of the next-to-last sentence.

Sec. 15.10.125. Appointment of additional election boards. In each precinct having 200 or more voters additional election boards may be appointed.

Sec. 15.10.130. Appointment of clerks. The election supervisor may appoint one clerk to assist the election board in conducting the election in precincts whenever necessary. The election supervisor may appoint one additional clerk to serve in precincts determined by the supervisor to be necessary to administer the elections in an efficient and economical manner. Clerks shall be appointed from among qualified voters in precincts in which they reside. If only one clerk is appointed the clerk may not be of the same political party as the governor. If two clerks are appointed they may not be of the same political party.

Sec. 15.10.140. Appointment of counters. The chairman of the election board may appoint a team of counters to assist with the counting of the ballots in each precinct where the election supervisor considers it necessary. The appointments may be made from among the qualified voters in the precincts in which they reside, and may be made at any time before the completion of the precinct count. There shall be four counters on each counting team, no more than two of whom may be of the same political party. (Sec. 2.14 ch 83 SLA 1960; am sec. 3 ch 80 SLA 1963; am sec. 5 ch 228 SLA 1968; am sec. 14 ch 116 SLA 1972; am sec. 32 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "completion of the precinct count" for "close of the precinct canvass" at the end of the second sentence.

Sec. 15.10.150. Appointment of nominees for judges and clerks. Whenever the appointment of election judges or clerks is required, the party district committee of the political party of which the governor is a member may present in writing to the election supervisor on or before April 15 in each regular election year, or at least 60 days before a special election, the names of two party nominees for judges, and one for clerk, in any or all election precincts, and the election supervisor shall appoint two of the party nominees to the respective precinct election boards. The party district committee of the political party which received the second largest number of statewide votes in the preceding gubernatorial election may present in writing to the election supervisor on or before April 15 in each regular election year, or at least 60 days before a special election the name of one party nominee for judge and one for clerk for any or all election precincts and the election supervisor shall appoint one of the party nominees to the respective precinct election boards. The election supervisor

may appoint additional nominees upon determining that additional judges or clerks are needed. If any party district committee fails to present the names prescribed by this section by April 15 of a regular election year or before the 60th day preceding a special election, the election supervisor may appoint any qualified person not otherwise disqualified under AS 15.10.120. (Sec. 2.15 ch 83 SLA 1960; am sec. 8 ch 136 SLA 1966; am sec. 6 ch 228 SLA 1968; am sec. 15 ch 116 SLA 1972; am sec. 14 ch 197 SLA 1975; am sec. 33 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "two of" near the end of the first sentence, inserted "one of" near the end of the second sentence, and added the present third sentence.

Sec. 15.10.160. Date and notice of appointment of election board. [Repealed, sec. 9 ch 136 SLA 1966.]

Editor's notes. The repealed section derived from sec. 2.16, ch 83, SLA 1960.

Sec. 15.10.170. Appointment and privileges of watchers. The precinct party committee, where an organized precinct committee exists, or the district party committee where no organized precinct committee exists, or the state party chairman where neither precinct nor district committee exists, may appoint one or more persons as watchers in each precinct and counting center for any election. Each candidate not representing a political party may appoint one or more watchers for each precinct or counting center in the candidate's respective district or the state for any election. Any organization or organized group that sponsors or opposes an initiative, referendum or recall may have one or more persons as watchers at the polls and counting centers after first obtaining authorization from the director. No state party chairman, no precinct party committee, no district committee or candidate not representing a political party or organization or organized group may have more than one watcher on duty at a time in any precinct or counting center. The watcher may be present at a position inside the place of voting or counting which affords a full view of all action of the election board and other counters taken from the time the polls are opened until the ballots are finally counted and the results certified by the election board or the data processing review board. The election board or the data processing review board may require each watcher to present written proof showing appointment by the precinct party committee, the district party committee, the organization or organized group or the candidate watcher represents which is signed by the chairman of the precinct party committee, the district party committee, the state party chairman, the organization or organized group or the candidate representing no party. (Sec. 2.17 ch 83 SLA 1960; am sec. 4 ch 80 SLA 1963; am sec. 10 ch 136 SLA 1966; am sec. 23 ch 69 SLA 1970; am sec. 15 ch 197 SLA 1975; am sec. 34 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "or the state party chairman where neither precinct nor district committee exists" near the middle of the first sentence, substituted "director" for "lieutenant governor" at the end of the third sentence, inserted "state party chairman, no" at the beginning of the fourth sentence, inserted "the state party chairman" near the end of the section, and deleted the former last sentence of the section, which read: "The lieutenant governor may prescribe regulations governing the conduct of watchers to assure the privileges of the watchers and the proper conduct of the election."

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p.7.

Sec. 15.10.180. Appointment of party representatives for state ballot counting review. The director shall appoint two persons from each political party to participate in the state ballot counting review. Each person who is appointed and serves is entitled to compensation as provided in AS 15.15.380. Each political party may present to the director a list of three or more names from which the director shall select the persons to represent the party. The list of names may be submitted in writing at least 30 days before the date of the election. The persons to represent the party on the state ballot counting review board may be selected by the state party central committee or in any other manner prescribed by the bylaws of the party. The list of names shall be certified by the chairman of the state central committee of the party or by the person authorized by the party bylaws to act in the absence of the chairman. (Sec. 2.18 ch 83 SLA 1960; am sec. 35 ch 100 SLA 1980; am sec. 34 ch 59 SLA 1982)

NOTES TO DECISIONS

Applied in *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Chapter 13. State Election Campaigns.

Section

10. Applicability
20. Alaska Public Offices Commission
30. Duties of the commission
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70. Contributions and expenditures; amount and form of payment
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130. Definitions

Collateral references. 25 Am. Jur. 2d, Elections, secs. 4-7, 10, 280-290.

29 C.J.S., Elections, secs. 2-4, 6, 118(7), 216(1)-216(5).

Sec. 15.13.010. Applicability. (a) This chapter applies in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking electoral confirmation. It also applies to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs. A municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800(20), or a special municipality-wide election called for that purpose, vote to exempt its elected municipal officers from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election. This chapter does not prohibit a municipality from regulating by ordinance campaign contributions and expenditures.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate. (Sec. 1 ch 76 SLA 1974; am secs. 1, 2 ch 189 SLA 1975; am sec. 32 ch 74 SLA 1985)

Effect of amendments. The 1985 amendment in subsection (a) substituted 'municipality' for 'city or borough' in the second sentence, 'a' for 'any' preceding 'regular election' and 'AS 29.71.800(20)' for 'AS 29.78.010(14)' in the third sentence, and 'governing body' for 'city council or borough assembly' and 'election' for 'ordinance' in the next-to-last sentence.

NOTES TO DECISIONS

Constitutionality. In the case of *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression. *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

Initiative substantially similar to ch. 76, SLA 1974, correctly withheld from ballot. Substantial similarity existed between ch. 76, SLA 1974, which enacted this chapter, relating to election campaigns, and an initiative relating to campaign contributions and expenditures, which was filed with the lieutenant governor prior to the regular 1974 session of the legislature. The act effectively displaced the initiative, and the lieutenant governor was correct in withholding the initiative from the ballot. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

For comparison of ch. 76, SLA 1974, and the initiative, see *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Sec. 15.13.011. Inapplicability to presidential primary. [Repealed, sec. 1 ch 2 SLA 1984.]

Sec. 15.13.020. Alaska Public Offices Commission. (a) There is created in the Department of Administration the Alaska Public Offices Commission consisting of five members. The governor shall appoint all members of the commission in the manner prescribed in (b) and (c) of this section, subject to confirmation by a majority of the legislature meeting in joint session.

(b) The governor shall appoint two members of each of the two political parties whose candidate for governor received the highest number of votes in the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties shall be chosen from a list of four names to be submitted by the central committee of each party.

(c) The four members selected under (b) of this section shall, by a majority vote, nominate to the governor an individual to serve as the fifth member of the commission. The governor shall either appoint the nominee to the commission, or shall reject the nominee and request those four members to nominate another individual to serve as the fifth member of the commission.

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

(e) A member of the commission, during tenure, may not

(1) hold or campaign for elective office;

(2) be an officer of a political party, political committee or group;

(3) permit the member's name to be used, or make any contributions

whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the

made under this chapter, AS 24.45 and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) report within 60 days after the election the names of all persons and groups who have failed to comply with any of the provisions of this chapter to the office of the attorney general;

(8) examine, investigate and compare all reports, statements and actions required by this chapter, AS 24.45 and AS 39.50 and to report to the attorney general the names of all persons or groups which the commission has substantial reason to believe have violated this chapter, AS 24.45 or AS 39.50;

(9) prepare and publish an annual report to the legislature concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals or change;

(10) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 44.62). (Sec. 1 ch 76 SLA 1974; am sec. 24 ch 25 SLA 1975; am secs. 11, 12 ch 189 SLA 1975; am secs. 3 - 5 ch 167 SLA 1976)

Legislative history reports. For report on ch 167, SLA 1976 (FCCS SCS CSHB 522), see 1976 House Journal, pp. 470, 562.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Duty-to-notify requirement only applies to groups which have registered with commission pursuant to AS 15.13.050. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988). Applied in *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

II. REGULATIONS.

No regulations were necessary to implement the mandatory provisions for filing an appointment of campaign treasurer established by AS 15.13.060(c). *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Sec. 15.13.040. Contributions, expenditures and supplying of services to be reported.

(a) Each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate, and for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with AS 15.13.110 and shall be certified correct by the candidate or campaign treasurer.

United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ or assist a lobbyist.

(f) Members of the commission shall receive compensation of \$50 a day while attending commission meetings and shall be entitled to travel expenses and per diem authorized by law for members of other boards and commissions.

(g) The members shall elect a chairman. Three members of the commission constitute a quorum. A vacancy does not impair the powers of the remaining members to exercise all of the powers of the commission.

(h) A vacancy on the commission shall be filled through the appropriate appointing method for the position within 30 days after the occurrence of the vacancy. The appointee shall serve for the remaining term of the appointee's predecessor.

(i) The commission may employ an executive director and other employees it considers necessary. Neither the executive director nor an employee may have a vote.

(j) The commission shall establish an office, which may be called a regional office, in each senate district in the state to keep on file for public inspection copies of all reports filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. The regional office shall make all forms and pertinent material available to candidates. All reports shall be filed by candidates, groups and individuals directly with the commission's central district office. The commission shall ensure that copies of all reports by statewide and legislative candidates in each senate district are forwarded promptly to that district or regional office.

(k) The commission shall ensure that copies of reports filed by candidates for municipal office are made available for public inspection in the appropriate municipality. (Sec. 1 ch 76 SLA 1974; am sec. 23 ch 25 SLA 1975; am secs. 3 - 10 ch 189 SLA 1975; am E.O. No. 41 sec. 2 (1980); am sec. 24 ch 85 SLA 1988; am secs. 1 - 3 ch 14 SLA 1989)

Effect of amendments. The 1988 amendment, in subsection (d), deleted obsolete references to terms of initial members and rewrote the subsection for clarity.

The 1989 amendment, effective April 14, 1989, added the second sentence in subsection (a); substituted "nominate to the governor an individual to serve as the" for "appoint the remaining" in the first sentence and added the second sentence in subsection (c); and substituted "through the appropriate appointing method for the position within 30 days after" for "by the appropriate appointing authority within 30 days of" in the first sentence in subsection (h)."

NOTES TO DECISIONS

Subsection (j) requires forms to be made available in a regional office in each senate district. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Furnishing forms to Nome regional office constituted compliance with law. Nome is designated center for forms pursuant to both subsection (j) and AS 15.10.110, and since Nome is the central office for Senate District P, which encompasses House District 21 and therefore Kotzebue, the lieutenant governor complied with the law by virtue of furnishing forms to the Nome regional office, even though such forms were not available in Kotzebue. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Sec. 15.13.030. Duties of the commission. The commission shall

(1) develop and provide all forms for the reports and statements required to be

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of \$100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person or group making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

(1) any contribution of cash, goods or services valued at more than \$250 a year to any group or candidate; or

(2) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made.

(f) During each year in which an election occurs, all businesses, persons, or groups which furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. The records shall be maintained on the forms provided and in the manner required by the commission. The supplier shall file a report of the complete record of each transaction with all candidates or groups to whom the supplier provides services, facilities or supplies in excess of \$250 in the aggregate in accordance with AS 15.13.110. All records shall be available for public inspection. (Sec. 1 ch 76 SLA 1974; am sec. 13 ch 189 SLA 1975; am sec. 33 ch 50 SLA 1989)

Effect of amendments. The 1989 amendment, effective May 27, 1989, substituted "\$250" for "100" in paragraph (d)(1).

NOTES TO DECISIONS

Constitutionality. In the case of *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707, rehearing denied, 438 U.S. 907, 98 S. Ct. 3126, 57 L. Ed. 2d 1150 (1978), the supreme court of the United States has indicated in unmistakable terms that state disclosure laws pertaining to ballot issues are constitutional. *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

When there is no showing that an individual must remain anonymous with respect to advertising as to ballot propositions because of the possibility of being subject to reprisals, economic or otherwise, the state campaign disclosure laws are not unconstitutional as applied to a contributor hoping to influence the outcome of a ballot issue, because the

objective of an informed electorate is sufficiently compelling to overcome an interest in anonymous political expression. *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Collateral references. Construction and application of statute regarding statement by candidate as to his expenses, or his interest in, or the financial value of publicity through, newspapers or other publicity sources. 103 ALR 1424.

Statement by candidate regarding salary or fees of office as violation of Corrupt Practice Acts or bribery. 106 ALR 493.

Sec. 15.13.045. Investigations, hearings. (a) The commission may issue subpoenas, administer oaths, hold hearings and conduct investigations.

(b) In conjunction with (a) of this section, the commission may compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by this chapter.

(c) The commission may examine the papers, books, records, accounts and documents of any person subject to this chapter to ascertain the correctness of a report filed with the commission, or in conjunction with an investigation or inspection conducted under (a) of this section.

(d) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court. (Sec. 14 ch 189 SLA 1975)

NOTES TO DECISIONS

Cited in *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Sec. 15.13.050. Groups. Each group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register, on forms provided by the commission, with the commission. If the group intends to support or oppose only one candidate, or to contribute to or expend on behalf of, or in opposition to, one candidate 50 per cent or more of its funds, the name of the candidate shall be a part of the name of the group. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent. (Sec. 1 ch 76 SLA 1974; am sec. 15 ch 189 SLA 1975)

NOTES TO DECISIONS

Disclosure requirements constitutional. The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Sec. 15.13.060. Campaign treasurers. (a) Each candidate and group shall appoint a campaign treasurer who is responsible for receiving, holding, and disbursing all contributions and expenditures, and for filing all reports and statements required by law. A candidate may be a campaign treasurer.

(b) Each group shall file the name and address of its campaign treasurer with the commission at the time it registers with the commission under AS 15.13.050.

(c) Each candidate for state office shall file the name and address of the campaign treasurer with the commission, or submit, in writing, the name and address of the campaign treasurer to the director for filing with the commission, no later than 15 days after the date of filing the declaration of candidacy or the nominating petition. Each candidate for municipal office shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing the declaration of candidacy or the nominating petition. If the candidate does not designate a campaign treasurer, the candidate is the campaign treasurer.

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file the successor's name and address with the commission within 48 hours of the appointment. The candidate is disqualified if found to have been in wilful violation of this subsection.

(e) A campaign treasurer may appoint as many deputy campaign treasurers as necessary. The candidate shall file the names and addresses of the deputy campaign treasurers with the commission.

(f) The candidate is responsible for the performance of the campaign treasurer, and any default or violation by the treasurer also shall be considered a default or violation by the candidate if the candidate knew or had reason to know of the default or violation. (Sec. 1 ch 76 SLA 1974; am secs. 16 - 19 ch 189 SLA 1975; am sec. 1 ch 133 SLA 1977; am sec. 35 ch 59 SLA 1982)

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Cited in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

II. SUBSECTION (C).

Editor's notes. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977), cited in the notes below, was decided under subsection (c) as it existed before the 1977 amendment. Prior to that amendment, subsection (c) read: "Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. The name of the candidate may be placed on the ballot by the lieutenant governor or municipal clerk only if the candidate has complied with this subsection."

This section is not unconstitutional in that it sets up "invalid class legislation." *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

The two groups classified by virtue of this section are those candidates who have complied with the law and those who have not; the failure to adhere to this section is the dividing line. Therefore, under any possible equal protection test this section passes constitutional muster. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Statutory requirement that a candidate's designation of treasurer be filed by a specified due date is not constitutionally unreasonable. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Subsection (c) should be strictly enforced. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File

Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Effect of unequal enforcement of AS 39.50.020 on enforcement of subsection (c). Unequal enforcement of AS 39.50.020, which requires candidates to file a financial disclosure statement, did not require the conclusion that a candidate had in fact substantially complied with the filing requirements of subsection (c) where the record did not show any intentional or purposeful discrimination against the candidate. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Subsection (c) requires candidates to "file" campaign treasurer statements within a specified time limit. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

The definition of "file" is well established in the law. It has been consistently held that a document is filed only when the proper officer has received it, and that it is not considered filed when it is deposited in the mails. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Telephone conversation not appropriate filing. Given the text of subsection (c), the legal meaning of the term "file" and the supreme court's adoption of the doctrine that statutory election deadlines are to be strictly enforced, a telephone conversation between the candidate's treasurer and the Alaska Public Offices Commission seven days after the declaration of candidacy was filed cannot be deemed an appropriate filing within the intentment of subsection (c). *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

No regulations were necessary to implement the mandatory provisions for filing an appointment of campaign treasurer established by subsection (c) of this section. *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Sec. 15.13.070. Contribution and expenditures; amount and form of payment. (a) A person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may not contribute to or expend more than \$1,000 a year on behalf of or in opposition to the competing candidates for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by AS 15.13.040(b) and 15.13.110. This chapter does not prohibit

(1) a candidate from contributing more than \$1,000 of the candidate's own money to the candidate's own campaign; or

(2) individuals or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than \$1,000 a year; however, these contributions and expenditures shall be reported in accordance with AS 15.13.040 and 15.13.110.

(b) A contribution over \$100 may not be made in cash or by cash payment and it may not be accepted by or on behalf of a candidate.

(c) An expenditure over \$100 may not be made in cash or by cash payment unless a written receipt is obtained and filed with the commission.

(d) A contribution may not be made, and an expenditure may not be made or incurred, directly or indirectly, anonymously, in a fictitious name, or by one person or group in the name of another, to influence the election of a candidate in an election. A contribution made by a person wishing to remain anonymous, and received by a candidate, campaign treasurer or deputy campaign treasurer, may not be used or expended, but shall be returned to the donor, if the donor's identity is known, and if no donor is found, the contribution escheats to the state if not donated by the candidate to the charity of the candidate's choice.

(e) Contributions to a candidate or a political committee may be received by, and expenditures of a candidate or political committee may be made by, only the

candidate, campaign treasurer, or deputy campaign treasurer.

(f) [Repealed, sec. 45 ch 85 SLA 1986.]

(g) [Repealed, sec. 45 ch 85 SLA 1986.]

(h) No campaign expenditure of any type whatsoever shall be made by any candidate, treasurer, or group unless the source is disclosed as required by the provisions of this chapter whether or not those funds were received before May 10, 1974. (Sec. 1 ch 76 SLA 1974; am secs. 20, 21 ch 189 SLA 1975; am sec. 45 ch 85 SLA 1986)

Cross references. For prohibition against certain campaign fund-raising by legislators, see AS 24.60.030.

Effect of amendments. The 1986 amendment repealed subsections (f) and (g), concerning campaign expenditure limits and cost-of-living adjustment of campaign expenditure limitations, respectively.

Editor's notes. In *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), the supreme court held that the 1st amendment of the federal constitution required the invalidation of certain provisions of the Federal Election Campaign Act of 1971, as amended in 1974: its independent expenditure ceiling, former 18 U.S.C. sec. 608(e)(1), its limitation on a candidate's expenditures from his own personal funds, former 18 U.S.C. sec. 608(a), and its ceiling on overall campaign expenditures, former 18 U.S.C. sec. 608(c), since these provisions placed substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression. This holding was accepted as law in Alaska and the expenditure limits in this chapter were not enforced. See notes from the opinion of the attorney general dated May 13, 1976, cited below.

Opinions of the attorney general. There seems to be no difference between sec. 608(c) of the Federal Elections Campaign Act of 1971, former 18 U.S.C. sec. 608(c), and subsection (f) of this section; accordingly, based on the reasons stated in *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976), for finding unconstitutional sec. 608(c) of the federal act, subsection (f) of this section is invalid as a violation of the rights and privileges protected by the 1st amendment. May 13, 1976 Op. Att'y Gen (decided prior to the 1986 repeal of subsection (f)).

The Public Offices Commission should not undertake investigations of violations of subsection (f) of this section, and candidates or others may be advised that no implementation or enforcement of subsection (f) of this section is planned by the office of the attorney general. May 13, 1976 Op. Att'y Gen. (decided prior to the 1986 repeal of subsection (f)).

The \$1000 statutory limit under this section is applicable to "control groups" under AS 15.13.130(4). Exempting such groups from the contribution limit would seriously undermine the statute's primary purpose of deterring the buying of elections and the undue influence of large contributors. June 15, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Cited in *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Collateral references. Construction and application of provisions of corrupt practices act regarding contributions by corporations. 125 ALR 1029.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Sec. 15.13.080. Statement by contributor. A person or group contributing to a candidate over \$250 or contributing goods or services to a candidate with a value of more than \$250 to influence the election of a candidate shall furnish the commission a signed statement, on a form made available by the commission. The statement shall

itemize the contributions and goods and state that the contributor is not a person or group prohibited by law from contributing and that the contribution consists of funds or property belonging to the contributor and has not been given or furnished by another person or group. The contributor's statement shall be filed with the commission by the contributor no later than 10 days after the contribution is made. A copy of the statement shall be furnished the candidate, campaign treasurer, or deputy campaign treasurer at the time the contribution is made. (Sec. 1 ch 76 SLA 1974; am sec. 29 ch 189 SLA 1975)

Sec. 15.13.090. Identification of communication. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairman. (Sec. 1 ch 76 SLA 1974; am sec. 22 ch 189 SLA 1975; am sec. 36 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'chairman' for 'treasurer' at the end of the section.

Collateral references. Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

Sec. 15.13.100. Expenditures before filing. A political campaign expenditure may not be made or incurred by a person in an election or by a person or group with the person's knowledge and on the person's behalf before the date upon which the person files for nomination for the office which the person seeks, except for personal travel expenses or for opinion surveys or polls. These expenditures must be included in the first report required under this chapter after filing for office. (Sec. 1 ch 76 SLA 1974; am sec. 23 ch 189 SLA 1975; am sec. 25 ch 14 SLA 1987)

Effect of amendments. The 1987 amendment in the first sentence substituted 'A' for 'No' at the beginning of the section, inserted 'not' following 'expenditure may,' and substituted 'the person's' for 'his' in two places and 'the person' for 'he or she' and in the last sentence substituted 'must' for 'shall be charged against the spending limitation that applies to the office for which he subsequently files, and shall.'

Sec. 15.13.110. Filing of reports. (a) Each candidate and group shall make a full report in accordance with AS 15.13.040 during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or, if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) ten days after the election; and

(4) December 31 of each year for expenditures and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds \$250 and which is made within one week of the election shall be reported to the commission by date, amount,

and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) The reports of candidates shall be filed with the commission's central office. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance with AS 15.13.040. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public.

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section. (Sec. 1 ch 76 SLA 1974; am sec. 24 ch 189 SLA 1975; am sec. 2 ch 133 SLA 1977)

Effect of amendments. The 1977 amendment added subsection (e).

NOTES TO DECISIONS

Disclosure requirements constitutional. The disclosure requirements of this chapter are not unconstitutionally vague or overbroad, nor do they violate the constitutional right of the people to privacy. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Stated in State, Pub. Offices Comm'n v. Marshall, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 15.13.120. Penalty; limitations on actions. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment for not more than one year or by a fine of not more than \$5,000. A violation includes but is not limited to any of the following acts or omissions:

(1) failing to make a statement or report required to be made under this chapter, or failing to make a statement or report at the time the statement or report is required to be made under this chapter;

(2) making a campaign contribution that exceeds the limitations of AS 15.13.070;

(3) making a false statement or report under this chapter;

(4) giving or furnishing money to another person or group for the purpose of making a contribution or expenditure anonymously, in a fictitious name, or in the name of another, or contributing in violation of AS 15.13.090;

(5) making a communication to support or defeat a candidate without identification of sponsorship, in violation of AS 15.13.090;

(6) knowingly accepting a contribution in violation of AS 15.13.070.

(b) [Repealed, sec. 6 ch 134 SLA 1982.]

(c) Promptly after the final date for filing statements and reports, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040, and shall make available a list of these delinquents for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(d) A person who believes a violation of this chapter has occurred may file a complaint with the commission. If the commission determines there is substantial reason to believe that a violation has occurred, it shall expeditiously make an investigation, which may also include an investigation of reports and statements filed by the complainant if the complainant is a candidate, of the matter complained of. When, in the judgment of the commission, after affording due notice and an opportunity for a hearing, a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall report its determination and recommendation to the person who filed the complaint with the commission within 60 days of receiving the complaint unless circumstances require additional time to make an adequate investigation. The finding of the commission may be appealed to the superior court.

(e) Prosecution for violation of a provision of this chapter may not be commenced after four years have elapsed from the date of the alleged violation.

(f) If, after being sworn into office, a person who was a successful candidate or the campaign treasurer or deputy campaign treasurer of a person who was a successful candidate is convicted of a violation of this chapter, proceedings shall be held and appropriate action taken in accordance with (1) art. II, sec. 12 of the state constitution, if the candidate is a candidate for the state legislature; (2) art. II, sec. 20 of the state constitution, if the candidate is a candidate for governor or lieutenant governor; (3) AS 29.20.170, if the candidate is a candidate for the borough assembly; (4) AS 29.20.280, if the candidate is a candidate for borough mayor; (5) AS 29.20.170, if the candidate is a candidate for city council; (6) AS 29.20.280, if the candidate is a candidate for city mayor; (7) the provisions of the call for the constitutional convention, if the candidate is a candidate for constitutional convention delegate; (8) art. IV, sec. 10 of the state constitution, if the candidate is a candidate for judicial retention.

(g) Information developed by the commission under (d) of this section shall be considered during a proceeding under (f) of this section.

(h) When, after being sworn into office, a successful candidate or the campaign treasurer or deputy campaign treasurer of a person who was a successful candidate is charged with a violation of this chapter, the case shall be promptly tried and accorded a preferred position for purposes of argument and decision, so as to assure a speedy disposition of the matter. (Sec. 1 ch 76 SLA 1974; am sec. 25 ch 189 SLA 1975; am secs. 1, 6 ch 134 SLA 1982; am secs. 33 - 36 ch 74 SLA 1985; am sec. 26 ch 14 SLA 1987)

Effect of amendments. The 1985 amendment in subsection (f) in paragraph (3) substituted "AS 29.20.170" for "AS 29.23.060(c)," in paragraph (4) substituted "AS 29.20.280" for "AS 29.23.130(f)," in paragraph (5) substituted "AS 29.20.170" for "AS 29.23.210(b)," and in paragraph (6) substituted "AS 29.20.280" for "AS 29.23.255."

The 1987 amendment in subsection (a)(2) substituted "that exceeds the limitations of AS 15.13.070" for "or expenditure which exceeds the limitations of AS 15.13.070(f)."

Editor's notes. In *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 48 L. Ed. 2d 659 (1976), the supreme court held that the 1st amendment of the federal constitution required the invalidation of certain provisions of the Federal Election Campaign Act of 1971, as amended in 1974: its independent expenditure ceiling, former 18 U.S.C. sec. 608(e)(1), its limitation on a candidate's expenditures from his own personal funds, former 18 U.S.C. sec. 608(a), and its ceiling on overall campaign expenditures, former 18 U.S.C. sec. 608(c), since these provisions placed substantial and direct restrictions on the ability of candidates,

citizens, and associations to engage in protected political expression. This holding was accepted as law in Alaska and the expenditure limits in this chapter were not enforced.

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

This section contains no scienter requirement and the court would not impose one. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981). Quoted in *Messerli v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

II. FORFEITURE SANCTION.

Editor's notes. Subsection (b), which contained a forfeiture sanction for violation of AS 15.13, was repealed in 1982.

Constitutionality of forfeiture sanction. The forfeiture sanction of subsection (b) (now repealed) does not conflict with any constitutional provision delimiting the qualifications of assembly or council members or with any provision reserving exclusive authority to determine a member's election to those local entities. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Even if the forfeiture sanction of subsection (b) (now repealed) may conflict with Alaska Const., art. II, sec. 12, insofar as state legislative elections are concerned, it can nonetheless constitutionally apply to local elections. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

The forfeiture sanction is valid. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

The deadlines for filing are mandatory, and the plain meaning of this section makes the forfeiture sanction applicable. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

The statutory forfeiture of office provision applied to the election of a city councilman and borough assemblyman whose 1980 seven-day pre-election report was not filed until well after the election. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

The absence of regulations is not fatal to enforcement of the forfeiture sanction because they are not necessary to implement the sanction or to protect a constitutional right. *State, Pub. Offices Comm'n v. Marshall*, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 15.13.122. Legal counsel. (a) The attorney general is legal counsel for the commission. The attorney general shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest warrants, the commission may request the chief justice of the supreme court to appoint a special prosecutor to represent the commission in a proceeding involving an alleged violation of this chapter and to prosecute that violation.

(b) When the public interest warrants, the commission may employ temporary legal counsel from time to time in matters in which the commission is involved. (Sec. 26 ch 189 SLA 1975)

Sec. 15.13.125. Civil penalty: late filing of required reports. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(1), (3), (4) or 15.13.110(d) is subject to a civil penalty of not more than \$10 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than \$50 a day for each day the

delinquency continues as determined by the commission subject to right of appeal to the superior court. An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.120 does not excuse that person from filing reports required by this chapter. (Sec. 6 ch 167 SLA 1976)

Editor's notes. The section originally numbered AS 15.13.125 was repealed by sec. 27 ch 189, SLA 1975, and derived from sec. 1, ch 76, SLA 1974.

Legislative history reports. For report on ch 167, SLA 1976 (FCCS SCS CSHB 522), see 1976 House Journal, pp. 470, 562.

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Penalty cannot be obviously unreasonable. The penalty cannot be so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable. The standard is one of obvious unreasonableness. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Statement of reasons for maximum penalties. A statement of reasons should be given by the commission when it imposes the maximum civil penalties under this section. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Stated in State, Pub. Offices Comm'n v. Marshall, Sup. Ct. Op. No. 2406 (File No. 5614), 633 P.2d 227 (1981).

Sec. 15.13.130. Definitions. In this chapter,

(1) "candidate" means a person who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices;

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation of the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

(3) "expenditure" means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of (A) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate; (B) use by a political party; (C) the payment by a person other than a candidate or political party of compensation for the personal services of another person which are rendered to a candidate or political party; or (D) influencing the outcome of a ballot proposition or question; however, "expenditure" does not include a candidate's filing

fee or the cost of preparing reports and statements required by this chapter;

(4) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 per cent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate;

(5) "individual" means a natural person;

(6) [Repealed, sec. 88 ch 74 SLA 1985.]

(7) "person", in addition to the terms set out in AS 01.10.060, includes a labor union. (Sec. 1 ch 76 SLA 1974; am sec. 28 ch 189 SLA 1975; am sec. 88 ch 74 SLA 1985)

Revisor's notes. Reorganized in 1985 to alphabetize the defined terms.

Effect of amendments. The 1985 amendment repealed paragraph (6), which defined "municipality."

Opinions of attorney general. The \$1000 statutory limit under AS 15.13.070(a) is applicable to "control groups" under this section. Exempting such groups from the contribution limit would seriously undermine the statute's primary purpose of deterring the buying of elections and the undue influence of large contributors. June 15, 1987, Op. Att'y Gen.

NOTES TO DECISIONS

Each of three affiliated employer corporations constituted separate "group" with their respective contributing employees, where the employers actively participated in determining which candidates would receive the pool of funds from their employees. *Veco Int'l, Inc. v. Alaska Pub. Offices Comm'n*, Sup. Ct. Op. No. 3295 (File No. S-1598), 753 P.2d 703 (1988).

Quoted in *Messeri v. State*, Sup. Ct. Op. No. 2236 (File No. 4326), 626 P.2d 81 (1980).

Chapter 15. General Procedure for Elections.

Section

10. General administrative supervision by director
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- 420. Duty to review the ballot counting
- 430. Scope of the review of ballot counting
- 440. Dates for opening and closing state ballot counting review
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- 470. Preservation of election ballots, papers, and materials
- 480. Security of ballots

Collateral references. 26 Am. Jur. 2d, Elections, secs. 225-233.

29 C.J.S., Elections, secs. 190-220.

Power to enjoin holding of an election. 33 ALR 1376; 70 ALR 733.

Quo warranto to test results of primary election. 86 ALR 246.

Personal liability of public officer for breach of duty in respect of election or primary election laws. 153 ALR 109.

Admissibility of election ballots in quo warranto proceedings. 71 ALR2d 353.

Sec. 15.15.010. General administrative supervision by director. The director shall provide general administrative supervision over the conduct of state elections, and may adopt regulations under the Administrative Procedure Act (AS 44.62) necessary for the administration of state elections. (Sec. 3.01 ch 83 SLA 1960; am sec. 5 ch 80 SLA 1963; am sec. 37 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, deleted "any" preceding "regulations" near the middle of the section, inserted "state" near the end of the section, and deleted the former provisions of the section following "elections," which read: "to protect the interest of the voter and assure administrative efficiency. When the lieutenant governor in administering a borough or special election, he may issue regulations under AS 44.62 changing the time required for notices of election, appointment of election officials, absentee voting, canvass of the vote, and election recounts."

NOTES TO DECISIONS

There appears to be no legislative history pertaining particularly to this section. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The director has the option of issuing certain regulations for the administration of elections or, in the alternative, to decline to issue such regulations. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Legislative intent that Administrative Procedure Act apply mandatorily. The presence of the clause referring to the Administrative Procedure Act (AS 44.62) in this section reflects the legislature's intention that the Administrative Procedure Act be mandatorily applied to regulations promulgated in accordance with that provision. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

If the lieutenant governor (now director) elects to issue regulations under the enactment, then such regulations must be promulgated under the procedural safeguards afforded by the Administrative Procedure Act (AS 44.62). Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

References to Administrative Procedure Act in section and AS 15.10.030 are similar. The wording of the reference to the Administrative Procedure Act (AS 44.62) in AS 15.10.030 is quite similar to that used in this section. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The only difference between the operational portions of AS 15.10.030 and AS 15.15.010 is that in the former, the verb "may" follows the clause referring to the Administrative Procedure Act (AS 44.62) while in the latter, it precedes the clause referring to the Administrative Procedure Act. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Regulation upheld. A regulation requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in the previous general election, adopted pursuant to authority delegated to the director of elections by this section to govern the 1986 election, did not conflict with any statute in effect, was consistent with expressed legislative intent, and was neither unreasonable nor arbitrary. After a state supreme court decision rendered the provision of former AS 15.25.160 which governed the number of signatures required for a nominating petition null and void, the division of elections properly promulgated the regulation at issue for the administration of the 1986 election. *Denardo v. State*, Sup. Ct. Op. No. 3224 (File No. S-1679), 741 P.2d 1197 (1987).

AS 15.15.330 to be read with requirements of this section. See *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Regulations under former "early count" provisions of AS 15.15.330 concerning the early tallying of ballots in selected precincts qualified as "regulations . . . necessary for the administration of elections to protect the interest of the voter and assure administrative efficiency . . ." within the meaning of this section. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Applied in *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Sec. 15.15.020. Date of general election. The general election is held on the Tuesday after the first Monday in November in every even numbered year. (Sec. 3.02 ch 83 SLA 1960)

Collateral references. Judicial, execution, or tax sale on election day, holiday, or Sunday. 58 ALR 1273.

Validity of public election as affected by fact that it was held at time other than that fixed by law. 121 ALR 987.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of electoral board. 61 ALR2d 484.

Sec. 15.15.030. Preparation of official ballot. The director shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections. The following directives shall be followed when applicable:

(1) The director shall determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law.

(2) The director shall number ballots in series to assure simplicity and secrecy and to prevent fraud.

(3) The director may contract for the preparation of the ballots on a regional basis if necessary and may contract for the preparation of ballots without obtaining competitive bids.

(4) The director may not include on the ballot as a part of a candidate's name, any honorary or assumed title or prefix but may include in the candidate's name any nickname or familiar form of a proper name of the candidate.

(5) The state general election ballot shall be printed on white paper with the names of the candidates and their party designations placed in separate sections under the office designation to which they were nominated. The party affiliation, if any, shall be designated after the name of the candidate. The lieutenant governor and the

governor shall be included under the same section. Provision shall be made for voting for write-in and no-party candidates within each section. The squares appearing on the ballots shall measure 1/4 inch on each side.

