

MAINE STATE LEGISLATURE

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Sixty-Eighth Legislature.

SENATE.

No. 4.

STATE OF MAINE.

To the Senate and House of Representatives of the Sixty-Eighth Legislature of the State of Maine:

I have the honor to submit the following suggestions, relating to the election laws:

The fact that forty-one states of the Union have adopted some form of the so-called Australian or secret ballot seems to indicate that this method, or system, is to become universal in this country.

The further fact that nearly all these states have either, in the first instance, adopted the blanket, or sheet ballot, in preference to the envelope ballot, or else having tried the envelope ballot, have discarded it for the blanket form, seems to indicate that the latter, which is the form in use in this State, is to be preferred as the best.

After a careful examination of the laws, systems and ballots in present use in most of these states, I am convinced that the form of ballot and method of marking the same now existing in this State is the best of them all, being the most simple and

plain, and therefore the most easily understood form of ballot, requiring the least time for correct marking, and at the same time placing the burden of correct marking, if burden there be, where it properly belongs, to wit, upon the five per cent. of independent, rather than upon the ninety-five per cent. of straight party voters.

While I am convinced that no change in the form of the ballot, or in the method of marking the same, is necessary or desirable, the experience of the past year has satisfied me that certain amendments to the law are very necessary to the more perfect working of the system in this State, and in suggesting these, I have to say that each has been demonstrated to be necessary in other states, none of them being novel or untried.

I have the honor to suggest that a non-partisan Ballot Commission should be provided to determine all preliminary questions relating to nominations and nomination certificates.

This is a provision which I consider indispensable to a correct Australian ballot system. It need not be expensive, would more than repay its cost, is in approved use in the states having the most carefully drawn election laws, and is of prime importance.

I append the text of the Massachusetts law governing this feature, as an illustration, putting the same in the form of an amendment to section 7 of our present law, together with new sections 34, 35, 36, 37, being additional to the present act, entitled "Ballot Law Commission."

Strike out section 7, and substitute therefor the following:

'SECT. 7. When certificates of nomination and nomination
2 papers have been filed in accordance with the provisions of
3 this act and are in apparent conformity therewith, they shall
4 be deemed to be valid unless objections thereto are duly
5 made in writing. Such objections, in the case of nomina-
6 tions of candidates for state offices and city offices, shall
7 be filed with the secretary of state, or the city clerk, as the

8 case may be, within the seventy-two hours succeeding five
9 o'clock P. M. of the last day fixed by law within which nom-
10 ination papers may be filed for the nomination of candidates
11 for such office.

12 'Objections to certificates of nomination and nomination
13 papers which are filed in accordance with this section, and
14 all other questions arising in relation thereto, shall, in the
15 case of nominations of candidates for state offices, be con-
16 sidered by the board hereinafter established and known as
17 the Ballot Law Commission.

18 'Such objections and questions arising in the case of
19 nominations of candidates for city offices shall be considered
20 by the board of registration (of voters) of the city, together
21 with the city clerk, if not a member of said board of regis-
22 tration, and the city solicitor, and the decision of the majority
23 of these officers shall be final. The boards thus constituted
24 in cities to consider such objections and questions may, at
25 hearings upon any matters within their jurisdiction, sum-
26 mons witnesses and administer to them oaths, and may
27 require the production of books and papers, and such wit-
28 nesses shall be summoned in the same manner, be paid the
29 same fees and be subject to the same penalties for default
30 as witnesses before the Supreme Judicial Court. A sum-
31 mons may be signed and an oath may be administered by
32 any member of such board.

33 'In case any such objection is filed, notice thereof shall,
34 by the secretary of state, or the city clerk, as the case may be,

35 be forthwith mailed to the candidates affected thereby,
36 addressed to their residences as given in the certificates of
37 nomination or nomination papers, and to any political party
38 committee known to the secretary of state or city clerk, as
39 the case may be, as especially interested in the nomination to
40 which objection is made.

41 'Whenever a greater number of candidates, bearing the
42 same political or other designation, are nominated for an
43 office than there are persons to be elected to such office,
44 the boards charged as above with considering objections to
45 such nomination, shall determine which of the candidates,
46 if any, are entitled to such designation.'

Add to the present act the following sections:

BALLOT LAW COMMISSION.

'SECT. 34. The Ballot Law Commission shall consist of
2 the secretary of state, the attorney general, and three other
3 persons who shall be appointed from different political
4 parties by the Governor with the consent of the Council,
5 biennially in the month of June, commencing June, 1897,
6 and shall hold office for terms of two years, beginning
7 August first, 1897. Any vacancy occurring in the number
8 of the three members so appointed shall be filled in like man-
9 ner for the remainder of the unexpired term.'

'SECT. 35. The Ballot Law Commission may summon
2 witnesses, and may administer to them oaths, and may
3 require the production of books and papers at a hearing
4 before them upon any matter within their jurisdiction.

6 'Witnesses shall be summoned in the same manner, be
7 paid the same fees, and be subject to the same penalties for
8 default, as witnesses summoned before the Supreme Judicial
9 Court. A summons may be signed and an oath may be
10 administered by any member of the said board.'

'SECT. 36. The decision of a majority of the members of
2 the board, upon any matter within its jurisdiction shall be
3 final and conclusive.'

