

# STATUTES

OF THE

## TERRITORY OF WASHINGTON:

BEING THE CODE PASSED BY THE

### LEGISLATIVE ASSEMBLY,

AT THEIR FIRST SESSION BEGUN AND HELD AT  
OLYMPIA, FEBRUARY 27<sup>TH</sup>, 1854.

ALSO. CONTAINING

THE DECLARATION OF INDEPENDENCE, THE CONSTITUTION OF  
THE UNITED STATES, THE ORGANIC ACT OF WASHING-  
TON TERRITORY. THE DONATION LAWS, &C. &C.

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**PUBLISHED BY AUTHORITY.**  
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1855.

# STATUTES

OF THE

## TERRITORY OF WASHINGTON.

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### AN ACT

RELATING TO ELECTIONS AND THE MODE OF SUPPLYING VACANCIES.

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SEC. 1. *Be it enacted by the council and house of representatives of the territory of Washington,* That all white male inhabitants over the age of twenty-one years, who shall have resided within this territory for three months next preceding an election, shall be entitled to vote at any election for delegate to congress, and for territorial, district, county and precinct officers: *Provided,* That they shall be citizens of the United States, or shall have declared, on oath, their intentions to become such, and shall have resided three months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election: *Provided,* That nothing in this act shall be so construed as to prevent all such American half-breed Indians, as the judges of election shall determine have adopted the habits and customs of civilization, from voting.

SEC. 2. No person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election.

## GENERAL ELECTIONS.

SEC. 3. A general election shall be held in the several election precincts in this territory, on the first Monday of September in each year, at which there shall be chosen all such officers as are by law to be elected in such year, unless otherwise provided for.

SEC. 4. It shall be the duty of the county commissioners, at their regular session in April preceding the general election, to appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at each election precinct, and said commissioners shall also set off and establish election precincts or districts when it may be necessary; and the clerk of said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice thereof in writing, directed to the judges so appointed; and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notices, to serve the same upon each of the said judges of the election. If in any precinct any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election, to serve at such election.

SEC. 5. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held at their respective precincts, until other judges shall be appointed, as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall from time to time fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

SEC. 6. The clerks of the several boards of county commissioners shall, at least thirty days before any general election, and at least fifteen days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be as nearly as circumstances will admit, as follows:—Notice is hereby given, that on the first Monday, the — day of September next, at the house of ———, in the town, district, or precinct of ———, in the county of ———, an election will be held for territorial, county, town, or district officers, (naming the offices to be filled, as the case may be,) which election will be opened at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this — day of ———, A. D. ———, (as the case may be.)

(Signed,) A. B., clerk of the board of county commissioners.

SEC. 7. The sheriff aforesaid, to whom such notices shall be delivered, as aforesaid, shall put up in three of the most public places in each town or precinct, the notices referring to such town or precinct, at least fifteen days previous to the time of holding any general election, and at least eight days previous to the time of holding any special election; and in cases where towns and precincts may be set off by law as election precincts, said notices shall be posted as follows:—one at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

SEC. 8. Previous to votes being taken, the judges and clerks of the elections shall severally take an oath, in the following form, to wit: I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will perform the duties of judge of the election, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

SEC. 9. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other and to the clerk of the election, and the person administering the oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

SEC. 10. At all elections to be held under this chapter, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour; but the board may in their discretion adjourn the polls at twelve o'clock at noon, for one hour, proclamation of the same being made.

SEC. 11. It shall be the duty of the clerks of the several boards of county commissioners to furnish the sheriff with two poll books, who shall deliver the same to one of the judges of every election precinct in the county, at least five days before the time of holding any election.

SEC. 12. Every elector shall in full view, deliver to one of the judges of the election a single ballot or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill; said ballot may be open or folded, as the voter may choose.

SEC. 13. The judge to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elec-

ter; and if no objection be made to him, and the judges be satisfied that the elector is legally entitled to vote, he shall immediately put the ticket in the box, without inspecting the names thereon, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number in the poll book.

SEC. 14. It shall be lawful for any elector to vote for delegate to congress, at any place of holding an election within this territory; for members of the legislative assembly, and all other officers, at any place for holding elections within the particular limits for which such members of the legislative assembly, and such other officers, are to be elected: *Provided*, That an elector qualified to vote for a part, and not all, of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

SEC. 15. If any person offering to vote shall be challenged, as unqualified, by any judge or clerk of the election, or by any other person entitled to vote at the same poll, and either judge may challenge any person offering to vote whom he shall know or suspect not to be qualified, the judges shall declare to the person so challenged the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear, (or affirm, as the case may be,) that you are qualified according to the law regulating elections in this territory, to vote for the person (or persons, as the case may be,) for whom you now propose to vote;" and if any person so challenged shall take such oath, his vote shall be received.

