

election conducted by the election officers herein provided for, and the ballots counted and return thereof made in the manner required by law for such offices, in so far as paper ballots are used.

1937, June 3, P.L. 1333, art. XI, § 1116.

Library References

Elections ¶163.
WESTLAW Topic No. 144.

C.J.S. Elections § 155.
P.L.E. Elections § 61.

Notes of Decisions

Commissioners' discretion 1
Discontinued use of machines 2

I. Commissioners' discretion

Considering overall benefits to be derived from use of properly authorized voting machines rather than paper ballots in primary election, county commissioners abused their discretion in deciding to substitute paper ballots, although there might be inconvenience in utilizing write-in slots on machines, and some difficulty in distinguishing male and female candidates. *Zaleski v. Kilgore*, 181 A.2d 293, 407 Pa. 524, 1962.

County commissioners must exercise their discretion in determining whether use of voting machine is possible or prac-

ticable in given situation. *Zaleski v. Kilgore*, 181 A.2d 293, 407 Pa. 524, 1962.

Court will not interfere with county commissioner's exercise of discretion as to whether voting machines can be used after Secretary of Commonwealth certified form and arrangement of ballots in them, except when bad faith, abuse of discretion, fraud, or violation of law appears. *Davidowitz v. Philadelphia County*, 187 A. 585, 324 Pa. 17, 1936.

2. Discontinued use of machines

Board of county commissioners acting as county election board is bound by legislative expression of conditions under which use of voting machine may be discontinued once they have been approved. *Zaleski v. Kilgore*, 181 A.2d 293, 407 Pa. 524, 1962.

§ 3017. Unofficial ballot labels; repair of machine, or use of paper ballots

(a) If ballot labels for an election district, at which a voting machine is to be used, shall not be delivered to the election officers as required by section 1209(b)(2) of this act,¹ the judge of election of such district shall cause other labels to be prepared, printed, or written, as nearly in the form of official ballot labels as practicable, and the election officers shall cause the labels, so substituted, to be used at the election, in the same manner, as near as may be, as the official labels. Such labels, so substituted, shall be known as unofficial ballot labels.

(b) If any voting machine being used in any election shall become out of order during such election, it shall, if possible, be repaired or another machine substituted by the custodian or county election board as promptly as possible, for which purpose the county board may purchase as many extra voting machines as they may deem necessary, but in case such repair or substitution cannot be made,

paper ballots, printed or written, and of any suitable form, may be used for the taking of votes.

1937, June 3, P.L. 1333, art. XI, § 1117.

1937 P.S. § 3049.

Library References

Elections ¶164, 222.
WESTLAW Topic No. 144.

C.J.S. Elections §§ 149, 203.
P.L.E. Elections §§ 61, 65.

§ 3018. Custody of voting machines and keys

(a) The county election board shall designate a person or persons who shall have the custody of the voting machines of the county, city, borough or township, and the keys therefor, when the machines are not in use at an election, and shall provide for his compensation and for the safe storage and care of the machines and keys.

(b) All voting machines, when not in use, shall be properly boxed or covered, and stored in a suitable place or places.

1937, June 3, P.L. 1333, art. XI, § 1118.

Library References

Elections ¶222.
WESTLAW Topic No. 144.

C.J.S. Elections § 203.
P.L.E. Elections § 65.

ARTICLE XI-A. ELECTRONIC VOTING SYSTEMS

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 3031.1. Definitions

As used in this article:

"Automatic tabulating equipment" means any apparatus which automatically examines and computes votes registered on paper ballots, ballot cards or district totals cards or votes registered electronically and which tabulates such votes.

"Ballot" means ballot cards or paper ballots upon which a voter registers or records his vote or the apparatus by which the voter registers his vote electronically and shall include any ballot envelope, paper or other material on which a vote is recorded for persons whose names do not appear on the ballot labels.

"Ballot card" means a card which is compatible with automatic tabulating equipment and on which votes may be registered.

"Ballot label" means the cards, papers, booklets, pages or other materials which contain the names of offices and candidates and the

statements of questions to be voted on and which are used in conjunction with the voting device.

"Counting center" means one or more locations selected by the county board of elections for the automatic tabulation of votes.

"Custodian" shall mean the person charged with the duty of testing and preparing voting devices and automatic tabulating equipment for elections and instructing election officials in the use of such voting devices and equipment.

"District totals cards" means a card or other data storage device which is compatible with automatic tabulating equipment and may be used in any voting system which provides for the initial computation and tabulation of votes at the district level to record the total number of votes cast for each candidate whose name appears on the ballot, the total number of write-in votes properly cast for each office on the ballot and the total number of votes cast for or against any question appearing on the ballot.

"Election" and "Elections" shall mean all general, municipal, primary and special elections.

"Electronic voting system" means a system in which one or more voting devices are used to permit the registering or recording of votes and in which such votes are computed and tabulated by automatic tabulating equipment. The system shall provide for a permanent physical record of each vote cast.

"Municipality" means a city, borough, incorporated town and township.

"Official ballot" means the list of offices and candidates and the statement of questions reflected on the voting device.

"Paper ballot" means a printed paper ballot which conforms in layout and format to the voting device in use.

"Public counter" shall mean a counter or other element which shall at all times publicly indicate how many ballots have been cast during the course of the election.

