

MAINE STATE LEGISLATURE

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SIXTY-SIXTH LEGISLATURE.

SENATE.

No. 3.

STATE OF MAINE.

AUGUSTA, January 12, 1893.

*To the President of the Senate and Speaker of the House
of Representatives :*

I have the honor to recommend certain amendments to chapter 102 of the Public Laws of 1891, being the Australian Ballot Law.

These amendments, together with the reasons therefor, I respectfully transmit herewith.

In the main they are simply verbal alterations, which from my experience with the law, I deem necessary to render it plain, explicit and unambiguous.

I have the honor to be

Your obedient servant,

NICHOLAS FESSENDEN,

Secretary of State.

Amend Section 6.—By substituting therein for the word “twenty” the word “thirty,” also by substituting therein for the word “seven” the word “ten” and by adding the word “and” after the word “officers” in the second line thereof, so that said section as amended shall read as follows :

SECT. 6. Certificates of nomination and nomination papers
2 for the nomination of candidates for state or county
3 offices and representatives to the legislature shall be filed
4 with the Secretary of State at least thirty days, exclusive
5 of Sundays, previous to the day of election for which the
6 candidates are nominated. Such certificates and papers
7 for the nomination of candidates for the offices of mayor
8 and all other offices in cities shall be filed with the city
9 clerks of the respective cities at least ten days, exclusive
10 of Sundays, previous to the day of such election. With
11 nomination papers shall also be filed the consent in writing
12 of the persons nominated.

REASONS.

In case of official ballots for State and National elections, twenty days is not sufficient time to do the work necessary to supply this large state with the necessary ballots.

This I state as matter of knowledge, and not as theory—experience has convinced me that this change must be made. Twenty days may suffice for a State no larger than Massachusetts, supplied as it is with express and mail routes. Thirty days is an absolute necessity for a State as large, territorially, as Maine.

Arguing from my experience with the ballots used during the September and November elections just past, I am satisfied that as applied to the cities of the State, ten days is none too much time to allow City Clerks for preparing their ballots.

Amend Section 11.—by inserting therein, immediately before the word “books,” the word “packages,” so that said Section as amended shall read as follows.

SECT. 11. All ballots when printed shall be folded as 2 hereinbefore provided, and fastened together in convenient 3 numbers in packages, books or blocks, in such manner 4 that each ballot may be detached and removed separately. 5 A record of the number of ballots printed and furnished 6 to each polling place shall be kept and preserved by the 7 Secretary of State and the several city clerks for the term 8 of one year.

REASONS.

The word “packages” appears in the Massachusetts Statute, and I am satisfied that the omission of said word in the Maine Statute was unintentional—I know of no practicable way in which the official ballots made necessary by this Statute, can be made into “books or blocks,” except as made into “packages” as done in Massachusetts, and as done in my office at September and November election 1892.

Amend Section 12,—by changing the figures “75” therein to “60.”

Also—change the word “voters” therein to “votes.”

Also—strike out all of said Section, after the word “votes,” as amended, and insert therein the following—“Cast in said voting place at the next preceding election, State or National, corresponding to the election for which said ballots are to be printed.”

So that said Section as amended shall read as follows:

SECT. 12. There shall be provided for each voting place, 2 at which an election is to be held, two sets of such general 3 ballots, each of not less than 60 for every 50 and fraction

4 of 50 votes cast in said voting place at the next preceding
5 election, State or National, corresponding to the election
6 for which said ballots are to be provided.

REASONS.

Sixty ballots for each 50 or fraction of 50 voters, or votes cast is enough—75 are too many—as proved by the experience of the State of Massachusetts, where now 60 takes the place of 75, and as proved by our own experience.

These ballots being official are all available, none are lost, destroyed or mislaid, as was the case under the old system.

Sixty for 50 affords 20 per cent more than an even supply, considering both lots as sent and received.

This reduction will lessen materially the cost of the ballot, both as to paper and printing, also the labor in folding, packing and shipping. With this change I believe the total cost to the State for ballots in an off year will not exceed \$7,500, and will not exceed \$9,500 in a National year, and will afford all the ballots necessary.