SEC. 16. There shall be provided and kept by the judges of each election precinct, (at the expense of the county,) a suitable ballot box, with a lock and key.

SEC. 17. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purpose hereinafter mentioned.

SEC. 18. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

SEC. 19. The ballot box shall then be opened and the poll books placed therein; and such box shall then be locked, and a covering with a seal

placed on the opening in the lid of such box, so to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

SEC. 20. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the persons having the care of the box shall carefully keep it, without opening it or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition, deliver to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll books taken out, and the box again locked.

SEC. 21. For the preservation of order, the judges are hereby authorized to enforce a fine, not exceeding ten dollars, on any person or persons who shall conduct in disorderly or riotous manner at the polls, and shall persist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county, for any time not exceeding twenty-four hours, or until the fine shall be paid; and the constables, sheriffs, deputy sheriffs, and jailors, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no constable, sheriff, or deputy be present, the judges may appoint a special constable or constables to execute their orders.

#### CANVASSING BY THE JUDGES.

SEC. 22. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and continue without adjournment until completed.

SEC. 23. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, on a comparison of the count with the poll lists, and the appearance of such ballots, a majority of the judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be rejected.

SEC. 24. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw

out and destroy therefrom so many ballots, unopened, as shall be equal to such excess.

SEC. 25. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made as nearly as circumstances will admit, in the following form, to wit:

At an election held at the house of A. B., in the town, district, or precinct of ———, in the county of ———, and territory of Washington, on the — day of ———, A. D. ———, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A. B. had ——— votes for delegate to congress;

C. D. had ——— votes for member of the legislative council;

E. F. had ——— votes for member of the house of representatives; (and in like manner for any other persons voted for.)

Certified by us, G. H., J. K., L. M., judges of election. Attest, A. B., C. D., clerks of election.

SEC. 26. The judges of election shall then enclose and seal one of the poll books under cover, directed to the clerk of the board of county commissioners of the county in which such election was held; and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot, if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll book, together with the ballot box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said poll book shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.

SEC. 27. If any person, after being deputed by the judges of election to carry the poll book of such election to the clerk of the county, shall fail or neglect to deliver such poll book to the said clerk within the time prescribed by law, save with the seals unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered by a civil action, in the name of the county commissioners, in the district court.



## OF THE CANVASS BY THE CLERK OF THE BOARD OF COUNTY COMMISSIONERS.

SEC. 28. On the tenth day after the close of any election, or sooner, if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, or any two county officers, shall proceed to open said returns, and make abstracts of the votes; such abstract of votes for delegate to congress shall be on one sheet; the abstract of the votes for members of the legislative assembly shall be on one sheet, and the abstract of the votes for district and territorial officers on one sheet; and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of said clerk of county commissioners immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the legislative assembly, county, and precinct officers respectively, and to deliver such certificate to the person entitled to it, on his making application to the clerk at his office: *Provided*, That when a tie shall exist between two or more persons for the council or house of representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

SEC. 29. If the requisite number of county or precinct officers shall not be elected, by reason of two or more persons having an equal and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes, shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected, a certificate of his election, as hereinbefore provided.

SEC. 30. The clerk of the board of county commissioners, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts and transmit it by mail to the secretary of the territory at the seat of government, and it shall be the duty of the secretary of the territory with the marshal of the territory or his deputy, in presence of the governor, to proceed within thirty days, after the elec-

tion, and sooner if the returns be all received, to canvass the votes given for delegate to congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.

SEC. 31. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory, within twenty days after the election, the said secretary may forthwith send a messenger to the clerk of the board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid out of the county treasury of the said county, the sum of thirty cents for each mile he shall necessarily travel in going to and returning from said county.

SEC. 32. Any person who shall receive a certificate of his election as a member of the council, or house of representatives, of the legislative assembly, coroner or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office, and when any vacancy shall happen in the office of member of the council, or house of representatives, by death, resignation or otherwise, and a session of the legislature is to take place before the next annual election, the governor shall issue a writ of election, directed to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district, to hold a special election to fill such vacancy, or vacancies, at a time appointed by the governor. If a vacancy happen in the office of sheriff, the county commissioners shall appoint some one to fill such vacancy until the next election; and when a vacancy shall happen in the office of delegate to congress from this territory it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy.