(6) The general election ballot shall be designed with the position of names of the candidates changed in each section as many times as there are candidates in the section in which there are the most names. As nearly as possible, an equal number of ballots shall be printed after each change. In making the changes of position, the name of the candidate at the head of each section shall be taken and placed at the bottom of the section and the column moved up so that the name that before was second is first after the change. After the ballots are printed, they shall be placed in separate stacks, one stack for each change of position. The ballots shall then be gathered by taking one from each stack, the intention being that every other ballot in the accumulated stack of ballots shall have the names of the candidates in a different position.

(7) The general election ballot shall be designed with the names of candidates of each political party for the office of President and Vice-President of the United States placed in the same section on the ballot rather than the names of electors of President and Vice-President.

(8) The general or special election ballot shall be designed with the title and proposition for any initiative, referendum, or constitutional amendment formulated as prescribed by law and placed on the ballot in the manner prescribed by the director. When placed on the ballot, a state ballot proposition or ballot question shall carry the number which was assigned to the petition for the proposition or question. Provision shall be made for marking the proposition "For" or "Against."

(9) The general or special election ballot shall be designed with the question of whether a constitutional convention shall be called placed on the ballot in the following manner: "Shall there be a constitutional convention?" Provision shall be made for marking the question "Yes" or "No."

(10) A nonpartisan ballot shall be designed for each judicial district in which a justice or judge is seeking retention in office. The ballot shall be divided into four parts and each part must bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall be retained as justice of the supreme court for 10 years?"; (B) "Shall be retained as judge of the court of appeals for eight years?"; (C) "Shall be retained as judge of the superior court for six years?"; or (D) "Shall be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No."

(11) When the legislature by law authorizes a state debt for capital improvements, the director shall place the question of whether the specific authorization shall be ratified by placing the ballot title and question on the next general election ballot, or on the special election ballot if a special election is held for the purpose of ratifying the state debt for capital improvements before the time of the next general election. Unless specifically provided otherwise in the Act authorizing the debt, the ballot title shall, by the use of a few words in a succinct manner, indicate the general subject of the Act. The question shall, by the use of a few sentences in a succinct manner, give a true and impartial summary of the Act authorizing the state debt. The question of whether state debt shall be contracted shall be assigned a

letter of the alphabet on the ballot. Provision shall be made for marking the question substantially as follows: "Bonds Yes" or "Bonds No," followed by an appropriate square.

(12) [Repealed, sec. 6 ch 80 SLA 1963.]

(13) The director may provide for the use of punch-card voting in state elections in any area where data processing equipment is available. (Sec. 3.03 ch 83 SLA 1960; am secs. 5 - 7 ch 125 SLA 1962; am sec. 6 ch 80 SLA 1963; am sec. 1 ch 72 SLA 1967; am secs. 7, 8 ch 228 SLA 1968; am sec. 1 ch 18 SLA 1969; am sec. 6 ch 38 SLA 1974; am sec. 1 ch 120 SLA 1975; am sec. 21 ch 12 SLA 1980; am sec. 38 ch 100 SLA 1980; am sec. 6 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, in paragraph (10), substituted "nonpartisan ballot" for "separate nonpartisan judicial ballot" near the beginning and added "in office" at the end of the first sentence and substituted "must" for "shall" in the second sentence.

Legislative history reports. For report on ch 18, SLA 1969, (HCSSB 218), see 1969 House Journal, p. 425.

NOTES TO DECISIONS

Editor's notes. Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917), cited in the notes below, was decided under former law.

Ballot need not be exactly in the form prescribed by statute. It is not of the essence of the system that the official ballot should be exactly in the form prescribed by the statute. Trifling variations not affecting the central ideas of the "officialness" and "indistinguishableness" of the ballot would be unimportant. Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

No nonofficial ballot should be taken as the expression of the will of the electors or should have any efficacy whatsoever. Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

A nonofficial ballot is not a ballot at all; it is not simply an illegal ballot; it is a void ballot. Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

Except under AS 15.15.140. The "official ballot" is the only instrument by means of which the elector can express his will at the election, save in the exceptional case provided for in AS 15.15.140. Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

For background and evils intended to be remedied by use of official ballot, see Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

Cited in Carr v. Thomas, Sup. Ct. Op. No. 1762 (File No. 4261), 586 P.2d 622 (1978); Short v. State, Sup. Ct. Op. No. 1938 (File No. 4578), 600 P.2d 20 (1979).

Collateral references. Name or form of name to be used in designating candidate on primary or election ballot. 93 ALR 911.

Constitutionality of statute relating to election ballots as regards place or number of appearances on the ballots of names of candidates. 78 ALR 398.

Constitutionality, construction and application of statutes providing that candidates for certain offices shall be placed upon nonpartisan ballot. 125 ALR 1044.

Constitutionality, construction, and application of statute which declares a defeated candidate for nomination ineligible as a candidate at general election, or prohibits printing his name on official ballot. 143 ALR 603.

Sec. 15.15.035. Printing of ballots and other materials. The director may not be required to do business with a printing company while the company is involved in a labor dispute. (Sec. 9 ch 228 SLA 1968; am sec. 39 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.15.040. Preparation of other election material. (a) The director shall prescribe the form of and prepare tinted sample ballots and all other materials, forms and supplies required for the election.

(b) The director shall prepare and issue or make available with each sample ballot for a special election the statement provided for in AS 24.08.037 of the scope of each project included in a proposed general obligation bond issue creating a state debt for capital improvements that is submitted to the electorate for ratification under AS 15.15.030(11). The statement of scope for each project shall be the same statement included in the authorization bill. When a ballot proposition is submitted to the voters at a primary or a special election, a statement the same as that provided for in the election pamphlet under AS 15.58.020(6) shall be made available with each sample ballot. (Sec. 3.04 ch 83 SLA 1960; am sec. 11 ch 136 SLA 1966; am sec. 16 ch 116 SLA 1972; am sec. 1 ch 70 SLA 1973; am sec. 16 ch 197 SLA 1975; am sec. 40 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of subsections(a) and (b), deleted "the original and duplicate registers, oaths of office of judges, challenge oaths, tally sheets, instructions to voters, warning notices" following "sample ballots" near the middle of subsection (a), inserted "all" and "materials" near the end of subsection (a), and substituted "AS 15.58.020(6)" for "AS 15.57.010(2)" near the end of subsection (b).

Sec. 15.15.050. Distribution of election materials. The director shall distribute an adequate supply of sample and official ballots and all other materials, forms and supplies required for the election to the election supervisors for distribution to chairmen of election boards in precincts not less than 25 days before the date for the election. (Sec. 3.05 ch 83 SLA 1960; am sec. 12 ch 136 SLA 1966; am sec. 17 ch 116 SLA 1972; am sec. 41 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, deleted "original registers, duplicate registers, oaths" following "official ballots" near the middle of the section, and inserted "all" and "materials" near the middle of the section.

NOTES TO DECISIONS

Exception to time requirement for 1978 election. In an order issued on October 20, 1978, in appeal from summary judgment in an election contest, the supreme court held that the lieutenant governor (now director) was authorized to distribute sample and official ballots, original registers, duplicate registers and other forms and supplies to election supervisors, as required by this section, as late as 10 days before the date of the 1978 general election, to be held on November 7, 1978. *Hammond v. Hickett*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.15.060. Procurement of polling places and other supplies. (a) Immediately following the appointment of the election board, the election supervisor in conjunction with the election board chairman shall secure polling places for holding the election, suitable ballot boxes which will assure security and an adequate number of voting booths or screens, national flags, pens, and pencils. Not less than one voting booth or screen shall be furnished for each 100 votes or fractional part of 100 votes cast in the previous election. The election supervisor and the election board chairman may, in an emergency, secure an alternate location for a polling place.

(b) The director may adopt regulations prescribing the type of polling place for holding the election and the requirements regarding ballot boxes, voting booths, screens, national flags, and other supplies to assure administrative economy and to protect the secrecy of the ballot.

(c) The director shall pay the cost of necessary election expenses incurred in securing a place for holding the election, a suitable ballot box, and an adequate number of voting booths, screens, national flags, and other supplies. The national flag shall be displayed over or near the entrance of each polling place.

(d) When the director determines that there is an area in the state where a voter may be confused as to the voter's correct precinct polling place, the director shall provide each polling place in that area with maps and materials which indicate election district boundaries, precinct boundaries, and polling places. (Sec. 3.06 ch 83 SLA 1960; am sec. 13 ch 136 SLA 1966; am sec. 42 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment divided the former section into present subsections (a), (b), and (c), deleted "including alternate emergency locations" preceding "suitable ballot boxes" near the middle of the first sentence of subsection (a), added the present last sentence of subsection (a), substituted "director" for "lieutenant governor" at the beginning of subsection (b), substituted "director" for "state, through the office of lieutenant governor" at the beginning of subsection (c), and added subsection (d).

Sec. 15.15.070. Public notice of election required. (a) The director shall give and is authorized to contract to give full public notice of the election. He may select a manner reasonably calculated to give actual knowledge of the election to the voters.

(b) The notice shall be given by publication at least twice in one or more newspapers of general circulation in each of the four major election districts. The printed notice shall specifically include but is not limited to the date of election, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and questions which are to be voted on.

(c) Public notice shall also be given by posting notices in two or more conspicuous places in each election precinct. The posted notice shall specifically include but is not limited to the date of election, the location of the polling place, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and questions which are to be voted on.

(d) First publication or posting is to be made not less than 10 days before the election.

(e) The director may have a precinct map of a densely populated precinct published in a newspaper of general circulation if need for the map is established.

(f) Additional notice shall be given of all bond issues, initiatives, referendums and propositions by use of newspapers, television, radio, printed posters, maps, and similar means of communication considered necessary. The director may not be required to post or publish notices except those provided for in this section.

(g) The director shall pay the cost of election expenses incurred in giving notice of an election. (Sec. 3.07 ch 83 SLA 1960; am sec. 8 ch 125 SLA 1962; am sec. 10 ch 228 SLA 1968; am secs. 43 - 46 ch 100 SLA 1980; am sec. 5 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in the second sentence of subsection (c) deleted "the boundary of the precinct" preceding "the location."

Editor's notes. For a case annotation concerning this section, see the annotation under AS 15.15.090 in the main pamphlet.

Collateral references. Notice of election to fill vacancy in office at general election. 158 ALR 1184.

What is 'public place' within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.15.080. Time for opening and closing polls. (a) Except as provided in (b) of this section, on the day of any election, each election board shall open the polls for voting at seven o'clock in the morning, shall close the polls for voting at eight o'clock in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place at 6:30 in the morning of an election day.

(b) On the day of any election that is not a general election, a primary election, a special election, or a federal election held under this title, the director shall require each election board to open the polls for voting at eight o'clock in the morning, shall close the polls for voting at eight o'clock in the evening, and shall keep the polls open during the time between these hours. The election board members shall report to the polling place one-half hour before the polls are to open on election day. (Sec. 3.08 ch 83 SLA 1960; am sec. 11 ch 228 SLA 1968; am sec. 18 ch 116 SLA 1972; am secs. 1, 2 ch 5 SLA 1984)

Effect of amendments. The 1984 amendment designated the formerly undesignated language as subsection (a); added subsection (b); and, in subsection (a), in the first sentence, added "Except as provided in (b) of this section" at the beginning and substituted "seven" for "eight," substituted "6:30" for "7:30" in the second sentence, and deleted the former last sentence, concerning standard time and daylight savings time.

Collateral references. 29 C.J.S., Election, sec. 198.

Violation of law as regards time for keeping polls open as affecting election results. 66 ALR 1159.

Sec. 15.15.090. Designation of precinct polling place. The polling place shall be located within the precinct unless the election supervisor and the election board chairman determine that a building located in an adjoining precinct is more suitable or convenient to the voters. (Sec. 8 ch 38 SLA 1974; am sec. 47 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "election" preceding "supervisor" near the middle of the section.

NOTES TO DECISIONS

Exception to time requirement for 1978 election. In an order issued on October 20, 1978, in appeal from summary judgment in an election contest, the supreme court held that the lieutenant governor (now director) was authorized to announce the general election, as required by this section, by publication of the date and nature of the election as late as 10 days before the 1978 general election, to be held on November 7, 1978. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Collateral references. Municipal liability for injury to voter in consequence of condition of polling place. 164 ALR 472.

Sec. 15.15.100. Time off for voting. A qualified voter who does not have sufficient time outside working hours within which to vote at a state election may, without loss of pay, take off as much working time as will enable voting. If any employee has two consecutive hours in which to vote, either between the opening of the polls and the

beginning of the employee's regular working shift, or between the end of the regular working shift and the closing of the polls, the employee shall be considered to have sufficient time outside working hours within which to vote. (Sec. 3.10 ch 83 SLA 1960)

Sec. 15.15.110. General duties and oath of election board and clerks. The election board shall supervise the election in the precinct. Before entering upon the duties of office, each election judge and clerk shall take an oath to honestly, faithfully, and promptly perform the duties of office. Any appointed judge, whether or not having personally subscribed to the oath, may administer the oath to another judge. The chairman of the election board shall rotate the time at which judges and clerks may be relieved for meals. (Sec. 3.11 ch 83 SLA 1960; am sec. 19 ch 116 SLA 1972)

Sec. 15.15.120. Filling vacancies in election board. If an appointed judge or clerk fails to appear and subscribe to the oath on election day or becomes incapacitated during the time of the election or the counting of the ballots, the election board members present shall elect, by a majority voice vote, a qualified voter to fill the vacancy. The qualified voter elected to fill the vacancy shall be of the same political party as the person for whom the substitution is made unless, after reasonable effort, the election board members determine that a qualified voter of the same political party is not available. (Sec. 3.12 ch 83 SLA 1960; am sec. 14 ch 136 SLA 1966; am sec. 48 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "the counting of the ballots" for "canvass" near the middle of the first sentence, and added "unless, after reasonable effort, the election board members determine that a qualified voter of the same political party is not available" at the end of the section.

Sec. 15.15.130. Majority decision of election board. The decision of the majority of judges determines the action that the election board shall take regarding any question which arises during the course of the election. (Sec. 3.13 ch 83 SLA 1960)

Sec. 15.15.140. Permitted use of unofficial ballots. (a) If the election board receives an insufficient number of official paper ballots, official punch-card ballots, or official election materials, it shall provide and the voters may use unmarked substitute ballots or other election materials to indicate the intent of the voter.

(b) The election board shall certify the facts which prevented the use of the official ballots and materials and shall include the certificate in the election returns to the director. The initial failure to certify to the facts or include the certificate required does not invalidate any ballots.

(c) On disclosure that unofficial ballots have been used without the certification required under (b) of this section, the director shall notify the chairman of the election board by telephone or telegram of the failure to certify the ballots properly.

(d) The director may accept a certificate made by telegram and count the ballots if the certificate is proper and actually received by the director within 10 days of the date that the chairman of the election board was notified under (c) of this section. (Sec. 3.14 ch 83 SLA 1960; am sec. 49 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section.

NOTES TO DECISIONS

Use of unofficial ballot. For case construing former law providing when unofficial ballot could be used, see Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

Sec. 15.15.150. Official opening of polls. On the day and hour of election, the election board shall announce that the polls are open and receive the voters. (Sec. 3.15 ch 83 SLA 1960)

Sec. 15.15.160. Prohibition of political discussion by election board. During the hours that the polls are open, a judge or clerk may not discuss any political party, candidate or issue while on duty. (Sec. 3.16 ch 83 SLA 1960)

Sec. 15.15.170. Prohibition of political persuasion near election polls. During the hours the polls are open, a person who is in the polling place or within 200 feet of any entrance to the polling place may not attempt to persuade a person to vote for or against a candidate, proposition or question. The election judges shall post warning notices at the required distance in the form and manner prescribed by the director. (Sec. 3.17 ch 83 SLA 1960; am sec. 20 ch 116 SLA 1972; am sec. 50 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "200" for "100" near the middle of the first sentence, and substituted "director" for "lieutenant governor" at the end of the section.

Sec. 15.15.180. Keeping of register. The judges shall keep a register or registers in which each voter before receiving a ballot shall sign the voter's name and give both a resident and mailing address. A record shall be kept in the registration book in space provided of the name of persons who offer to vote but who actually do not vote, and a brief statement of explanation. The signing of the register constitutes a declaration by the voter that the voter is qualified to vote. (Sec. 3.18 ch 83 SLA 1960; am sec. 15 ch 136 SLA 1966; am sec. 9 ch 38 SLA 1974; am sec. 51 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "a" for "an original" following "shall keep" near the beginning of the section, and inserted "or registers" near the beginning of the section.

NOTES TO DECISION

Quoted in Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Sec. 15.15.190. Keeping of duplicate register. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.15.180.]

Editor's notes. The repealed section derived from sec. 3.19, ch 83, SLA 1960; sec. 16, ch 136, SLA 1966; sec. 21, ch 116, SLA 1972.

Sec. 15.15.195. Voters on official registration list. An election judge in a precinct shall allow a voter on the official registration list to vote in the precinct unless the voter is questioned in accordance with AS 15.15.210. (Sec. 52 ch 100 SLA 1980)

Editor's notes. AS 15.15.210, referred to above, was repealed by sec. 231, ch 100, SLA 1980.

Sec. 15.15.198. Voters not on official registration list. (a) If a voter's name does not appear on the official registration list in the precinct in which the voter seeks to vote, the election judge shall affirmatively advise the voter that the voter may cast a questioned ballot and the voter shall be allowed to vote a questioned ballot.

(b) A person whose registration has been cancelled under AS 15.07.130(b) and who votes a questioned ballot shall have the ballot counted if

(1) the person was registered to vote for either of the two most recent general elections;

(2) the person signs under oath a statement to that effect; and

(3) the earlier registration is verified by the director. (Sec. 52 ch 100 SLA 1980; am sec. 6 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (a) substituted "the voter" for "he" and "the election judge shall affirmatively advise the voter that the voter may cast a questioned ballot and the voter" for "he."

Revisor's notes. Section 54, ch 100, SLA 1980, added AS 15.15.213 which is virtually identical to the provisions of AS 15.15.198. Consequently, the material enacted as AS 15.15.213 is not set out in the statutes. It read as follows: "Sec. 15.15.213. QUESTIONED BALLOT. If the name of a voter is not on the list of registered voters, the voter may vote a questioned ballot"

Editor's notes. The case cited in the note below was decided under former AS 15.15.213.

NOTES TO DECISION

There is no constitutional requirement of precinct residency, and there is clear statutory authorization for persons claiming to be registered voters to vote a questioned ballot if there is no evidence of registration in the precinct in which the voter seeks to vote. Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.15.213).

Cross-precinct voting authorized. Cross-precinct voting, which occurs when a voter registered in one precinct votes a questioned ballot in a different precinct in the same election district is authorized by statute. Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.15.213).

Waiver of challenges to validity of cross-district voting. Challenges to the validity of cross-district voting, which occurs when a voter registered in one district casts a questioned ballot in a different district, were waived if not raised before the ballots were separated and commingled. Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.15.213).

Sec. 15.15.200. Questioning of voter of doubtful qualification. [Repealed, sec. 38 ch 116 SLA 1972.]

Editor's notes. The repealed section derived from sec. 3.20, ch 83, SLA 1960; sec. 9, ch 71, SLA 1972.

Sec. 15.15.210. Questioning of voters of suspect qualification. Every election judge and election clerk shall question, and every watcher and any other person qualified to vote in the precinct may question a person attempting to vote if the questioner has good reason to suspect that the questioned person is not qualified to vote. All questions regarding a person's qualifications to vote shall be made in writing setting out the reason the person has been questioned. A questioned person before voting shall subscribe to an oath or affirmation in a form provided by the director attesting

to the fact that in each particular the person meets all the qualifications of a voter, is not disqualified, and has not voted at the same election. The questioned person shall also state the place from which that person came immediately before living in the precinct where offering to vote and the length of time of residence in the former place. After the questioned person has executed the oath or affirmation, the person may vote.

If the questioned person refuses to execute the oath or affirmation, the person may not vote. (Sec. 36 ch 59 SLA 1982)

Sec. 15.15.213. Questioning a voter's ballot. [Repealed, sec. 43, ch 85 SLA 1988.]

Sec. 15.15.215. Disposition of questioned votes. (a) A voter who casts a questioned ballot shall vote the ballot in the same manner as prescribed for other voters. After the election judge removes the numbered stub from the ballot, the voter shall insert the ballot into a small envelope and put the small envelope into a larger envelope on which the statement the voter previously signed is located. These larger envelopes shall be sealed and deposited in the ballot box. When the ballot box is opened, these envelopes shall be segregated, counted, compared to the voting list, and delivered to the official or body supervising the election. The merits of the question shall be determined by this official or body in accordance with the procedure prescribed for questioned votes in AS 15.20.207.

(b) [Repealed, sec. 231 ch 100 SLA 1980.] (Sec. 1 ch 120 SLA 1968; am sec. 17 ch 197 SLA 1975; am secs. 55, 231 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section, repealing former subsection (b).

NOTES TO DECISIONS

Former provisions concerning paper ballots construed. See Carr v. Thomas, Sup. Ct. Op. No. 1762 (File No. 4261), 586 P.2d 622 (1978); Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Legislative intent in enacting section. See Carr v. Thomas, Sup. Ct. Op. No. 1762 (File No. 4261), 586 P.2d 622 (1978).

Failure to comply strictly with section does not invalidate ballots. The legislature has not indicated that failure to comply strictly with this section should cause ballots to be invalidated. Carr v. Thomas, Sup. Ct. Op. No. 1762 (File No. 4261), 586 P.2d 622 (1978).

Although this section uses the word "shall" rather than "may," many election cases regard the word "shall" as directory in post-election cases and failure to follow strictly such requirements does not result in ballots being declared invalid. Furthermore, even where statutory terms have been construed as mandatory, it has been held that the right to vote is a superseding mandate. Carr v. Thomas, Sup. Ct. Op. No. 1762 (File No. 4261), 586 P.2d 622 (1978).

There is no constitutional requirement of precinct residency, and there is clear statutory authorization for persons claiming to be registered voters to vote a questioned ballot if there is no evidence of registration in the precinct in which the voter seeks to vote. Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Cross-precinct voting authorized. Cross-precinct voting which occurs when a voter registered in one precinct votes a questioned ballot in a different precinct in the same election district is authorized by statute. Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Waiver of challenges to validity of cross-district voting. Challenges to the validity of cross-district voting which occurs when a voter registered in one district casts a questioned

ballot in a different district, are waived if not raised before the ballots are separated and commingled. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979). See now AS 15.20.211. - Ed. note.

Collateral references. Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast. 155 ALR 677.

Sec. 15.15.220. Administration of oaths. Any election judge may administer to a voter any oath that is necessary in the administration of the election. (Sec. 3.22 ch 83 SLA 1960; am sec. 56 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "election" at the beginning of the section.

Sec. 15.15.225. Voter identification at polls. (a) Before being allowed to vote, each voter shall exhibit to an election judge one form of identification, including but not limited to an official voter registration card, driver's license, birth certificate, passport, or hunting or fishing license.

(b) An election judge may waive the identification requirement if the election judge knows the identity of the voter.

(c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot. (Sec. 57 ch 100 SLA 1980)

Sec. 15.15.230. Providing ballot to voter. When the voter has qualified to vote, the election judge shall give the voter an official ballot. The voter shall retire to a booth or private place to mark the ballot. (Sec. 3.23 ch 83 SLA 1960; am sec. 58 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "private place" for "screen" near the end of the section, and deleted "for the candidates of his choice" at the end of the section.

NOTES TO DECISIONS

The official ballot is to be handed to the voter by the judges. *Territory ex rel. Suizer v. Canvassing Bd.*, 5 Alaska 602 (1917) (decided under former law).

Collateral references. Failure to make available to voters official ballots, or ballots conforming to requirements, as affecting validity of election of public officer. 165 ALR 1263.

Sec. 15.15.240. Assisting voter by judge. A qualified voter who cannot read, mark the ballot, or sign the voter's name may request an election judge, a person, or not more than two persons of the voter's choice to assist. If the election judge is requested, the election judge shall assist the voter. If any other person is requested, the person shall state upon oath before the election judge that the person will not divulge the vote cast by the person assisted. (Sec. 3.24 ch 83 SLA 1960; am sec. 9 ch 125 SLA 1962; am sec. 59 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "an election" for "a" preceding "judge" near the middle of the first sentence, and inserted "election" near the beginning of the second sentence.

Sec. 15.15.250. Disposition of improperly marked ballot. If a voter improperly marks or otherwise damages a ballot, the voter may request and the election board shall provide another ballot, with a maximum of three, and the board shall record the

number of the improperly marked or damaged ballot and destroy it immediately without examining it. (Sec. 3.25 ch 83 SLA 1960; am sec. 7 ch 80 SLA 1963)

Sec. 15.15.260. Placing ballot in ballot box by voter. When the voter has marked a ballot, the voter shall inform the election judge. The director may require that the voter return the ballot to the election judge temporarily so that any stub which may be part of the ballot may be removed by the election judge. Any such requirement shall protect the secrecy of the ballot. In all cases the ballot shall be deposited in the ballot box by the voter in the presence of the election judge unless the voter requests the election judge to deposit the ballot on the voter's behalf. Separate ballot boxes may be used for separate ballots. (Sec. 3.26 ch 83 SLA 1960; am sec. 1 ch 102 SLA 1978; am sec. 60 ch 100 SLA 1980)

Effect of amendments. The 1978 amendment rewrote this section.

The 1980 amendment inserted "election" preceding "judge" wherever it appears throughout the section, and substituted "director" for "lieutenant governor" at the beginning of the second sentence.

Sec. 15.15.270. Prohibiting the leaving of the polling place with ballot. A voter may not leave the polling place with the official ballot that the voter received to mark. (Sec. 3.27 ch 83 SLA 1960)

Sec. 15.15.280. Prohibiting the exhibition of marked ballots. Subject to AS 15.15.240 a voter may not exhibit the voter's ballot to an election official or any other person so as to enable any person to ascertain how the voter marked the ballot. (Sec. 3.28 ch 83 SLA 1960)

Sec. 15.15.290. Prohibiting the identification of ballots. While the polls are open, an election official may not open any ballot received from a voter, or mark a ballot by folding or otherwise so as to be able to recognize it, or otherwise attempt to learn how a voter marked a ballot, or allow the same to be done by another person. (Sec. 3.29 ch 83 SLA 1960)

Sec. 15.15.300. Prohibiting the count of exhibited ballots. An election official may not allow a ballot to be placed in the ballot box that the official knows to have been unlawfully exhibited by the voter. A ballot unlawfully exhibited shall be recorded as a spoiled ballot and destroyed. (Sec. 3.30 ch 83 SLA 1960; am sec. 61 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "allow a ballot to be placed" for "place" near the beginning of the first sentence, substituted "which he knows" for "a ballot known" near the middle of the first sentence, and substituted "recorded as a spoiled ballot and destroyed" for "retained and placed with the improperly marked or damaged ballots" at the end of the section.

NOTES TO DECISIONS

A ballot upon which the voter signed his or her name was not "exhibited" within the meaning of AS 15.15.280 and this section and did not need to be declared a "spoiled ballot" and destroyed. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Sec. 15.15.310. Official closing of polls. Fifteen minutes before and at the time of closing the polls, the election board shall announce the present time and the time of closing the polls. (Sec. 3.31 ch 83 SLA 1960)

Sec. 15.15.320. Voters in line when polls close. Every qualified voter present and in line at the time prescribed for closing the polls may vote. (Sec. 3.32 ch 83 SLA 1960)

Sec. 15.15.330. Commencement of ballot count. When the polls are closed and the last vote has been cast, the election board and clerks or counters shall immediately proceed to open the ballot box and to count the votes cast. In all cases the election board shall cause the count to be continued without adjournment until the count is complete. (Sec. 3.33 ch 83 SLA 1960; am sec. 14 ch 228 SLA 1968; am sec. 24 ch 116 SLA 1972; am sec. 62 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment deleted the former first sentence, which read: "Counting of paper ballots may begin before the polls are closed in precincts having 300 or more voters and designated by the lieutenant governor; however, counting shall not in any event begin before 2:00 P.M. prevailing time and unless at least 100 votes have been cast", substituted "When" for "In all other precincts, when" at the beginning of the present first sentence, deleted "and canvass" preceding "the votes cast" at the end of the present first sentence, and substituted "count" for "canvass" twice where it appears in the present second sentence.

NOTES TO DECISIONS

Construction of "early count" regulations authorized under section prior to 1980 amendment. See *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Former provisions concerning paper ballots construed. See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.15.340. Report, oath and vacancies of counters. Counters shall report to the election board at the polls at the time designated by the election supervisor or the chairman of the election board to assume their duties to assist the election board in counting the vote. Before undertaking the duties of office, each counter shall subscribe to an oath to honestly, faithfully, impartially, and promptly carry out the duties of the position. An election judge may administer the oath. If an appointed counter fails to appear and subscribe to the oath at the time designated by the election supervisor, the election board shall appoint any qualified voter to fill the vacancy. (Sec. 3.34 ch 83 SLA 1960; am sec. 15 ch 228 SLA 1968; am sec. 25 ch 116 SLA 1972; am sec. 63 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "or the chairman of the election board" near the middle of the first sentence, and deleted "and canvassing" preceding "the vote" at the end of the first sentence.

Sec. 15.15.350. General procedure for ballot count. (a) The director may adopt regulations prescribing the manner in which the precinct ballot count is accomplished so as to assure accuracy in the count and to expedite the process. The election board shall account for all ballots by completing a ballot statement containing (1) the number of official ballots received; (2) the number of official ballots voted; (3) the number of official ballots spoiled; (4) the number of official ballots unused and

destroyed. The board shall count the number of questioned ballots and shall compare that number to the number of questioned voters in the register. Discrepancies shall be noted and the numbers included in the certificate prescribed by AS 15.15.370. The election board shall count the ballots in a manner that allows watchers to see the ballots when opened and read. No person handling the ballot after it has been taken from the ballot box and before it is placed in the envelope for mailing may have a marking device in hand or remove a ballot from the immediate vicinity of the polls.

(b) Ballots may not be counted before 8:00 p.m., local time, on the day of the election. (Sec. 3.35 ch 83 SLA 1960; am sec. 16 ch 228 SLA 1968; am sec. 18 ch 197 SLA 1975; am sec. 64 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director may" for "lieutenant governor shall" at the beginning of subsection (a), substituted "ballot count" for "canvass" near the middle of the first sentence of subsection (a), added the present second, third, and fourth sentences of subsection (a), deleted "or counting board" following "The election board" near the beginning of the fifth sentence of subsection (a), substituted "count" for "canvass" near the beginning of the fifth sentence of subsection (a), deleted the former material following "of the polls", which read: "Except as provided by AS 15.15.330 for the early counting of ballots, and by AS 15.20.680 for the counting of punch-card ballots" at the end of subsection (a) and added subsection (b).

Collateral references. Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made. 106 ALR 398.

Determination of canvassing boards or election officials as regards counting or exclusion of ballots as subject of review by mandamus. 107 ALR 618.

Injunction against canvassing of votes and declaring result of election. 1 ALR2d 588.

Sec. 15.15.360. Rules for counting hand-marked ballots. (a) The election board shall count hand-marked ballots according to the following rules.

(1) A voter may mark a ballot only by the use of cross-marks, "X" marks, diagonal, horizontal or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the square opposite the name of the candidate the voter desires to designate.

(2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

(3) If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.

(4) If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office may not be counted.

(5) The mark specified in (1) of this subsection shall be counted only if it is substantially inside the square provided, or touching the square so as to indicate clearly that the voter intended the particular square to be designated.

(6) Improper marks on the ballot may not be counted and do not invalidate marks for candidates properly made.

(7) An erasure or correction invalidates only that section of the ballot in which it appears.

(8) A vote marked for the candidate for President or Vice-President of the United States is considered and counted as a vote for the election of the presidential electors.

(9) Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board determines, on the basis of other evidence that the ballot was so marked for the purpose of identifying

the ballot.

(10) Stickers bearing a candidate's name may be affixed to the ballot in place of writing in a candidate's name if write-in votes are otherwise permitted. Stickers may not be issued by members of the election board while serving at the polls. Stickers may not be offered to voters within 200 feet of the polling place.

(11) In order to vote for a write-in candidate, the voter must write in the candidate's name in the space provided or place a sticker in the space and, in addition, mark the square opposite the candidate's name in accordance with (1) of this subsection.

(b) The rules set out in this section are mandatory and there shall be no exceptions to them. A ballot may not be counted unless marked in compliance with these rules.

(c) The rules set out in this section apply to hand-marked punch-card ballots if punch-card machines are not available in a precinct. (Sec. 3.36 ch 83 SLA 1960; am secs. 10 - 12 ch 125 SLA 1962; am secs. 8 - 10 ch 80 SLA 1963; am sec. 1 ch 136 SLA 1966; am sec. 24 ch 69 SLA 1970; am sec. 26 ch 116 SLA 1972; am sec. 65 ch 100 SLA 1980)

Cross references. For rules for counting punch-card ballots, see AS 15.20.730.

Effect of amendments. The 1980 amendment deleted "canvass and" following "board shall near the middle of the introductory paragraph of subsection (a), substituted "hand-marked ballots" for "the votes" near the middle of the introductory paragraph of subsection (a), inserted "diagonal, horizontal or vertical marks, solid marks, stars, circles, asterisks" near the middle of paragraph (1) of subsection (a), inserted "specified in (1) of this subsection" near the beginning of paragraph (5) or subsection (a), deleted "or ballots" preceding "are otherwise permitted" near the end of the first sentence of paragraph (10) of subsection (a), substituted "200" for "100" near the middle of the third sentence of paragraph (10) of subsection (a), added paragraph (11) of subsection (a), and added subsections (b) and (c).

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

NOTES TO DECISIONS

Completely filled-in boxes are to be counted. *Hickel v. Thomas*, Sup. Ct. Order (File No. 4251), 588 P.2d 273 (1978).

Punch-card ballots marked entirely by pen instead of punched are valid because they provide clear evidence of the voters' intent. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Boxes completely filled in over prior mark are to be counted. *Hickel v. Thomas*, Sup. Ct. Order (File No. 4251), 588 P.2d 273 (1978).

Use of punch-card machine not required. Neither this section nor AS 15.20.730 (rules for counting punch-card ballots) require voters to use a punch-card machine if one is available, but only specify the manner of counting properly punched and hand-marked ballots. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Former paragraph unconstitutional. Former paragraph of this section, which was repealed in 1970, added to the qualifications established by U.S. Const., art. I, sec. 3, and was therefore unconstitutional. *Benesch v. Miller*, Sup. Ct. Op. No. 509 (File No. 1058), 446 P.2d 400 (1968).

The over-all effect of former paragraph of this section was that of adding to the qualifications established by U.S. Const., art. I, sec. 3, the additional qualification that in order to be a candidate at the general election, the candidate must not have been defeated in the primary election for that office. *Benesch v. Miller*, Sup. Ct. Op. No. 509 (File No. 1058), 446 P.2d 400 (1968).

Sec. 15.15.361. Stickers. The director may adopt regulations under the Administrative Procedure Act (AS 44.62), governing the size, thickness, color and other characteristics of stickers and their use in elections. (Sec. 66 ch 100 SLA 1980)

Sec. 15.15.370. Completion of ballot count. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To assure adequate protection the director shall prescribe the manner in which the ballots, registers, and all other election records and materials are thereafter preserved, transferred, and destroyed. (Sec. 3.37 ch 83 SLA 1960; am sec. 11 ch 80 SLA 1963; am sec. 67 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'count of ballots' for 'canvass' at the beginning of the section, deleted 'or counters' following 'the election board' near the middle of the first sentence, substituted 'director' for 'lieutenant governor' wherever it appears throughout the section, substituted 'and the register' for 'the original register, all ballots unlawfully exhibited, properly identified, the record of ballots destroyed under AS 15.15.250, and all oaths and affidavits' following 'the certificate' at the end of the third sentence, deleted 'and the duplicate register' following 'the duplicate certificate' near the end of the sixth sentence, substituted 'the' for 'its' preceding 'respective election supervisor' near the end of the sixth sentence, substituted 'results' for 'certificates' near the end of the seventh sentence, inserted 'telephone' near the end of the seventh sentence, and substituted 'totaling' for 'canvass' near the beginning of the eighth sentence.

NOTES TO DECISIONS

For construction of prior law, see Territory ex rel. Sulzer v. Canvassing Bd., 5 Alaska 602 (1917).

Cited in Hammond v. Hickel, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); Thomas v. Croft, Sup. Ct. Op. No. 2135 (File No. 4719), 614 P.2d 795 (1980).