The reason for the present requirement, that Town Clerks shall return to the Secretary of State, fourteen days before election, the number of voters in their towns, was, I presume to furnish the Secretary of State with a basis for calculating the number of ballots to be printed for the several precincts. For this purpose such requirement is worthless; because if every Clerk in the State should comply therewith, fourteen days would not suffice in which to transmit ballots, and such returns should be made forty days before election to be of any service—but all Clerks do not comply with the requirement, even if they know of it.

Out of the 513 returns which should have been received prior to the last September election, only about 300 had been received by me, within the time prescribed.

The execution of this law, by the Secretary of State, should not be made to depend upon the performance by such Clerks of their duties. Such a course is unsafe.

The amendment suggested, is safe and certain, and will materially aid the purposes of the law.

Amend Section 18, as follows :

First:—insert the word “presiding” before the words “election officers” in the second line of said Section, and the words “officer or” after the word “election” in same line.

Second:—insert the words “or officers,” after the words “presiding Election officer” in the first and second sentences of said Section, and after the words “presiding election officer” in the last sentence of said Section.

Third:—for the words “ballot officers,” substitute the words “ballot clerks” in the second sentence of said Section.

So that said Section as amended shall read as follows.

SECT. 18. The several city, town and plantation Clerks,
2 or municipal officers, shall send to the presiding election
3 officer or officers of each voting place before the opening of
4 the polls on the day of election one set of ballots so prepared,
5 sealed and marked for such voting place, and a receipt of
6 such delivery shall be returned to them from the presiding
7 election officer or officers present, which receipt, with a re-
8 cord of the number of ballots sent, shall be kept in the
9 Clerks office for one year. At the opening of the polls in
10 each polling place the seals of the packages shall be publicly
11 broken, and the packages shall be opened by the presiding
12 election officer or officers, and the books or blocks of bal-

13 lots shall be delivered to the ballot Clerks hereinafter
14 provided for. The cards of instruction shall be immedi-
15 ately posted at or in each voting shelf or compartment
16 provided in accordance with this act for the marking of
17 the ballots, and not less than three such cards and not less
18 than five specimen ballots shall be immediately posted in
19 or about the polling rooms, outside the guard rails. The
20 second set of ballots shall be retained by the respective
21 Clerks until they are called for or needed for the pur-
22 poses of voting, and, upon the requisition in writing of
23 the presiding election officer or officers of any voting
24 place, the second set of ballots shall be furnished to such
25 voting place in the manner above provided as to the first
26 set.

REASONS.

In cities the Warden is the presiding election officer (singular).

In Towns and Plantations, a majority of the Board of Selectmen or Assessors respectively, constitute the presiding election officers (plural). These verbal changes are necessary to make the law conform to the facts.

The use of the words "ballot officers" is misleading. The words mean "ballot clerks," and this change should be made in the interest of a clear and explicit expression.

Amend Section 21 as follows:—Substitute for the word "officers," the word "clerks," wherever the word "officers" appears in said Section, except where said word officers occurs immediately after the word "municipal," in the first line of said Section and in the fifth from the last line of said Section.

So that said Section as amended shall read as follows :

SECT. 21. The municipal officers of cities, towns and
2 plantations voting in accordance with the provisions of
3 this act, shall biennially in the month of May appoint
4 clerks for each polling place. For each polling place in
5 cities and towns of more than one thousand inhabitants
6 four clerks, and for each polling place in plantations, and
7 for each island ward of the city of Portland and for the
8 island district of the town of Cumberland and for every
9 town of less than 1,000 inhabitants two clerks shall be
10 appointed. Said clerks shall equally represent each of
11 the political parties which cast the largest number of
12 votes in the state election next preceding their appoint-
13 ment. Each of said clerks shall be sworn to the faithful
14 performance of his duties, and shall hold office for two
15 years from the date of his appointment, and until a suc-
16 cessor is appointed and qualified, or he is removed. Such
17 election clerks shall attend at the times and places desig-
18 nated for meetings in their respective wards, towns or
19 plantations for the election of any national, state, county
20 or ward officers, and for the determination of any ques-
21 tion submitted to the qualified voters of any city by lawful
22 authority, and shall receive such reasonable compensation
23 for each day's actual service as the municipal officers of
24 their respective cities, towns and plantations may deter-
25 mine. No person shall be eligible to the position of
26 election clerk in any ward, town or plantation where he
27 is a candidate to be voted for.