'SECT. 37. The appointed members of the Ballot Law
2 Commission shall be paid such compensation for their serv-
3 ices, not exceedinghundred dollars each, as the
4 Governor and Council may determine, and the total expendi-
5 tures on account of said commission shall not exceed the
6 sum ofhundred dollars in any one year.'

I further suggest that our law ought to contain the same provision in regard to the use, by signature nomination candidates, of political party designations, which exists in most, if not all of our sister states.

Such a provision is not only necessary, it is but simple justice to political parties entitled to make nominations as such, to protect them in the use of the party designation, and to prevent independent candidates from appropriating such party designations to their own individual use to the confusion of the voters and of all concerned in our elections.

I append, by way of illustration, substantially the text of the Massachusetts law, suggesting that it, or something like it, be tacked on to section 5 of our present law.

"If a candidate is nominated otherwise than by a political party, which at the preceding gubernatorial election polled for governor one per cent. of the entire vote cast for governor within the state, the name of a political party so polling one per cent. of such entire vote, shall not be used in the party or politi-

cal designation of such candidate, except and unless some other name or term is used to describe, restrict or modify the same.

ANOTHER SUGGESTION.

I am well assured that it is the opinion of several members of the Supreme Judicial Court, as also of many good lawyers, that the use of "stickers," to be obtained by the individual voter, and pasted upon the official ballot, as our present law apparently contemplates, is in direct conflict with the spirit of the law itself, because such use could, and doubtless in many instances would be made effective to obtain the very ends which the law is framed to prevent. The point is so evident that it seems to need no argument. It may be wise for the legislature to forestall trouble along this line, by the following changes:

In section 24, line 13, strike out the word "fill," and insert the words 'write or mark,' in place thereof.

In section 10, line 23, strike out the word "insert" and in lieu thereof insert the words 'write or mark.'

To make section 10 accurate, the word "after" in line 21, should be stricken out and the word 'under' should be inserted in its place.

See chapter 267, Public Laws of 1893, pages 310, 316.

Yet another suggestion seems necessary, regarding vacancies in the number of members elect of the House of Representatives. There have been two deaths and two resignations or refusals to accept a seat in the House this year, prior to the assembling of the legislature. A most unusual if not unheard of happening.

The present law requires in all cases, that nomination certificates and papers "shall be filed with the secretary of state at least thirty days, exclusive of Sundays, previous to the day of the election."

While this provision is necessary and exactly right, so far as the general election is concerned, it is not necessary nor wise when it relates to a special election held to fill a vacancy such as I have alluded to. Section 6 should be so amended as to provide that certificates of nomination and nomination papers of candidates nominated to fill vacancies caused by the death,

resignation or refusal to accept seat of a member-elect of the House of Representatives, or the death or resignation of a Representative, should be filed within, say ten days, or some such short period of time prior to the day of election.

The power of the Governor to appoint, in case of vacancies in public office, does not extend to Senators or Representatives to the legislature. Such vacancies must be filled, if filled at all, by special elections.

As to Senators, the constitution provides for an election by the legislature. As to Representatives the Statutes provide for a special election by the electoral or class district, and such an election being for the choice of a "state officer," is to that extent a "state election," and therefore falls within the provisions of the Australian ballot law.

In this connection three matters ought to be provided for

First—That the municipal officers of the oldest town in a class district, or the municipal officers of any unclassified city or town, should immediately notify the secretary of state of the date of any special election called for the purpose.

Second—That, in case of such special election, the check lists used at the preceding general election shall be used at such special election.

Third—That in cities no action of the board of registration of voters shall be necessary prior to such special election.

As to the first, see sections 30, 49, 50, of the Revised Statutes.

In submitting the foregoing, I desire to state that the execution of the ballot law has been one of my duties since its first adoption, and during all the elections held under it I have endeavored to understand its provisions, and to note what to me seem its defects as well as its advantages. I deem it my duty to impress, as strongly as I can, upon the minds of your honorable body that no change in form of ballot or method of marking ought to be even considered, much less adopted. If the Australian ballot system is to be retained, the present form of ballot and method of marking should be unchanged, not only for the sake of economy, but because the voters of the State are fast becoming acquainted with the present system, and a change,

besides increasing the expense, would unsettle the minds of the voters as to method of marking, and would produce more defective ballots than are now cast.

The number of defective ballots is steadily growing less under the present system, and will soon be reduced to a minimum.

There are but two states, I think, Connecticut and New Jersey, which now retain the envelope ballot system.

While many states have amended their Australian ballot laws from time to time, by the light of practice and experience, I do not know of any that have discarded the blanket form of ballot for the envelope form, and for this state to do so would, I believe, be a step backward.

I have the specimen ballots of some fourteen different states, and I think a comparison between our own and any of them will show at a glance that the official ballot of Maine is preferable to any, and that the system of marking, in use here, is the most simple and the easiest to be understood of any.

Respectfully submitted,

NICHOLAS FESSENDEN,

Secretary of State.

Augusta, Jan. 1, 1897.

STATE OF MAINE.

IN SENATE, January 12, 1897.

Read and laid upon the table to be printed, pending reference, on motion by Mr. CLASON of Kennebec.

KENDALL M. DUNBAR, *Secretary*.