Sec. 15.15.380. Payment of election board members. The director shall pay each election board member for time spent at election duties, including the receiving of instructions. Election board chairmen and the chairman and members of the absentee ballot, questioned ballot and state ballot counting review boards shall be paid for time spent at their election duties. The director shall set the compensation to be paid under this section by regulation. (Sec. 3.38 ch 83 SLA 1960; am sec. 17 ch 228 SLA 1968; am sec. 27 ch 116 SLA 1972; am sec. 1 ch 85 SLA 1975; am sec. 1 ch 70 SLA 1978; am sec. 68 ch 100 SLA 1980)

Effect of amendments. The 1978 amendment substituted "\$5" for "\$4.50" in the first sentence and "\$5.50" for "\$5" in the second sentence.

The 1980 amendment substituted "director" for "state, through the office of lieutenant governor" at the beginning of the section, deleted "\$5 per hour" following "board member" near the middle of the first sentence, inserted "ballot, questioned ballot" near the middle of the second sentence, substituted "ballot counting review boards" for "canvass board" near the middle of the second sentence, deleted "\$5.50 an hour" following "shall be paid" near the end of the second sentence, and added the present third sentence.

Sec. 15.15.390. Certifying election expenses. The director shall prescribe the manner of certifying, auditing, and paying election expenses, including the cost of giving notice, renting polling places, paying election judges, clerks, and counters, securing a ballot box, postage, and stationery, and obtaining similar election necessities. (Sec. 3.39 ch 83 SLA 1960; am sec. 69 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, and inserted "election" near the middle of the section.

Sec. 15.15.400. Preparation of voter list. The director shall prepare both a statewide list and a list by precinct of the names and addresses of all persons who voted in the election and their political party affiliation. Any person may obtain a copy of the list, or a part of the list, or a computer tape containing both residence and mailing addresses of voters, by applying to the director and paying to the state treasury a fee as determined by the director. (Sec. 3.40 ch 83 SLA 1960; am sec. 70 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" wherever it appears throughout the section, deleted "if the party affiliation was specifically declared by the voter" following "party affiliation" at the end of the first sentence, and inserted "or a computer tape containing both residence and mailing addresses of voters" near the middle of the second sentence.

Sec. 15.15.410. Plural voting. Upon a determination that a person has voted more than once in the same election, the director shall notify the attorney general. (Sec. 3.41 ch 83 SLA 1960; am sec. 71 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section.

Sec. 15.15.420. Duty to review the ballot counting. The director shall review the counting of the ballots with the assistance of and in the presence of the appointed representatives from the political parties. (Sec. 3.42 ch 83 SLA 1960; am sec. 72 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, and substituted "review the counting of ballots" for "canvass the vote" near the middle of the section.

Sec. 15.15.430. Scope of the review of ballot counting. (a) The review of ballot counting by the director shall include only

(1) a review and comparison of the tallies of hand-marked ballots in the election poll books with the precinct election certificates to correct any mathematical error in the count of hand-marked ballots;

(2) a review of the tallies of write-in votes and a review of election certificates as

provided by law from precincts using punch-card ballots;

(3) a review of absentee and questioned ballots as prescribed by law.

(b) If the director finds an unexplained error in the tally of hand-marked ballots in any precinct, the director may count the ballots from the precinct according to the rules set out in AS 15.15.360. If the director finds the precinct counters have not entered tallies in the precinct tally books but have certified a candidate as having received a fixed number of votes, the director may recount the ballots from that precinct according to the rules set out in AS 15.15.360. The director shall certify in writing to the state ballot counting review board any changes resulting from the count. (Sec. 3.43 ch 83 SLA 1960; am sec. 12 ch 80 SLA 1963; am sec. 73 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "review of ballot counting" for "canvass" at the beginning of subsection (a), substituted "director" for "lieutenant governor" wherever it appears throughout the section, substituted "hand-marked" for "paper" wherever it appears throughout the section, substituted "votes" for "ballots" near the middle of paragraph (2) of subsection (a), substituted "review" for "comparison" near the middle of paragraph (2) of subsection (a), substituted "punch-card" ballots for "voting machines" at the end of paragraph (2) of subsection (a), substituted "a review" for "the canvass" at the beginning of paragraph (3) of subsection (a), inserted "and questioned" in paragraph (3) of subsection (a), deleted "election poll books" following "in any precinct" near the middle of the first sentence of subsection (b), added "according to the rules set out in AS 15.15.360" at the end of the first and second sentences of subsection (b), and substituted "ballot counting review" for "canvass" near the middle of the last sentence of subsection (b).

NOTES TO DECISIONS

When election certificate considered evidence of election result. This section, read in conjunction with AS 15.15.440, permitted the election certificate to be considered as evidence of the election result, in the absence of evidence of fraud, corruption, or scienter on the part of any member of the election board in tallying the votes and executing the certificate. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Discard of ballots did not require that votes be disallowed. Although 141 ballots were discarded rather than mailed to the lieutenant governor (now director) as required by AS 15.15.370, and this amounted to a significant deviation from the positive statutory duty placed upon the election board to mail the ballots to the lieutenant governor (now director), this deviation did not in itself require that these votes be disallowed. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.15.440. Dates for opening and closing state ballot counting review. The state ballot counting review shall begin no later than 11 days after the election and be continued daily until completed. The director may designate the hours each day during which the state ballot counting review board is to conduct its ballot counting review. The director shall close the review when the director is satisfied that no missing precinct certificate of election would, if received, change the result of the election. If no election certificate has been received from a precinct, the director may secure from the election supervisors and may count a certified copy of the duplicate election certificate of the precinct. If no election materials have been received, but election results have been received by telephone, telegram or radio, the director shall count the election results so received. If the director has reason to believe that a missing precinct certificate, if received, would affect the result of the election, the director shall await the receipt of the certificate until the close of business on the 15th day after the date of election. A certificate not actually delivered to the director by the close of business on the 15th day after the election may not be counted at the state

ballot counting review. (Sec. 3.44 ch 84 SLA 1960; am sec. 13 ch 125 SLA 1962; am sec. 13 ch 80 SLA 1963; am sec. 74 ch 100 SLA 1980; am sec. 7 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in the first sentence substituted "no later than 11" for "eight," in the third sentence substituted "the director" for "he," in the next-to-last sentence substituted "the close of business on" for "four o'clock in the afternoon of" and in the last sentence substituted "the close of business" for "four o'clock" and "may" for "shall."

NOTES TO DECISIONS

When election certificate considered evidence of election result. AS 15.15.430, read in conjunction with this section, permitted the election certificate to be considered as evidence of the election result, in the absence of evidence of fraud, corruption, or scienter on the part of any member of the election board in tallying the votes and executing the certificate. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Discard of ballots did not require that votes be disallowed. Although 141 ballots were discarded rather than mailed to the lieutenant governor (now director) as required by AS 15.15.370, and this amounted to a significant deviation from the positive statutory duty placed upon the election board to mail the ballots to the lieutenant governor (now director), this deviation did not in itself, however, require that these votes be disallowed. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.15.450. Certification of state ballot counting review. Upon completion of the state ballot counting review the director shall certify the person receiving the largest number of votes for the office for which that person was a candidate as elected to that office and shall certify the approval of a justice or judge not rejected by a majority of the voters voting on the question. The director shall issue to the elected candidates and approved justices and judges, a certificate of their election or approval. The director shall also certify the results of a proposition and other question except that the lieutenant governor shall certify the results of an initiative, referendum or constitutional amendment. (Sec. 3.45 ch 83 SLA 1960; am sec. 75 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "state ballot counting review" for "canvass" near the beginning of the section, substituted "director" for "lieutenant governor" wherever it appears throughout the section, and added "except that the lieutenant governor shall certify the results of an initiative, referendum or constitutional amendment" at the end of the section.

Collateral references. Result of election as affected by lack of title or by defective title of election officers. 1 ALR 1535.

Power of election officers to withdraw or change their returns. 168 ALR 855.

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.

Sec. 15.15.460. Tie votes. If two or more candidates tie in having the highest number of votes for the same office for which there is to be elected only one candidate, the director shall so notify the candidates who are tied. The director shall immediately proceed with the recount of votes in the manner provided by AS 15.20.430 - 15.20.530. (Sec. 3.46 ch 83 SLA 1960; am sec. 76 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" where it appears near the middle of the first sentence and near the beginning of the second sentence.

Sec. 15.15.470. Preservation of election ballots, papers, and materials. The director shall preserve all precinct election certificates, tallies, and registers for four years after the election. All ballots and stubs may be destroyed 30 days after the certification of the state ballot counting review unless an application for recount has been filed and not completed, or unless their destruction is stayed by an order of the court. The director may permit the inspection of election materials upon call by Congress, the state legislature, or a court of competent jurisdiction. (Sec. 3.47 ch 83 1960; am sec. 14 ch 125 SLA 1962; am sec. 77 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the first sentence and at the beginning of the third sentence, inserted "the" preceding "state" near the middle of the second sentence, and substituted "ballot counting review" for "canvass" near the middle of the second sentence.

Collateral references. Determination of facts regarding custody of ballots since original count, as condition of recount. 71 ALR 435.

Costs or reimbursement for expenses incident to recount. 106 ALR 928.

Sec. 15.15.480. Security of ballots. All official ballots in the possession of election officials, whether voted or not voted, shall be kept in a secure manner until destroyed in accordance with law. The director shall provide for the security of ballots during transportation and storage under regulations adopted under the Administrative Procedure Act (AS 44.62). (Sec. 78 ch 100 SLA 1980)

Chapter 20. Special Procedures for Elections.

Article

1. Absentee Voting (15.20.010 - 15.20.220)
2. Election Recounts (15.20.430 - 15.20.530)
3. Election Contests (15.20.540 - 15.20.560)
4. Punch-Card Voting (15.20.590 - 15.20.740)
5. Voting By Mail (15.20.800)

Article 1. Absentee Voting.

Section

10. Persons who may vote absentee
15. Moving from election district just before election
20. Provision for general administrative supervision
30. Preparation of ballots, envelopes, and other materials
40. Distribution of ballots, envelopes, and other materials
45. Designation of absentee voting officials and stations
48. Absentee voting in offices of election supervisors
50. Requirement of full public notice
61. Absentee voting in person
71. Absentee voting by personal representative
81. Absentee voting by mail
82. Absentee voting by mail from outside the United States
160. Fee prohibited
170. Disposition of ballots
180. Names of absentee voters to be made available
190. Appointment, duties, and compensation of district counting boards
201. Time of district absentee ballot counting review
203. Procedure for district absentee ballot counting review
205. Time of district questioned ballot counting review
207. Procedure for district questioned ballot review
211. Counting cross-district and certain write-in votes
220. Procedure for state review

Collateral references. 26 Am. Jur. 2d, Elections, secs. 243-252.

29 C.J.S., Elections, secs. 210(1) - 210(7).

Voting by persons in military service. 140 ALR 1100; 147 ALR 1443; 148 ALR 1402; 149 ALR 1466; 150 ALR 1460; 151 ALR 1464; 152 ALR 1459; 153 ALR 1434; 154 ALR 1459; 155 ALR 1459.

Validity of absentee voters' laws. 97 ALR2d 218.

Construction and effect of absentee voters' law. 97 ALR2d 257.

Sec. 15.20.010. Persons who may vote absentee. At any election a qualified voter may vote an absentee ballot for the district in which the voter resides and is registered if the voter.

(1) believes that the voter will be unavoidably absent from the proper voting

precinct on election day, whether inside the state or not; or

(2) will be unable to be present at the polls because of physical disability.

(3) [Repealed, sec. 79 ch 100 SLA 1980.] (Sec. 4.01 ch 83 SLA 1960; am sec. 79 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "At any election a" for "A" at the beginning of the section, inserted "an" preceding "absentee" near the middle of the introductory paragraph, substituted "ballot" for "at any election" near the middle of the introductory paragraph, added "for the district in which he resides and is registered" at the end of the introductory paragraph, deleted "or" at the end of paragraph (2), and deleted the former provisions of paragraph (3), which read: "if he believes he will be unable to be present at the polls because of the physical inaccessibility of the polling place causing undue travel expense, hardship, or hazard to the voter."

NOTES TO DECISIONS

Applied in *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Sec. 15.20.015. Moving from election district just before election. A person who meets all voter qualifications except that listed in AS 15.05.010(4) is qualified to vote by absentee ballot in the election district in which the person formerly resided if the person lived in that election district for at least 30 days immediately before changing residence. (Sec. 2 ch 80 SLA 1963)

Sec. 15.20.020. Provision for general administrative supervision. The director shall provide general administrative supervision over the conduct of absentee voting. The director shall make available instructions to absentee voters regarding the procedure for absentee voting. One set of instructions shall accompany each absentee ballot. (Sec. 4.02 ch 83 SLA 1960; am sec. 80 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the first sentence and at the beginning of the second sentence, deleted "and may issue rules necessary to the administration of absentee voting to assure efficiency and encourage voter participation" following "absentee voting" at the end of the first sentence, and substituted "make available" for "issue" near the beginning of the second sentence.

Sec. 15.20.030. Preparation of ballots, envelopes, and other material. The director shall provide ballots for use as absentee ballots in all districts. The director shall provide a small envelope in which the voter shall initially place the marked ballot, and shall provide a larger envelope, with the prescribed voter's certificate on the back, in which the small envelope with ballot enclosed shall be placed. The director shall prescribe the form of and prepare the voter's certificate, envelopes, and other material used in absentee voting. The voter's certificate shall include an oath, for use when required, that the voter is a qualified voter in all respects, a blank for the voter's signature, a certification that the affiant properly executed the marking of the ballot and gave the voter's identity, blanks for the attesting official or witnesses, and a place for recording the date the envelope was sealed and witnessed. (Sec. 4.03 ch 83 SLA 1960; am sec. 14 ch 80 SLA 1963; am sec. 81 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" wherever it appears throughout the section, deleted "the paper" preceding "ballots" near the middle of the first sentence, deleted "prepared" following "ballots" near the middle of the first sentence, deleted "at the polls" following "for use" near the middle of the first sentence, deleted "the" preceding "absentee ballots" near the end of the first sentence.

added "in all districts" at the end of the first sentence, deleted "blank" preceding "envelope" near the beginning of the second sentence, inserted "official or" preceding "witnesses" near the end of the fourth sentence, deleted "and time" following "the date" near the end of the fourth sentence, and substituted "witnessed" for "delivered" at the end of the section.

NOTES TO DECISIONS

Applied in *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Sec. 15.20.040. Distribution of ballots, envelopes, and other material. The director shall distribute the absentee ballots, envelopes, and other absentee voting material to the election supervisors for redistribution to absentee voting officials and absentee ballot stations established under AS 15.20.045(b) before the date upon which a person may first apply for an absentee ballot in person. (Sec. 4.04 ch 83 SLA 1960; am sec. 15 ch 80 SLA 1963; am sec. 82 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, substituted "absentee voting" for "the proper election" following "redistribution to" near the middle of the section, and inserted "and absentee ballot stations established under AS 15.20.045(b)" near the middle of the section.

NOTES TO DECISIONS

Exception to time requirement for 1978 election. In an order issued on October 20, 1978, in an appeal from summary judgment in an election contest, the supreme court held that the lieutenant governor (now director) was authorized to distribute absentee ballots for redistribution by election officials, as required by this section, as late as 5 days before the 1978 election, to be held November 7, 1978. *Hammond v. Hikkel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.20.045. Designation of absentee voting officials and stations. (a) The director or election supervisor may designate persons to act as absentee voting officials under AS 15.20.010 - 15.20.220 in areas where election supervisors do not have offices. Magistrates may, with the approval of the administrative director of the Alaska Court System, be designated under this section. At least 15 days before the election the director shall supply each absentee voting official with appropriate ballots.

(b) The director may designate by regulation adopted under the Administrative Procedure Act (AS 44.62) locations at which absentee voting stations will be operated on election day and on other dates and at times to be designated by the director. The director shall supply absentee voting stations with ballots for all election districts in the state and shall designate absentee voting officials to serve at absentee voting stations. (Sec. 19 ch 197 SLA 1975; am sec. 83 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of subsection (a), substituted "absentee voting" for "election" near the middle of the first sentence of subsection (a), added the last sentence of subsection (a), and added subsection (b).

Sec. 15.20.048. Absentee voting in offices of election supervisors. (a) The director shall supply each election supervisor with ballots for all districts in the state to be used for absentee voting in an election. Ballots for absentee voting in person shall be available in the offices of the election supervisors 15 days before the election through the day of the election.

(b) The director shall announce publicly that voting may begin in the offices of the election supervisors at a time earlier than the time allowed under (a) of this section if all election supervisors are supplied with ballots under (a) of this section before the

15th day before the election. (Sec. 84 ch 100 SLA 1980)

Sec. 15.20.050. Requirement of full public notice. The director shall give full public notice of the dates and manner of voting absentee and may select any means of communication permitted to be used in giving notice of the date and time of the general election. (Sec. 4.05 ch 83 SLA 1960; am sec. 85 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.20.060. Application in person or by a representative. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.20.061 and 15.20.071.]

Editor's notes. The repealed section derived from sec. 4.06, ch 83, SLA 1960; sec. 3, ch 24, SLA 1966; sec. 20, ch 197, SLA 1975.

Sec. 15.20.061. Absentee voting in person. (a) A qualified voter may apply in person for an absentee ballot to the following election officials at the times specified:

(1) to an absentee voting official in the election district in which the voter resides on or after the 15th day before an election up to and including the day before the date of the election;

(2) to an election supervisor

(A) after a date announced by the director under AS 15.20.048(b); and

(B) on or after the 15th day before an election up to and including the date of the election;

(3) to an absentee voting official at an absentee voting station designated under AS 15.20.045(b) at any time when the absentee voting station is operating;

(4) to an absentee voting official in the precinct in which the voter resides when distances preclude easy access to the polling place on or after the 15th day before an election up to and including election day;

(5) to an absentee voting official in the precinct in which no volunteers can be located to serve on the election board on or after the 15th day before an election up to and including election day.

(b) On receipt of an application in person for an absentee ballot and exhibition of proof of identification as required in AS 15.15.225, the absentee voting official or election supervisor shall issue the ballot to the applicant.

(c) On receipt of an absentee ballot in person, the voter shall proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of the election official who shall sign as attesting official and date that signature. The election official shall then accept the ballot.

(d) The election official may not accept a marked ballot that has been exhibited by an absentee voter with intent to influence other voters. If the absentee voter improperly marks or otherwise damages a ballot, the voter may request and the election official shall provide another ballot up to a maximum of three. Exhibited, improperly marked, or damaged ballots shall be destroyed. The numbers of all ballots destroyed shall be noted on the ballot statement.

(e) Each election official shall keep a record of the names and signatures of voters who cast absentee ballots before the election official and the dates on which the ballots were cast. (Sec. 86 ch 100 SLA 1980)

NOTES TO DECISIONS

Former sections governing absentee ballot voting construed. See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.20.062 - 15.20.070. Applications for ballot. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.20.061, 15.20.071, and 15.20.081.]

Editor's notes. The repealed sections derived from sec. 4.07, ch 83, SLA 1960; sec. 18, ch 136, SLA 1968; sec. 28, ch 116, SLA 1972.

Sec. 15.20.071. Absentee voting by personal representative. (a) A qualified voter who is physically disabled may apply for an absentee ballot through a personal representative to the following election officials at the times specified:

- (1) to an absentee voting official in the election district in which the voter resides on or after the 15th day before an election up to and including the day of the election;
- (2) to an election supervisor
 - (A) after a date announced by the director under AS 15.20.048(b); and
 - (B) on or after the 15th day before an election up to and including the date of the election;
- (3) to an absentee voting official at an absentee voting station designated under AS 15.20.045(b) at a time when the absentee voting station is operating;
- (4) to the election board chairman or the chairman's designee on election day in the precinct in which the voter is entitled to vote except that the voter may not apply to the election board chairman in an area in which absentee voting officials have been designated.

(b) Upon receipt of a written application by personal representative, the election official authorized to issue the absentee ballot shall provide the ballot and other absentee voting material to the personal representative if the written application is signed by the applicant and is accompanied by a letter from a licensed physician or a statement signed by two qualified voters stating that the applicant will be unable to go to the polling place because of physical disability.

(c) The personal representative shall deliver the absentee ballot to the voter as soon as practicable. Upon receipt of an absentee ballot through a personal representative, the voter shall proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the envelope in the presence of the personal representative who shall witness and date the signature of the voter. The voter must mark the ballot and sign the voter's certification not later than election day. The voter shall then return the absentee ballot to the personal representative who shall deliver the ballot to the election official who provided the ballot. The absentee ballot must be returned to the election official not later than 8:00 p.m. on election day.

(d) Each election official shall keep a record of the name and signature of each personal representative requesting an absentee ballot and the name of the person on whose behalf the ballot is requested. The election official shall record the date the absentee ballot is provided and the date the ballot is returned to the election official.

(e) A candidate for office at that election may not act as a personal representative. (Sec. 87 ch 100 SLA 1980; am sec. 8 ch 85 SLA 1986; am sec. 7 ch 67 SLA 1989)

Effect of amendments. The 1986 amendment in subsection (c) in the second sentence deleted "the back of" preceding "the envelope" and substituted "witness and date the signature of the voter" for "sign as attesting witness and date his signature," added the third sentence, in the fourth sentence substituted "the" for "his" preceding "personal representative," in the present last sentence deleted "within three days from the date it is obtained but" following "election official," and deleted the former last sentence, concerning the untimely return of an absentee ballot.

The 1989 amendment, effective August 28, 1989, deleted "and time" following "record the date" and substituted "date" for "time" the second time the word appears in the second sentence in subsection (d).

NOTES TO DECISIONS

Former sections governing absentee ballot voting construed. See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 89 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Sec. 15.20.080. Date for application in person. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.20.061.]

Editor's notes. The repealed section derived from sec. 4.08, ch 83, SLA 1960; sec. 16, ch 80, SLA 1963; sec. 2, ch 26, SLA 1966; sec. 29, ch 116, SLA 1972.

Sec. 15.20.081. Absentee voting by mail. (a) A qualified voter may apply by mail to the director for an absentee ballot. The application shall include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. Persons residing outside the United States and applying to vote absentee in federal elections in accordance with AS 15.05.011 need not include an Alaska residence address in the application.

(b) An application for an absentee ballot by mail must be received by the division of elections not less than four days before the election for which the absentee ballot is sought. The absentee ballot application must permit the person to register to vote under AS 15.07.070 and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote.

(c) After receipt of an application by mail, the director shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious mail service. The material shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the election supervisor in the district in which the voter is a resident.

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of two persons over the age of 18 years, who shall sign as witnesses and attest to the date on which the voter signed the certificate in their presence, and, in addition, the voter shall provide the certification prescribed in AS 09.63.020.

(e) An absentee ballot must be marked on or before the date of the election. Except as provided in (h) of this section, a voter who returns the ballot by mail shall

use a mail service at least equal to first class and mail the ballot not later than the day of the election to the election supervisor for the election district in which the voter seeks to vote. Except as provided in AS 15.20.480, the ballot may not be counted unless it is received by the close of business on the 10th day after the election. If the ballot is postmarked, it must be postmarked on or before election day. After the day of the election, no ballots shall be accepted unless received by mail.

(f) The director may require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of the voter's identity as prescribed by regulations adopted under the Administrative Procedure Act (AS 44.62).

(g) The director shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the election supervisor and the dates on which the ballot was executed and postmarked.

(h) Except as provided in AS 15.20.480, an absentee ballot returned by mail from outside the United States or from a military APO or FPO address that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the 15th day following the election. (Sec. 87 ch 100 SLA 1980; am sec. 63 ch 6 SLA 1984; am secs. 9 - 11 ch 85 SLA 1986; am secs. 8 - 11 ch 67 SLA 1989)

Effect of amendments. The 1984 amendment made a series of technical and internal reference changes in subsection (d).

The 1986 amendment in subsection (b) in the first sentence deleted "more than six months nor" following "postmarked not" and substituted "ten" for "seven" and added the second sentence; in subsection (e) deleted "and attested" following "marked" in the first sentence, in the second sentence substituted "Except as provided in (h) of this section, a" for "If the" and "a mail service at least equal to first class" for "the most expeditious mail service" and "for the" for "In his," inserted "who" preceding "returns," deleted "he" following "ballot by mail" and added "in which the voter seeks to vote" at the end of the sentence, and added the third and last sentences of the subsection; and added subsection (h).

The 1989 amendment, effective August 28, 1989, substituted "received by the division of elections" for "postmarked" and "four days" for "ten days" in the first sentence and "must permit" for "shall permit" in the second sentence in subsection (b); inserted "registration official" in the first sentence and rewrote the second sentence in subsection (d); deleted "Except as provided in AS 15.20.480" at the beginning of the third sentence in subsection (e); and added "Except as provided in AS 15.20.480" at the beginning of subsection (h).

NOTES TO DECISIONS

Former statutory sections governing absentee ballot voting construed. See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Subsection (d) contravened. Where absentee voter "witnessed" his own absentee ballot, such a "witnessing" contravenes subsection (d); and his ballot should not have been counted. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Attesting officer may initial attestation. Where the attesting officer had initialed the attestation section rather than signed, the ballot should have been counted. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Attesting officer's failure to provide the source of his authority will not of itself invalidate an absentee ballot. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Presumption of official's attestation. It must be presumed that a person who attests an absentee ballot as an authorized official does so in full cognizance of the text and oath on the absentee ballot form. Although this presumption may be rebutted by an affirmative showing that the attesting officer lacks appropriate authority, where contestant has

produced no evidence rebutting the presumption of authorization, all ballots challenged on this basis will be held properly counted. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Satisfaction of requirement that ballots be marked on or before election day. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

The failure of the absentee ballot to be properly postmarked or dated when received by an election official was not included as a violation of the absentee ballot statute mandating the canvass board to invalidate the ballot. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Ballots properly counted. Where ballots with postmarks and date stamps later than election day had been signed by attesting witnesses, and the date space on the voter's certificate indicated that the vote had been cast on or before election day, these ballots were properly counted in the recount. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Sec. 15.20.082. Absentee voting by mail from outside the United States. (a) The director shall prepare special absentee ballots under this section for use in a state primary election, a state general election, and a state special election when the voter notifies the director in writing that the voter expects to be living, working, or traveling outside the United States at the time of the election. The director shall prepare the ballot so that it may be sent to the absentee voter 60 days before the date of the election. The director shall list on the ballot the different races to be voted on at the particular election on a statewide basis and, if the director prepares the ballot without the names of candidates printed on the ballot, the director shall provide the voter with information described in (c) of this section.

(b) A special state absentee ballot prepared for use under (a) of this section shall contain each judicial retention election and ballot proposition or question scheduled to appear on the particular ballot.

(c) A special state absentee ballot prepared for the state general election or for a state special election shall, if the names of candidates are not yet certified, permit a voter to cast a ballot for all the candidates of a particular political party that expects to have candidates appear on the ballot; for this purpose, the director shall prepare the ballot with party boxes and a blank line for each office to be voted on in that election. The voter may vote for a candidate for that office by writing in the name of a person and marking the box to the right of that name or the voter may mark one of the party boxes. If the voter puts a mark in a party box for that office, the director shall count the mark as a vote cast for the candidate for that office nominated by that party. If the voter writes in a name for an office, the vote shall be counted as a write-in vote for that office. The director shall count the ballots under AS 15.15.360. The director shall provide the voter with the names of each candidate appearing on the primary election ballot and the names of any candidates who have qualified by petition to appear on the general election ballot.

(d) The director shall prepare the regular absentee ballots as soon as is reasonably possible and shall send the regular absentee ballot to each person receiving a special absentee ballot under this section. The director shall, if the regular absentee ballot is received within the time required by law, count the regular absentee ballot in preference to the special absentee ballot. (Sec. 12 ch 85 SLA 1986)

Sec. 15.20.090 - 15.20.150. Dates for and procedure on applications; casting votes.
[Repealed, sec. 231 ch 100 SLA 1980.]

Editor's notes. The repealed sections derived from secs. 4.09-4.15, ch 83, SLA 1960; sec. 1, ch 22, SLA 1968; sec. 3, ch 24, SLA 1966; sec. 19, ch 138, SLA 1966; secs. 30-32, ch 116, SLA 1972; sec. 10, ch 38, SLA 1974; secs. 21, 22, ch 197, SLA 1975.

Sec. 15.20.160. Fee prohibited. A person may not receive a fee from the voter for attesting to any voter's certificate required in voting absentee. (Sec. 4.16 ch 83 SLA 1960)

Sec. 15.20.170. Disposition of ballots. Each absentee voting official shall transmit the dated envelopes containing the marked ballots by the most expeditious mail service to the election supervisor for the district. Upon receipt of the absentee ballots the election supervisor shall stamp on the envelope the date on which the ballot is received. (Sec. 4.17 ch 83 SLA 1960; am sec. 18 ch 228 SLA 1968; am sec. 23 ch 197 SLA 1975; am sec. 88 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section.

NOTES TO DECISIONS

The purpose of former AS 15.20.150 and this section was to provide methods by which to insure that absentee ballots have been cast on or before election day. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Satisfaction of requirement that ballots be marked on or before election day. The mandatory requirement of former AS 15.20.150 that ballots be marked on or before election day was satisfied by a date received stamp, or a postmark, or the date of witnessing of the voter certificate, or any combination of these. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

The failure of the absentee ballot to be properly postmarked or dated when received by an election official was not included as a violation of the absentee ballot statute mandating the canvass board to invalidate the ballot. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (under the 1980 amendment, the election supervisor is to stamp on envelopes the date of receipt).

Sec. 15.20.180. Names of absentee voters to be made available. The election supervisors and election officials shall have available for public inspection the names and addresses of persons who voted absentee. (Sec. 4.18 ch 83 SLA 1960; am sec. 19 ch 228 SLA 1968; am sec. 24 ch 197 SLA 1975)

Sec. 15.20.190. Appointment, duties, and compensation of district counting boards.
(a) Thirty days prior to the date of an election, the election supervisors shall appoint, in the same manner provided for the appointment of election judges prescribed in AS 15.10.150, district absentee ballot counting boards and district questioned ballot counting boards, each composed of four members, two from each political party. The district boards shall assist the election supervisors in counting the absentee and questioned ballots and shall receive the same compensation paid election judges under AS 15.15.380.

(b) The election supervisor shall appoint a counting team or teams to aid the district absentee ballot counting board in counting absentee ballots and the district questioned ballot counting board in counting questioned ballots. There shall be four

counters on each counting team, no more than two of whom may be members of the same political party. (Sec. 4.19 ch 83 SLA 1960; am sec. 20 ch 228 SLA 1968; am sec. 89 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'counting' for 'canvassing' preceding 'boards' near the middle of the first sentence of subsection (a), inserted 'and district questioned ballot counting boards, each' near the middle of the first sentence of subsection (a), deleted 'major' preceding 'political party' near the end of the first sentence of subsection (a), substituted 'boards' for 'board' near the beginning of the second sentence of subsection (a), deleted 'and canvassing' preceding 'the absentee' near the middle of the second sentence of subsection (a), inserted 'and questioned' near the middle of the second sentence of subsection (a), added 'under AS 15.15.380' at the end of subsection (a), and added subsection (b).

Sec 15.20.200. Time of district canvass and for counting absentee ballots. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.20.201.]

Editor's notes. The repealed section derived from sec. 4.20, ch 83, SLA 1960; sec. 17, ch 80, SLA 1963; sec. 21, ch 228, SLA 1968.

Sec. 15.20.201. Time of district absentee ballot counting review. (a) No less than seven days preceding the day of election, the election supervisor, in the presence and with the assistance of the district absentee ballot counting board, shall review all voter certificates of absentee ballots received by that date. The review of absentee ballots shall continue at times designated by the election supervisor until completed.

(b) Counting of absentee ballots which have been reviewed shall begin at 8:00 p.m., local time, on the day of the election at places designated by each election supervisor and shall continue until all absentee ballots reviewed and eligible for counting have been counted. The counting teams shall report the count of absentee ballots to the district absentee ballot counting board. An election supervisor or an election official may not remove absentee ballots from the small, inner envelopes before 8:00 p.m., local time, on the day of the election. Counting of the absentee ballots shall continue at times designated by the election supervisor until all absentee ballots are counted.

(c) Not later than the 15th day following the day of the election, the district absentee ballot counting board shall certify the absentee ballot review.

(d) Absentee ballots received in the office of an election supervisor after the completion of the district absentee ballot counting review shall be forwarded immediately to the director by the most expeditious service. (Sec. 90 ch 100 SLA 1980; am secs. 13 - 15 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (a) in the first sentence substituted 'No less than seven days' for 'On the seventh day' and deleted 'or his designee' and at the end of the second sentence deleted 'and shall include all absentee ballots received in the office of the election supervisor by 4:00 p.m. on the seventh day following the day of the election'; in subsection (c) substituted 'Not later than the 15th' for 'On the eighth'; and in subsection (d) substituted 'completion of the district absentee ballot counting review' for 'after the seventh day following the day of the election.'

Sec. 15.20.203. Procedure for district absentee ballot counting review. (a) The district absentee ballot counting board shall examine each absentee ballot envelope and shall determine whether the absentee voter is qualified to vote at the election and whether the absentee ballot has been properly cast.

(b) An absentee ballot may not be counted if

- (1) the voter has failed to properly execute the certificate;
- (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate;
- (3) the ballot is not attested on or before the date of the election;
- (4) the ballot, if postmarked, is not postmarked on or before the date of the election; or
- (5) after the day of election, the ballot was delivered by a means other than mail.

(c) Any person present at the district absentee ballot counting review may challenge the name of an absentee voter when read from the voter's certificate on the back of the large envelope if the person has good reason to suspect that the challenged voter is not qualified to vote, is disqualified, or has voted at the same election. The person making the challenge shall specify the basis of the challenge in writing. The district absentee ballot counting board by majority vote may refuse to accept and count the absentee ballot of a person properly challenged on grounds listed in (b) of this section.

(d) If an absentee ballot is rejected, the election supervisor shall send a copy of the statement of the challenge to the absentee voter. The election supervisor shall place all rejected absentee ballots in a separate envelope with the statements of challenge. The envelope shall be labeled "rejected absentee ballots" and shall be forwarded to the director with the election certificates and other returns.

(e) If an absentee ballot is not rejected, the large envelope shall be opened and the small envelope containing the absentee ballot shall be placed in a container and mixed with other small envelopes.

(f) The small envelopes shall be drawn from the container, opened, and the absentee ballots counted at the times specified in AS 15.20.201 and according to the rules for determining properly marked ballots in AS 15.15.360.

(g) Upon completion of the absentee ballot review, the election supervisor shall prepare an election certificate for execution by the district absentee ballot counting board and shall forward the original certificate and other returns to the director no later than the 16th day following the election. (Sec. 90 ch 100 SLA 1980; am secs. 16, 17 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (b) repealed former paragraph (3), which read "the voter fails to enclose the marked ballot inside the small envelope," designated former paragraphs (4) and (5) as present paragraphs (3) and (4), added present paragraph (5), and made other, minor word and punctuation changes; and near the end of subsection (g) substituted "16th" for "ninth."

NOTES TO DECISIONS

The voter's signature is a basic part of the certificate and failure to properly attach it invalidates the ballot. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979) (decided under former AS 15.20.210).

The failure of the absentee ballot to be properly postmarked or dated when received by an election official was not included as a violation of the absentee ballot statute mandating the canvass board to invalidate the ballot. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.20.210).

Sec. 15.20.205. Time of district questioned ballot counting review. (a) On the second day following the day of the election, the election supervisor or the supervisor's designee, in the presence and with the assistance of the district

questioned ballot counting board, shall review all voter certificates of questioned ballots received by that date. The review of questioned ballots shall continue at times designated by the election supervisor until completed.

(b) Counting of questioned ballots which have been reviewed shall begin on the third day following the day of the election and shall continue at times designated by the election supervisor until all questioned ballots reviewed and eligible for counting have been counted. The counting teams shall report the count to the district questioned ballot counting board.

(c) The district questioned ballot counting board shall certify the questioned ballot totals as soon as the count is completed but no later than the 10th day following the election.

(d) Questioned ballots received after certification of the count shall be forwarded immediately to the director by the most expeditious service. (Sec. 90 ch 100 SLA 1980; am sec. 18 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment near the end of subsection (c) substituted "10th" for "eighth."

Sec. 15.20.207. Procedure for district questioned ballot review. (a) The district questioned ballot counting board shall examine each questioned ballot envelope and shall determine whether the questioned voter is qualified to vote at the election and whether the questioned ballot has been properly cast.

(b) A questioned ballot may not be counted if

(1) the voter has failed to properly execute the certificate; or

(2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate.

(c) Any person present at the district questioned ballot review may challenge the name of a questioned voter when read from the voter's certificate on the back of the large envelope if the person has good reason to suspect that the questioned voter is not qualified to vote, is disqualified, or has voted at the same election. The person making the challenge shall specify the basis of the challenge in writing. The district questioned ballot counting board by majority vote may refuse to accept and count the questioned ballot of a person properly challenged under grounds listed in (b) of this section.