Two of the clerks in each polling place, one from each
29 political party, shall be detailed by the municipal officers
30 to act as ballot clerks. The two ballot clerks thus

31 detailed and appointed in each polling place shall have
32 the charge of the ballots therein and shall furnish them
33 to the voters in the manner hereinafter set forth.

A duplicate list of the qualified voters in each ward,
35 town or plantation shall be prepared for the use of the
36 ballot clerks, and all the provisions of law relative to the
37 preparation, furnishing and preservation of check lists
38 shall apply to such duplicate lists.

REASONS.

The Section as it now stands is perplexing owing to the use therein of the words "officers" and "clerks" synonymously. A hundred letters at least were written me asking an interpretation of this Section.

The Constitution of the State makes municipal officers of towns and plantations, and the wardens of city wards "election officers"—This Statute does not purport to change the power conferred by the constitution. The new officers made necessary by this statute are clerks, and perform the duties of clerks, and the changes suggested should be made in order to prevent confusion and misunderstanding.

The Section starts observing this difference, and with the words "clerks," as applied to these new officers, and later on uses the word "officers," as I believe in the sense of clerks. This change I deem most important in view of the misapprehension occasioned by its language all over the State.

Amend Section 22 by substituting for the word "Six" in line eight thereof, the word "Twelve," also in line seventeen thereof, after the word "Officers" insert a comma and the words "election clerks."

Also in line nineteen thereof, after the word "the," insert the word "presiding," and after the word "election" in the

same line insert the words "officer or," so that section as amended shall read as follows :

SECT. 22. The municipal officers in each city, town or
2 plantation, as aforesaid, shall cause the polling places
3 therein to be suitably provided with a sufficient number
4 of voting shelves or compartments, at or in which voters
5 may conveniently mark their ballots, so that in the mark-
6 ing thereof they may be screened from the observation of
7 others, and a guard rail shall be so constructed and placed
8 that only such persons as are inside said rail can approach
9 within twelve feet of the ballot boxes, and of such voting
10 shelves or compartments. The arrangement shall be such
11 that neither the ballot boxes nor the voting shelves or
12 compartments shall be hidden from view of those just
13 outside the said guard rail. The number of such voting
14 shelves or compartments shall not be less than one for
15 every 100 voters qualified to vote at such polling place,
16 and not less than three in any town, and not less than five
17 in any ward of a city. No persons other than the election
18 officers, election clerks and voters admitted as hereinafter
19 provided, shall be permitted within said rail, except by
20 authority of the presiding election officer or officers for
21 the purpose of keeping order and enforcing the law.
22 Each voting shelf or compartment shall be kept provided
23 with proper supplies and conveniences for marking the
24 ballots.

REASONS.

1st. Experience in the September and November elections just had, conclusively proves that in practical use six feet is not enough. Twelve feet is near enough to permit the curious to approach the voting booth and voter who is

therein marking, and if secrecy be the object aimed at, twelve feet will be found, in practice, to be productive of better results, than six feet, as the law now demands.

2nd. The "election officers," viz., Warden and ward Clerks, Municipal Officers, Town and Plantation Clerks are such by virtue of constitutional provision. These officers necessarily should be within the rail: the "election clerks," Viz., election and ballot clerks as provided for, by this statute are also properly within the rail, and the change or amendment suggested is a necessary one to avoid confusion of belief and practice, and to preserve the harmony of the law.

3rd. As before stated in reference to the point of presiding election officers. In cities the city wardens are such, and in towns and plantations the selectmen and assessors are such respectively. The law as it stands is inadequate and insufficient to embrace the facts. This is simply a verbal alteration, but appears to me to be necessary to give the law the full comprehension which is rendered necessary, under our system of town and city government. The presiding election officer (for city wards) and officers (for towns and plantations) are the proper persons to exercise the power delegated in this section, but inasmuch as in many towns no one chairman of the Municipal Board is ever actually chosen, the singular form does not apply with sufficient strictness, on the other hand, the singular form is strictly correct as applied to city wards, while the plural form is not, as it might be supposed by some to include ward clerks.