"Question" shall mean the statement of a constitutional amendment or other proposition which is submitted to a popular vote at any election.

"Voting booth" shall mean the enclosure occupied by the voter when voting.

"Voting device" means either an apparatus in which paper ballots or ballot cards are used in connection with an implement by which a voter registers his votes with ink or other substance or by punching, or an apparatus by which such votes are registered electronically, so

that in either case the votes so registered may be computed and tabulated by means of automatic tabulating equipment.

1937, June 3, P.L. 1333, art. XI-A, § 1101-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

§ 3031.2. Authorization of electronic voting systems for use at polling places

Any county or municipality may, by a majority vote of its qualified registered electors voting thereon cast at any primary or election, authorize and direct the use of an electronic voting system for registering or recording and computing the vote at all elections and primaries held at polling places in such county or municipality.

1937, June 3, P.L. 1333, art. XI-A, § 1102-A, added 1980, July 11, P.L. 600, No. 128, § 4, imd. effective.

§ 3031.3. Placing the question on the ballot; election thereon

(a) The county election board may, upon their own motion, submit to the qualified registered electors of the county or municipality, at any primary or election, the question "shall an electronic voting system be used at polling places in the (county or municipality) of?"

(b) The county election board, upon receipt of a request from the governing body of a municipality, said request being evidenced by the filing of a copy of a resolution certified by the secretary or clerk of the municipality, or upon the filing of a petition with them signed by qualified registered electors of the county or municipality, equal in number to at least ten (10) per centum of the total number of electors who voted in said county or municipality, at the preceding general or municipal election, but in no case less than fifty, shall, at the next primary or election, occurring at least sixty days thereafter, submit to the qualified registered electors of such county or municipality, the question "shall an electronic voting system be used at polling places in the (county or municipality) of?"

(c) The county board shall cause the said question to be submitted at the primary or election, in accordance with the provisions of this act relating to elections.

(d) The election on said question shall be held at the places, during the hours, and under the regulations, provided by law for holding primaries and elections, and shall be conducted by the election officers provided by law to conduct such elections. The election officers shall count the votes cast at the elections on said question, and shall make return thereof to the county election board of the county, as required by law. Said returns shall be computed by the county election board, or other return board, and, when so comput-

Research References

Treatises and Practice Aids

Standard Pennsylvania Practice § 136134, Appointment of Child Advocate; Qualifications.

Notes of Decisions

Validity 3

3. Validity

Amendments to Pennsylvania Constitution affecting criminal defendants' rights to confront witnesses and allowing General Assembly to enact laws regarding manner in which children could testify in criminal proceedings were not flawed because the General Assembly did not draft the ballot questions to approve the amendments; Constitution granted General Assembly authority to prescribe the manner in which constitutional amendments would be presented to the electorate, and Assembly in the Election

Code directed that the Secretary of State would compose ballot questions. *Bergdoll v. Com.*, 855 A.2d 185, Civ. App. 2006, affirmed 874 A.2d 1148, 583 Pa. 44. Constitutional Law ¶ 9(1)

1. Arrangement of names and labels

Gilhood v. Chairman and Com'rs, Philadelphia County Bd. of Elections, E.D.Pa.1969, 306 F.Supp. 1202, [main volume] affirmed 90 S.Ct. 996, 397 U.S. 147, 25 L.Ed.2d 182.

3. Party levers

Gilhood v. Chairman and Com'rs, Philadelphia County Bd. of Elections, E.D.Pa.1969, 306 F.Supp. 1202, [main volume] affirmed 90 S.Ct. 996, 397 U.S. 147, 25 L.Ed.2d 182.

ARTICLE XI-A. ELECTRONIC VOTING SYSTEMS

§ 3031.1. Definitions

Notes of Decisions

Electronic tabulation 1

1. Electronic tabulation

County board of elections should have programmed automatic tabulating equipment to reg-

ister votes for township supervisor, even though no names were printed on paper ballot. *Dayhoff v. Weaver*, 808 A.2d 1002, Civ. App. 2002, appeal denied 819 A.2d 548, 572 Pa. 767. Elections ¶ 241

§ 3031.3. Placing the question on the ballot; election thereon

(a) The county election board may, upon their own motion, submit to the qualified registered electors of the county or municipality, at any primary or election, the question "shall an electronic voting system be used at polling places in the (county or municipality) of . . . ?"

(b) The county election board, upon receipt of a request from the governing body of a municipality, said request being evidenced by the filing of a copy of a resolution certified by the secretary or clerk of the municipality, or upon the filing of a petition with them signed by qualified registered electors of the county or municipality, equal in number to at least ten (10) per centum of the total number of electors who voted in said county or municipality, at the preceding general or municipal election, but in no case less than fifty, shall, at the next primary or election, occurring at least sixty days thereafter, submit to the qualified registered electors of such county or municipality, the question "shall an electronic voting system be used at polling places in the (county or municipality) of . . . ?"

(c) The county board shall cause the said question to be submitted at the primary or election, in accordance with the provisions of this act relating to elections.

(d) The election on said question shall be held at the places, during the hours, and under the regulations, provided by law for holding primaries and elections, and shall be conducted by the election officers provided by law to conduct such elections. The election officers shall count the votes cast at the elections on said question, and shall make return thereof to the county election board of the county, as required by law. Said returns shall be computed by the county election board, or other return board, and,