(d) If a questioned ballot is rejected, the election supervisor shall send a copy of the statement of the challenge to the questioned voter. The election supervisor shall place all rejected questioned ballots in a separate envelope with statements of challenge. The envelope shall be labeled "rejected questioned ballots" and shall be forwarded to the director with the election certificates and other returns.

(e) If a questioned ballot is not rejected, the large envelope shall be opened and the small envelope containing the questioned ballot shall be placed in a container and mixed with other small envelopes containing questioned ballots.

(f) The small envelopes shall be drawn from the container, opened, and the questioned ballots counted at the times specified in AS 15.20.205 and according to the rules for determining properly marked ballots in AS 15.15.360.

(g) Upon completion of the questioned ballot review, the election supervisor shall prepare an election certificate for execution by the district questioned ballot counting board, and shall forward the original certificate and returns to the director as soon as the count is completed but no later than the ninth day following the election.

(Sec. 90 ch 100 SLA 1980; am sec. 19 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment at the end of subsection (b) repealed former paragraph (3), which read "the voter did not enclose the marked ballot inside the small envelope" and made minor related word and punctuation changes.

NOTES TO DECISIONS

Cross-precinct voting authorized. See this catchline in notes to AS 15.20.211.

Sec. 15.20.210. Procedure for district canvass. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.20.203.]

Editor's notes. The repealed section derived from sec. 4.21, ch 83, SLA 1960; sec. 22, ch 228, SLA 1968.

Sec. 15.20.211. Counting cross-district and certain write-in votes. (a) If a qualified voter of the state votes a ballot for an election district other than the election district in which the voter is registered, the votes cast for statewide candidates and for statewide ballot propositions and statewide questions shall be counted. If the qualified voter voted for a candidate for the state senate from the senate district in which the voter is a resident, the vote shall be counted. The votes cast for candidates or ballot propositions or questions not appearing on the ballot of the district in which the voter is a resident may not be counted.

(b) If a voter requested an absentee ballot by mail and the proper absentee ballot was not sent to the voter, the votes cast by the voter on the ballot received which are for write-in candidates the voter could have voted for if the voter had received and voted the proper absentee ballot shall be counted. (Sec. 91 ch 100 SLA 1980)

NOTES TO DECISIONS

Cross-precinct voting authorized. Cross-precinct voting, which occurred when a voter registered in one precinct voted a questioned ballot in a different precinct in the same election district, was authorized by statute. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.20.210).

Waiver of challenges to validity of cross-district voting. Under prior law, challenges to the validity of cross-district voting which occurred when a voter registered in one district cast a questioned ballot in a different district were waived if not raised before the ballots were separated and commingled. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.20.210).

Sec. 15.20.220. Procedure for state review. (a) When the director and appointed party representatives have completed the review of ballots cast at the voting precincts, they shall proceed to review the absentee and questioned ballot votes certified by the district counting boards. The review of the absentee and questioned ballot vote certified by the district counting boards shall be accomplished by reviewing the tallies of the recorded vote to check for mathematical error and by comparing the totals with the election certificate of results.

(b) The state review board shall review and count absentee ballots under AS 15.20.081(e) and (h) and questioned ballots that have been forwarded to the director and that have not been reviewed or counted by a district counting board. (Sec. 37 ch 59 SLA 1982; am sec. 12 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, in subsection (b), inserted "ballots under AS 15.20.081(e) and (h)" and deleted the former second sentence, which prohibited counting absentee and questioned ballots not received in the office of the director by 4:00 p.m. on the 15th day after the election.

Secs. 15.20.230 - 15.20.420. [Repealed, sec. 231 ch 100 SLA 1980.]

Editor's notes. The repealed article derived from secs. 4.41-4.60, ch 83, SLA 1960; sec. 33, ch 118, SLA 1972.

Article 2. Election Recounts.

Section

- 430. Authorization of recount application
- 440. Form of application
- 450. Requirement of deposit
- 460. Determination of date of recount
- 470. Requirement of notice
- 480. Procedure for recount
- 490. Certification of results
- 510. Provision for appeal to courts
- 520. Provision for appeal to legislature or Congress
- 530. Determination of tie votes

Collateral references. 26 Am. Jur. 2d, Elections, secs. 291-295, 366, 356.

29 C.J.S., Elections, secs. 269-295.

Determination of facts regarding custody of ballots since original count, as condition of recount. 71 ALR 435.

Determination of canvassing board or election officials as regards counting or exclusion of ballots as subject of review by mandamus. 107 ALR 618.

Treatment of excess or illegal ballots when it is not known for which candidate or on which side of a proposition they were cast. 155 ALR 677.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of election board. 61 ALR2d 484.

Sec. 15.20.430. Authorization of recount application. (a) A defeated candidate or 10 qualified voters who believe there has been a mistake made by an election official or by the counting board in counting the votes in an election, may file an application within five days after the completion of the state review to the director for a recount of the votes from any particular precinct or any election district and for any particular office, proposition, or question. However, the application may be filed only within three days after the completion of the state review after the general election for a recount of votes cast for the office of governor and lieutenant governor. If there is a tie vote as provided in AS 15.15.460, the director shall initiate the recount and give notice to the interested parties as provided in AS 15.20.470.

(b) The date on which the director receives an application rather than the date of mailing or transmission determines whether the application is filed within the time allowed under (a) of this section. If the actual physical delivery by telegram of a copy in substance of the statements made in the application for recount is received in the office of the director at or before 5:00 p.m. Alaska Standard time on the due date,

the application will be accepted; providing the original signed application is postmarked at or before 5:00 p.m. Alaska Standard time of the same day. (Sec. 4.71 ch 83 SLA 1960; am sec. 20 ch 136 SLA 1966; am sec. 93 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "counting" for "canvassing" in the first sentence of subsection (a), "review" for "canvass" in the first and second sentences of subsection (a), and "director" for "lieutenant governor" throughout the section.

NOTES TO DECISIONS

Common law. At common law the right to recount did not exist. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Any intervening Sunday must be included in calculating the five-day recount limitation. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

The supreme court is enjoined by the legislature to observe the provisions of AS 01.10.020 in resolving any issue relating to AS 01.10.080 and its applicability to the five-day recount provision of this section. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Quoted in *Carr v. Thomas*, Sup. Ct. Op. No. 1762 (File No. 4261), 586 P.2d 622 (1978); *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Collateral references. 29 C.J.S., Elections, sec. 228.

Determination of facts regarding custody of ballots since original count, as condition of recount. 71 ALR 435.

Sec. 15.20.440. Form of application. (a) The application shall state in substance the basis of the belief that a mistake has been made, the particular election precinct or election district for which the recount is to be held, the particular office, proposition, or question for which the recount is to be held, and that the person making the application is a candidate or that the 10 persons making the application are qualified voters. The candidate or persons making the application shall designate by full name and mailing address two persons who shall represent the applicant and be present and assist during the recount. Any person may be named representative, including the candidate or any person signing the application. Applications by 10 qualified voters shall also include the designation of one of the number as chair. The candidate or persons making the application shall sign the application and shall print or type their full name and mailing address.

(b) Candidates, political parties, or organized groups having a direct interest in a recount and who are seeking to protect their interests during a recount may provide, at their own expense, two or more observers to witness the recount. (Sec. 4.72 ch 83 SLA 1960; am sec. 18 ch 80 SLA 1963; am sec. 94 ch 100 SLA 1980; am sec. 20 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (a) in the third sentence deleted "himself" following "the candidate" and at the end of the sentence deleted "and the representatives shall be paid in the same amount and manner as election judges" and at the end of the next-to-last sentence substituted "chair" for "chairman."

Sec. 15.20.450. Requirement of deposit. The application shall include a deposit in cash, by certified check, or by bond with a surety approved by the director. The amount of the deposit is \$300 for each precinct, \$750 for each election district, and \$10,000 for the entire state. If the recount includes an office for which candidates received a tie vote, or the difference between the number of votes cast was 20 or less or was less than .5 percent of the total number of votes cast for the two candidates

for the contested office, or a question or proposition for which there was a tie vote on the issue, or the difference between the number of votes cast in favor of or opposed to the issue was 20 or less or was less than .5 percent of the total votes cast in favor of or opposed to the issue, the application need not include a deposit and the state shall bear the cost of the recount. If, on the recount, a candidate other than the candidate who received the original election certificate is declared elected, or if the vote on recount is determined to be four percent or more in excess of the vote reported by the state review for the candidate applying for the recount or in favor or opposed to the question or proposition as stated in the application, the entire deposit shall be refunded. If the entire deposit is not refunded, the director shall refund any money remaining after the cost of the recount has been paid from the deposit. (Sec. 4.73 ch 83 SLA 1960; am sec. 15 ch 125 SLA 1962; am sec. 21 ch 136 SLA 1966; am sec. 1 ch 77 SLA 1976; am sec. 95 ch 100 SLA 1980; am sec. 21 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in the second sentence substituted "\$300" for "\$50," "\$750" for "\$250" and "\$10,000" for "\$2,000," and in the third sentence substituted "if" for "However, if" and "20" for "10" in two places.

Collateral references. Cost or reimbursement for expenses incident to recount. 106 ALR 928.

Sec. 15.20.460. Determination of date of recount. If the director determines that the application is substantially in the required form, the director shall fix the date of the recount to be held within three days after the receipt of an application requesting a recount of the general election votes cast for the office of governor and lieutenant governor and within five days after the receipt of an application requesting a recount for any other office, question, or proposition. (Sec. 4.74 ch 83 SLA 1960; am sec. 96 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the beginning of the section.

NOTES TO DECISIONS

Stated in *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Sec. 15.20.470. Requirement of notice. The director shall give the candidate or designated chairman signing the application, the two or more persons appointed to represent the applicant during the recount, and other directly interested parties, notice of the time and place of the recount by certified mail, by telegraph, or by telephone. (Sec. 4.75 ch 83 SLA 1960; am sec. 97 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section, and inserted "or more" near the middle of the section.

Sec. 15.20.480. Procedure for recount. In conducting the recount, the director shall review all ballots whether the ballots were counted at the precinct or by computer or by the district absentee counting board or the questioned ballot counting board to determine which ballots, or part of ballots, were properly marked and which ballots are to be counted in the recount, and shall check the accuracy of the original count, the precinct certificate and the review. The director shall check the number of ballots and questioned ballots cast in a precinct against the registers and shall check absentee ballots voted against absentee ballots distributed. The director shall count absentee

ballots received before the completion of the recount. For administrative purposes, the director may join and include two or more applications in a single review and count of votes. The rules in AS 15.15.360 governing the counting of hand-marked ballots and the rules in AS 15.20.730 governing the counting of punch-card ballots shall be followed in the recount. The ballots and other election material must remain in the custody of the director during the recount and the highest degree of care shall be exercised to protect the ballots against alteration or mutilation. The recount shall be completed within 10 days. The director may employ additional personnel necessary to assist in the recount. (Sec. 4.76 ch 83 SLA 1960; am sec. 98 ch 100 SLA 1980; am sec. 22 ch 85 SLA 1986; am sec. 13 ch 67 SLA 1989)

Effect of amendments. The 1986 amendment in the first sentence deleted "or his appointed representative" following "the director" and in the third sentence substituted "close of business" for "4:00 p.m."

The 1989 amendment, effective August 28, 1989, deleted "after close of business on the 15th day following the election and" following "received" in the third sentence and substituted "must remain" for "shall remain" in the sixth sentence.

NOTES TO DECISIONS

Applied in *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Sec. 15.20.490. Certification of results. If it is determined by recount that the plurality of votes was cast for a candidate, the director shall issue a certificate of election or nomination to the elected or nominated candidate as determined by the recount. If it is determined by the recount that a proposition or question should be certified as having received the required vote, the director shall so certify except that the lieutenant governor shall so certify if the proposition or question involves an initiative, a referendum, or a constitutional amendment. (Sec. 4.77 ch 83 SLA 1960; am sec. 99 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the middle of the first and second sentences, and added "except that the lieutenant governor shall so certify if the proposition or question involves an initiative, a referendum or a constitutional amendment" at the end of the section.

Collateral references. Injunction against canvassing of votes and declaring result of election. 1 ALR 2d 588.

Admissibility of parol evidence of election officials to impeach election returns. 46 ALR2d 1385.

Sec. 15.20.500. Authorization for expanding recount. [Repealed, sec. 6 ch 26 SLA 1966.]

Editor's notes. The repealed section derived from sec. 4.78, ch 83, SLA 1960.

Sec. 15.20.510. Provision for appeal to courts. A candidate or any person who requested a recount who has reason to believe an error has been made in the recount (1) involving any question or proposition or the validity of any ballot may appeal to the superior court in accordance with applicable court rules governing appeals in civil matters, and (2) involving candidates for the legislature or Congress or the office of governor and lieutenant governor may appeal to the supreme court in accordance with rules as may be adopted by the court. Appeal shall be filed within five days of the completion of the recount. Upon order of the court, the director shall

furnish the record of the recount taken, including all ballots, registers, and other election material and papers pertaining to the election contest. The appeal shall be heard by the court sitting without a jury. The inquiry in the appeal shall extend to the questions whether or not the director has properly determined what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate or division on the question or proposition the vote should be attributed. The court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount. (Sec. 4.79 ch 83 SLA 1960; am sec. 19 ch 80 SLA 1963; am sec. 100 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" in the third, fifth and sixth sentences.

NOTES TO DECISIONS

The supreme court's obligation under this section is to review any and all questioned ballots cast in the election at issue, regardless of whether they were or were not specifically challenged below. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

The recount appeal involves more than the facial validity of the ballots. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

An election contest and recount appeal are distinct proceedings. In an election contest where no fraud, corruption or ineligibility of a party is alleged, the evidence presented must demonstrate the existence of malconduct sufficient to change the results of the election. In contrast, the inquiry in a recount appeal is whether specific votes or classes of votes were properly counted or rejected. The concept of malconduct does not enter into the question, except insofar as particular acts or shortcomings of election officials may have resulted in the improper counting or rejecting of votes. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

The proportionate reduction rule is the only method to properly determine the effect of any bias that affected individual votes in a random fashion, but the technique is not to be used to actually reduce the candidates' official totals. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Applied in *Carr v. Thomas*, Sup. Ct. Op. No. 1762 (File No. 4281), 588 P.2d 622 (1978).

Collateral references. Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of election board. 61 ALR2d 484.

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

Sec. 15.20.520. Provision for appeal to legislature or Congress. A candidate or persons who requested a recount, who have reason to believe an error has been made in the recount involving a candidate for the general election for the state legislature or Congress, may appeal to the chamber in which the candidate seeks membership in accordance with applicable rules of the legislature or Congress. Upon request of the legislature or Congress, the director shall furnish the record of the recount taken including all ballots, registers, and other election material and papers pertaining to the election contest. (Sec. 4.80 ch 83 SLA 1960; am sec. 101 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "Director" for "lieutenant governor" near the beginning of the last sentence.

Opinions of attorney general. AS 15.20.540, 15.20.550, and 15.20.560, when read together, clearly state intention of legislature to permit appeal to superior court under certain circumstances, but the language of these sections is permissive. 1963 Op. Att'y Gen. No. 5.

As an alternative means of contesting an election, the legislature provided (this section) for a direct appeal to the chamber in which the candidate seeks membership in accordance with the applicable rules of the legislature or Congress. 1963 Op. Att'y Gen. No. 5.

Sec. 15.20.530. Determination of tie votes. If after a recount and appeal two or more candidates tie in having the highest number of votes for the same office, the director shall notify the candidates who are tied. The director shall notify the candidates of a reasonably suitable time and place to determine the successful candidate by lot. After the determination has been made by lot, the director shall so certify. (Sec. 4.81 ch 83 SLA 1960; am sec. 102 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" wherever it appears throughout the section.

Article 3. Election Contests.

Section

- 540. Grounds for election contest
- 550. Jurisdiction and time for contest
- 560. Judgment of court

Opinions of attorney general. AS 15.20.540, 15.20.550, and 15.20.560, when read together, clearly state intention of legislature to permit appeal to superior court under certain circumstances, but the language of these sections is permissive. March 29, 1963 Op. Att'y Gen., No. 5.

As an alternative means of contesting an election, the legislature provided (AS 15.20.520) for a direct appeal to the chamber in which the candidate seeks membership in accordance with the applicable rules of the legislature or Congress. March 29, 1963, Op. Att'y Gen., No. 5.

Collateral references. 26 Am. Jur. 2d, Elections, secs. 316-384.

29 C.J.S., Elections, secs. 245-322.

Right of one holding certificate of election to take office as against incumbent whose term has expired, notwithstanding election contest. 81 ALR 620.

Costs or reimbursement for expenses incident to election contest or recount. 106 ALR 928.

Sec. 15.20.540. Grounds for election contest. A defeated candidate or 10 qualified voters may contest the nomination or election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds: (1) malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election; (2) when the person certified as elected or nominated is not qualified as required by law; (3) any corrupt practice as defined by law sufficient to change the results of the election. (Sec. 4.91 ch 83 SLA 1960)

NOTES TO DECISIONS

Article not atypical. Under the provisions of Alaska's Election Code, the legislature has authorized election contests, placed jurisdiction over such contests in the superior court, and has specified the content of the judgments which are to be entered. These provisions of Alaska's Election Code are not atypical; rather, they reflect the role American courts have played in the resolution of election contest issues. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

An election contest and recount appeal are distinct proceedings. In an election contest where no fraud, corruption or ineligibility of a party is alleged, the evidence presented must demonstrate the existence of malconduct sufficient to change the results of the election. In contrast, the inquiry in a recount appeal is whether specific votes or classes of votes were properly counted or rejected. The concept of malconduct does not enter into the question, except insofar as particular acts or shortcomings of election officials may have resulted in the improper counting or rejecting of votes. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Procedure for getting local election contests before the courts. No procedure having been prescribed by the legislature for getting local election contests before the courts, following the procedure for contesting state elections is a reasonable method of getting the matter before the court and the jurisdiction of the court to hear the matter is recognized by the constitution. *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).

The purpose of holding elections is to ascertain the public will. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

And what voters mean cannot be arbitrarily assumed. Neither the courts nor the election authorities are authorized to arbitrarily assume that the voters meant something which cannot fairly be ascertained from the ballots themselves. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Overriding concern of courts. In election contests the overriding concern of the courts has been to ascertain whether the alleged impropriety in fact establishes doubt as to the validity of the election result. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

The appropriate standard in election contests is that specified in this section. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

The determinative standard to be applied in judging any election contest in Alaska has been established by the legislature in item (1) of this section. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

"Malconduct," as used in this section, means a significant deviation from statutorily or constitutionally prescribed norms. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

If a bias has been introduced into the vote, "malconduct" exists if the bias can be shown to be the result of a significant deviation from lawfully prescribed norms. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Irregularities containing no element of bias, even if they amount to significant deviations from prescribed norms, do not necessarily constitute malconduct. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Significant deviations which impact randomly on voter behavior will amount to malconduct if the significant deviations from prescribed norms by election officials are imbued with scienter, a knowing noncompliance with the law or a reckless indifference to norms established by law. Thus, evidence of an election official's good faith may preclude a finding of malconduct under certain circumstances. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Deviations must be analyzed individually. Each alleged deviation from a statutorily or constitutionally prescribed norm must be analyzed individually to determine if it is "significant" and to ascertain if it involves an element of scienter. Once it is determined that the individual instance of noncompliance amounts to malconduct, a determination must be made of the number of votes affected. The total number of votes affected by all such incidents must then be considered in ascertaining whether they are sufficient to change the result of the election. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

When cumulation of irregularities may be proper. In rare circumstances, an election may be so permeated with numerous serious violations of law, not individually amounting to malconduct, that substantial doubt will be cast on the outcome of the vote. Under such circumstances, cumulation of irregularities may be proper and will support a finding of malconduct. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

It was error for the trial court to cumulate isolated instances of irregularity which, when analyzed separately, did not constitute "significant deviations" from prescribed norms to support a finding of malconduct. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Proof of misconduct. This section requires that the misconduct must be shown to be sufficient to change the result, and not that evidence be presented which shows in fact that the result of the election was changed. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Any malconduct on the part of election officials must be of sufficient magnitude "to change the result of the election." *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Burden. A party challenging an election has the burden of proving that the alleged misconduct could have changed the result of the election. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

It is incumbent upon citizens to show more than a lack of total and exact compliance with the constitutionally and statutorily prescribed form of ballot. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Citizens have the dual burden of showing a significant deviation from the prescribed form of ballot and that such departure was of a magnitude sufficient to change the result of the referendum election. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

A party challenging an election must prove that the alleged malconduct could have changed the result of the election. The contestant need not show that the malconduct in fact changed the result of the election. *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Method used to determine if malconduct could have changed result of election. See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

The unauthorized wording of the proposition required by Alaska Const., art. XIII, sec. 3, was misconduct. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

The inclusion in the referendum ballot, by the executive officer charged with the duty of preparing the ballot, of unauthorized prefatory language was malconduct within the intendment of item (1). *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

And such wording constituted fraud within the meaning of this section. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

For discussion of specific instances of misconduct, see *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979).

Applied in *Thomas v. Croft*, Sup. Ct. Op. No. 2135 (File No. 4719), 614 P.2d 795 (1980).

Cited in *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Collateral references. Result of election as affected by votes cast for deceased or disqualified person. 133 ALR 319.

Contest on ground of irregularity in assessment or preparation of voters' lists for purposes of poll tax. 139 ALR 611.

Failure to make available to voters official ballots, or ballots conforming to requirements, as affecting validity of election of public officer. 165 ALR 1263.

Validity where candidate's surname only is written in on ballot. 86 ALR2d 1025.

Sec. 15.20.550. Jurisdiction and time for contest. The action may be brought in the superior court within 10 days after the completion of the state review. (Sec. 4.92 ch 83 SLA 1960; am sec. 103 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "review" for "canvass" at the end of the section.

NOTES TO DECISIONS

Cited in *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).

Collateral references. State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

Sec. 15.20.560. Judgment of court. The judge shall pronounce judgment on which candidate was elected or nominated and whether the question or proposition was accepted or rejected. The director shall issue a new election certificate to correctly reflect the judgment of the court. If the court decides that the election resulted in a tie vote, the director shall immediately proceed to determine the election by lot as is provided by law. If the court decides that no candidate was duly elected or nominated, the judgment shall be that the contested election be set aside. The provisions of this section and AS 15.20.540 and 15.20.550 are not intended to limit or interfere with the power of the legislature to judge the election and qualifications of its members. (Sec. 4.93 ch 83 SLA 1960; am sec. 104 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the second sentence and near the middle of the third sentence.

NOTES TO DECISIONS

Under this section the judge is given the discretion to order a new election. *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Collateral references. Validity of statute allowing attorneys' fees to successful party in election contest. 11 ALR 894.

Article 4. Punch-Card Voting.

Section

- 590. Appointment of officials
- 600. Party representation
- 609. Use of computers
- 610. Alternate site
- 620. Tests and security
- 630. Demonstration
- 640. Processing at polling place
- 650. Delivery of ballots to computer counting center
- 660. Receipt of ballots at computer counting center
- 670. Receipt of ballots by control board
- 680. Counting of ballots by computer
- 685. Hand counting of punch-card ballots
- 690. Alternate computer counting
- 700. Disposition of ballots
- 710. Report of partial results
- 720. Public observation
- 730. Rules for counting punch-card ballots
- 740. Questioned punch-card ballots

Collateral references. 26 Am. Jur. 2d, Elections, secs. 225-242, 254-272.

29 C.J.S., Elections, secs. 174-189, 204-207.

Sec. 15.20.590. Appointment of officials. (a) For every area of the state designated by the director for punch-card voting, the director shall appoint a data processing review board which is responsible to the director for the evaluation of all computer phases of the election. The board shall consist of at least three members. At least one member shall be a member of the political party whose candidate for governor received the largest number of statewide votes at the preceding general election, one shall be a member of the party whose candidate received the second largest number of votes, and one shall be registered to vote either as an "independent" or "nonpartisan" or shall have declined to state a party affiliation when registering to vote. At least one of the members must be familiar with the election process, and at least two must have some expertise in computer programming and processing. The election supervisor shall name one of the members who has sufficient familiarity with computer programming and operations as presiding officer of the board.

(b) For the computer counting center in the election supervisor's area, each election supervisor shall appoint

(1) a receiving board consisting of at least one person from each political party;
and

(2) a control board consisting of at least one person from each political party.
(Sec. 2 ch 120 SLA 1975; am sec. 105 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the beginning of subsection (a).

Sec. 15.20.600. Party representation. In AS 15.20.590 - 15.20.730, wherever there is a provision for a person to represent a political party, the person shall be chosen by the appointing official subject to the approval of the district committee of that party. If the party district committee fails to respond within 15 days, the appointing official shall seek approval from the state chairman of the party. If the committee or state chairman makes a reasonable objection, another person shall be appointed. (Sec. 2 ch 120 SLA 1975; am sec. 106 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added the present second sentence, and inserted "or state chairman" near the beginning of the third sentence.

Sec. 15.20.609. Use of computers. The director shall designate the computers to be used in the counting of ballots. The director may designate more than one computer for use in computer counting centers in addition to alternate computers specified under AS 15.20.610. (Sec. 107 ch 100 SLA 1980)

Sec. 15.20.610. Alternate site. For each computer counting center, the director shall designate an alternate site, if available, to be used in the event of equipment failure at the main location. If the computer fails and no alternate site is available, the election supervisor shall designate emergency counting teams to hand count punch-card ballots in the manner prescribed by AS 15.20.730. (Sec. 2 ch 120 SLA 1975; am sec. 108 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the beginning of the section, and substituted "by AS 15.20.730" for "for paper ballots" at the end of the section.

Sec. 15.20.620. Tests and security. (a) No later than one week before the election, the computer punch-card vote counting program must be tested in the presence of and to the satisfaction of the data processing review board. Testing shall take place at both the main and alternate computer counting centers.

(b) In addition to the test specified in (a) of this section, other tests shall be made to ensure that the system is functioning properly

(1) at least one day before the election at a time specified by the data processing review board presiding officer;

(2) on the day of the election one hour before the polls close;

(3) immediately after the final vote tabulation is complete;

(4) approximately one hour before the processing of the questioned and absentee ballots; and

(5) immediately after the final vote tabulation of questioned and absentee ballots is complete.

(c) As a security precaution, after the computer has been tested as prescribed in (b)(2) and (4) of this section,

(1) the vote-counting task shall remain isolated from nonrelated processing tasks;

(2) processing not concerned with vote counting shall be limited to tasks which are critical to the computer center and shall be agreed upon in advance by the manager of the computer center and the director;

(3) reasonable computer security controls shall be in effect to assure the integrity of the vote-counting process; and

(4) access to the computer counting area shall be controlled by the data processing review board until the vote-counting process is terminated.

(d) During the final tabulation by computer, a manual count of different individual races in six precincts chosen at random shall be made, and the results checked against those of the system.

(e) If a problem is encountered during any of the testing or tabulating procedures, additional tests may be conducted as considered necessary.

(f) At any time during the count, party representatives or members of the data processing review board may request a listing of the program source code which comprises the instructions to be executed by the computer. (Sec. 2 ch 120 SLA 1975; am secs. 109 - 112 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "questioned and" in paragraphs (4) and (5) of subsection (b), and deleted "and challenged" preceding "ballots" in paragraphs (4) and (5) of subsection (b), added paragraphs (1)-(4) of subsection (c), deleted "the computer system shall remain idle and the area secured until tabulation of punch-card ballots begins" following "this section" at the end of former subsection (c), and added subsection (f).

Sec. 15.20.630. Demonstration. A demonstration of the punch-card process shall be made available to each voter at the polling place before the voter begins the voting process and each voter shall be informed that the demonstration is available. (Sec. 2 ch 120 SLA 1975)

Sec. 15.20.640. Processing at polling place. (a) Immediately after the polls have closed, the ballot box shall be opened by election board members in full view of all persons present, and all ballots shall be removed from the ballot envelopes.

(b) The ballot cards shall be inspected individually and any ballots which are damaged so that they cannot be read by the computer shall be withdrawn and set aside for hand counting.

(c) The ballots containing write-in votes shall be banded together and placed behind the other undamaged ballot cards which have been voted. The envelope containing questioned ballots shall be banded to the computer-ready ballots, and the bundle placed in a special container and sealed, with the seal signed by the election board members.

(d) The special container shall be placed in a transport box which shall be locked, sealed, or otherwise secured before delivery to the computer counting center. (Sec. 2 ch 120 SLA 1975; am secs. 113, 114 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment deleted "or are marked so that the voter can be identified" preceding "shall be withdrawn" near the middle of subsection (b), substituted "set aside for hand counting" for "placed in the facsimile ballot envelope" at the end of subsection (b), deleted "facsimile ballot envelope and the" following "The" at the beginning of the second sentence of subsection (c), and deleted "and challenged" preceding "ballots" near the beginning of the second sentence of subsection (c).

Sec. 15.20.650. Delivery of ballots to computer counting center. The delivery of ballots from the precinct polling place to the designated computer counting center shall be made by a delivery team consisting of two members of the election board, one from each of the two major political parties or by a licensed security officer accompanied by at least one person designated by the election board. The delivery team shall accompany the ballots from the precinct polling place to the receiving board at the computer counting center. (Sec. 2 ch 120 SLA 1975; am sec. 115 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added "or by a licensed security officer accompanied by at least one person designated by the election board" at the end of the first sentence.

Sec. 15.20.660. Receipt of ballots at computer counting center. (a) A state trooper shall be on duty at the computer counting center during the processing of ballots.

(b) Immediately inside the computer counting center the receiving board shall

(1) receive the transport box and examine the seal; if the seal is damaged or otherwise not intact the board shall notify the election supervisor immediately; if the seal is intact the receiving board shall sign a receipt to that effect and acknowledge delivery;

(2) check the precinct off on a log sheet, enter the arrival time, initial the entry, and have the delivery team sign the log sheet; and

(3) deliver the special container to the control board. (Sec. 2 ch 120 SLA 1975)

Sec. 15.20.670. Receipt of ballots by control board. The control board shall

(1) cut the seal and remove all ballots and envelopes from the special container;

(2) insert the proper header and end cards into the ballots;

(3) place the ballot bundles and unprocessable ballots envelope in a tray for delivery to the computer room; and

(4) give the envelope containing questioned ballots to the election supervisor. (Sec. 2 ch 120 SLA 1975; am secs. 116, 117 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "unprocessable ballots" for "facsimile" near the middle of paragraph (3), deleted "and challenged" preceding "ballots" near the middle of paragraph (4), and substituted "election supervisor" for "data processing review board" at the end of paragraph (4).

Sec. 15.20.680. Counting of ballots by computer. (a) All vote-counting processing in the computer room shall be under the supervision of the presiding officer of the data processing review board. The presiding officer shall resolve any problems which arise in the vote counting by consulting with other members of the board.

(b) The data processing review board shall initiate the processing of ballots from each precinct by

(1) comparing the precinct identification on the header card against that of the envelope to ensure that they are the same;

(2) ensuring that any write-in ballots are separate and placed at the rear of other ballots; and

(3) giving the ballots to the computer operator.

- (c) The computer operator shall process the ballots by
- (1) picking up the ballots of one precinct, removing any ballots which cannot be processed, placing any unprocessable ballots in the envelope, and returning the envelope to the data processing review board member for hand counting;
 - (2) placing the ballots in the computer card reader and activating it;
 - (3) returning the counted ballots with write-in ballots separated to the data processing review board. (Sec. 2 ch 120 SLA 1975; am sec. 118 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote the section.

Sec. 15.20.685. Hand counting of punch-card ballots. (a) The election supervisor shall appoint a counting team or teams to assist in the counting of punch-card ballots at the computer counting center on election night. There shall be at least four counters on each counting team, no more than two of whom may be members of the same political party.

(b) A counting team or teams shall count all punch-card ballots which cannot be processed through the computer and all write-in votes on ballots which have been processed through the computer. Each counting team shall make a certificate in duplicate of the results of the count. (Sec. 119 ch 100 SLA 1980)

Sec. 15.20.690. Alternate computer counting. (a) A computer service technician shall be on standby duty during the entire vote counting process. If equipment failure occurs and the data processing review board determines that repairs cannot be made within a reasonable time and an alternate computer is not available at the same site, the computer room process shall be moved to the alternate site if one is available. If an alternate computer is available at the same site, the data processing review board shall make a test run to ensure that the alternate computer is functioning properly, and ballot counting shall be continued beginning with the precinct determined appropriate by the data processing review board. If an alternate site is not available, ballots shall be counted manually. The data processing review board shall determine the precincts to receive manual counting.

(b) If an alternate site is available, all ballots including those previously counted shall be boxed, and a receipt prepared. The ballot programs shall also be sealed. The sealed material shall then be transported to the alternate location accompanied by a state trooper, the election supervisor, and the data processing review board. On arrival at the alternate site, the board shall initiate a test run to ensure that the computer is functioning properly. After checking the seals on all containers, the supervisor and presiding officer shall sign the receipt and open all of the materials. Ballot counting shall be continued, beginning with the precinct determined appropriate by the data processing review board.

(c) After processing is completed, all ballots shall be sealed and transported to a designated place of security. (Sec. 2 ch 120 SLA 1975; am sec. 120 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment rewrote subsection (a), deleted "the computer operator" following "election supervisor" near the middle of the second sentence of subsection (b), substituted the present last sentence of subsection (b) for the former, which read: "All of the ballots shall be counted at the alternate site, including those already counted at the main location", and rewrote subsection (c).

NOTES TO DECISIONS

Applied in *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978).

Cited in *Thomas v. Croft*, Sup. Ct. Op. No. 2135 (File No. 4719), 614 P.2d 795 (1980).

Sec. 15.20.700. Disposition of ballots. (a) The ballots which have been counted in the computer room shall be sealed by the data processing review board or the designated counting team. The sealed ballots shall then be transported to a designated place of security. The questioned ballots shall be sealed and given to the election supervisor for tallying.

(b) [Repealed, sec. 121 ch 100 SLA 1980.]

(c) The ballot image magnetic tape which contains an exact image of each counted ballot shall be retained in a secure manner by the election supervisor until the director determines that it is no longer needed. (Sec. 2 ch 120 SLA 1975; am sec. 121 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added "or the designated counting team" at the end of the first sentence of subsection (a), deleted "facsimile envelopes" following "The" at the beginning of the third sentence of subsection (a), deleted "and challenged" preceding "ballots" near the middle of the third sentence of subsection (a), deleted the former last sentence of subsection (a), which read: "any ballots containing write-in votes shall be sealed and given to the election supervisor for tallying by the district absentee ballot canvassing board", deleted subsection (b), which read: "A representative of the lieutenant governor's office and a state trooper shall meet any aircraft carrying computer ballots to the capital, and accompany them to the security area there", substituted "an" for "a" following "contains" near the beginning of subsection (c), and substituted "director" for "lieutenant governor" near the middle of subsection (c).

Sec. 15.20.710. Report of partial results. The presiding officer of the data processing review board may authorize activation of the print program to provide partial results, if time permits. This printout shall be released to the presiding officer of the data processing review board who shall file the original with the control board and provide copies for posting and distribution to news media representatives. In addition, the director may authorize the computerized broadcast of results while vote counting is in progress. This broadcast may be accomplished through on-line terminals and may begin when the vote counting begins. (Sec. 2 ch 120 SLA 1975; am sec. 122 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added the present third and fourth sentence.

Sec. 15.20.720. Public observation. The punch-card counting process shall be available for public viewing by closed circuit television, or by direct observation to the extent that the presiding officer of the data processing review board determines that election officials and computer personnel will not be hindered in the performance of their duties. (Sec. 2 ch 120 SLA 1975; am sec. 123 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "that the presiding officer of the data processing review board determines" near the middle of the section.

Sec. 15.20.730. Rules for counting punch-card ballots. (a) A vote for a candidate whose name is not printed on the ballot shall be counted only if the name is written

in, the square following it is punched, and the number of punches does not exceed the number of offices available. A write-in vote for a candidate whose name is also printed on the ballot may be counted only if the square following the written name is punched, the square following the printed name is not punched, and the number of punches does not exceed the number of offices available.

(b) The computer shall be programmed to count ballots as follows:

(1) a vote may be counted only if the punch is clearly spaced in the square following the name of the candidate the voter desires to select;

(2) if there is only one square marked for a team whose names are on separate lines, such as president and vice-president or governor and lieutenant governor, a punch in the square or elsewhere in the rectangle following the names shall be counted for that team;

(3) a failure to properly punch a ballot card as to one or more candidates does not itself invalidate the entire ballot;

(4) if a voter punches fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked;

(5) if a voter punches more names than there are persons to be elected to the office, the votes for candidates to that office may not be counted;

(6) improper marks on the ballots may not be counted and do not invalidate punches for candidates properly made;

(7) an erasure or correction invalidates only that section of the ballot in which it appears;

(8) a vote marked for the candidate for President of the United States is considered and counted as a vote for the election of presidential electors.