Amend Sec. 23 by substituting in line five thereof, for the words "ballot officer," the words "ballot clerk." Also in line ten thereof after the words "election officers," strike out the comma, and insert the words "and election clerks," so that said section as amended shall read as follows:

SECT. 23. Any person desiring to vote shall give his
2 name, and if requested so to do, his residence, to one of
3 the ballot clerks, who shall thereupon announce the same
4 in a loud and distinct tone of voice, clear and audible,
5 and if such name is found upon the check-list by the
6 ballot clerk having charge thereof, he shall likewise repeat
7 the said name, and the voter shall be allowed to enter
8 the space inclosed by the guard-rail, as above provided.
9 The ballot clerk shall give him one, and only one ballot,
10 and his name shall be immediately checked on said list.

Besides the election officers and election clerks, not
12 more than two voters in excess of the number of voting
13 shelves or compartments provided, shall be allowed in
14 said inclosed space at one time.

REASONS.

1st. The use of the words "ballot officer," in this connection is obviously incorrect and very misleading. To whom do these words as here used apply? If to the ballot clerk, then the words should be "ballot clerk" and not "ballot officer." If to the presiding election officer or officers then these words should be substituted. The sense and meaning of this section should be made plain and clear and not be allowed to remain as it now is productive of doubt and uncertainty as to what is meant.

I presume that the ballot clerk is meant and intended. There is no reason for styling the presiding election officers—ballot officers—they are not ballot officers, either by constitutional or statute law.

Beyond this, this ballot law, in the following sections prescribes that the voter "shall vote in the manner now provided by law." This provision places the voter after having passed

the scrutiny of the ballot clerks, entirely under the guidance of the presiding election officer or officers, and brings him within their control, as always heretofore. He has still to vote, and is to be found by the presiding election officer or officers, upon the check list kept by them.

2nd. The words "and election clerks," are necessary in this section after the words "election officers," for reasons already assigned. Who are entitled to be within the rail? The election officers, made such by constitutional law, and the election clerks by virtue of this statute. The use of the words "election officers" only, has caused much conflict of belief. Some had contended that these words referred only to the election clerks. Some that only the "election officers" were meant.

Insomuch as this alteration makes the matter plain, it seems to me to be very necessary.

Knowing the mixed opinions entertained all over the State, regarding the meaning of this statute, coming to me in hundreds upon hundreds of letters of inquiry, it seems to me advisable, that throughout the law in every section,—the distinction between "election officers" and "election clerks," should be made as plain in the language of the law, as it is intended it should be in the exercise of all duties under it.

Amend Section 24 by inserting after the words "election officers" in the thirty-second line thereof, the words "or an election clerk;" also by substituting, for the words "ballot officers," in the thirty-third line thereof the words "ballot clerks;" also by inserting after the word "officer" in the thirty-fifth line thereof, the words "or officers."

So that said Section as amended shall read as follows :

SECT. 24. On receipt of his ballot the voter shall forth-
2 with, and without leaving the inclosed space, retire alone

3 to one of the voting shelves or compartments so provided
4 and shall prepare his ballot by marking in the appropriate
5 margin or place, a cross (X) as follows: He may place
6 such mark opposite the name of a party or political desig-
7 nation, in which case he shall be deemed to have voted
8 for all the persons named in the group under such party
9 or designation; or he may place such mark opposite the
10 names of the individual candidates of his choice for each
11 office to be filled, or he may fill in the name of the candi-
12 date of his choice in the blank space provided therefor
13 and place the mark opposite as aforesaid, in which cases
14 he shall be deemed to have voted only for the individual
15 candidates opposite whose names he has placed such mark.
16 In case of a question submitted to the vote of the people
17 he shall place such mark in the appropriate margin against
18 the answer which he desires to give. Before leaving the
19 voting shelf or compartment the voter shall fold his ballot
20 without displaying the marks thereon, in the same way it
21 was folded when received by him, and he shall keep the
22 same so folded until he has voted. He shall vote in the
23 manner now provided by law before leaving the enclosed
24 space, and shall deposit his ballot in the box with the
25 official endorsement uppermost. He shall mark and
26 deposit his ballot without undue delay and quit said
27 enclosed space as soon as he has voted. No such voter
28 shall be allowed to occupy a voting shelf or compartment
29 already occupied by another, nor to remain within said
30 enclosed space more than ten minutes, nor to occupy a
31 voting shelf or compartment for more than five minutes
32 in case all of such shelves or compartments are in use,
33 and other voters are waiting to occupy the same. No

34 voter not an election officer or an election clerk whose
35 name has been checked on the list of the ballot officers,
36 shall be allowed to re-enter said inclosed space during said
37 election. It shall be the duty of the presiding election
38 officer or officers for the time being to secure the observ-
39 ance of the provisions of this section.