SEC. 33. When two or more counties are united in one council or representative district, or for the election of any officer, the clerk of the board of county commissioners of the county or counties last established, shall on the twentieth day after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of the senior county, and together with him, shall canvass the votes according to law and the certificate of election shall be signed by such clerks, and be delivered to the proper persons at the office of the clerk of the senior county; and for the purposes of this act, the county first created, shall be deemed the senior county, and when all the counties were created by the same act the

county first named therein, shall be deemed the senior county. *Provided,* That where a tie shall exist between two or more persons for the council or house of representatives, or district officers, in any district, it shall be the duty of the clerks of the boards of county commissioners to agree upon a day of election, and shall forthwith give notice to the sheriffs of their respective counties, who shall immediately advertise another election, giving at least ten day's notice thereof.

Sec. 34. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, three dollars per diem, and to the person carrying the poll-books from the place of election to the clerk's office, and to the clerks of the board of county commissioners for attending at another county to canvass votes, the sum of thirty cents per mile, for going and returning, to be paid out of the county treasury.

Sec. 35. If any judge, or clerk of election, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county, a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action in the name of the county commissioners of the proper county, for the use of common schools in said county.

Sec. 36. The term of office of all officers elected, shall begin from the time of their election, unless some other express provision is made by law.

Sec. 37. In all elections, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected.

Sec. 38. In counting votes, the judges of election shall disregard misspelling or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended.

OF THE MANNER OF CONTESTING THE ELECTION OF COUNTY, TOWN, DISTRICT AND  
PRECINCT OFFICERS.

Sec. 39. All contests for county and precinct officers shall be tried in the proper county, and whenever any elector shall wish to contest such election, he shall file with the clerk of the board of commissioners of the county, within ten days after such person shall have been declared elected, a statement in writing, specifying the grounds of contest, verified by affidavit, and such clerk shall forthwith issue a notice to the board of county commissioners, to meet at the county seat, at a designated time, not less than ten nor more than twenty days thereafter, to try such contested election; and he shall issue to the contestee a notice to appear at the time and place specified in the notice to the board of county commissioners, which notice, with a copy of such statement, shall be delivered to the

2. Vacancies, how they shall occur.
3. Governor to declare certain offices vacant.
4. Governor to supply certain vacancies.
5. Vacancy in county or precinct officers—county commissioners to appoint.
6. Persons supplying vacancies to qualify in the same manner as their predecessors.
7. Act when to take effect.

SEC. 1. Resignations shall be made as follows :

1. By the territorial officers and by all officers elected by the legislature, to the governor ;
2. By all county officers, to the county commissioners in their respective counties ;
3. By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

#### VACANCIES.

SEC. 2. Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office :

1. The death of the incumbent ;
2. His resignation ;
3. His removal ;
4. His ceasing to be an inhabitant of the district, county, town, or village for which he shall have been elected or appointed, or within which the duties of his office are to be discharged ;
5. His conviction of any infamous crime, or of any offence involving a violation of his official oath ;
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law ;
7. The decision of a competent tribunal declaring void his election or appointment.

SEC. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

#### SUPPLYING VACANCIES.

SEC. 4. Whenever a vacancy shall occur during the recess of the legislature in any office which the legislature are authorized to fill by election, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

SEC. 5. When at any time there shall be in either of the county or precinct offices, no officer duly authorized to execute the duties thereof,

some suitable person may be appointed by the county commissioners to perform the duties of either of said offices : *Provided*, That in case there is no board of county commissioners, the governor may, on notice of such vacancy, create or fill such board.

SEC. 6. Every such person so appointed, in pursuance of either of the last two preceding sections, shall before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place they shall be appointed; and they shall continue to exercise and perform the duties of the office to which they shall be so appointed, until such vacancy shall be regularly supplied as provided by law.

SEC. 7. This act shall be in force and take effect from its passage.

AN ACT RELATIVE TO CRIMES AND PUNISHMENTS, AND PROCEEDINGS  
IN CRIMINAL CASES.

- I. *Of the rights of persons accused of crimes and offenses.*
- II. *Of offenses against the lives and persons of individuals.*
- III. *Of offenses against property.*
- IV. *Of offenses against public peace.*
- V. *Of offenses against public justice, and by and against public officers.*
- VI. *Of offenses against public policy.*
- VII. *Of offenses against morality and decency.*
- VII. *Of offenses against public health.*
- IX. *Of principals and accessories.*
- X. *General provisions relative to crimes and punishments.*

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- 2. Rights of the accused on trial, to face witnesses, &c.
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  - 4. No person to be tried the second time for the same offense.
  - 5. When a second trial for the same offense may be had.
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