(c) Hand counting of write-in votes and unprocessable punch-card ballots shall be done in accordance with the requirements of this section. If an equipment failure occurs and the data processing review board determines that the ballots are to be counted manually, the ballot counting shall be done in accordance with the requirements of this section. (Sec. 2 ch 120 SLA 1975; am sec. 124 ch 100 SLA 1980; am sec. 14 ch 67 SLA 1989)

Cross references. For rules for determining marks on ballots, see AS 15.15.360 and note for that section.

Effect of amendments. The 1989 amendment, effective August 28, 1989, deleted "designated by a plus sign" following "square" in paragraph (b)(1) and substituted "square marked" for "plus-marked square" in paragraph (b)(2).

NOTES TO DECISIONS

Any mark obliterating the boundary line is sufficiently within the box to be counted. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Punch-card ballots on which the punched holes were not directly centered in the candidate's square but on which the holes touched the candidate's square and clearly obliterated at least the upper line of the square were properly counted. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Punch-card ballots on which the voter had circled the box opposite certain candidates' names, and then punched out all of the circled boxes except for the box opposite one candidate's, were properly not counted in a recount involving that candidate. *Willis v. Thomas*, Sup. Ct. Op. No. 1923 (File No. 4398), 600 P.2d 1079 (1979).

Punch-card ballots marked with a pen or pencil rather than being punched are to be counted. *Hickel v. Thomas*, Sup. Ct. Order (File No. 4251), 588 P.2d 273 (1978).

Punch-card ballots marked entirely by pen instead of punched are valid because they provide clear evidence of the voters' intent. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Punch-card ballots marked in pen or pencil and then punched in the same square are to be counted. *Hickel v. Thomas*, Sup. Ct. Order (File No. 4251), 588 P.2d 273 (1978).

Punch-card ballots punched both immediately above the first square in a list of candidates and in the first square of the list of candidates are to be counted. *Hickel v. Thomas*, Sup. Ct. Order (File No. 4251), 588 P.2d 273 (1978).

Punch-card ballots punched either immediately above the first candidate in the list or immediately below the last candidate are not to be counted. *Hickel v. Thomas*, Sup. Ct. Order (File No. 4251), 588 P.2d 273 (1978).

Punch-card machine use not required. Neither AS 15.15.360 (rules for counting hand-marked ballots) nor this section require voters to use a punch-card machine if one is available, but only specify the manner of counting properly punched and hand-marked ballots. *Fischer v. Stout*, Sup. Ct. Op. No. 3208 (File No. S-1953), 741 P.2d 217 (1987).

Sec. 15.20.740. Questioned punch-card ballots. The procedure for reviewing and counting questioned punch-card ballots is the same procedure established in AS 15.20.205 and 15.20.207 for hand-marked ballots except that questioned punch-card ballots may be processed by the computer from the third through the eighth day following the election. The data processing review board shall supervise the count and shall follow the procedure established in AS 15.20.680 and 15.20.685. (Sec. 125 ch 100 SLA 1980)

Article 5. Voting by Mail.

Section

800. Voting by mail

Sec. 15.20.800. Voting by mail. (a) The director may conduct an election by mail if it is held at a time other than when the general, party primary, or municipal election is held.

(b) If the director conducts an election under (a) of this section by mail, the director shall send a ballot for each election described in (a) of this section to each person whose name appears on the official registration list prepared under AS 15.07.125 for that election. The ballot shall be sent to the address stated on the official registration list unless the voter has notified the director or an election supervisor of a different address to which the ballot should be sent. The director shall send ballots by first class, nonforwardable mail.

(c) If the director conducts an election under (a) of this section by mail, the director shall mail ballots under this section on or before the 22nd day before the election.

(d) The voter may cast the ballot under AS 15.20.081(d) - (e).

(e) The director shall review ballots voted under this section under procedures established for the review of absentee ballots under AS 15.20.201 and 15.20.203. (Sec. 23 ch 85 SLA 1986)

Revisor's notes. Enacted as AS 15.20.750. Renumbered in 1986.

Chapter 25. Nomination of Candidates.

Article

1. Primary Elections (15.25.010 - 15.25.135)
2. Nominations for General Election by Petition (15.25.140 - 15.25.200)

Article 1. Primary Elections.

Section

10. Provision for primary election
20. Date of primary
30. Declaration of candidacy
40. Manner and date of filing declaration
42. Eligibility of a candidate
43. Determination of residency of a candidate
45. Withdrawal of candidacy
50. Requirement of filing fee
55. Removal of name from primary ballot
56. Nomination by party petition where incumbent dies or is disqualified or incapacitated
60. Preparation and distribution of ballots
70. Special provisions on counting ballots
90. General procedure for conduct of primary election
100. Placement of nominees on general election ballot
110. Filling vacancies by party petition
120. Requirements for party petition
130. Selection of nominees for party petition

Collateral references. 25 Am. Jur. 2d, Elections, secs. 128-167.

29 C.J.S., Elections, secs. 89-96, 111(1)-148.

Determination of controversies within political parties as to nomination by committees. 20 ALR 1035; 169 ALR 1281.

Extent of power of political party, committee, or officer to exclude persons from participating in its primaries as voters or candidates. 70 ALR 1501; 88 ALR 473; 97 ALR 685; 151 ALR 1121.

Constitutionality of election laws as regards nominations otherwise than statutory convention or primary election. 146 ALR 668.

Personal liability of public officer for breach of duty in respect of election or primary election laws. 153 ALR 109.

Power of political party or its officials as to withdrawal of nomination as affected by filing of certificate of nomination. 155 ALR 189.

State court jurisdiction over contest involving primary election for member of Congress. 68 ALR2d 1320.

Validity of percentage of vote or similar requirements for participation by political parties in primary elections. 70 ALR2d 1162.

Right to seek nomination or to become candidate for more than one office in the same election. 94 ALR2d 557.

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. (Sec. 5.01 ch 83 SLA 1960; am sec. 1 ch 1 SLA 1967; am sec. 1 ch 20 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'AS 15.25.010 - 15.25.200' for 'this chapter' at the end of the section.

Sec. 15.25.020. Date of primary. The primary election is held on the fourth Tuesday in August of every even-numbered year. (Sec. 5.02 ch 83 SLA 1960; am sec. 1 ch 26 SLA 1966; am sec. 2 ch 1 SLA 1967)

Sec. 15.25.030. Declaration of candidacy. (a) A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance:

- (1) the full name of the candidate;
- (2) the full mailing address of the candidate;
- (3) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident;
- (4) the office for which the candidate seeks nomination;
- (5) the name of the political party of which the person is a candidate for nomination;
- (6) the full residence address of the candidate, and the date on which residency at that address began;
- (7) the date of the primary election at which the candidate seeks nomination;
- (8) the length of residency in the state and in the district of the candidate;
- (9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;
- (10) that the candidate is a qualified voter as required by law;
- (11) that the candidate will meet the specific age requirements of the office for which the person is a candidate;
- (12) that the candidate requests that the candidate's name be placed on the primary election ballot;
- (13) that the required fee accompanies the declaration;
- (14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;
- (15) the manner in which the candidate wishes the candidate's name to appear on the ballot; and
- (16) that the candidate is registered to vote as a member of the political party whose nomination is being sought.

(b) A person filing a declaration of candidacy under this section shall simultaneously file with the director a statement of income sources and business

interests that complies with the requirements of AS 39.50.

(c) An incumbent public official who has a current statement of income sources and business interests on file with the Alaska Public Offices Commission is not required to file a statement of income sources and business interests with the declaration of candidacy under (b) of this section. (Sec. 5.03 ch 83 SLA 1960; am sec. 16 ch 125 SLA 1962; am sec. 1 ch 53 SLA 1966; am sec. 3 ch 1 SLA 1967; am sec. 35 ch 116 SLA 1972; am sec. 3 ch 133 SLA 1977; am sec. 126 ch 100 SLA 1980; am sec. 34 ch 50 SLA 1989; am secs. 15, 16 ch 67 SLA 1989)

Effect of amendments. The first 1989 amendment, effective May 27, 1989, substituted "residence" for "resident" in paragraph (a)(6). The second 1989 amendment, effective August 28, 1989, added "and the date on which residency at that address began" at the end of paragraph (a)(6); rewrote paragraph (a)(8); substituted "is not a candidate for this office under any other declaration of candidacy or nominating petition" for "has not filed another declaration of candidacy or nominating petition for the office for which this declaration is filed" in paragraph (a)(14); inserted "with the director" and substituted "that complies" for "which complies" in subsection (b); and added subsection (c).

NOTES TO DECISIONS

Alaska Const., art. II, sec. 2 and this section collectively condition eligibility for seeking legislative office upon three years' residency in the state and one year in the election district. *Gilbert v. State*, Sup. Ct. Op. No. 1085 (File No. 2290), 526 P.2d 1131 (1974).

Residency requirements not unconstitutional. The residency requirements of Alaska Const., art. II, sec. 2 and this section do not deprive an individual of equal protection by (1) limiting his right to seek and hold public office; (2) limiting his ability and the ability of voters who would support him to participate in the electoral process; and (3) restricting his right to freely travel between the states. *Gilbert v. State*, Sup. Ct. Op. No. 1085 (File No. 2290), 526 P.2d 1131 (1974).

The impact of the residency requirements upon the voters' right to have a meaningful choice of candidates is slight. *Gilbert v. State*, Sup. Ct. Op. No. 1085 (File No. 2290), 526 P.2d 1131 (1974).

But serve compelling state interest. The requirements of three years' residency in the state and one year in the election district serve a compelling state interest. *Gilbert v. State*, Sup. Ct. Op. No. 1085 (File No. 2290), 526 P.2d 1131 (1974).

The requirements are necessary to permit exposure of the candidate to his prospective constituents so they may judge his character, knowledge and reputation, and they are needed to ensure that legislators are familiar with the diverse character of the state where they will participate in the law-making process. *Gilbert v. State*, Sup. Ct. Op. No. 1085 (File No. 2290), 526 P.2d 1131 (1974).

Late filing of declaration or conflict-of-interest statement. Election laws mandate, in plain and unequivocal language, that a candidate physically deliver a declaration of candidacy "at or before 5:00 p.m.," and that a conflict-of-interest statement be "simultaneously filed." This statutory scheme does not in any way suggest that a declaration or a conflict-of-interest statement completed after the deadline should be deemed timely; and an Elections Division policy of permitting candidates to fill out forms after the statutory filing deadline does not properly implement AS 15.25.040(a). *Falke v. State*, Sup. Ct. Op. No. 3038 (File No. S-605), 717 P.2d 369 (1986).

Substantial compliance doctrine was not applicable to excuse late filing of conflict-of-interest statement. *Falke v. State*, Sup. Ct. Op. No. 3038 (File No. S-605), 717 P.2d 369 (1986).

Applied in *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Cited in *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977); *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Collateral references. Political principles or affiliations as ground for refusal of government officials to file certificate of nomination or take other steps necessary to representation of party or candidate upon official ticket. 130 ALR 1471.

Constitutionality, construction, and application of statutes regarding party affiliations or change thereof as affecting eligibility to nomination for public office. 153 ALR 641.

Right to seek nomination, or to become candidate, for more than one office in the same election. 94 ALR2d 557.

Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 ALR3d 1048.

Sec. 15.25.040. Manner and date of filing declaration. (a) The declaration is filed by either

(1) the actual physical delivery of the declaration in person or by mail at or before 5:00 p.m., prevailing time, June 1 of the year in which a general election is held for the office; or

(2) the actual physical delivery by telegram of a copy in substance of the statements made in paragraphs (1) - (5) of the declaration as required by AS 15.25.030(a) at or before 5:00 p.m., prevailing time, June 1 of the year in which a general election is held for the office and also the actual physical delivery of the declaration containing paragraphs (1) - (16) as required by AS 15.25.030(a) by registered mail which is received not more than 15 days after that time.

(b) If the postmark is illegible, a dated receipt from the post office where dispatched shall be acceptable as evidence of mailing. If June 1 is a Sunday or holiday, the deadlines for postmarking and receipt of the declaration shall be extended 24 hours in each instance.

(c) A candidate for a statewide office or a candidate for a district-wide office shall file either with the director or an election supervisor. If the candidate files the declaration with an election supervisor, the election supervisor shall immediately forward the declaration to the director.

(d) If the declaration filed under (a) of this section is not received within seven calendar days, the candidate shall be notified of nonreceipt. The candidate shall have the opportunity to refile the declaration with proof that a previous declaration has been filed in a timely manner and in accordance with law. (Sec. 5.04 ch 83 SLA 1960; am sec. 17 ch 125 SLA 1962; am sec. 20 ch 80 SLA 1963; am secs. 3, 4 ch 26 SLA 1966; am sec. 22 ch 136 SLA 1966; am sec. 1 ch 28 SLA 1972; am secs. 11, 12 ch 38 SLA 1974; am sec. 25 ch 197 SLA 1975; am sec. 4 ch 133 SLA 1977; am sec. 127 ch 100 SLA 1980; am sec. 25 ch 85 SLA 1988)

Cross references. For date of filing petition, see AS 15.25.150.

Collateral references. Mandatory or directory character of statutory provision as to time of filing candidate's application or certificate of nomination before primary or election. 72 ALR 290.

Effect of amendments. The 1988 amendment substituted '(1) - (16)' for '(1) - (15)' in subsection (a)(2).

NOTES TO DECISIONS

Late filing of declaration or conflict-of-interest statement. Election laws mandate, in plain and unequivocal language, that a candidate physically deliver a declaration of candidacy "at or before 5:00 p.m.," and that a conflict-of-interest statement be "simultaneously filed."

This statutory scheme does not in any way suggest that a declaration or a conflict-of-interest statement completed after the deadline should be deemed timely; and an Elections Division policy of permitting candidates to fill out forms after the statutory filing deadline does not properly implement AS 15.25.040(a). *Falke v. State*, Sup. Ct. Op. No. 3038 (File No. S-605), 717 P.2d 369 (1986).

Applied in *Sillides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Sec. 15.25.042. Eligibility of a candidate. (a) If the director receives a complaint regarding the eligibility of a candidate for a particular office, the director shall determine eligibility under regulations adopted by the director. The director shall determine the eligibility of the candidate within 30 days of the receipt of the complaint.

(b) Except as provided in (c) of this section, the director shall determine the eligibility of the candidate by a preponderance of the evidence.

(c) If a candidate for the legislature has been registered to vote at any time during the 12 months preceding the filing of the declaration of candidacy in a district other than the district in which the declaration of candidacy has been filed, the director may not determine that a candidate is eligible except under a standard of clear and convincing evidence.

(d) A person may not be a resident of two districts at the same time. (Sec. 24 ch 85 SLA 1986)

Sec. 15.25.043. Determination of residency of a candidate. In determining the residence within an election district of a qualified voter for the purposes of compliance with art. II, sec. 2 of the Alaska Constitution, the director shall apply the rules established in AS 15.05.020 together with the following rules:

(1) a person establishes residence within an election district

(A) by actual physical presence at a specific location within the district; and

(B) by maintaining a habitation at the specific location;

(2) a person may maintain a place of residence at a specific location within a district while away from the location for purposes of employment, education, military service, or vacation if the person does not establish residency at another location; and

(3) a qualified voter loses residence by voting in another election district or in another state's elections. (Sec. 24 ch 85 SLA 1986)

Sec. 15.25.045. Withdrawal of candidacy. Notice of withdrawal of candidacy must be in writing over the signature of the candidate. (Sec. 23 ch 136 SLA 1966)

Collateral references. Power of political party or its officials to withdraw nominations. 155 ALR 186.

Sec. 15.25.050. Requirement of filing fee. (a) At the time the declaration is filed, each candidate shall pay a nonrefundable filing fee to the director. The filing fee for candidates for office of governor, lieutenant governor, United States senator, and

United States representative is \$100. The filing fee for candidates for office of state senator and state representative is \$30.

(b) An indigent person as defined by regulations adopted under the Administrative Procedure Act (AS 44.62) may file a statement of indigency in the form prescribed by regulation in place of the filing fee required by this section. (Sec. 5.05 ch 83 SLA 1960; am sec. 128 ch 100 SLA 1980; am sec. 25 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (a) in the first sentence inserted 'nonrefundable' and deleted the former last sentence, concerning payment of filing fees collected.

NOTES TO DECISIONS

Cited in *Silides v. Thomas*, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977); *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Collateral references. Validity and effect of statutes exacting filing fees from candidates for public office. 89 ALR2d 864.

Sec. 15.25.055. Removal of name from primary ballot. A candidate's name must appear on the primary election ballot unless notice of the withdrawal from the primary is received by the director at least 48 days before the date of the primary election. (Sec. 24 ch 136 SLA 1966; am sec. 25 ch 69 SLA 1970; am sec. 129 ch 100 SLA 1980; am sec. 17 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted '48 days' for '40 days and made a minor stylistic change.'

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.25.056. Nomination by party petition where incumbent dies or is disqualified or incapacitated. (a) If an unopposed incumbent candidate for renomination dies, becomes disqualified from holding the office the candidate is seeking, or is certified as being incapacitated between June 1 of the election year and that date which is more than 50 days before the date of the primary election, the candidate's place on the ballot may be filled by party petition. The petition shall state that the political party requests the name of the proposed candidate replace that of the incumbent on the primary election ballot and shall be accompanied by a declaration of candidacy from the person named in the petition. The petition must be received by the director no later than 14 days after the death, disqualification or certification of incapacity of the incumbent or 48 days before the primary election date, whichever time is earlier.

(b) The method for certifying an incumbent candidate for nomination as being incapacitated, the method for selecting the person who is to be named in the party petition, and the method for placing the name of the person selected on the primary nomination ballot are the same as those prescribed in AS 15.25.110 and 15.25.130 relating to filling vacancies of party nominees in a general election.

(c) The death, disqualification or certification of incapacity of the incumbent within 48 days before or on the primary election date does not affect the counting and review of the ballots. If the result of the counting and review discloses that the candidate, if the candidate had lived, would have been nominated, the candidate shall

be declared nominated. The vacancy may be filled by party petition as provided in AS 15.25.110 - 15.25.130. (Sec. 24 ch 136 SLA 1966; am secs. 26, 27 ch 69 SLA 1970; am secs. 130, 131 ch 100 SLA 1980; am secs. 18, 19 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted 'more than 50 days' for '45 days' in the first sentence in subsection (a), and substituted '48 days' for '40 days' in the last sentence in subsection (a) and in the first sentence in subsection (c).

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Collateral references. Name or form of name to be used in designating candidate on primary or election ballot. 93 ALR 911.

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation. The names for each office shall be rotated as provided for the general election ballot. No blank spaces shall be provided on the ballot for the writing or pasting in of names. (Sec. 5.06 ch 83 SLA 1960; am sec. 4 ch 1 SLA 1967; am sec. 132 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' where it appears near the middle of the first sentence and at the beginning of the second sentence.

Sec. 15.25.070. Special provisions on counting ballots. A voter may not vote for a person whose name is not on the ballot. Votes cast for a person whose name is not on the ballot may not be counted, but writing in a candidate's name does not invalidate the entire ballot. (Sec. 5.07 ch 83 SLA 1960; am sec. 5 ch 1 SLA 1967)

Sec. 15.25.080. Declaration of party preference. [Repealed, sec. 231 ch 100 SLA 1980.]

Editor's notes. The repealed section derived from sec. 5.08, ch 83, SLA 1960; sec. 6, ch 1, SLA 1967.

Sec. 15.25.090. General procedure for conduct of primary election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the primary election, including, but not limited to, provisions concerning voter qualification; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provisions regarding payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, review, and certification of returns; provisions for the determination of tie votes and of recount, contests and appeal; and provisions for absentee voting. (Sec. 5.09 ch 83 SLA 1960; am sec. 7 ch 1 SLA 1967; am sec. 133 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' near the middle of the section, substituted 'review' for 'canvassing' near the end of the section, and deleted 'and the use of voting machines' following 'absentee voting' at the end of the section.

Sec. 15.25.100. Placement of nominees on general election ballot. The director shall place the name of the candidate receiving the highest number of votes for an office by a political party on the general election ballot. (Sec. 5.10 ch 83 SLA 1960; am sec. 134 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' at the beginning of the section.

Collateral references. Constitutionality, construction, and application of statute which declares a defeated candidate for nomination ineligible as a candidate at general election, or prohibits printing his name on official ballot. 143 ALR 603.

NOTES TO DECISIONS

Quoted in *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Sec. 15.25.110. Filling vacancies by party petition. If a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding the office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 48 days or more before the general election, the vacancy may be filled by party petition. The central committee of any political party or any party district committee may certify as being incapacitated any candidate nominated by their respective party by presenting to the director a sworn statement made by a panel of three licensed physicians, not more than two of whom may be of the same political party, that the candidate is physically or mentally incapacitated to an extent that would in the panel's judgment prevent the candidate from active service during the term of office if elected. The director shall place the name of the person nominated by party petition on the general election ballot. The name of a candidate disqualified under this section may not appear on the general election ballot. (Sec. 5.11 ch 83 SLA 1960; am sec. 18 ch 125 SLA 1962; am sec. 8 ch 1 SLA 1967; am sec. 135 ch 100 SLA 1980; am sec. 20 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted '48 days' for '40 days' and made a minor stylistic change in the first sentence and substituted 'may' for 'shall' preceding 'be of the same political party' in the second sentence.

Collateral references. Construction and application of statutes relating to filling vacancies in nominations for election to public office. 143 ALR 996.

Application of statutes as to party affiliations or change thereof as affecting eligibility to nomination for public office or filling of vacancies. 153 ALR 648.

Sec. 15.25.120. Requirements for party petition. Party petitions for the nomination of candidates shall state in substance that the political party desires and intends to support the named candidate for the named office and requests that the name of the proposed candidate be placed on the general election ballot. The petition may be filed no later than 48 days before the date of the general election. (Sec. 5.12 ch 83 SLA 1960; am sec. 136 ch 100 SLA 1980; am sec. 21 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted '48 days' for '40 days' in the second sentence.

Sec. 15.25.130. Selection of nominees for party petition. The nominees of political parties by party petition may be selected for statewide offices by the party central committee or in any other manner prescribed by the party bylaws, and the petition for statewide offices shall be signed by the chairman of the central committee, or in the absence of the chairman, by any two members of the committee. The nominees of political parties by party petition may be selected for district-wide offices by the respective party district committee or in any other manner prescribed by the party bylaws, and the petition for district-wide offices shall be signed by the chairman of the party district committee, or in the absence of the chairman, by any two members of the party committee, or in any other manner prescribed by the party bylaws. The petition may be delivered in person, by mail or by telegraph. (Sec. 5.13 ch 83 SLA 1960)

NOTES TO DECISIONS

Applied in *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Sec. 15.25.135. Election of party committeemen and committeewomen. [Repealed, sec. 21 ch 80 SLA 1963.]

Editor's notes. The repealed section derived from sec. 5.14, ch 83, SLA 1960; sec. 1, ch 106, SLA 1962.

Article 2. Nominations for General Election by Petition.

Section

- 140. Provision for no-party candidate nominations
- 150. Date of filing petition
- 160. Required number of signatures for statewide office
- 170. Required number of signatures for district-wide office
- 180. Requirements for petition
- 190. Placement of names on general election ballot
- 200. Withdrawal of candidate's name

Collateral references. 25 Am. Jur. 2d, Elections, secs. 168-173.

29 C.J.S., Elections, secs. 89-96, 106-110, 130-148.

Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition. 100 ALR 1308.

Constitutionality, construction, and application of statute which declares a defeated candidate for nomination ineligible as a candidate at general election, or prohibits printing his name on official ballot. 143 ALR 603.

Constitutionality of election laws as regards nominations by petition or otherwise than by statutory convention or primary election. 146 ALR 668.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604.

Sec. 15.25.140. Provision for no-party candidate nominations. Candidates not representing a political party are nominated by petition. (Sec. 5.51 ch 83 SLA 1960)

Sec. 15.25.150. Date of filing petition [Effective May 1, 1990]. The petition is filed with the director by actual physical delivery in person at or before 5:00 p.m., prevailing time, August 1 in the year in which a general election is held for the office, or by actual physical delivery to the director by registered or certified mail return receipt requested which is postmarked at or before 5:00 p.m., prevailing time, August 1 in the year in which a general election is held for the office, and received not more than 15 days after that time. If the postmark is illegible, a dated receipt from the post office where dispatched shall be acceptable as evidence of mailing. If August 1 is a Sunday or holiday, the deadlines for postmarking and receipt of the petition shall be extended 24 hours in each instance. (Sec. 5.52 ch 83 SLA 1960; am sec. 23 ch 228 SLA 1968; am sec. 26 ch 197 SLA 1975; am sec. 137 ch 100 SLA 1980; am sec. 22 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective May 1, 1990, substituted "August 1" for "June 1" in three places.

Cross references. As to manner and date of filing declaration, see AS 15.25.040.

Sec. 15.25.160. Required number of signatures for statewide office. Petitions for the nomination of candidates for the office of governor, lieutenant governor, United States senator and United States representative shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election. Candidates for the office of governor and lieutenant governor shall file jointly. (Sec. 5.53 ch 83 SLA 1960; am sec. 138 ch 100 SLA 1980; am sec. 26 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in the first sentence substituted "one" for "three" and "voters who cast ballots" for "votes cast."

NOTES TO DECISIONS

Ballot access requirement. Where there was no evidence that the former ballot access requirement of 1,000 signatures caused confusion among voters or any other problem, the increase to a minimum of signatures equal in number to 3 percent of votes cast in last election in order to make all ballot access requirements uniform, violated the free speech and equal protection clauses of the Alaska Constitution by effectively eliminating a new political party's access to the ballot. *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Quoted in *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Sec. 15.25.170. Required number of signatures for district-wide office. Petitions for the nomination of candidates for the office of state senator or state representative shall be signed by qualified voters of the election or senate district in which the proposed nominee desires to be a candidate equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or

senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district. (Sec. 5.54 ch 83 SLA 1960; am sec. 139 ch 100 SLA 1980; am sec. 27 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment divided the section into two sentences by substituting "A" for "provided that no," in the first sentence substituted "one" for "three," "voters who cast ballots" for "votes cast" and "the proposed nominee's" for "his" and in the second sentence deleted "need contain more than 200 signatures nor" following "petition" and "it" preceding "contain less" and inserted "not."

Sec. 15.25.180. Requirements for petition. (a) The petition shall state in substance

- (1) the full name of the candidate;
- (2) the full residence address of the candidate, and the date on which residency at that address began;
- (3) the full mailing address of the candidate;
- (4) the name of the political group supporting the candidate;
- (5) if the candidacy is for the office of state senator or state representative, the election or senate district of which the candidate is a resident;
- (6) the office for which the candidate is nominated;
- (7) the date of the election at which the candidate seeks election;
- (8) the length of residency in the state and in the district of the candidate;
- (9) that the subscribers are qualified voters of the state or election or senate district in which the candidate resides;
- (10) that the subscribers request that the candidate's name be placed on the ballot;
- (11) that the proposed candidate accepts the nomination and will serve if elected, with the statement signed by the proposed candidate;
- (12) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with the candidate for governor;
- (13) the name of the candidate as the candidate wishes it to appear on the ballot; and
- (14) that the candidate is not a candidate for any other office to be voted on at the primary or general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

(b) A person filing a nominating petition under this section shall also file a statement of income sources and business interests that complies with the requirements of AS 39.50 within 30 days of filing the petition.

(c) An incumbent public official who has a current statement of income sources and business interests on file with the Alaska Public Offices Commission is not required to file a statement of income sources and business interests under (b) of this section. (Sec. 5.55 ch 83 SLA 1960; am sec. 22 ch 80 SLA 1963; am sec. 140 ch 100 SLA 1980; am sec. 45 ch 85 SLA 1986; am secs. 23, 24 ch 67 SLA 1989)

Effect of amendments. The 1986 amendment repealed paragraph (10), which read "That the subscribers intend to vote for the candidate at the general election."

The 1989 amendment, effective August 29, 1989, in subsection (a), added "and the date on which residency at that address began" at the end of paragraph (2), rewrote paragraph (8), repealed paragraph (10), redesignated former paragraphs (11) - (15) as present

paragraphs (10) - (14), and substituted "is not a candidate for this office under any other nominating petition or declaration of candidacy" for "has not filed another nominating petition or declaration of candidacy for the office for which this petition is filed" in present paragraph (14); and added subsections (b) and (c).

Sec. 15.25.190. Placement of names on general election ballot. The director shall place the names and the political group affiliation of persons who have been properly nominated by petition on the general election ballot. (Sec. 5.56 ch 83 SLA 1960; am sec. 141 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.25.200. Withdrawal of candidate's name. If a candidate nominated by petition dies or withdraws after the petition has been filed and at least 48 days before the date of the general election, the director may not place the name of the candidate on the general election ballot. (Sec. 5.57 ch 83 SLA 1960; am sec. 142 ch 100 SLA 1980; am sec. 25 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, substituted "at least 48 days before the date of the general election" for "before September 1 of the election year."

Secs. 15.25.220 - 15.25.280. Presidential party primary election. [Repealed, sec. 1 ch 2 SLA 1984.]

Chapter 30. National Elections.

Article

1. President (15.30.010 - 15.30.100)
2. United States Congress (15.30.110 - 15.30.120)

Article 1. President.

Section

10. Provision for selection of electors
20. Number and manner of selecting candidates
25. Qualifications for limited political parties
30. Qualification of electors
40. Requirement of party pledge
50. Interpretation of votes cast for candidates for President and Vice President
60. Notification of electors
70. Place and time of meeting
80. Filling of vacancies
90. Duties of electors
100. Compensation of electors

Collateral references. 25 Am. Jur. 2d, Elections, secs. 1, 3, 4, 9; 77 Am. Jur. 2d, United States, sec. 43.

29 C.J.S., Elections, secs. 91, 94, 97, 111(1), 174, 210(2); 91 C.J.S., United States, secs. 27, 28.

Presidential and vice-presidential electors. 153 ALR 1068.

Sec. 15.30.010. Provision for selection of electors. Electors of President and Vice President of the United States are selected by election at the general election in presidential election years. (Sec. 6.01 ch 83 SLA 1960; am sec. 10 ch 71 SLA 1972)

Legislative history reports. For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 898.

Sec. 15.30.020. Number and manner of selecting candidates. Each political party shall select a number of candidates for electors of President and Vice President of the United States equal to the number of senators and representatives to which the state is entitled in Congress. The candidates for electors shall be selected by the state party convention or in any other manner prescribed by the bylaws of the party. The chairman and secretary of the state convention or any other party official designated by the party bylaws shall certify a list of the names of candidates for electors to the director on or before September 1 in presidential election years. (Sec. 6.02 ch 83 SLA 1960; am sec. 143 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the end of the section.

Sec. 15.30.025. Qualifications for limited political parties. (a) A limited political party may be organized for the purpose of selecting candidates for electors of President and Vice-President of the United States by filing with the director at least 90 days before a presidential general election a petition signed by qualified voters of the state equaling in number at least one percent of the number of voters who cast ballots for President at the last presidential election. The petition shall state that the signers intend to organize a limited political party, that they intend to select candidates for electors of President and Vice-President of the United States at the next succeeding presidential election, and the name of the limited political party.

(b) A limited political party organized under this section may not assume a name which is so similar to an existing political party as to confuse or mislead the voters at an election. If the director determines that the name of the limited political party set out in a petition is confusing or misleading, the director may refuse to accept the petition for filing.

(c) A limited political party organized under this section ceases to be a limited political party if its presidential candidate fails to receive at least three percent of the number of voters who cast ballots for the office of President at a presidential election. (Sec. 1 ch 160 SLA 1970; am sec. 144 ch 100 SLA 1980; am secs. 28, 29 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (a) in the first sentence deleted "a petition" following "by filing," inserted "a petition" following "general election," and substituted "the" for "this" preceding "state equaling," "one" for "three," and "the number of voters who cast ballots" for "Alaska's total vote"; and in subsection (c) substituted "ceases" for "shall cease," "if" for "whenever," "three" for "10" and "number of voters who cast ballots" for "total Alaskan vote cast."

NOTES TO DECISIONS

Ballot access requirement. The amendment of a similar ballot access requirement increasing minimum signatures required from 1000 to 3 percent of votes cast in last election was held violative of free speech and equal protection clauses of the Alaska Constitution by effectively eliminating a new political party's access to the ballot. *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Sec. 15.30.030. Qualification of electors. Any qualified voter except a United States senator or representative or person holding an office of trust or profit under the United States may be selected as a candidate for elector. (Sec. 6.03 ch 83 SLA 1960)

Sec. 15.30.040. Requirement of party pledge. The party shall require from each candidate for elector a pledge that as an elector the person will vote for the candidates nominated by the party of which the person is a candidate. (Sec. 6.04 ch 83 SLA 1960)

Sec. 15.30.050. Interpretation of votes cast for candidates for President and Vice President. In voting for presidential electors, a vote marked for the candidates for President and Vice President is considered and counted as a vote for the presidential electors of the party. (Sec. 6.05 ch 83 SLA 1960)

Sec. 15.30.060. Notification of electors. When the results of the election of presidential electors have been determined, the director shall send a certificate of election to each elector and shall notify the electors of the time and place of their meeting and of their duties as electors. (Sec. 6.06 ch 83 SLA 1960; am sec. 145 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the middle of the section.

Sec. 15.30.070. Place and time of meeting. The electors shall meet at the office of the director or other place designated by the director at 11:00 o'clock in the morning on the first Monday after the second Wednesday in December following their election. If Congress fixes a different day for the meeting, the electors shall meet on the day designated by the Act of Congress. (Sec. 6.07 ch 83 SLA 1960; am sec. 146 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the beginning of the first sentence of the section.

Sec. 15.30.080. Filling of vacancies. If there is a vacancy caused by death, failure to attend, ineligibility or other cause, and if available alternates have not been designated, the electors shall fill the vacancy by plurality vote. (Sec. 6.08 ch 83 SLA 1960; am sec. 25 ch 136 SLA 1966)

Sec. 15.30.090. Duties of electors. After any vacancies have been filled, the electors shall proceed to cast their votes for the candidates for the office of President and Vice President of the party which selected them as candidates for electors and shall perform the duties of electors as required by the constitution and laws of the United States. The director shall provide administrative services and the Department of Law shall provide legal services necessary for the electors to perform their duties. (Sec. 6.09 ch 83 SLA 1960; am sec. 147 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the second sentence.

Sec. 15.30.100. Compensation of electors. Each elector is entitled to receive from the state treasury the same per diem and travel expenses allowed members of the legislature. (Sec. 6.10 ch 83 SLA 1960; sec. 25 ch 14 SLA 1987)

Article 2. United States Congress.

Section

110. Provisions for election of United States Senators

120. Provisions for election of United States Representatives

Collateral references. 25 Am. Jur. 2d, Elections, secs. 3, 4, 8, 30, 56; 28 Am. Jur. 2d, Elections, sec. 225; 77 Am. Jur. 2d, United States, secs. 20-25.

91 C.J.S., United States, secs. 9-16.

State court jurisdiction over contest involving primary election for member of Congress.
68 ALR2d 1320.

Sec. 15.30.110. Provisions for election of United States senators. A United States senator shall be elected at the general election held in the year 1960 and at the general election every sixth year thereafter. A United States senator shall be elected at the general election held in the year 1962 and at the general election every sixth year thereafter. (Sec. 6.31 ch 83 SLA 1960)

Sec. 15.30.120. Provisions for election of United States representatives. A United States representative in Congress shall be elected from each congressional district at the general election in 1960 and at the general election every second year thereafter. (Sec. 6.32 ch 83 SLA 1960)

Chapter 35. State Elections.

Article

1. Executive (15.35.010)
2. Legislative (15.35.020)
3. Judiciary (15.35.030 - 15.35.170)

Article 1. Executive.

Section

10. Election of governor and lieutenant governor

Collateral references. 25 Am. Jur. 2d, Elections, secs. 3, 10; 38 Am. Jur. 2d, Governor, sec 2.

29 C.J.S., Elections, sec. 1 et seq.; 81A C.J.S., States, secs. 84, 130.

Sec. 15.35.010. Election of governor and lieutenant governor. A governor and lieutenant governor shall be elected at the general election in 1962 and every four years thereafter. (Sec. 7.01 ch 83 SLA 1960)

Article 2. Legislative.

Section

20. Election of legislature

Collateral references. 25 Am. Jur. 2d, Elections, secs. 12-29, 32-38.

29 C.J.S., Elections, sec. 1 et seq.; 81A C.J.S., States, secs. 42-44, 62-78; 84-86.

Sec. 15.35.020. Election of legislature. One-half of the members of the state senate and all members of the state house of representatives shall be elected at each general election in accordance with the apportionment articles of the state constitution. (Sec. 7.31 ch 83 SLA 1960)

Article 3. Judiciary.