REASONS.

1st. The amendment by adding the words "or an election clerk," after the words "election officer," is necessary on account of the uncertainty existing as to the exact meaning of "election officers." In a sense election clerks are election officers, but inasmuch as municipal officers, wardens of city wards, town and plantation clerks are made election officers by the express provision of the constitution, and necessarily as such must take their position inside the rail, and inasmuch as the election clerks provided for by this statute must also take their position inside the rail, all difficulty of construction can be easily avoided by adding the words "or an election clerk."

2nd. The words "ballot officers" are misleading. If this clause of the law refers to the check list kept by the election officers, then it should be so stated, if it refers to the check list kept by the ballot clerks, as I infer is the case, then this amendment removes all doubts arising from the use of the word "officers." So much doubt, confusion and misunderstanding has been occasioned in the minds of the voters all over the State, by the synonymous use of the words "officers," and "clerks," in this statute, that it seems to me of prime importance that the distinction between the election officers, and the election clerks, should be as clearly expressed as possible; and that the duties of the new clerks should not be

brought, in any instance, into apparent conflict with those of the old officers.

3rd. The words "or officers" are necessary in this section, as before explained in regard to previous sections where the same amendment is necessary for the sake of explicitness and legal accuracy.

Amend Section 26, by inserting after the word "officer," in the second and ninth lines thereof, the words "or officers," and by changing the word "his" in said ninth line to the word "their." Also by substituting for the word "officers" in the fifth line thereof the word "clerks." Also by substituting, after the word "such" in said fifth line, the words "clerk or clerks" for the word "officers." Also by substituting for the words "officer or officers" in the sixth line thereof the words "clerk or clerks." Also by inserting after the word "him" in next to the last line of said section the words "or them." And by substituting for the words "he is" in next to the last line thereof the words "such officer or officers are," so that said section as amended, shall read as follows :

SECT. 26. Any voter who declares to the presiding election officer or officers that he cannot read his ballot, or that by blindness or other physical disability he is unable to mark his ballot shall, upon request, receive the assistance of one or two of the election clerks in the marking thereof, such clerk or clerks to be selected by the voter and such clerk or clerks shall certify on the outside thereof that it was so marked with his or their assistance, and shall thereafter give no information regarding the same. The presiding officer or officers may in their discretion, require such declaration of disability to be made by the voter under oath before him or them, and such officer or officers are hereby qualified to administer the same.

REASONS.

1st. The reasons assigned in previous sections of adding the words “or officers,” need not be re-stated, as it must be apparent that such change makes the law technically correct.

2nd. The use of the words “election officer,” in this section led to a belief in the minds of very many, that, under this provision, the selectmen, assessors and wardens of city wards, could be selected to mark ballots. I do not believe such was the intention of the Legislature which passed this Bill, I do not think it is correct practice for the selectmen, assessors or wardens to aid in marking votes. The reason why such would not be wise practice are many, but it may be sufficient to give one only. The law evidently meant that each of the two great parties should be equally represented so far as affording markers of ballots for the ignorant or physically disqualified voter;—that fair play should be had at all polling places, as between these rival political parties. If municipal officers in towns and plantations, and wardens in cities are empowered by this section to act as markers, then a manifest inequality and consequent unfairness must result. In a town having a republican board of selectmen, the republican party would have five markers—the democratic party but two. In a town having a democratic board, the result would be the other way.

Undoubtedly the words “election officers,” as used in this section mean the election clerks, created by this statute, and it would be only the part of wisdom to use the word clerk, thereby making plain the intent of the law, and avoiding further misunderstanding in regard to it.

STATE OF MAINE.

IN SENATE, January 12, 1893.

On motion by Mr. HERSEY of Oxford, laid on the table to be printed, pending reference to Committee on Legal Affairs.

KENDALL M. DUNBAR, *Secretary*.