Section

30. Approval or rejection of supreme court justice
40. Filing declaration by supreme court justice
41. Requirement of filing fee for supreme court candidate
50. Placing name of supreme court justice on ballot
53. Approval or rejection of a judge of the court of appeals
55. Filing declaration by judge of the court of appeals
57. Requirement of filing fee for court of appeals
59. Placing name of judge of the court of appeals on the ballot
60. Approval or rejection of superior court judge
70. Filing declaration by superior court judge

71. Requirement of filing fee for superior court candidate
80. Determination of judicial district in which to seek approval
90. Placing name of superior court judge on ballot
100. Approval or rejection of district judge
110. Filing declaration by district judge
120. Requirement of filing fee for district court candidate
130. Placing name of district judge on ballot

Collateral references. 25 Am. Jur. 2d, Election, secs. 3, 10, 211, 276; 46 Am. Jur. 2d, Judges, secs. 7, 9, 10.

29 C.J.S., Elections, sec. 1 et seq.; 48 C.J.S., Judges, secs. 12, 13.

Sec. 15.35.030. Approval or rejection of supreme court justice. Each supreme court justice shall be subject to approval or rejection at the first general election held more than three years after the justice's appointment. If approved, the justice shall thereafter be subject to approval or rejection in a like manner every tenth year. (Sec. 7.51 ch 83 SLA 1960)

Sec. 15.35.040. Filing declaration by supreme court justice. Each justice seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite. (Sec. 7.52 ch 83 SLA 1960; am sec. 148 ch 100 SLA 1980; am sec. 30 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted "no later than August 1 before" for "not less than 90 days before the date of."

Sec. 15.35.041. Requirement of filing fee for supreme court candidate. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the supreme court is \$100. (Sec. 23 ch 80 SLA 1963; am sec. 149 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "for retention" near the middle of the first sentence, substituted "director" for "lieutenant governor" at the end of the first sentence, and inserted "retention on" near the middle of the second sentence.

Sec. 15.35.050. Placing name of supreme court justice on ballot. The director shall place the name of a supreme court justice who has properly filed a declaration of candidacy for retention on the ballot in each judicial district of the state for the general election at which approval is sought. (Sec. 7.53 ch 83 SLA 1960; am sec. 2 ch 18 SLA 1969; am sec. 150 ch 100 SLA 1980; am sec. 26 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, deleted "judicial" before "ballot."

Legislative history reports. For report on ch 18, SLA 1969 (HCSSB 218), see 1969 House Journal, p. 425.

Sec. 15.35.053. Approval or rejection of a judge of the court of appeals. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after the judge's appointment. If approved, the judge is thereafter subject to approval or rejection in a like manner every eighth year. (Sec. 151 ch 100 SLA 1980)

Revisor's notes. This section is identical to former AS 15.35.140, Section 151, ch 100, SLA 1980, enacted this section, effective January 1, 1981 and sec. 231 of ch 100 repealed AS 15.35.140, effective January 1, 1981.

Sec. 15.35.055. Filing declaration by judge of the court of appeals. Each judge of the court of appeals seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite. (Sec. 151 ch 100 SLA 1980; am sec. 31 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted 'no later than August 1 before' for 'not less than 90 days before the date of.'

Sec. 15.35.057. Requirement of filing fee for court of appeals. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the court of appeals is \$100. (Sec. 151 ch 100 SLA 1980)

Revisor's notes. This section is identical to former AS 15.35.160, sec. 151, ch 100, SLA 1980, enacted this section, effective January 1, 1981, and sec. 231 of ch 100 repealed AS 15.35.160, effective January 1, 1981.

Sec. 15.35.059. Placing name of judge of the court of appeals on ballot. The director shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy for retention on the ballot in each judicial district of the state for the general election at which approval is sought. (Sec. 151 ch 100 SLA 1980; am sec. 27 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, deleted 'judicial' before 'ballot.'

Sec. 15.35.060. Approval or rejection of superior court judge. Each superior court judge shall be subject to approval or rejection at the first general election held more than three years after the judge's appointment. If approved, the judge shall thereafter be subject to approval or rejection in a like manner every sixth year. Sec. 7.54 ch 83 SLA 1960)

NOTES TO DECISIONS

Cited in *Kochutin v. State*, Sup. Ct. Op. No. 3194 (File No. S-1894), 739 P.2d 170 (1987).

Sec. 15.35.070. Filing declaration by superior court judge. Each judge seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite. (Sec. 7.55 ch 83 SLA 1960; am sec. 152 ch 100 SLA 1980; am sec. 32 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted "no later than August 1 before" for "not less than 90 days before the date fixed for."

NOTES TO DECISIONS

Applied in *Division of Elections v. Johnstone*, Sup. Ct. Op. No. 2704 (File Nos. 7231, 7232), 669 P.2d 537 (1983).

Sec. 15.35.071. Requirement of filing fee for superior court candidate. At the time the declaration is filed, each candidate for retention shall pay a filing fee to the director. The filing fee for a candidate for retention on the superior court is \$30. (Sec. 24 ch 80 SLA 1963; am sec. 153 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "for retention" near the middle of the first sentence, substituted "director" for "lieutenant governor" at the end of the first sentence, and inserted "retention on" near the middle of the second sentence.

Sec. 15.35.080. Determination of judicial district in which to seek approval. The judge shall seek approval in the judicial district to which the judge was originally appointed, except in case of assignments and transfers with the judge's consent, in which case the judge shall seek approval in the district where the judge has served the major portion of the judge's term. The judge shall designate on the declaration of candidacy the judicial district to which the judge was appointed, except in case of assignments and transfers in which case the judge shall designate the district where the judge has served the major portion of the judge's term. (Sec. 7.56 ch 83 SLA 1960)

NOTES TO DECISIONS

Scope of vote. Art. IV, sec. 6 of the state constitution, dealing with retention of judges, does not specify that the vote will be held on a district-wide basis even though this section currently provides that retention of superior court judges will be decided by the voters of the judge's judicial district, and AS 15.35.100(b) sets forth the same rule for district court judges. *Hornaday v. Rowland*, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Sec. 15.35.090. Placing name of superior court judge on ballot. The director shall place the name of a superior court judge who has properly filed a declaration of candidacy for retention on the ballot in the judicial district designated in the declaration of candidacy for the general election at which approval is sought. (Sec. 7.57 ch 83 SLA 1960; am sec. 3 ch 18 SLA 1969; am sec. 154 ch 100 SLA 1980; am sec. 28 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, deleted "judicial" before "ballot."

Legislative history reports. For report on ch 18, SLA 1969, (HCSSB 218), see 1969 House Journal, p. 425.

Sec. 15.35.100. Approval or rejection of district judge. (a) Each district judge shall be subject to approval or rejection at the first general election held more than one year after the judge's appointment under the provisions of AS 22.15.170. If approved, the judge shall thereafter be subject to approval or rejection in a like manner every fourth year.

(b) The district judge shall seek approval in the judicial district in which the judge was originally appointed, or in the district where the judge has served the major portion of the judge's term. The district judge shall designate on the declaration of candidacy the judicial district in which the judge was appointed, or the district where the judge has served the major portion of the judge's term. (Sec. 1 ch 138 SLA 1966; am sec. 1 ch 164 SLA 1968)

NOTES TO DECISIONS

Scope of vote. Art. IV, sec. 6 of the state constitution, dealing with retention of judges, does not specify that the vote will be held on a district-wide basis even though AS 15.35.080 currently provides that retention of superior court judges will be decided by the voters of the judge's judicial district, and subsection (b) of this section sets forth the same rule for district court judges. *Hornaday v. Rowland*, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Quoted in *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Cited in *Stephens v. Hammersley*, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976); *Kochutin v. State*, Sup. Ct. Op. No. 3194 (File No. S-1894), 739 P.2d 170 (1987).

Sec. 15.35.110. Filing declaration by district judge. Each district judge seeking retention in office shall file with the director a declaration of candidacy for retention no later than August 1 before the general election at which approval or rejection is requisite. (Sec. 1 ch 138 SLA 1966; am sec. 155 ch 100 SLA 1980; am sec. 33 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted "no later than August 1 before" for "not less than 90 days before the date fixed for."

NOTES TO DECISIONS

Quoted in *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Sec. 15.35.120. Requirement of filing fee for district court candidate. At the time the declaration is filed, each candidate for retention on the district court shall pay a filing fee of \$30 to the director. (Sec. 1 ch 138 SLA 1966; am sec. 156 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "retention on" near the middle of the section, and substituted "director" for "lieutenant governor" at the end of the section.

NOTES TO DECISIONS

Quoted in *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Sec. 15.35.130. Placing name of district judge on ballot. The director shall place the name of a district judge who has properly filed a declaration of candidacy for retention on the ballot in the judicial district designated in the declaration of candidacy for the general election at which approval is sought. (Sec. 1 ch 138 SLA 1966; am sec. 4 ch 18 SLA 1969; am sec. 157 ch 100 SLA 1980; am sec. 29 ch 67 SLA 1989)

Effect of amendments. The 1989 amendment, effective August 28, 1989, deleted "judicial" before "ballot."

NOTES TO DECISIONS

Quoted in *Delahay v. State*, Sup. Ct. Op. No. 648 (File No. 1252), 476 P.2d 908 (1970).

Cited in *Stephens v. Hammersley*, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Sec. 15.35.140 - 15.35.170. Judges of the court of appeals: Requirements for retention in office. [Repealed, sec. 231 ch 100 SLA 1980. For current law, see AS 15.35.053 - 15.35.059.]

Editor's notes. The repealed sections derived from sec. 22, ch 12, SLA 1980.

Chapter 40. Special Elections and Appointments.

Article

1. United States Senate (15.40.010 - 15.40.130)
2. United States House of Representatives (15.40.140 - 15.40.220)
3. Governor and Lieutenant Governor (15.40.230 - 15.40.310)
4. Legislature (15.40.320 - 15.40.470)

Article 1. United States Senate.

Section

10. Conditions and time of filing vacancy by appointment
30. Conditions for full, unexpired term appointment
40. Conditions for part-term appointment and special election
50. Date of special election
60. Proclamation of special election
70. Term of elected senator
80. Selection of nominees in manner provided for general election
90. Designation of nominees by petition
100. Requirements of petition for no-party candidates
110. Requirements of petition for political party
120. Selection of political party nominees
130. General provision for conduct of special election

Collateral references. 25 Am. Jur. 2d, Elections, secs. 3, 4, 8; 26 Am. Jur. 2d, Elections, secs. 185-187, 195, 196; 38 Am. Jur. 2d, Governor, secs. 5-7; 63 Am. Jur. 2d, Public Officers and Employees, secs. 89, 90, 110, 111, 113; 77 Am. Jur. 2d, United States, secs. 20-25.

29 C.J.S., Elections, secs. 1(3), 70-74; 91 C.J.S., United States, sec. 15.

Inequality of population or lack of compactness of territory as invalidating apportionment of representatives. 2 ALR 1337.

Power of judiciary to compel legislature to make apportionment of representatives or election districts as required by Constitution. 46 ALR 964.

Death or disability of one elected to office before qualifying as creating a vacancy. 74 ALR 486.

Statutory provision as to manner and time of notice of special election as mandatory or directory. 119 ALR 661.

Election within contemplation of constitutional or statutory provisions relating to filling vacancy in public office occurring before expiration of regular term. 132 ALR 574.

Construction and application of statutes relating to filling vacancies in nominations for election to public office. 143 ALR 996.

What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.40.010. Conditions and time of filling vacancy by appointment. When a vacancy occurs in the office of United States senator, the governor, within 30 days,

shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if the vacancy will be filled by a special election before the senate will next meet, convene, or reconvene, the governor may not fill the vacancy. (Sec. 8.01 ch 83 SLA 1960)

Sec. 15.40.020. Qualification of appointee. [Repealed, sec. 1 ch 139 SLA 1967.]

Editor's notes. The repealed section derived from sec. 8.02, ch 83, SLA 1960.

Sec. 15.40.030. Conditions for full, unexpired term appointment. If the vacancy is for an unexpired term of two years plus five full calendar months or less, the appointment shall be for the remainder of the unexpired term. (Sec. 8.03 ch 83 SLA 1960)

Sec. 15.40.040. Conditions for part-term appointment and special election. If the vacancy is for an unexpired term of more than two years plus five full calendar months, the governor shall call a special election by proclamation and the appointment shall expire on the date the United States senate first meets, convenes, or reconvenes, following the certification of the results of the special election by the director. (Sec. 8.04 ch 83 SLA 1960; am sec. 158 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the end of the section.

Sec. 15.40.050. Date of special election. The special election to fill the vacancy shall be held on the date of the first general election which is held more than three full calendar months after the vacancy occurs. (Sec. 8.05 ch 83 SLA 1960)

Sec. 15.40.060. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 80 days before the election. (Sec. 8.06 ch 83 SLA 1960)

Sec. 15.40.070. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States senate first meets, convenes, or reconvenes following the certification of the results of the special election by the director. (Sec. 8.07 ch 83 SLA 1960; am sec. 159 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the end of the section.

Sec. 15.40.080. Selection of nominees in manner provided for general election. If the vacancy in the office of the United States senator occurs one calendar month or more before the filing date for the primary election, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections. (Sec. 8.08 ch 83 SLA 1960; am sec. 28 ch 69 SLA 1970)

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.40.090. Designation of nominees by petition. If the vacancy occurs less than one calendar month before the filing date for the primary election and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by actual delivery to the director before September 2 immediately preceding the special election. (Sec. 8.09 ch 83 SLA 1960; am sec. 29 ch 69 SLA 1970; am sec. 160 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the end of the section.

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.40.100. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election, and shall state in substance that which is required in petitions for nomination for general elections provided in AS 15.25.180. (Sec. 8.10 ch 83 SLA 1960; am sec. 161 ch 100 SLA 1980; am sec. 34 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted "one" for "three" and "number of voters who cast ballots" for "numbers of votes cast."

NOTES TO DECISIONS

Ballot access requirement. The amendment of a similar ballot access requirement increasing minimum signatures required from 1000 to 3 percent of votes cast in last election was held violative of free speech and equal protection clauses of the Alaska Constitution by effectively eliminating a new political party's access to the ballot. *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Sec. 15.40.110. Requirements of petition by political party. Petitions for the nomination of candidates of political parties shall state in substance that the political party desires and intends to support the named candidate for the office of United States senator at the special election and requests that the name of the candidate be placed on the ballot. (Sec. 8.11 ch 83 SLA 1960)

Sec. 15.40.120. Selection of political party nominees. The nominees of political parties to be designated by special petition may be selected by the state convention or by any other manner as prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention or, if the nominee is designated by the central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws. (Sec. 8.12 ch 83 SLA 1960)

Sec. 15.40.130. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of United States senators, including, but not limited to, provisions concerning voter qualifications; provisions regarding the duties,

powers, rights and obligations of the director, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting. (Sec. 8.13 ch 83 SLA 1960; am sec. 162 ch 100 SLA 1980; am sec. 38 ch 59 SLA 1982)

Article 2. United States House of Representatives.

Section

- 140. Condition and time of calling special election
- 150. Condition for holding special election with primary
- 160. Proclamation
- 170. Term of elected representative
- 180. Date of nominations
- 190. Requirements of petition for no-party candidates
- 200. Requirements of party petition
- 210. Selection of party nominees
- 220. General provisions for conduct of special election

Collateral references. 25 Am. Jur. 2d, Elections, secs. 3, 8; 26 Am. Jur. 2d, Elections, secs. 185-187, 195, 196; 38 Am. Jur. 2d, Governor, secs. 5-7; 63 Am. Jur. 2d, Public Officers and Employees, secs. 89, 90, 110, 111, 113; 77 Am. Jur. 2d, United States, secs. 20-25.

29 C.J.S., Elections, secs. 1(3), 70-74; 91 C.J.S., United States, sec. 15.

Inequality of population or lack of compactness of territory as invalidating apportionment of representatives. 2 ALR 1337.

Power of judiciary to compel legislature to make apportionment of representatives or election districts as required by Constitution. 46 ALR 964.

Death or disability of one elected to office before qualifying as creating a vacancy. 74 ALR 486.

Statutory provision as to manner and time of notice of special election as mandatory or directory. 119 ALR 661.

Election within contemplation of constitutional or statutory provisions relating to filling vacancy in public office occurring before expiration of regular term. 132 ALR 574.

Construction and application of statutes relating to filling vacancies in nominations for election to public office. 143 ALR 996.

What is "public place" within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.40.140. Condition and time of calling special election. When a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in general election years, the governor may not call a special election. (Sec. 8.21 ch 83 SLA 1960; am sec. 30 ch 69 SLA 1970)

Sec. 15.40.150. Condition for holding special election with primary. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election, the governor shall, by proclamation, call the special election to be held on the date of the primary election. (Sec. 8.22 ch 83 SLA 1960; am sec. 31 ch 69 SLA 1970)

Sec. 15.40.160. Proclamation. The governor shall issue the proclamation at least 50 days before the election. (Sec. 8.23 ch 83 SLA 1960)

Sec. 15.40.170. Term of elected representative. At the special election, a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election by the director. (Sec. 8.24 ch 83 SLA 1960; am sec. 163 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the end of the section.

Sec. 15.40.180. Date of nominations. Candidates for the special election shall be nominated by petition transmitted by (1) the actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs. (Sec. 8.25 ch 83 SLA 1960; am sec. 19 ch 125 SLA 1962; am sec. 164 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the end of the section.

Sec. 15.40.190. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election and shall state in substance that which is required for nomination petitions by AS 15.25.180. (Sec. 8.26 ch 83 SLA 1960; am sec. 165 ch 100 SLA 1980; am sec. 35 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted "for" for "of" in the catchline, and substituted "one" for "three" and "voters who cast ballots" for "votes cast"

NOTES TO DECISIONS

Ballot access requirement. The amendment of a similar ballot access requirement increasing minimum signatures required from 1000 to 3 percent of votes cast in last election was held violative of free speech and equal protection clauses of the Alaska Constitution by effectively eliminating a new political party's access to the ballot. *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Sec. 15.40.200. Requirements of party petition. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of United States representative at the special election and requests that the name of the candidate nominated be placed on the ballot. (Sec. 8.27 ch 83 SLA 1960)

Sec. 15.40.210. Selection of party nominees. The nominees of political parties may be selected by the state convention or in any other manner prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention, or if the nominees are selected by the party central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws. (Sec. 8.28 ch 83 SLA 1960)

Sec. 15.40.220. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the United States representative, including, but not limited to, provisions specifically referred to in AS 15.40.130. (Sec. 8.29 ch 83 SLA 1960)

Article 3. Governor and Lieutenant Governor.

Section

- 230. Condition and time of calling special election
- 240. Conditions for holding special election with primary or general election
- 250. Proclamation of special election
- 260. Term of elected governor and lieutenant governor
- 270. Date of nominations
- 280. Requirements of petition for no-party candidates
- 290. Requirements of party petition
- 300. Selection of party nominees
- 310. General provisions for conduct of special election

Collateral references. 25 Am. Jur. 2d, Elections, secs. 3, 10; 26 Am. Jur. 2d, Elections, secs. 185-187, 195-196; 38 Am. Jur. 2d, Governor, sec. 2.

29 C.J.S., Elections, secs. 1(3), 70-74; 81A C.J.S., States, sec. 87-89.

Death or disability of one elected to office before qualifying as creating a vacancy. 74 ALR 486.

Statutory provision as to manner and time of notice of special election as mandatory or directory. 119 ALR 661.

Election within contemplation of constitutional or statutory provisions relating to filling vacancy in public office occurring before expiration of regular term. 132 ALR 574.

Construction and application of statutes relating to filling vacancies in nominations for election to public office. 143 ALR 996.

What is 'public place' within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.40.230. Condition and time of calling special election. When a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor, the acting governor shall, by proclamation, call a special election to be held on a date not less than 60, nor more than 90, days after the date the vacancy in the office of the governor occurred. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in years in which a governor is regularly elected, the acting governor shall serve the remainder of the unexpired term and may not call a special election. (Sec. 8.31 ch 83 SLA 1960; am sec. 32 ch 69 SLA 1970)

Cross references. For special election in case of second vacancy in office of governor, see AS 44.19.044; for simultaneous vacancies, see AS 44.19.046.

Sec. 15.40.240. Conditions for holding special election with primary or general election. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election in years in which a governor is regularly elected or if the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election or general election in election years in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special election to be held on the date of the primary election or general election. (Sec. 8.32 ch 83 SLA 1960; am sec. 33 ch 69 SLA 1970)

Sec. 15.40.250. Proclamation of special election. The acting governor shall issue the proclamation at least 50 days before the election. (Sec. 8.33 ch 83 SLA 1960)

Sec. 15.40.260. Term of elected governor and lieutenant governor. At the special election, a governor and a lieutenant governor shall be elected to fill the remainder of the unexpired terms and shall take office on the date the results of the special election are certified. (Sec. 8.34 ch 83 SLA 1960)

Sec. 15.40.270. Date of nominations. Candidates for the special election shall be nominated by petition transmitted by (1) actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before the 21st day after the vacancy occurs. (Sec. 8.35 ch 83 SLA 1960; am sec. 20 ch 125 SLA 1962; am sec. 166 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the end of the section.

Sec. 15.40.280. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters of the state equal in number to at least one percent of the number of voters who cast ballots in the preceding general election, shall include nominees for the office of governor and lieutenant governor, and shall state in substance that which is required for nomination petitions by AS 15.25.180. (Sec. 8.36 ch 83 SLA 1960; am sec. 167 ch 100 SLA 1980; am sec. 36 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted "for" for "of" in the catchline and substituted "one" for "three" and "voters who cast ballots" for "votes cast."

Sec. 15.40.290. Requirements of party petition. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidates for the offices of governor and lieutenant governor at the special election and requests that the names of the two candidates nominated be placed on the ballot. (Sec. 8.37 ch 83 SLA 1960)

Sec. 15.40.300. Selection of party nominees. The nominees of political parties may be selected by state convention or in any other manner prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention, or if the nominees are selected by the party central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws. (Sec. 8.38 ch 83 SLA 1960)

Sec. 15.40.310. General provisions for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of the governor and lieutenant governor, including, but not limited to, provisions specifically referred to in AS 15.40.130. (Sec. 8.39 ch 83 SLA 1960)

Article 4. Legislature.

Section

- 320. Condition and time for filling vacancy by appointment
- 330. Qualification and confirmation of appointee
- 340. Date of office of appointee
- 350. Procedure upon rejection
- 360. Term of appointed representative
- 370. Conditions for full, unexpired term senate appointment
- 380. Conditions for part-term senate appointment and special election
- 390. Date of special election
- 400. Proclamation of special election
- 410. Term of elected senator
- 420. Selection of nominees in manner provided for general election
- 430. Designation of nominees by petition
- 440. Requirements of petition for no-party candidates
- 450. Requirements of petition by political party
- 460. Selection of political party nominees
- 470. General provision for conduct of special election

Collateral references. 25 Am. Jur. 2d, Elections, secs. 3, 10; 26 Am. Jur. 2d, Elections, secs. 185-187, 195, 196; 38 Am. Jur. 2d, Governor, secs. 5-7; 63 Am. Jur. 2d, Public Officers and Employees, secs. 89, 90, 110, 112, 113, 127-138.

29 C.J.S., Elections, secs. 1(3), 70-74; 81A C.J.S., States, secs. 43, 71, 87.

Death or disability of one elected to office before qualifying as creating a vacancy. 74 ALR 486.

Statutory provision as to manner and time of notice of special election as mandatory or directory. 119 ALR 661.

Election within contemplation of constitutional or statutory provisions relating to filling vacancy in public office occurring before expiration of regular term. 132 ALR 574.

Construction and application of statutes relating to filling vacancies in nominations for election to public office. 143 ALR 996.

What is 'public place' within requirement as to posting of election notices. 90 ALR2d 1210.

Sec. 15.40.320. Condition and time for filling vacancy by appointment. When a vacancy occurs in the state legislature, the governor, within 30 days, shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if a vacancy in the state senate will be filled by a special election before the legislature will next meet, convene or reconvene, the governor may not fill the vacancy. (Sec. 8.51 ch 83 SLA 1960)

Sec. 15.40.330. Qualification and confirmation of appointee. (a) The appointee shall meet the qualifications of a member of the legislature as prescribed in sec. 2, art. II of the state constitution, shall be a member of the same political party as that which nominated the predecessor in office, and shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party which nominated the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not nominated by a political party or if no other member of the predecessor's political party is a member of the predecessor's house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party, the appointment is not subject to confirmation. If the appointee is a member of a political party, the appointment is subject to confirmation as provided by this section for the confirmation of political party appointees.

(b) A member of a political party is a person who supports the political program of a party. The filing for office of a candidate as an independent or no-party candidate does not preclude a candidate from being a member of a political party. Recognition of an independent or no-party candidate as a member of a party caucus of members of the legislature at the legislative session following the election of the independent or no-party candidate is recognition of that person's party membership at the time filings were made by party candidates for the preceding general election. (Sec. 8.52 ch 83 SLA 1960; am sec. 168 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment added subsection (b).

Sec. 15.40.340. Date of office of appointee. If the appointment is not subject to confirmation, the term of the appointee shall begin on the first day the appointee is present when the legislature meets, convenes, or reconvenes after the date of the appointment. If the appointment is subject to confirmation, the term of the appointee shall begin on the date the appointment is confirmed. (Sec. 8.53 ch 83 SLA 1960)

Sec. 15.40.350. Procedure upon rejection. If an appointment is rejected, the governor, within 10 days, shall appoint another qualified person as provided in AS 15.40.330, who shall also be subject to confirmation, as provided in that section. (Sec. 8.54 ch 83 SLA 1960)

Sec. 15.40.360. Term of appointed representative. If the vacancy is in the state house of representatives, the appointment shall be for the remainder of the unexpired term. (Sec. 8.55 ch 83 SLA 1960)

Sec. 15.40.370. Conditions for full, unexpired term senate appointment. If the vacancy is for an unexpired senate term of two years plus five full calendar months or less, the appointment shall be for the remainder of the unexpired term. (Sec. 8.56 ch 83 SLA 1960)

Sec. 15.40.380. Conditions for part-term senate appointment and special election. If the vacancy is for an unexpired senate term of more than two years and five full calendar months, the governor shall call a special election by proclamation and the appointment shall expire on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director. (Sec. 8.57 ch 83 SLA 1960; am sec. 169 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' at the end of the section.

Sec. 15.40.390. Date of special election. The special election to fill a vacancy in the state senate shall be held on the date of the first general election held more than three full calendar months after the senate vacancy occurs. (Sec. 8.58 ch 83 SLA 1960)

Sec. 15.40.400. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 50 days before the election. (Sec. 8.59 ch 83 SLA 1960)

Sec. 15.40.410. Term of elected senator. At the special election a state senator shall be elected to fill the remainder of the unexpired term and shall take office on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director. (Sec. 8.60 ch 83 SLA 1960; am sec. 170 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' at the end of the section.

Sec. 15.40.420. Selection of nominees in manner provided for general election. If the vacancy in the office of state senator occurs one calendar month or more before the filing date for the primary election, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections. (Sec. 8.61 ch 83 SLA 1960; am sec. 34 ch 69 SLA 1970)

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.40.430. Designation of nominees by petition. If the vacancy occurs less than one calendar month before the filing date and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by (1) the actual physical delivery of the petition in person; (2) by mail postmarked not later than midnight of the filing date; or (3) by telegram of a copy in substance of the statements made in the petition to the director before September 2 just before the special election. (Sec. 8.62 ch 83 SLA 1960; am sec. 21 ch 125 SLA 1962; am sec.

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' near the end of the section.

Sec. 15.40.440. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by qualified voters equal in number to at least one percent of the number of voters who cast ballots in the proposed nominee's respective election or senate district in the preceding general election. A nominating petition may not contain less than 50 signatures for any district, and shall state in substance that which is required in petitions for nomination for general elections provided in AS 15.25.180. (Sec. 8.63 ch 83 SLA 1960; am sec. 172 ch 100 SLA 1980; am sec. 37 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment substituted 'A' for 'provided that no' in dividing the section into two sentences, in the first sentence substituted 'one' for 'three,' 'voters who cast ballots' for 'votes cast' and 'the proposed nominee's' for 'his,' and in the second sentence deleted 'need contain more than 200 signatures nor' following 'nominating petition' and 'it' preceding 'contain less' and inserted 'not.'

NOTES TO DECISIONS

Ballot access requirement. The amendment of a similar ballot access requirement increasing minimum signatures required from 1000 to 3 percent of votes cast in last election was held violative of free speech and equal protection clauses of the Alaska Constitution by effectively eliminating a new political party's access to the ballot. *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Sec. 15.40.450. Requirements of petition by political party. Petitions for the nomination of candidates of political parties shall state in substance that the party desires and intends to support the named candidate for the office of state senator at the special election and requests that the name of the candidate be placed on the ballot. (Sec. 8.64 ch 83 SLA 1960)

Sec. 15.40.460. Selection of political party nominees. The nominees of political parties may be selected by the respective party district committee or by any other manner as provided by the party bylaws, and the petition shall be signed by the chairman of the party district committee or by any other party official designated by the party bylaws. (Sec. 8.65 ch 83 SLA 1960)

Sec. 15.40.470. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of state senators, including, but not limited to, the provisions specifically referred to in AS 15.40.130. (Sec. 8.66 ch 83 SLA 1960)

Chapter 45. Initiative, Referendum and Recall.

Article

1. Initiative (15.45.010 - 15.45.245)
2. Referendum (15.45.250 - 15.45.465)
3. Recall (15.45.470 - 15.45.720)

NOTES TO DECISIONS

Article does not toll time for consideration of Initiative. Nothing in the constitution says or implies that the process of verification of signatures tolls the time in which the initiative is to be considered by the legislature and proceeds onto the ballot (or is voided by legislative enactment of substantially the same measure); similarly, the statutory provisions in this article neither express nor imply any tolling of the time. *Yute Air Alaska, Inc. v. McAlpine*, Sup. Ct. Op. No. 2928 (File No. S-548), 698 p.2d 1173 (1985).

Article 1. Initiative.

Section

10. Provision and scope for use of the initiative
20. Filing application
30. Form of application
40. Form of proposed bill
50. Manner of notice
60. Designation of sponsors
70. Review of application for certification
80. Bases of denial of certification
90. Preparation of petition
100. Statement of warning
110. Circulation by sponsor
120. Manner of signing and withdrawing name from petition
130. Certification of sponsor
140. Filing of petition
150. Review of petition
160. Bases for determining the petition was improperly filed
170. Submission of supplementary petition
180. Preparation of ballot title and proposition
190. Placing proposition on ballot
200. Display of proposed law
210. Determination of void petition
220. Adoption and effective date of proposed law
230. Insufficiency of application or petition
240. Judicial review
245. Delegation by lieutenant governor

Collateral references. 42 Am. Jur. 2d, Initiative and Referendum, sec. 1 et seq.

82 C.J.S., Statutes, secs. 115-151.

Power of legislature to raise the constitutional minimum of favorable votes imposed upon adoption of special proposition submitted to voters. 91 ALR 1021.

Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition. 100 ALR 1308.

Statement regarding cost of proposed public improvements in ballot for special election in that regard. 117 ALR 892.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604.

Sec. 15.45.010. Provision and scope for use of the initiative. The law-making powers assigned to the legislature may be exercised by the people through the initiative. However, an initiative may not be proposed to dedicate revenue, to make or repeal appropriations, to create courts, to define the jurisdiction of courts or prescribe their rules, or to enact local or special legislation. (Sec. 9.01 ch 83 SLA 1960)

NOTES TO DECISIONS

This section embodies a statutory restatement of the constitutional restriction found in Alaska Const., art XI, sec. 7. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Liberal construction on review. In reviewing an initiative prior to submission to the people, the requirements of the constitutional and statutory provisions pertaining to the use of initiatives should be liberally construed. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

What constitutes local or special legislation. See *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Subject matter of initiative to be considered. In deciding whether an initiative is local or special legislation, the supreme court must consider the subject matter of the initiative and determine whether the subject matter is of common interest to the whole state. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

A law does not cease to be general because it operates only in certain subdivisions of the state. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Legislation, whether enacted by the legislature or by the initiative, need not operate evenly on all parts of the state to avoid being classified as local or special. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

The critical element is whether there is a rational basis for the particular classification. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

The classification must bear a reasonable and proper relationship to the purposes of the act and the problem sought to be remedied. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Initiative for relocating state capital not unconstitutional. Exclusion of Anchorage and Fairbanks as potential sites for the new capital did not render an initiative for relocating the state capital unconstitutional under Alaska Const., art XI, sec. 7, which prohibits use of the initiative to enact local or special legislation. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

The initiative's exclusion of Anchorage and Fairbanks was not arbitrary, but was premised on the view that the new capital should be a planned capital and one that should not be located in the relatively heavily urbanized areas of Anchorage and Fairbanks. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

The question of the location of Alaska's capital has obvious statewide interest and impact. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

As to scope of lieutenant governor's review of initiative application to determine that it is not local or special legislation, see *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Sec. 15.45.020. Filing application. An initiative is proposed by filing an application with the lieutenant governor. A deposit of \$100 must accompany the application. This deposit shall be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded. (Sec. 9.02 ch 83 SLA 1960; am sec. 22 ch 125 SLA 1962)

NOTES TO DECISIONS

Stated in *Burgess v. Miller*, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Sec. 15.45.030. Form of application. The application shall include (1) the proposed bill to be initiated, (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached, (3) the designation of an initiative committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the initiative, and (4) the signatures and addresses of not less than 100 qualified voters. (Sec. 9.03 ch 83 SLA 1960)

NOTES TO DECISIONS

Stated in *Boucher v. Engstrom*, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (Alaska 1974).

Cited in *Thomas v. Bailey*, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (Alaska 1979).

Sec. 15.45.040. Form of proposed bill. The proposed bill shall be in the following form: (1) the bill shall be confined to one subject; (2) the subject of the bill shall be expressed in the title; (3) the enacting clause of the bill shall be: "Be it enacted by the People of the State of Alaska;" (4) the bill may not include subjects restricted by AS 15.45.010. (Sec. 9.04 ch 83 SLA 1960)

NOTES TO DECISIONS

Single subject standard is enacted at this section with respect to initiatives; whether this limitation is within the legislature's power under Alaska Const., art. XI, is questionable; but Alaska Const., art. XII, sec. 11, makes the law making power equal, and the restriction in Alaska Const., art. II, sec. 13, therefore, applies to initiatives. *Yute Air Alaska, Inc. v. McAlpine*, Sup. Ct. Op. No. 2928 (File No. S-548), 698 P.2d 1173 (1985).

The legislature expanded the scope of the lieutenant governor's review of the initiative application in enacting this section, which requires that a determination be made as to whether unconstitutional subjects were included. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Cited in *Thomas v. Bailey*, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Sec. 15.45.050. Manner of notice. Notice to the initiative committee on any matter pertaining to the application and petition may be served on any member of the committee in person or by mail addressed to a committee member as indicated on the application. (Sec. 9.05 ch 83 SLA 1960)

NOTES TO DECISIONS

This section is the only statutory provision regulating the manner of notice concerning initiative applications. *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974).

Cited in *Thomas v. Bailey*, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Sec. 15.45.060. Designation of sponsors. The qualified voters who subscribe to the application are designated as sponsors. The initiative committee may designate additional sponsors by giving written notice to the lieutenant governor of the names and addresses of those so designated. (Sec. 9.06 ch 83 SLA 1960)

NOTES TO DECISIONS

Cited in *Thomas v. Bailey*, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Sec. 15.45.070. Review of application for certification. The lieutenant governor shall review the application and shall either certify it or notify the initiative committee of the grounds for denial. (Sec. 9.07 ch 83 SLA 1960)

NOTES TO DECISIONS

Cited in *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974); *Thomas v. Bailey*, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Sec. 15.45.080. Bases of denial of certification. The lieutenant governor shall deny certification upon determining in writing that (1) the proposed bill to be initiated is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. (Sec. 9.08 ch 83 SLA 1960)

NOTES TO DECISIONS

Cited in *Boucher v. Engstrom*, 528 P.2d 456 (Alaska 1974); *Thomas v. Bailey*, Sup. Ct. Op. No. 1835 (File Nos. 4204, 4220), 595 P.2d 1 (1979).

Sec. 15.45.090. Preparation of petition. If the application is certified, the lieutenant governor shall prescribe the form of and prepare petitions containing (1) a copy of the proposed bill, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the bill, (3) the warning prescribed in AS 15.45.100, (4) sufficient space for signature and address, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petition delivered to each sponsor. Upon request of the committee, the lieutenant governor shall report the number of persons who voted in the preceding general election. (Sec. 9.09 ch 83 SLA 1960)

NOTES TO DECISIONS

Sufficiency of summary. In preparing summary of subject matter of proposed bill, the lieutenant governor is entitled to rely on the premise that readers of the summary understand that in the absence of explicit language to the contrary, state initiatives are

intended to change state law and bind the state government, not federal law and the federal government, thus he need not give "special" reminders to the voters regarding the scope of a state initiative. *Burgess v. Miller*, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Summary's prediction as to proposed bill's effect was amply supported by text of bill, consequently the summary's use of the language "would prevent" was neither misleading nor inaccurate. *Burgess v. Miller*, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Sec. 15.45.100. Statement of warning. Each petition shall include a statement of warning that a person who signs a name other than the person's own on the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter, is guilty of a class B misdemeanor. (Sec. 9.10 ch 83 SLA 1960; am sec. 173 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "is guilty of a class B misdemeanor" for "upon conviction is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both" at the end of the section.

Sec. 15.45.110. Circulation by sponsor. The petitions may be circulated throughout the state only by a sponsor and only in person. (Sec. 9.11 ch 83 SLA 1960)

Sec. 15.45.120. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing the voter's name and address. A person who has signed the initiative petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed. (Sec. 9.12 ch 83 SLA 1960)

Sec. 15.45.130. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of that petition, (3) the signatures were made in the sponsor's actual presence, and (4) to the best of the sponsor's knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified. (Sec. 9.13 ch 83 SLA 1960)

Sec. 15.45.140. Filing of petition. The sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them, and the petition must be signed by qualified voters equal in number to 10 per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the state. If the petition is not filed within the one year period provided for in this section, the petition has no force or effect. (Sec. 9.14 ch 83 SLA 1960; am sec. 1 ch 128 SLA 1971)

Opinions of attorney general. An initiative petition must be sufficient on its face before it may be accepted for filing, i.e., it must have the requisite number of purportedly valid signatures before it may be filed in the office of the attorney general; a petition deficient in this respect should be returned to the sponsors. February 1, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *Burgess v. Miller*, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, or primary election that is held after (1) the petition and any supplementary petition have been filed, (2) a legislative session has convened and adjourned, and (3) a period of 120 days has expired since the adjournment of the legislative session. (Sec. 9.19 ch 83 SLA 1960; am sec. 35 ch 69 SLA 1970; am sec. 174 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "direct the director to" near the beginning of the section.

Legislative history reports. For report on ch 69, SLA 1970 (HB 584), see 1970 House Journal Supplement No. 2, p. 7.

Opinions of attorney general. An initiative petition must be filed before the start of the legislative session in order to be presented to the electorate at the first statewide election held 120 or more days after the conclusion of that session. February 1, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Stated in *Burgess v. Miller*, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Sec. 15.45.200. Display of proposed law. The director shall provide each election board with 10 copies of the proposed law being initiated, and the election board shall display three copies of the proposed law in a conspicuous place in the room where the election is held. (Sec. 9.20 ch 83 SLA 1960; am sec. 175 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.45.210. Determination of void petition. If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the election, the petition is void and the lieutenant governor shall so notify the committee. (Sec. 9.21 ch 83 SLA 1960)

NOTES TO DECISIONS

This section was enacted to effectuate Alaska Const., art. XI, sec. 4. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

The delegation of power in this section is both reasonable and constitutional. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Delegation to the lieutenant governor of the authority to determine whether an act and an initiative are substantially the same is based on sound, practical considerations, is to a logical governmental officer, and is definitionally narrow. *Warren v. Boucher*, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

An initiative petition which, on its face, is seen to contain an insufficient number of signatures may not be filed and later supplemented to cure the deficiency. February 1, 1984 Op. Att'y Gen.

AS 15.45.170 authorizes a supplementary petition, but that privilege is afforded only when a petition, believed to contain a sufficient number of signatures of qualified voters, is later found to contain signatures of persons who are not qualified voters; in such a case, the latent defect of numbers may be cured, but where the defect is patent, the petition may not be accepted for filing. February 1, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *Burgess v. Miller*, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Cited in *Boucher v. Engstrom*, Sup. Ct. Op. No. 1097 (File No. 2232), 528 P.2d 456 (Alaska 1974).

Sec. 15.45.150. Review of petition. Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot. (Sec. 9.15 ch 83 SLA 1960)

Sec. 15.45.160. Bases for determining the petition was improperly filed. The lieutenant governor shall notify the committee that the petition was improperly filed upon determining that (1) there is an insufficient number of qualified subscribers, or (2) the subscribers were not resident in at least two-thirds of the election districts of the state. (Sec. 9.16 ch 83 SLA 1960)

Sec. 15.45.170. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the initiative committee may amend and correct the petition by circulating and filing a supplementary petition within 30 days of the date that notice was given. (Sec. 9.17 ch 83 SLA 1960)

Opinions of attorney general. This section authorizes a supplementary petition, but that privilege is afforded only when a petition, believed to contain a sufficient number of signatures of qualified voters, is later found to contain signatures of persons who are not qualified voters; in such a case, the latent defect of numbers may be cured, but where the defect is patent, the petition may not be accepted for filing. February 1, 1984 Op. Att'y Gen.

An initiative petition which, on its face, is seen to contain an insufficient number of signatures may not be filed and later supplemented to cure the deficiency. February 1, 1984 Op. Att'y Gen.

Sec. 15.45.180. Preparation of ballot title and proposition. (a) If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than six words, indicate the general subject of the proposition. The proposition shall, in not more than 100 words, give a true and impartial summary of the proposed law.

(b) The proposition prepared under (a) of this section shall comply with AS 15.60.005 and shall be worded so that a "Yes" vote on the proposition is a vote to enact the proposed law. (Sec. 9.18 ch 83 SLA 1960; am sec. 1 ch 104 SLA 1988)

Effect of amendments. The 1988 amendment added subsection (b).

Alaska Const., art. V, sec. 3, art. XI, sec. 4 and art. XI, sec. 11, when read in harmony, give the legislature the power to enact a method of determining whether an act and an initiative are 'substantially the same,' as used in Alaska Const., art. XI, sec. 4. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Interpretation of phrase 'substantially the same measure' in Alaska Const., art. XI, sec. 4. See Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Initiative correctly withheld from ballot. Substantial similarity existed between ch. 76, SLA 1974, which enacted ch. 13 of Title 15, relating to election campaigns, and an initiative relating to campaign contributions and expenditures, which was filed with the lieutenant governor prior to the regular 1974 session of the legislature. The act effectively displaced the initiative, and the lieutenant governor was correct in withholding the initiative from the ballot. Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Sec. 15.45.220. Adoption and effective date of proposed law. If a majority of the votes cast on the initiative proposition favor its adoption, the proposed law is enacted, and the lieutenant governor shall so certify. The act becomes effective 90 days after certification. (Sec. 9.22 ch 83 SLA 1960)

Sec. 15.45.230. Insufficiency of application or petition. An initiative submitted to the voters may not be held void because of the insufficiency of the application or petitions by which the submission was procured. (Sec. 9.23 ch 83 SLA 1960)

Sec. 15.45.240. Judicial review. Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - 15.45.230 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given. (Sec. 9.24 ch 83 SLA 1960; am sec. 176 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted 'under AS 15.45.010 - 15.45.230' near the beginning of the section, inserted 'in the superior court' near the middle of the section, and deleted 'by any appropriate remedy in the superior court' following 'was given' at the end of the section.

NOTES TO DECISIONS

Applicability of 30-day limitation period. The 30-day limitation period in this section applies to all persons, not just the initiative committee. McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988) (overruling that portion of Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974), construing AS 15.45.240).

Retroactive application of decision regarding 30-day limitation period. No retroactive application would be given to the holding, reversing Engstrom, that the 30-day limitation period applies to all persons, not just the initiative committee, which retroactive application would have barred the challenge by the University of Alaska to an initiative. McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988).

Liberal construction of constitutional and statutory requirements. In reviewing an initiative prior to submission to the people, the requirements of the constitutional and statutory provisions pertaining to the use of initiatives should be liberally construed. Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974).

Applied in Warren v. Boucher, Sup. Ct. Op. No. 1205 (File No. 2315), 543 P.2d 731 (1975).

Stated in Burgess v. Miller, Sup. Ct. Op. No. 2584 (File No. 6915), 654 P.2d 273 (1982).

Sec. 15.45.245. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on the lieutenant governor by AS 15.45.010 - 15.45.240 to the director. (Sec. 177 ch 100 SLA 1980)

Article 2. Referendum.

Section

- 250. Provision and scope of use of referendum
- 260. Filing application
- 270. Form of application
- 280. Manner of notice
- 290. Designation of sponsors
- 300. Time of review of application for certification
- 310. Bases of denial of certification
- 320. Preparation of petition
- 330. Statement of warning
- 340. Circulation by sponsor
- 350. Manner of signing and withdrawing name from petition
- 360. Certification of sponsor
- 370. Filing of petition
- 380. Review of petition
- 390. Bases for determining the petition was improperly filed
- 400. Submission of supplementary petition
- 410. Preparation of ballot title and proposition
- 420. Placing proposition on ballot
- 430. Display of act being referred
- 440. Rejection of act
- 450. Insufficiency of application or petition
- 460. Judicial review
- 465. Delegation by lieutenant governor

Collateral references. 42 Am. Jur. 2d, Initiative and Referendum, sec. 1 et seq.

82 C.J.S., Statutes, secs. 115-151.

Power of legislature to raise the constitutional minimum of favorable votes imposed upon adoption of special proposition submitted to voters. 91 ALR 1021.

Nonregistration as affecting one's qualification as signer of petition for special election, submission of proposition, or nominating petition. 100 ALR 1308.

Statement regarding cost of proposed public improvement in ballot for special election in that regard. 117 ALR 892.

Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters. 131 ALR 1382.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 ALR2d 604.

Sec. 15.45.250. Provision and scope of use of referendum. The people may approve or reject acts of the legislature by referendum. However, a referendum may

not be applied to dedication of revenue, to appropriation, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety. (Sec. 9.31 ch 83 SLA 1960)

Cross references. For constitutional restrictions on the subject matter of initiative and referendum, see Alaska Const., art. XI, sec. 7.

Sec. 15.45.260. Filing application. A referendum is proposed by filing an application with the lieutenant governor. A deposit of \$100 must accompany the application. This deposit shall be retained if a petition is not properly filed. If a petition is properly filed, the deposit shall be refunded. (Sec. 9.32 ch 83 SLA 1960; am sec. 23 ch 125 SLA 1962)

Sec. 15.45.270. Form of application. The application shall include

- (1) the act to be referred;
- (2) a statement that the sponsors are qualified voters who signed the application with the proposed bill attached;
- (3) the designation of a referendum committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the referendum; and
- (4) the signatures and addresses of not fewer than 100 qualified voters. (Sec. 9.33 ch 83 SLA 1960)

Opinions of attorney general. The state legislature has interpreted and implemented Alaska Constitution, art. XI, sec. 2, passing this section requiring the application for a referendum petition to include the act to be referred. 1963 Op. Att'y Gen. No. 17.

The application for referendum petition relating to borough legislation was not in proper form, and it was necessary for the proponents of the measure to prepare an application containing the text of ch. 52, SLA 1963, and secure the necessary number of signatures to this application before they could validly prepare a petition for circulation under sec. 3, art. XI, of the Alaska Constitution. 1963 Op. Att'y Gen. No. 17.

Sec. 15.45.280. Manner of notice. Notice to the referendum committee on any matter pertaining to the application and petition may be served on any member of the committee in person or by mail addressed to a committee member as indicated on the application. (Sec. 9.34 ch 83 SLA 1960)

Sec. 15.45.290. Designation of sponsors. The qualified voters who subscribe to the application are designated as sponsors. The referendum committee may designate additional sponsors by giving notice to the lieutenant governor of the names and addresses of those so designated. (Sec. 9.35 ch 83 SLA 1960)

Sec. 15.45.300. Time of review of application for certification. Within seven calendar days after the date the application is received, the lieutenant governor shall review the application and shall either certify it or notify the referendum committee of the grounds for denial. (Sec. 9.36 ch 83 SLA 1960; am sec. 178 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment deleted 'canvass' following 'shall review' near the middle of the section.

Sec. 15.45.310. Bases of denial of certification. The lieutenant governor shall deny certification upon determining that

- (1) the application is not substantially in the required form;
- (2) there is an insufficient number of qualified sponsors; or
- (3) more than 90 days have expired since the adjournment of the legislative session at which the act being referred was passed. (Sec. 9.37 ch 83 SLA 1960)

Sec. 15.45.320. Preparation of petition. If the application is certified, the lieutenant governor shall, within seven calendar days after the date of certification, prescribe the form of, and prepare, a petition containing (1) a copy of the act to be referred, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the act, (3) the warning prescribed in AS 15.45.330, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petitions delivered to each sponsor. Upon request of the referendum committee, the lieutenant governor shall specify the number of persons who voted in the preceding general election. (Sec. 9.38 ch 83 SLA 1960)

Sec. 15.45.330. Statement of warning. Each petition shall include a statement of warning that a person who signs a name other than the person's own to the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition when knowingly not a qualified voter is guilty of a class B misdemeanor. (Sec. 9.39 ch 83 SLA 1960; am sec. 179 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "is guilty of a class B misdemeanor" for "upon conviction, is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both" at the end of the section.

Sec. 15.45.340. Circulation by sponsor. The petitions may be circulated throughout the state only by a sponsor and only in person. (Sec. 9.40 ch 83 SLA 1960)

Sec. 15.45.350. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing the voter's name and address. A person who has signed the referendum petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed. (Sec. 9.41 ch 83 SLA 1960)

Sec. 15.45.360. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of the petition, (3) the signatures were made in the sponsor's actual presence, and (4) to the best of the sponsor's knowledge, the signatures are

the signatures of persons whose names they purport to be. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified. (Sec. 9.42 ch 83 SLA 1960)

Sec. 15.45.370. Filing of petition. The sponsors may file the petition only within 90 days after the adjournment of the legislative session at which the act was passed and only if signed by qualified voters equal in number to 10 per cent of those who voted in the preceding general election and resident in at least two-thirds of the election districts of the state. (Sec. 9.43 ch 83 SLA 1960)

Sec. 15.45.380. Review of petition. Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the committee whether the petition was properly or was improperly filed and at which election the proposition shall be placed on the ballot. (Sec. 9.44 ch 83 SLA 1960)

Sec. 15.45.390. Bases for determining the petition was improperly filed. The lieutenant governor shall notify the committee that the petition was improperly filed upon determining that (1) there is an insufficient number of qualified subscribers; (2) the subscribers were not resident in at least two-thirds of the election districts of the state; or (3) the petition was not filed within 90 days after the adjournment of the legislative session at which the act was passed. (Sec. 9.45 ch 83 SLA 1960)

Sec. 15.45.400. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the committee may amend and correct the petition by circulating and filing a supplementary petition within 10 days of the date that notice was given if 90 days have not expired after the adjournment of the legislative session at which the act was passed. (Sec. 9.46 ch 83 SLA 1960)

Sec. 15.45.410. Preparation of ballot title and proposition. (a) The lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition upon determining that the petition is properly filed. The ballot title shall, in not more than six words, indicate the general subject area of the act. The proposition shall, in not more than 100 words, give a true and impartial summary of the act being referred.

(b) The proposition prepared under (a) of this section shall comply with AS 15.60.005 and shall be worded so that a "Yes" vote on the proposition is a vote to reject the act referred. (Sec. 9.47 ch 83 SLA 1960; am sec. 2 ch 104 SLA 1988)

Effect of amendments. The 1988 amendment added subsection (b).

Sec. 15.45.420. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot for the first statewide general, special, or primary election held more than 180 days after adjournment of the legislative session at which the act was passed. (Sec. 9.48 ch 83 SLA 1960; am sec. 36 ch 69 SLA 1970; am sec. 180 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted 'direct the director to' near the beginning of the section.

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.45.430. Display of act being referred. The director shall provide each election board with 10 copies of the act being referred, and the election board shall display three copies of the act in a conspicuous place in the room where the election is held. (Sec. 9.49 ch 83 SLA 1960; am sec. 181 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' at the beginning of the section.

Sec. 15.45.440. Rejection of act. If a majority of the votes cast on the referendum proposition favor the rejection of the act referred, the act is rejected, and the lieutenant governor shall so certify. The act rejected by referendum is void 30 days after certification. (Sec. 9.50 ch 83 SLA 1960)

NOTES TO DECISIONS

Section adopts language of Constitution. This section adopted almost verbatim the language of Alaska Constitution, art. XI, sec. 6, for establishing the time when an act rejected by referendum shall become void. *Walters v. Cease*, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263, *aff'd*, Sup. Ct. Op. No. 182 (File No. 518), 394 P.2d 670 (1964).

Sec. 15.45.450. Insufficiency of application or petition. A referendum submitted to the voters may not be held void because of the insufficiency of the application or petition by which the submission was procured. (Sec. 9.51 ch 83 SLA 1960)

Sec. 15.45.460. Judicial review. Any person aggrieved by any determination made by the lieutenant governor under AS 15.45.250 - 15.45.450 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given. (Sec. 9.52 ch 83 SLA 1960; am sec. 182 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted 'under AS 15.45.250 - 15.45.450' near the middle of the section, inserted 'in the superior court' near the middle of the section and deleted 'by any appropriate remedy in the superior court' following 'was given' at the end of the section.

Sec. 15.45.465. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed upon the lieutenant governor by AS 15.45.250 - 15.45.460 to the director. (Sec. 183 ch 100 SLA 1980)

Article 3. Recall.

Section

- 470. Provision and scope for use of recall
- 480. Filing application
- 490. Time of filing application

- 500. Form of application
- 510. Grounds for recall
- 520. Manner of notice
- 530. Notice of the number of voters
- 540. Review of application
- 550. Bases of denial of certification
- 560. Preparation of petition
- 570. Statement of warning
- 580. Circulation by sponsor
- 590. Manner of signing and withdrawing name from petition
- 600. Certification of sponsor
- 610. Filing of petition
- 620. Review of petition
- 630. Bases for determining the petition was improperly filed
- 640. Submission of supplementary petition
- 650. Calling special election
- 660. Preparation of ballot
- 670. Conduct of special election
- 680. Display of bases for and against recall
- 690. Certification of election results
- 700. Filling vacancy
- 710. Insufficiency of grounds, application, or petition
- 720. Judicial review

Collateral references. 42 Am. Jur. 2d, Initiative and Referendum, sec. 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, secs. 238-254.

67 C.J.S., Officers and Public Employees, secs. 182-185.

Removal of public officers for misconduct during previous term. 43 ALR3d 691.

Sec. 15.45.470. Provision and scope for use of recall. The governor, the lieutenant governor, and members of the state legislature are subject to recall by the voters of the state or the political subdivision from which elected. (Sec. 9.71 ch 83 SLA 1960)

Cross references. For constitutional provisions concerning recall, see Alaska Const., art XI, sec. 8.

Sec. 15.45.480. Filing application. The recall of the governor, lieutenant governor, or a member of the state legislature is proposed by filing an application with the director. A deposit of \$100 must accompany the application. This deposit shall be retained if a petition is not properly filed. If a petition is properly filed the deposit shall be refunded. (Sec. 9.72 ch 83 SLA 1960; am sec. 24 ch 125 SLA 1962; am sec. 184 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "lieutenant governor" near the beginning of the section, substituted "director" for "lieutenant governor. The recall of the lieutenant governor is proposed by filing an application with the attorney general, who shall perform the duties imposed on the lieutenant governor in the recall of other elected state officials" at the end of the first sentence.

Sec. 15.45.490. Time of filing application. An application may not be filed during the first 120 days of the term of office of any state public official subject to recall. (Sec. 9.73 ch 83 SLA 1960)

Sec. 15.45.500. Form of application. The application shall include

- (1) the name and office of the person to be recalled;
- (2) the grounds for recall described in particular in not more than 200 words;
- (3) a statement that the sponsors are qualified voters who signed the application with the statement of grounds for recall attached;
- (4) the designation of a recall committee of three sponsors who shall represent all sponsors and subscribers in matters relating to the recall;
- (5) the signatures of at least 100 qualified voters who subscribe to the application as sponsors for purposes of circulation; and
- (6) the signatures and addresses of qualified voters equal in number to 10 percent of those who voted in the preceding general election in the state or in the senate or electoral district of the official sought to be recalled. (Sec. 9.74 ch 83 SLA 1960; am sec. 185 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "signatures" for "appointment" near the middle of the section.

Sec. 15.45.510. Grounds for recall. The grounds for recall are (1) lack of fitness, (2) incompetence, (3) neglect of duties, or (4) corruption. (Sec. 9.75 ch 83 SLA 1960)

Sec. 15.45.520. Manner of notice. Notice on all matters pertaining to the application and petition may be served on any member of the recall committee in person or by mail addressed to a committee member as indicated on the application. (Sec. 9.76 ch 83 SLA 1960)

Sec. 15.45.530. Notice of the number of voters. The director, upon request, shall notify the recall committee of the official number of persons who voted in the preceding general election in the state or in the senate or election district of the official to be recalled. (Sec. 9.77 ch 83 SLA 1960; am sec. 186 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.45.540. Review of application. The director shall review the application and shall either certify it or notify the recall committee of the grounds of refusal. (Sec. 9.78 ch 83 SLA 1960; am sec. 187 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.45.550. Bases of denial of certification. The director shall deny certification upon determining that

- (1) the application is not substantially in the required form;

(2) the application was filed during the first 120 days of the term of office of the official subject to recall or within less than 180 days of the termination of the term of office of any official subject to recall;

(3) the person named in the application is not subject to recall; or

(4) there is an insufficient number of qualified subscribers. (Sec. 9.79 ch 83 SLA 1960; am sec. 188 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.45.560. Preparation of petition. Upon certifying the application, the director shall prescribe the form of, and prepare, a petition containing (1) the name and office of the person to be recalled, (2) the statement of the grounds for recall included in the application, (3) the statement of warning required in AS 15.45.570, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the director to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the director in a number reasonably calculated to allow full circulation throughout the state or throughout the senate or election district of the official sought to be recalled. The director shall number each petition and shall keep a record of the petitions delivered to each sponsor. (Sec. 9.80 ch 83 SLA 1960; am sec. 189 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" wherever it appears throughout the section.

Sec. 15.45.570. Statement of warning. Each petition and duplicate copy shall include a statement of warning that a person who signs a name other than the person's own to the petition, or who knowingly signs more than once for the same proposition at one election, or who signs the petition while knowingly not a qualified voter, is guilty of a class B misdemeanor. (Sec. 9.81 ch 83 SLA 1960; am sec. 190 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "is guilty of a class B misdemeanor" for "upon conviction is punishable by fine of not more than \$1,000 or by imprisonment for not more than one year, or by both" at the end of the section.

Sec. 15.45.580. Circulation by sponsor. The petitions may be circulated only by a sponsor and only in person throughout the state or senate or election district represented by the official sought to be recalled. (Sec. 9.82 ch 83 SLA 1960)

Sec. 15.45.590. Manner of signing and withdrawing name from petition. Any qualified voter may subscribe to the petition by signing the voter's name and address. A person who has signed the petition may withdraw the person's name only by giving written notice to the director before the date the petition is filed. (Sec. 9.83 ch 83 SLA 1960; am sec. 191 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the end of the section.

Sec. 15.45.600. Certification of sponsor. Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state in substance that (1) the person signing the affidavit is a sponsor, (2) the person is the only circulator of that petition or copy, (3) the signatures were made in the sponsor's actual presence, and (4) to the best of the sponsor's knowledge, the signatures are those of the persons whose names they purport to be. In determining the sufficiency of the petition, the director may not count subscriptions on petitions not properly certified. (Sec. 9.84 ch 83 SLA 1960; am sec. 192 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the middle of the third sentence.

Sec. 15.45.610. Filing of petition. A petition may not be filed within less than 180 days of the termination of the term of office of a state public official subject to recall. The sponsor may file the petition only if signed by qualified voters equal in number to 25 per cent of those who voted in the preceding general election in the state or in the senate or election district of the official sought to be recalled. (Sec. 9.85 ch 83 SLA 1960)

Sec. 15.45.620. Review of petition. Within 30 days of the date of filing, the director shall review the petition and shall notify the recall committee and the person subject to recall whether the petition was properly or improperly filed. (Sec. 9.86 ch 83 SLA 1960; am sec. 193 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the middle of the section.

Sec. 15.45.630. Bases for determining the petition was improperly filed. The director shall notify the committee that the petition was improperly filed upon determining that

- (1) there is an insufficient number of qualified subscribers; or
- (2) the petition was filed within less than 180 days of the termination of the term of office of the official subject to recall. (Sec. 9.87 ch 83 SLA 1960; am sec. 194 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the beginning of the section.

Sec. 15.45.640. Submission of supplementary petition. Upon receipt of notice that the filing of the petition was improper, the committee may amend and correct the petition by circulating and filing a supplementary petition within 20 days of the date that notice was given, if filed within less than 180 days of the termination of the term of office of the person subject to recall. (Sec. 9.88 ch 83 SLA 1960)

Sec. 15.45.650. Calling special election. If the director determines the petition is properly filed and if the office is not vacant, the director shall prepare the ballot and shall call a special election to be held on a date not less than 60, nor more than 90, days after the date that notification is given that the petition was properly filed. If a

primary or general election is to be held not less than 60, nor more than 90, days after the date that notification is given that the petition was properly filed, the special election shall be held on the date of the primary or general election. (Sec. 9.89 ch 83 SLA 1960; am sec. 37 ch 69 SLA 1970; am sec. 195 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' near the beginning of this section.

Legislative history reports. For report on ch 69, SLA 1970 (HB 564), see 1970 House Journal Supplement No. 2, p. 7.

Sec. 15.45.660. Preparation of ballot. The ballot shall be designed with the question of whether the public official shall be recalled, placed on the ballot in the following manner: "Shall (name of official) be recalled from the office of?". Provision shall be made for marking the question "Yes" or "No." (Sec. 9.90 ch 83 SLA 1960)

Sec. 15.45.670. Conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of a general election shall govern the conduct of a special election for the recall of the state public official, including but not limited to, provisions concerning voter qualification; provisions regarding duties, powers, rights and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for the payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for counting, reviewing, and certification of returns; provision for the determination of votes and of recount contests and court appeal; and provisions for absentee voting. (Sec. 9.91 ch 83 SLA 1960; am sec. 196 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' near the beginning of the section, substituted 'reviewing' for 'canvassing' near the end of the section, and deleted 'and the use of voting machines' following 'for absentee voting' at the end of the section.

Revisor's notes. In 1988, 'municipalities' was substituted for 'cities and organized boroughs' under the authority of AS 01.05.031(b)(11).

Sec. 15.45.680. Display of bases for and against recall. The director shall provide each election board in the state or in the senate or election district of the person subject to recall with 10 copies of the statement of the grounds for recall included in the application and 10 copies of the statement of not more than 200 words made by the official subject to recall in justification of the official's conduct in office. The person subject to recall may provide the director with the statement within 10 days after the date the director gave notification that the petition was properly filed. The election board shall post three copies of the statements for and against recall in three conspicuous places in the polling place. (Sec. 9.92 ch 83 SLA 1960; am sec. 197 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'director' for 'lieutenant governor' wherever it appears throughout the section.

Sec. 15.45.690. Certification of election results. If a majority of the votes cast on the question of recall favor the removal of the official, the director shall so certify and the office is vacant on the day after the date of certification. (Sec. 9.93 ch 83 SLA 1960; am sec. 198 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" near the middle of the section.

Sec. 15.45.700. Filling vacancy. A vacancy caused by a recall is filled as a vacancy caused by any other means is filled. (Sec. 9.94 ch 83 SLA 1960)

Sec. 15.45.710. Insufficiency of grounds, application, or petition. A recall submitted to the voters may not be held void because of the insufficiency of the grounds, application, or petition by which the submission was procured. Sec. 9.95 ch 83 SLA 1960)

Sec. 15.45.720. Judicial review. Any person aggrieved by a determination made by the director under AS 15.45.470 - 15.45.710 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of determination was given. (Sec. 9.96 ch 83 SLA 1960; am sec. 199 ch 100 SLA 1980)

Effects of amendments. The 1980 amendment substituted "director under AS 15.45.470 - 15.45.710" for "lieutenant governor" near the beginning of the section, inserted "in the superior court" near the middle of the section, and deleted "by any appropriate remedy in the superior court" following "was given" at the end of the section.

NOTES TO DECISIONS

Quoted in *Meiners v. Bering Strait School Dist.*, Sup. Ct. Op. No. 2857 (File Nos. S-125, S-140), 687 P.2d 287 (1984).

Chapter 50. Constitutional Amendments and Conventions.

Article

1. Constitutional Amendments (15.50.010 - 15.50.060)
2. Constitutional Conventions (15.50.070 - 15.50.100)
3. Delegation by Lieutenant Governor (15.50.110)

Article 1. Constitutional Amendments.

Section

10. Preparation of proposition for constitutional amendment
20. Description of ballot title and proposition
25. Objection to proposed ballot title and proposition
27. Judicial review
30. Placing proposition on ballot
40. Display of resolution
50. Certification of vote
60. Effective date

Collateral references. 16 Am. Jur. 2d, Constitutional Law, secs. 18, 29-57; 25 Am. Jur. 2d, Elections, secs. 185-192.

16 C.J.S., Constitutional Law, secs. 7-11; 29 C.J.S., Elections, sec. 170.

Number of amendments that may be submitted under an initiative and referendum clause. 62 ALR 1350.

Proposition submitted to people as covering one or more than one proposed constitutional amendment. 94 ALR 1510.

Basis for computing majority essential to the adoption of a constitutional or other special proposition submitted to voters. 131 ALR 1382.

Sec. 15.50.010. Preparation of proposition for constitutional amendment. (a) The lieutenant governor shall prepare a proposed ballot title and proposition for each amendment to the state constitution proposed by the legislature or by a constitutional convention. Each amendment shall be confined to one subject. Within 30 days of the date of adjournment of a legislative session or of the date of adjournment of a constitutional convention, the lieutenant governor shall provide one copy of the proposed ballot title and proposition for each amendment to each member of the legislature and shall make copies available to the public.

(b) The proposition prepared under (a) of this section shall comply with AS 15.60.005 and shall be worded so that a "Yes" vote on the proposition is a vote to adopt the proposed constitutional amendment. (Sec. 10.01 ch 83 SLA 1960; am sec. 1 ch 99 SLA 1978; am sec. 3 ch 104 SLA 1988)

Effect of amendments. The 1988 amendment added subsection (b).

Sec. 15.50.020. Description of ballot title and proposition. The ballot title shall, in not more than six words, indicate the general subject of the act. The proposition shall, in

not more than 100 words, give a true and impartial summary of the amendment proposed. (Sec. 10.02 ch 83 SLA 1960)

Sec. 15.50.025. Objection to proposed ballot title and proposition. A qualified voter, or the Legislature of the State of Alaska acting directly or through the legislative council, who believes that the proposed ballot title and proposition prepared by the lieutenant governor under AS 15.50.010 does not provide a true and impartial summary of the amendment proposed may, within 15 days of the date of mailing of the proposed ballot title and proposition to the members of the legislature, submit to the lieutenant governor a statement of objection to the proposed ballot title and proposition, giving the reasons for objection, and suggesting alternative language revising the wording of the title or proposition. The lieutenant governor shall consider any objection received before directing that the ballot containing the proposition be prepared by the director. Not more than 10 days after the deadline for receipt of objections, the lieutenant governor shall advise any person who submitted a statement of objection to the proposed ballot title and proposition of the lieutenant governor's final decision. (Sec. 2 ch 99 SLA 1978; am sec. 200 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted 'directing that the ballot containing the proposition be prepared by the director' for 'ordering preparation and printing of the ballots' at the end of the second sentence.

Sec. 15.50.027. Judicial review. A qualified voter, or the Legislature of the State of Alaska acting directly or through the legislative council, who has filed with the lieutenant governor a statement of objection to a proposed ballot title and proposition as provided in AS 15.50.025 and who believes that the ballot title and proposition as finally prepared does not provide a true and impartial summary of the amendment proposed may bring an action in the superior court to have the determination reviewed. An action shall be commenced within 45 days of the date of mailing of the proposed ballot title and proposition to members of the legislature as provided in AS 15.50.010. (Sec. 2 ch 99 SLA 1978)

Sec. 15.50.030. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the ballot for the next statewide general election held after the amendment proposed by the legislature or held 120 days after the amendment proposed by a constitutional convention. If there is insufficient time to permit the proposition to be placed on the regular ballot by the director, the lieutenant governor shall direct the director to prepare a separate ballot for the proposition. (Sec. 10.03 ch 83 SLA 1960; am sec. 201 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted 'direct the director to' near the beginning of the section, deleted 'primary, or special' preceding 'election' near the middle of the section, substituted 'director' for 'lieutenant governor' near the middle of the second sentence, substituted 'the director' for 'election officials' near the middle of the second sentence, and substituted 'a separate' for 'the' preceding 'ballot' near the end of the section.

Sec. 15.50.040. Display of resolution. The director shall provide each election board with 10 copies of the resolution proposing the constitutional amendment by the

legislature or by the convention, and the election board shall display three copies of the resolution in a conspicuous place in the room where the election is held. (Sec. 10.04 ch 83 SLA 1960; am sec. 202 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment substituted "director" for "lieutenant governor" at the beginning of the section.

Sec. 15.50.050. Certification of vote. If a majority of the votes cast on the proposition favor the amendment, the constitutional amendment is adopted, and the lieutenant governor shall so certify. (Sec. 10.05 ch 83 SLA 1960)

Sec. 15.50.060. Effective date. Unless otherwise provided in the amendment, it becomes effective 30 days after certification. (Sec. 10.06 ch 83 SLA 1960)

Article 2. Constitutional Conventions.

Section

- 70. Placing question of constitutional convention on ballot
- 80. Certification of vote
- 90. Time and manner of selecting delegates
- 100. Certification of constitutional amendment by convention

Collateral references. 16 Am. Jur. 2d, Constitutional Law, secs. 18, 34-51.

16 C.J.S., Constitutional Law, secs. 7-11.

Power of state legislature to limit the powers of a state constitutional convention. 158 ALR 512

Sec. 15.50.070. Placing question of constitutional convention on ballot. If during any 10-year period a constitutional convention has not yet been held, and the question of holding a constitutional convention has not been placed before the voters, the lieutenant governor shall direct the director to place the question on the ballot for the next regular statewide general or primary election. (Sec. 10.51 ch 83 SLA 1960; am sec. 203 ch 100 SLA 1980)

Effect of amendments. The 1980 amendment inserted "direct the director to" near the middle of the section.

Cross references. For constitutional provisions concerning placement of the question of a constitutional convention on ballot, see Alaska Const., art. XIII, sec. 3.

NOTES TO DECISIONS

Question required to be presented in form prescribed by Alaska Const., art. XIII, sec. 3. See *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Inclusion of unauthorized language was malconduct. The inclusion in the referendum ballot, by the executive officer charged with the duty of preparing the ballot, of unauthorized prefatory language was malconduct within the intentment of AS 15.20.540(1). *Boucher v. Bomhoff*, Sup. Ct. Op. No. 775 (File No. 1487), 495 P.2d 77 (1972).

Sec. 15.50.080. Certification of vote. If a majority of votes cast on the question are in the affirmative, the lieutenant governor shall so certify and shall issue the call for the convention. (Sec. 10.52 ch 83 SLA 1960)

Sec. 15.50.090. Time and manner of selecting delegates. Delegates to the convention shall be elected at the next statewide general election in the number and manner prescribed in the call for the convention by the lieutenant governor or as provided by law. (Sec. 10.53 ch 83 SLA 1960)

Sec. 15.50.100. Certification of constitutional amendment by convention. The president of the constitutional convention shall certify to the lieutenant governor each proposed amendment to the constitution adopted by the constitutional convention. (Sec. 10.54 ch 83 SLA 1960)

Article 3. Delegation by Lieutenant Governor.

Section

110. Delegation by lieutenant governor

Sec. 15.50.100. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on the lieutenant governor by AS 15.50.010 - 15.50.100 to the director. (Sec. 204 ch 100 SLA 1980)

Editor's notes. This section is set out above to make a stylistic change.

Chapter 56. Election Offenses, Corrupt Practices and Penalties.

Section

10. Campaign misconduct in the first degree
20. Campaign misconduct in the second degree
30. Unlawful interference with voting in the first degree
35. Unlawful interference with voting in the second degree
40. Voter misconduct in the first degree
50. Voter misconduct in the second degree
60. Unlawful interference with an election
70. Election official misconduct in the first degree
80. Election official misconduct in the second degree
90. Improper subscription to petition
100. Refusal to allow employees time off
110. Effect of certain convictions
115. Disposition of cases involving corrupt practice
120. Election defined
130. Time limitation

Editor's notes. This chapter was enacted as AS 15.56.011-15.56.131 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

Collateral references. 26 Am. Jur. 2d, Elections, secs. 280-290, 371-394.

29 C.J.S., Elections, secs. 323-356.

Treating of voters by candidate for office as violation of corrupt practices or similar act. 2 ALR 402.

Constitutionality of corrupt practices acts. 69 ALR 377.

Statement by candidate regarding salary or fees of office as violation of corrupt practice acts or bribery. 106 ALR 493.

Acts of others upon which charges of bribery or improper influencing of voters are predicated as chargeable to candidate, for purpose of disqualifying him for the office to which he is elected. 121 ALR 601.

Construction and application of provisions of corrupt practices act regarding contributions by corporations. 125 ALR 1029.

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 ALR2d 1137.

Attorney's conduct in political campaign as ground for disbarment or other disciplinary action. 57 ALR2d 1362.

Power of corporation to make political contribution or expenditure under state law. 79 ALR3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 ALR3d 944.

Sec. 15.56.010. Campaign misconduct in the first degree. (a) A person commits the crime of campaign misconduct in the first degree if the person

(1) knowingly circulates or has written, printed or circulated a letter, circular, or publication relating to an election, to a candidate at an election, or an election proposition or question without the name and address of the author appearing on its face;

(2) knowingly prints or publishes an advertisement, billboard, placard, poster, handbill, paid-for television or radio announcement or other communication intended to influence the election of a candidate or outcome of a ballot proposition or question without the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising or communication and, if a candidate or group, with the name of the campaign chairman; or

(3) knowingly writes or prints and circulates, or has written, printed and circulated, a letter, circular, bill, placard, poster or advertisement in a newspaper, on radio or television

(A) containing false factual information relating to a candidate for an election;

(B) which the person knows to be false; and

(C) which would provoke a reasonable person under the circumstances to a breach of the peace or damages the candidate's reputation for honesty, integrity, or the candidate's qualifications to serve if elected to office.

(b) Violation of this section is a corrupt practice.

(c) Campaign misconduct in the first degree is a class A misdemeanor. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.011. Renumbered in 1980.

NOTES TO DECISIONS

Constitutionality. See *Tally v. California*, 362 U.S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960) holding Los Angeles municipal ordinance, similar to this section, void on its face.

Collateral references. Validity and construction of state statute prohibiting anonymous political advertising. 4 ALR4th 741.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 ALR4th 1088.

Photograph, defamation by. 52 ALR4th 488.

Class or group defamation as actionable by individual member. 52 ALR4th 618.

Sufficiency of identification of allegedly defamed party. 54 ALR4th 746.

Defamation by statement made in jest. 57 ALR4th 520.

False light invasion of privacy - neutral or laudatory depiction of subject. 59 ALR4th 502.

Sec. 15.56.020. Campaign misconduct in the second degree. (a) A person commits the crime of campaign misconduct in the second degree if, during the hours the polls are open, the person intentionally is within 200 feet of an entrance to a polling place, and

(1) attempts to persuade a person to vote for or against a candidate, proposition, or question; or

(2) circulates cards, handbills, or marked ballots, or posts political signs or posters relating to a candidate at an election or election proposition or question.

(b) Election judges shall post warning notices at the required distance in the form and manner prescribed by the director or the chief municipal elections official in a local election.

(c) Campaign misconduct in the second degree is a class B misdemeanor. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.021. Renumbered in 1980.

Sec. 15.56.030. Unlawful interference with voting in the first degree. (a) A person commits the crime of unlawful interference with voting in the first degree if the person

(1) uses, threatens to use, or causes to be used force, coercion, violence, or restraint; or if the person inflicts, threatens to inflict, or causes to be inflicted damage, harm or loss upon or against another person to induce or compel that person to vote or refrain from voting for a candidate in an election or for any election proposition or question;

(2) gives, promises to give, offers, or causes to be given or offered money or other valuable thing to a person with the intent to induce the person to vote for or refrain from voting for a candidate at an election or for an election proposition or question; or

(3) solicits, accepts, or agrees to accept money or other valuable thing with the intent to vote for or refrain from voting for a candidate at an election or for an election proposition or question.

(b) Violation of this section is a corrupt practice.

(c) Unlawful interference with voting in the first degree is a class C felony. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.031. Renumbered in 1980.

Sec. 15.56.035. Unlawful interference with voting in the second degree. (a) A person commits the crime of unlawful interference with voting in the second degree if the person

(1) has an official ballot in possession outside of the voting room unless the person is an election official or other person authorized by law or local ordinance, or by the director or chief municipal elections official in a local election;

(2) makes, or knowingly has in possession, a counterfeit of an official election ballot;

(3) knowingly solicits or encourages, directly or indirectly, a registered voter who is no longer qualified to vote under AS 15.05.010, to vote in an election; or

(4) as a registration official

(A) knowingly refuses to register a person who is entitled to register under AS 15.07.030; or

(B) accepts a fee from an applicant applying for registration.

(b) Violation of (a)(3) of this section is a corrupt practice.

(c) Unlawful interference with voting in the second degree is a class A misdemeanor. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.036. Renumbered in 1980.

Sec. 15.56.040. Voter misconduct in the first degree. (a) A person commits the crime of voter misconduct in the first degree if the person

(1) votes or attempts to vote in the name of another person or in a name other than the person's own;

(2) votes or attempts to vote more than once at the same election with the intent that the person's vote be counted more than once;

(3) intentionally makes a false affidavit, swears falsely or falsely affirms under an oath required by this title;

(4) knowingly votes or solicits a person to vote after the polls are closed with the intent that the vote be counted.

(b) Voter misconduct in the first degree is a class C felony. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.041. Renumbered in 1980.

Sec. 15.56.050. Voter misconduct in the second degree. (a) A person commits the crime of voter misconduct in the second degree if the person

(1) registers to vote without being entitled to register under AS 15.07.030;

(2) knowingly makes a material false statement while applying for voter registration or reregistration; or

(3) votes or attempts to vote in an election after being disqualified under AS 15.05.030.

(b) Voter misconduct in the second degree is a class A misdemeanor. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.051. Renumbered in 1980.

Sec. 15.56.060. Unlawful interference with an election. (a) A person commits the crime of unlawful interference with an election if the person

(1) induces or attempts to induce an election official to fail in the official's duty by force, threat, intimidation or offers of reward;

(2) intentionally changes, attempts to change, or causes to be changed an official election document including ballots, tallies and returns;

(3) intentionally delays, attempts to delay, or causes to be delayed the sending of the certificate, register, ballots, or other materials whether original or duplicate, required to be sent by AS 15.15.370; or

(4) is contracted or employed by the state to print or reproduce in any manner an official ballot, and the person knowingly

(A) personally appropriates, or gives or delivers to, or permits to be taken by anyone other than a person authorized by the director, official ballots; or

(B) prints or reproduces or has printed or reproduced official ballots in a form or with a content other than that prescribed by law or as directed by the director.

(b) Unlawful interference with an election is a class C felony. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.061. Renumbered in 1980.

Sec. 15.56.070. Election official misconduct in the first degree. (a) A person commits the crime of election official misconduct in the first degree if while an election official, the person

(1) intentionally fails to perform an election duty or knowingly does an unauthorized act with the intent to affect an election or its results;

(2) knowingly permits or makes or attempts to make a false count of election returns; or

(3) intentionally conceals, withholds, destroys, or attempts to conceal, withhold or destroy election returns.

(b) Election official misconduct in the first degree is a class C felony. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.071. Renumbered in 1980.

Sec. 15.56.080. Election official misconduct in the second degree. (a) A person commits the crime of election official misconduct in the second degree if while an election official, and while the polls are open, the person

(1) opens a ballot received from a voter at an election, unless permitted by ordinance in a local election;

(2) marks a ballot by folding or otherwise so as to be able to recognize it;

(3) otherwise attempts to learn how a voter marked a ballot; or

(4) allows a person to do one of the acts prescribed by (1), (2), or (3) of this subsection.

(b) Election official misconduct in the second degree is a class A misdemeanor. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.081. Renumbered in 1980.

Sec. 15.56.090. Improper subscription to petition. (a) A person commits the crime of improper subscription to petition if the person

(1) signs a name other than the person's own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for state or local office;

(2) knowingly signs more than once for the same proposition, question, or candidate at one election; or

(3) signs a petition proposing an initiative, referendum, recall, or nomination of a candidate for state or local office, while knowingly not being a qualified voter.

(b) Improper subscription to petition is a class B misdemeanor. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.091. Renumbered in 1980.

Sec. 15.56.100. Refusal to allow employees time off. (a) An employer commits the offense of refusal to allow employees time off if the employer refuses to allow an employee time off for the purpose of voting, or if, after allowing the time off, the employer deducts the time from the wages of the employee, except as provided in (b) of this section.

(b) An employee who has two consecutive hours in which to vote, either between the opening of the polls and the beginning of the employee's regular working shift, or between the end of that regular working shift and the close of the polls, is considered to have sufficient time outside of working hours within which to vote.

(c) Refusal to allow employees time off to vote is a violation. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.101. Renumbered in 1980.

Sec. 15.56.110. Effect of certain convictions. (a) The election of a candidate to the state legislature or to municipal office who knowingly commits a corrupt practice or whose campaign treasurer or deputy campaign treasurer knowingly commits a corrupt practice is voidable under this section.

(b) If a successful candidate or the campaign treasurer or the deputy campaign treasurer of a successful candidate for the state legislature or for a seat on a city council or borough assembly or for mayor is convicted of a felony or misdemeanor described in this chapter as a corrupt practice, the eligibility of the successful candidate to hold the office to which elected shall be determined as to

(1) a member of the legislature under art. II, sec. 12 of the state constitution;

(2) a member of the borough assembly under AS 29.20.170(6);

(3) a borough mayor under AS 29.20.280(6);

(4) a member of the city council under AS 29.20.170(6);

(5) a city mayor under AS 29.20.280(6). (Sec. 205 ch 100 SLA 1980; am secs. 37 - 40 ch 74 SLA 1985)

Revisor's notes. Enacted as AS 15.56.111. Renumbered in 1980. In 1988, the phrase "borough or city" was deleted from (b) of this section under the authority of AS 01.05.031(b)(11).

Effect of amendments. The 1985 amendment in subsection (b) in paragraph (2) substituted "member of the borough assembly" for "borough assemblyman" and "AS 29.20.170(6)" for "AS 29.23.060(c)," in paragraph (3) substituted "AS 29.20.280(6)" for "AS 29.23.130(f)," in paragraph (4) substituted "member of the city council" for "city councilman" and "AS 29.20.170(6)" for "AS 29.23.210(b)," and in paragraph (5) substituted "AS 29.20.280(6)" for "AS 29.23.255."

Sec. 15.56.115. Disposition of cases involving corrupt practice. When a candidate or a nominee or the campaign treasurer of a candidate or a nominee is charged with a felony or misdemeanor described in this chapter as a corrupt practice, the case shall be promptly tried and the case shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.111(c). Renumbered in 1980. Renumbered again in 1982.

Sec. 15.56.120. Election defined. In this chapter, "election" includes a local election as defined in AS 15.60.010 in addition to a state election. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.121. Renumbered in 1980.

Sec. 15.56.130. Time limitation. A prosecution for an offense described in the Alaska Election Code (AS 15.05 - AS 15.60) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed. (Sec. 205 ch 100 SLA 1980)

Revisor's notes. Enacted as AS 15.56.131. Renumbered in 1980.

Chapter 58. Election Pamphlet.

Section

- 10. Election pamphlet
- 20. Contents of pamphlet
- 30. Material to be filed by candidate
- 40. Material to be filed by political parties
- 50. Information and recommendations on judicial officers
- 60. Charges for space in pamphlet
- 70. Organization of material
- 80. Distribution
- 90. Delegation by lieutenant governor

Collateral references. 26 Am. Jur. 2d, Elections, secs. 193-199.

29 C.J.S., Elections, secs. 117, 118(1).

Doctrine of privilege or fair comment as applicable to misstatements of fact in publication (or oral communication) relating to public officer or candidate for office. 110 ALR 412; 150 ALR 358.

Statement regarding cost of proposed public improvement in ballot for special election in that regard. 117 ALR 892.

Validity of special election as affected by publication or dissemination of matter or information, extrinsic to the question as submitted, regarding nature or effect of the proposal. 122 ALR 1142.

Sec. 15.58.010. Election pamphlet. Before each state general election, the lieutenant governor shall prepare, publish and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor. (Sec. 206 ch 100 SLA 1980; am sec. 38 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in the first sentence substituted "at least one" for "an" and "each household identified from the official registration list" for "every registered voter."

Sec. 15.58.020. Contents of pamphlet. Each election pamphlet shall contain

- (1) photographs and campaign statements submitted by eligible candidates for elective office in the region;
- (2) information and recommendations filed under AS 15.58.050 on judicial officers subject to a retention election in the region;
- (3) a map of the election district or districts of the region;
- (4) sample ballots for election districts of the region;
- (5) an absentee ballot application;
- (6) for each ballot proposition submitted to the voters by initiative or referendum petition or by the legislature,
 - (A) the full text of the proposition specifying constitutional or statutory provisions proposed to be affected;
 - (B) the ballot title and the summary of the proposition prepared by the director

or by the lieutenant governor;

(C) a neutral summary of the proposition prepared by the Legislative Affairs Agency;

(D) statements submitted which advocate voter approval or rejection of the proposition not to exceed 500 words;

(7) for each bond question, a statement of the scope of each project as it appears in the bond authorization;

(8) a maximum of two pages of material submitted by each political party;

(9) additional information on voting procedures that the lieutenant governor considers necessary;

(10) for the question whether a constitutional convention shall be called,

(A) a full statement of the question placed on the ballot;

(B) statements not to exceed 500 words that advocate voter approval or rejection of the question. (Sec. 206 ch 100 SLA 1980; am sec. 1 ch 33 SLA 1983)

Sec. 15.58.030. Material to be filed by candidate. (a) No later than July 15 of a presidential election year, candidates for the offices of the United States President and Vice-President may file with the lieutenant governor photographs and statements advocating their candidacy.

(b) [EFFECTIVE MAY 1, 1990] No later than July 15 of a year in which a state general election will be held, an individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.030 may file with the lieutenant governor a photograph and a statement advocating the candidacy. An individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.180 by filing a nominating petition or by another means may file with the lieutenant governor a photograph and a statement advocating the candidacy by July 15 or within 10 days of becoming a candidate, whichever is later.

(c) Each candidate for an office designated under (a) or (b) of this section is allowed one page of space in the pamphlet for a photograph and statement.

(d) Pages on which candidates' photographs or statements appear must be clearly identified with the words "paid for by the candidate."

(e) A candidate's statement must be typewritten and is limited to a position statement of 250 words or less and a biographical statement of 150 words or less.

(f) A candidate's photograph must be a 5" x 7" black and white glossy print taken within the past five years. The photograph must be limited to the head, neck and shoulders of the candidate.

(g) No later than August 7 of the year in which the state general election will be held, a person seeking retention in office as a justice or judge may file with the lieutenant governor a photograph and a statement advocating the candidacy. (Sec. 206 ch 100 SLA 1980; am secs. 39 - 41 ch 85 SLA 1986; am sec. 30 ch 67 SLA 1989)

Effect of amendments. Section 39, ch. 85, SLA 1986 in subsection (a) substituted "July 15 of a presidential election year" for "75 days before the state general election." Section 40, ch. 85, SLA 1986 in subsection (b) substituted "July 15 of a year in which a" for "75

days before the' and 'the' for 'his' preceding 'candidacy,' inserted 'will be held' following 'general election,' and deleted 'justice or judge' preceding 'state senator.' Section 41, ch. 85, SLA 1986 added subsection (g).

The 1989 amendment, effective May 1, 1990, in subsection (b), inserted 'an individual who becomes' and 'under AS 15.25.030' in the first sentence and added the second sentence. For provisions in effect until May 1, 1990, see the main pamphlet.

Editor's notes. Until May 1, 1990, subsection (b) provides: "No later than July 15 of a year in which a state general election will be held, a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative may file with the lieutenant governor a photograph and a statement advocating the candidacy."

Sec. 15.58.040. Material to be filed by political parties. (a) No later than July 15 of a year in which a state general election will be held, a political party may file with the lieutenant governor a maximum of two pages of material.

(b) Each page purchased must be clearly identified with the words "paid for by" followed by the name of the political party, the name of the state chairman of the party, and the name of the party treasurer. (Sec. 206 ch 100 SLA 1980; am sec. 42 ch 85 SLA 1986)

Effect of amendments. The 1986 amendment in subsection (a) substituted 'July 15 of a year in which a' for '75 days before the' and inserted 'will be held.'

Sec. 15.58.050. Information and recommendations on judicial officers. No later than August 7 of the year in which the state general election will be held, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law and shall contain a brief statement describing each public reprimand, public censure, or suspension received by the judge under AS 22.30.011(d)(3) or (4) during the period covered in the evaluation. A statement may not exceed 600 words. (Sec. 206 ch 100 SLA 1980; am sec. 43 ch 85 SLA 1986; am sec. 5 ch 38 SLA 1987)

Effect of amendments. The 1986 amendment in the first sentence substituted 'August 7 of the year in which' for '75 days before' and inserted 'will be held.'

The 1987 amendment added the language beginning 'and shall contain a brief statement' at the end of the second sentence.

Sec. 15.58.060. Charges for space in pamphlet. (a) Each general election candidate shall pay to the lieutenant governor at the time of filing material under this chapter the following:

(1) President or Vice-President of the United States, United States senator, United States representative, governor, lieutenant governor, supreme court justice and court of appeals judge, \$150 each;

(2) superior court judge and district court judge, \$75 each;

(3) state senator and state representative, \$50 each.

(b) The state chairman or executive committee of a political party shall pay to the lieutenant governor at the time of filing material under this chapter \$300 for each page purchased.

(c) There is no charge for statements and recommendations submitted by the judicial council or for statements advocating approval or rejection of a proposition submitted to the voters for approval. (Sec. 206 ch 100 SLA 1980)

Sec. 15.58.070. Organization of material. Material in the election pamphlet shall be organized to the extent possible in the same manner and form in which it will appear on the ballot. The decision of the lieutenant governor on the form of material is final. (Sec. 206 ch 100 SLA 1980)

Sec. 15.58.080. Distribution. (a) Not less than 30 days before the general election, the lieutenant governor shall mail to every registered voter one copy of the pamphlet prepared for the region in which the voter resides. Additional pamphlets may be obtained from the director, the office of the lieutenant governor, and the area election offices.

(b) The state library shall make a recording of the appropriate regional pamphlet available to a blind voter without cost. The lieutenant governor shall assist with the preparation of recording each regional pamphlet. (Sec. 206 ch 100 SLA 1980)

NOTES TO DECISIONS

Exception to time requirement for 1978 election. See *Hammond v. Hickel*, Sup. Ct. Order (File Nos. 4281, 4282, 4283, 4284, 4285, 4291), 588 P.2d 256 (1978), cert. denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979); (decided under former AS 15.57.050).

Sec. 15.58.090. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed by this chapter to the director. (Sec. 206 ch 100 SLA 1980)

Chapter 60. General Provisions.

Section

- 05. Readability of certain election materials
- 10. Definitions
- 20. Short title

Sec. 15.60.005. Readability of certain election materials. (a) The policy of the state is to prepare a ballot proposition that is clear, concise, and easily readable. The form of each ballot proposition shall be scored under (c) of this section. The policy of the state is to prepare a ballot proposition that is scored at approximately 60.

(b) Each neutral summary prepared for the voter's pamphlet shall be scored under (c) of this section. The policy of the state is to prepare a neutral summary that is scored at approximately 60.

(c) A ballot proposition or neutral summary shall be scored using the following procedures:

- (1) disregard numbers;
- (2) multiply the average sentence length in words by 1.015;
- (3) multiply the average number of syllables for each 100 words by .846;
- (4) subtract the total of (2) and (3) from 206.835.

(d) A court may not enjoin the conduct or results of an election for a failure to comply with (a) or (b) of this section. (Sec. 4 ch 104 SLA 1988)

Sec. 15.60.010. Definitions. In this title, unless the context otherwise requires,

(1) "absentee voting official" means a person appointed to serve as an absentee voting official in accordance with AS 15.20.045;

(2) "ballot" means a hand-marked ballot and a punch-card ballot;

(3) "director" means the director of elections who is the chief elections officer of the state appointed in accordance with AS 15.10.105(a);

(4) "election board" means the local precinct board composed of the three election judges;

(5) "election district" means one of the districts described in art. XIV, sec. 3, of the state constitution, as may be modified under art. VI of the state constitution;

(6) "election official" means election judges, clerks, counters, members of counting or review boards, employees of the division of elections and absentee voting officials;

(7) "federal election" means a general, special, or primary election held solely or in part for the purpose of selecting, nominating or electing a candidate for the office of President, Vice-President, presidential elector, United States senator or United States representative;

(8) "felony involving moral turpitude" includes those crimes which are immoral or wrong in themselves such as murder, sexual assault, robbery, kidnapping, incest, arson, burglary, theft, and forgery;

(9) "general election" means the election held on the Tuesday after the first Monday in November of even-numbered years;

(10) "hand-marked ballot" means a ballot designated to be marked by hand with a pen or pencil;

(11) "lieutenant governor" includes an appointed lieutenant governor, governor, or acting governor if a vacancy has occurred in the office of lieutenant governor or governor;

(12) "limited political party" means a political group which organizes for the purpose of selecting candidates for electors for President and Vice-President;

(13) "local election" means a regular or special election held by a borough, city, school district, or regional educational attendance area;

(14) "master register" means the list of all registered voters in the state which is maintained by the director of elections;

(15) "member of a political party" means a person who supports the political program of a party;

(16) "oath" includes affirmation;

(17) "official registration list" means the list of all voters qualified to vote at a particular election compiled in accordance with AS 15.07.125;

(18) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state;

(19) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party;

(20) "political party" means an organized group of voters that represents a political program and that nominated a candidate for governor who received at least three percent of the total votes cast at the preceding general election for governor;

(21) "precinct" means the territory within which resident voters may cast votes at one polling place;

(22) "presidential election year" means a year in which the presidential electors are elected;

(23) "proposition" means an initiative, referendum, or constitutional amendment submitted at an election to the public for vote;

(24) "punch-card ballot" means a ballot designed to be punched by a machine and counted by automatic data processing equipment;

(25) "qualified voter" means a person who has the qualification of a voter and is not disqualified as provided by art. V, sec. 2, of the state constitution and AS 15.05.030;

(26) "question" means an issue placed on the ballot to determine whether a judge or justice shall be accepted or rejected, whether a constitutional convention shall be called, whether a state debt shall be contracted, or whether a state official shall be recalled;

(27) "registration official" includes an employee of the division of elections when performing the task of voter registration and a person appointed to serve as a registration official in accordance with AS 15.07.081 or 15.07.100;

(28) "senate district" means the territory included in the election districts as designated in art. XIV, sec. 2, of the state constitution, as may be modified under art. VI of the state constitution;

(29) "signature" or "subscription" includes a mark intended as a signature or subscription;

(30) "special election" means an election held at a time other than when the general or primary election is held and an election called to be held with, and at the time of, the general or primary election;

(31) "state chairman" means the party official elected as the highest ranking statewide party executive;

(32) "sworn" includes affirmed;

(33) "unconditional discharge" means that a person is released from all disability arising under a conviction and sentence, including probation and parole;

(34) "vacancy" exists in an office when the person elected or appointed to the office resigns, retires, dies, is recalled, is rejected by majority vote on the question at an election, is convicted of a corrupt practice, is removed by impeachment, or is expelled;

(35) "voter" means a person who presents oneself for the purpose of voting either in person or by absentee ballot. (Sec. 12.01 ch 83 SLA 1960; am sec. 11 ch 71 SLA 1972; am sec. 13 ch 38 SLA 1974; am sec. 29 ch 197 SLA 1975; am sec. 9 ch 208 SLA 1975; am sec. 207 ch 100 SLA 1980; am sec. 64 ch 6 SLA 1984; am sec. 44 ch 85 SLA 1986)

Revisor's notes. Reorganized in 1988. The word 'as' was added following 'themselves such' in paragraph (8) by the revisor of statutes under AS 01.05.031.

Effect of amendments. The 1984 amendment deleted 'party' preceding 'primary' twice in paragraph (30). The 1986 amendment in paragraph (20) substituted 'an organized group of voters that' for 'a group of organized voters which,' 'that' for 'which' preceding 'nominated,' 'three' for '10' and 'votes' for 'vota.'

Opinions of attorney general. For a list of crimes which constitute felonies involving moral turpitude, see Nov. 7, 1980 Op. Att'y Gen.

NOTES TO DECISIONS

Editor's notes. The definition of "political party," as amended by sec. 44, ch. 85, SLA 1986, includes 'as an element receipt of three percent of the votes cast in the preceding gubernatorial election. A ten percent polling requirement was in effect when *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983), annotated below, was decided. Ten percent polling requirement for defining "political party" unconstitutional. The eligibility of a party to nominate a candidate for governor through a primary election may not constitutionally be conditioned on that party's receipt of 10 percent of the votes cast in the preceding gubernatorial election. *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

The 10 percent polling requirement for defining "political party" may not be justified by the asserted state interests in promoting a two-party system in order to encourage compromise and political stability in ensuring that public officials are elected by a majority of the voters. *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

The 10 percent polling requirement for defining "political party" may not be justified by the state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot since the state has not established that this interest could not have been served by a requirement substantially smaller than 10 percent. *Vogler v. Miller*, Sup. Ct. Op. No. 2639 (File No. 6959), 660 P.2d 1192 (1983).

Applied in *Vogler v. Miller*, Sup. Ct. Op. No. 2562 (File No. 6959), 651 P.2d 1 (1982).

Quoted in *Turkington v. City of Kachemak*, Sup. Ct. Op. No. 141 (File No. 177), 390 P.2d 593 (1963); *Meiners v. Bering Strait School Dist.*, Sup. Ct. Op. No. 2857 (File Nos. S-125, S-140), 687 P.2d 287 (1984).

Sec. 15.60.020. Short title. AS 15.05 - AS 15.60 may be cited as the Alaska Election Code. (Sec. 12.02 ch 83 SLA 1960)

Chapter 62. Miscellaneous Provisions.

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10. [Repealed]

Sec. 15.62.010. Application of election code recall provisions to party representatives. [Repealed by sec. 26 ch 80, SLA 1963.]

Editor's notes. The repealed section derived from sec. 2, ch 165, SLA 1962.

Chapter 65. Rights of Voter and Prohibitions.

Section

10-50 [Repealed]

Secs. 15.65.010 - 15.65.050. Prohibitions; rights of voters. [Repealed by sec. 231 ch 100, 1980.]

Cross references. For provisions concerning election offenses, see AS 15.56.010-15.56.130.

Editor's notes. The repealed chapter derived from secs. 38-7-14, 38-8-5 ACLA 1949; secs. 1 ch 45, SLA 1953; sec. 1, 2, ch 76, SLA 1955; sec. 1, ch 84, SLA 1960; sec. 27 ch 43, SLA 1964; sec. 33, ch 124. SLA 1975.

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Sec. 15.13.070. Contributions and expenditures; amount and form of payment.

Cross references. — For prohibition against certain campaign fund-raising by legislators, see AS 24.60.030.

Opinions of attorney general. — The \$1000 statutory limit under this section is applicable to "control groups" under AS

15.13.130(4). Exempting such groups from the contribution limit would seriously undermine the statute's primary purpose of deterring the buying of elections and the undue influence of large contributors. June 15, 1987, Op. Att'y Gen.

Sec. 15.13.130. Definitions.

Opinions of attorney general. — The \$1000 statutory limit under AS 15.13.070(a) is applicable to "control groups" under this section. Exempting such groups from the contribution limit

would seriously undermine the statute's primary purpose of deterring the buying of elections and the undue influence of large contributors. June 15, 1987, Op. Att'y Gen.

Chapter 15. General Procedure for Elections.

Section
10. General administrative supervision by director

Section
30. Preparation of official ballot
70. Public notice of election required

Sec. 15.15.010. General administrative supervision by director. The director shall provide general administrative supervision over the conduct of state elections, and may adopt regulations under the Administrative Procedure Act (AS 44.62) necessary for the administration of state elections. The director shall adopt regulations that establish for the broadcasting of notices under AS 15.15.070 the frequency of the broadcasts, appropriate broadcast times, and the locations for the broadcasts. The broadcasting regulations must be reasonably calculated to provide the widest possible exposure of the notices. (§ 3.01 ch 83 SLA 1960; am § 5 ch 80 SLA 1963; am § 37 ch 100 SLA 1980; am § 1 ch 74 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 22, 1991, added the last two sentences.

Sec. 15.15.030. Preparation of official ballot. The director shall prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections. The following directives shall be followed when applicable:

(1) The director shall determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law.

(2) The director shall number ballots in series to assure simplicity and secrecy and to prevent fraud.

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(10) A nonpartisan ballot shall be designed for each judicial district in which a justice or judge is seeking retention in office. The ballot shall be divided into four parts and each part must bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall be retained as justice of the supreme court for 10 years?"; (B) "Shall be retained as judge of the court of appeals for eight years?"; (C) "Shall be retained as judge of the superior court for six years?"; or (D) "Shall be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No."

(11) When the legislature by law authorizes a state debt for capital improvements, the director shall place the question of whether the specific authorization shall be ratified by placing the ballot title and question on the next general election ballot, or on the special election ballot if a special election is held for the purpose of ratifying the state debt for capital improvements before the time of the next general election. Unless specifically provided otherwise in the Act authorizing the debt, the ballot title shall, by the use of a few words in a succinct manner, indicate the general subject of the Act. The question shall, by the use of a few sentences in a succinct manner, give a true and impartial summary of the Act authorizing the state debt. The question of whether state debt shall be contracted shall be assigned a letter of the alphabet on the ballot. Provision shall be made for marking the question substantially as follows: "Bonds Yes" or "Bonds No," followed by an appropriate square.

(12) *[Repealed, § 6 ch 80 SLA 1963.]*

(13) The director may provide for the use of punch-card voting in state elections in any area where data processing equipment is available. (§ 3.03 ch 83 SLA 1960; am §§ 5 — 7 ch 125 SLA 1962; am § 6 ch 80 SLA 1963; am § 1 ch 72 SLA 1967; am §§ 7, 8 ch 228 SLA 1968; am § 1 ch 18 SLA 1969; am § 6 ch 38 SLA 1974; am § 1 ch 120 SLA 1975; am § 21 ch 12 SLA 1980; am § 38 ch 100 SLA 1980; am § 6 ch 67 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 28, 1989, in paragraph (10), substituted "nonpartisan ballot" for "separate nonpartisan judicial ballot" near the beginning and added "in office" at the end of the first sentence and substituted "must" for "shall" in the second sentence.

Sec. 15.15.070. Public notice of election required. (a) The director shall give and is authorized to contract to give full public notice of the election. The director may select a manner reasonably calculated to give actual knowledge of the election to the voters.

(b) The notice shall be given by publication at least twice in one or more newspapers of general circulation in each of the four major elec-

tion districts. The printed notice shall specifically include but is not limited to the date of election, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and questions which are to be voted on.

(c) Public notice shall also be given by posting notices in two or more conspicuous places in each election precinct. The posted notice shall specifically include but is not limited to the date of election, the location of the polling place, the hours between which the polling places will be open, the offices to which candidates are to be nominated or elected, and the subject of the propositions and questions which are to be voted on.

(d) The first publication, broadcast, or posting of the notice shall be made not less than 10 days before the election.

(e) The director may have a precinct map of a densely populated precinct published in a newspaper of general circulation if need for the map is established.

(f) Additional notice shall be given of all bond issues, initiatives, referendums, and propositions by use of newspapers, television, radio, printed posters, maps, and similar means of communication considered necessary. The director may not be required to post, broadcast, or publish notices except those provided for in this section.

(g) The director shall pay the cost of election expenses incurred in giving notice of an election.

(h) An abbreviated form of the notice published under (b) of this section shall be broadcast on one or more radio or television stations in each of the four major election districts. The broadcast notice must include at a minimum the date of the election, the hours between which the polling places will be open, the names of the newspapers in which the notice is published, and the dates of publication in the newspapers. (§ 3.07 ch 83 SLA 1960; am § 8 ch 125 SLA 1962; am § 10 ch 228 SLA 1968; am §§ 43 — 46 ch 100 SLA 1980; am § 5 ch 85 SLA 1986; am §§ 2 — 4 ch 74 SLA 1991)

Effect of amendments. — The 1991 amendment, effective September 22, 1991, rewrote subsection (d), inserted " broadcast," in the second sentence in subsection (f), and added subsection (h).

Effect of amendments. — The 1989 amendment, effective August 28, 1989, deleted "judicial" before "ballot."

Sec. 15.35.100. Approval or rejection of district judge. (a) Each district judge shall be subject to approval or rejection at the first general election held more than two years after the judge's appointment under the provisions of AS 22.15.170. If approved, the judge shall thereafter be subject to approval or rejection in a like manner every fourth year.

(b) The district judge shall seek approval in the judicial district in which the judge was originally appointed, or in the district where the judge has served the major portion of the judge's term. The district judge shall designate on the declaration of candidacy the judicial district in which the judge was appointed, or the district where the judge has served the major portion of the judge's term. (§ 1 ch 138 SLA 1966; am § 1 ch 164 SLA 1968; am § 1 ch 89 SLA 1990)

Effect of amendments. — The 1990 amendment substituted "two years" for "one year" in the first sentence in subsection (a).

SLA 1990 provides that the 1990 amendment to (a) of this section applies "to district court judges who enter into the duties of the office on or after September 2, 1990."

Editor's notes. — Section 3, ch. 89.

Sec. 15.35.130. Placing name of district judge on ballot. The director shall place the name of a district judge who has properly filed a declaration of candidacy for retention on the ballot in the judicial district designated in the declaration of candidacy for the general election at which approval is sought. (§ 1 ch 138 SLA 1966; am § 4 ch 18 SLA 1969; am § 157 ch 100 SLA 1980; am § 29 ch 67 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 28, 1989, deleted "judicial" before "ballot."

Chapter 45. Initiative, Referendum, and Recall.

Article 1. Initiative.

Sec. 15.45.010. Provision and scope for use of the initiative.

NOTES TO DECISIONS

Initiative attempting to alter or supplement existing court rules. — Lieutenant governor properly denied certification of an initiative that would have set maximum allowable levels of attorney's fees in personal injury cases, where the initiative constituted an attempt to pre-

scribe a rule of court in violation of Article XI, § 7 of the Alaska Constitution and would have altered or supplemented existing court rules regulating contingent fees. *Citizens Coalition for Tort Reform, Inc. v. McAlphine*, Sup. Ct. Op. No. 3686 (File No. S-3714), P.2d (1991).

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Sec. 15.50.110. Delegation by lieutenant governor. The lieutenant governor may delegate the duties imposed on the lieutenant governor by AS 15.50.010 — 15.50.100 to the director. (§ 204 ch 100 SLA 1980)

Editor's notes. — This section is set out above to make a stylistic change.

Chapter 58. Election Pamphlet.

Section

- 30. Material to be filed by candidate
- 50. Information and recommendations on judicial officers

Sec. 15.58.030. Material to be filed by candidate. (a) No later than July 15 of a presidential election year, candidates for the offices of the United States President and Vice-President may file with the lieutenant governor photographs and statements advocating their candidacy.

(b) No later than July 15 of a year in which a state general election will be held, an individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.030 may file with the lieutenant governor a photograph and a statement advocating the candidacy. An individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.180 by filing a nominating petition or by another means may file with the lieutenant governor a photograph and a statement advocating the candidacy by July 15 or within 10 days of becoming a candidate, whichever is later.

(c) Each candidate for an office designated under (a) or (b) of this section is allowed one page of space in the pamphlet for a photograph and statement.

(d) Pages on which candidates' photographs or statements appear must be clearly identified with the words "paid for by the candidate."

(e) A candidate's statement must be typewritten and is limited to a position statement of 250 words or less and a biographical statement of 150 words or less.

(f) A candidate's photograph must be a 5" x 7" black and white glossy print taken within the past five years. The photograph must be limited to the head, neck and shoulders of the candidate.

(g) No later than August 7 of the year in which the state general election will be held, a person seeking retention in office as a justice or judge may file with the lieutenant governor a photograph and a statement advocating the candidacy. (§ 206 ch 100 SLA 1980; am §§ 39 — 41 ch 85 SLA 1986; am § 30 ch 67 SLA 1989)

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§ 15.58.050

ELECTIONS

§ 15.60.007

Effect of amendments. — The 1989 amendment, effective May 1, 1990, in subsection (b), inserted "an individual who becomes" and "under AS 15.25.030" in the first sentence and added the second sentence.

Sec. 15.58.050. Information and recommendations on judicial officers. No later than August 7 of the year in which the state general election will be held, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election. The statement shall reflect the evaluation of each justice or judge conducted by the judicial council according to law and shall contain a brief statement describing each public reprimand, public censure, or suspension received by the judge under AS 22.30.011(d) during the period covered in the evaluation. A statement may not exceed 600 words. (§ 206 ch 100 SLA 1980; am § 43 ch 85 SLA 1986; am § 5 ch 38 SLA 1987; am § 1 ch 135 SLA 1990)

Effect of amendments. — The 1990 amendment made an internal reference change in the next to last sentence.

Chapter 60. General Provisions.

Section

07. Sale of voter registration and election management software

Sec. 15.60.007. Sale of voter registration and election management software. The director may sell voter registration and election management system data processing software. (§ 18 ch 36 SLA 1990)

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