

# Michigan Law Review

---

Volume 15 | Issue 1

---

1916

## Direct Primary Legislation in Michigan

Arthur C. Millspaugh  
*Whitman College*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Election Law Commons](#), [Law and Politics Commons](#), [Legislation Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Arthur C. Millspaugh, *Direct Primary Legislation in Michigan*, 15 MICH. L. REV. 21 (1916).  
Available at: <https://repository.law.umich.edu/mlr/vol15/iss1/3>

This Article is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## DIRECT PRIMARY LEGISLATION IN MICHIGAN.

THE first local direct nomination law in Michigan was passed in 1901; the first general law in 1905. The public opinion, however, which looked to the abolition of the convention system of nomination, rather than to its legal regulation, had its inception as early as 1894. The unusually objectionable primaries of that year led to a pronounced but unorganized agitation for reform, in the course of which a few of the most radical proposed to abolish absolutely all conventions.<sup>1</sup> The legislature of 1895 contented itself, however, with attempting the regulation of primaries and conventions, leaving most of the nominating machinery in the control of the party organization. Nevertheless, as early as 1896, the Republicans of Battle Creek decided in mass-meeting to do away with the city convention and to nominate city officers directly in the ward primaries.<sup>2</sup>

### *Early Attempts.*

With the election of Hazen S. Pingree to the governorship in 1896, the movement for direct nominations entered the stage of legislative debate. In his first message Governor Pingree gave marked emphasis to the direct nomination issue.<sup>3</sup> In this session several bills were drafted and introduced but none were passed.<sup>4</sup> Members of the legislature from Detroit appeared most active in attempting to secure the enactment of a direct nomination law. In 1898—especially in Detroit<sup>5</sup>—public opinion was crystallizing. For the first time direct nominations were discussed by the Michigan Political Science Association which had been organized in 1893.<sup>6</sup> In his message in 1899 Governor Pingree urged the passing of a law which should apply “to all candidates for each elective office, from governor down to township and ward officers.”<sup>7</sup> Representative Colby of Wayne introduced five direct nomination bills: two general and three to apply only to Wayne County,<sup>8</sup> but the only result of the session was the amending of the acts of 1887 and 1895.<sup>9</sup> The opposi-

<sup>1</sup> Detroit Tribune, Nov. 10, 11, 12, 13, 14, 1894; Detroit Free Press, Nov. 16, 1894.

<sup>2</sup> Ibid., Mar. 14, 1896.

<sup>3</sup> Detroit Tribune, Jan. 8, 1897.

<sup>4</sup> Detroit Tribune, Jan 8, Feb. 20, Mar. 2, 6, 1897; House Journal, 1897, pp. 103, 571, 638, 643, 662, 717, 762; Senate Journal, 1897, pp. 210, 206, 366.

<sup>5</sup> Grand Rapids Herald, Nov. 9, 1898; Detroit Tribune, Oct. 6, Nov. 3, 12, 24, 26, 1898.

<sup>6</sup> Ibid., Nov. 20, 1898.

<sup>7</sup> Detroit Free Press, Jan. 6, 1899

<sup>8</sup> House Journal, 1899, pp. 217, 591, 520, 521.

<sup>9</sup> These acts related to the conduct of primaries and conventions.

tion argument most frequently heard was that the direct primary would destroy the party organization and would give to the cities a monopoly of the nominations at the expense of the country districts.<sup>10</sup> In this session, however, the majority of the farmers in the legislature which opposed direct nominations was not significantly large,<sup>11</sup> and was probably due more to the native conservatism of the farmer than to a feeling that the legislation would be contrary to his class interests.

The corrupt gubernatorial campaign of 1900 greatly strengthened the sentiment for direct nominations, and in Wayne County a majority of the Republican senatorial and legislative conventions and candidates endorsed the direct nomination principle.<sup>12</sup> In his address in 1901 at the close of his term Governor Pingree dwelt at length on the need for direct nominations; but the incoming executive made no recommendation on the subject.<sup>13</sup> There was no dearth of bills, however; and the most important ones passed the lower house, being opposed by some of the agricultural members, by office-holders, and by "machine" politicians in general, some of whom expressed the fear that direct nominations would "bring Pingree back."<sup>14</sup> In addition to the arguments used in the previous session, it was now contended that the direct primary would be too expensive, that it would facilitate manipulation,<sup>15</sup> that it would unduly increase the power of the newspapers, and that the farmers would not attend the primary elections.<sup>16</sup> The session resulted in the enactment of three laws affecting party organizations: a law supposed to have been passed at machine dictation abolishing "off-year" elections in Detroit and merging the city with the general elections;<sup>17</sup> a law regulating convention procedure in Kent County,<sup>18</sup> and a law providing for direct nominations in the city of Grand Rapids,<sup>19</sup> which, after a trial in the March primaries, was superseded by a more detailed law passed during the same session of the legislature.<sup>20</sup> These

<sup>10</sup> Detroit Free Press, Feb. 18, 1899; Detroit Journal, Feb. 11, 1899.

<sup>11</sup> On one vote in the House, 19 of the 39 farmers voting favored the bill. House Journal, 1899, p. 1070. In the Senate, two of the six farmers voting favored the bill. Senate Journal, 1899, p. 1288.

<sup>12</sup> Detroit Tribune, Feb. 8, Mar. 26, 1901.

<sup>13</sup> House Journal, 1901, pp. 29, 30.

<sup>14</sup> Detroit Tribune, Jan. 19, 23, Feb. 10, Mar. 22, 1901.

<sup>15</sup> Ibid., files for Feb., 1901.

<sup>16</sup> Ibid., Feb. 8, 1901.

<sup>17</sup> Local Acts, 1901, No. 437.

<sup>18</sup> Ibid., No. 389.

<sup>19</sup> Ibid., No. 292.

<sup>20</sup> Ibid., No. 471.

local acts for Grand Rapids, which in their main provisions were identical, provided: that primary elections in that city should be controlled by the general election officials and in details not specifically covered by these special acts should be governed by the general election laws; that in the direct primary should be nominated all candidates for elective city offices, judges, representatives and senators in the state legislature, and all other elective officers chosen in the city except elected members of school boards; that the primary should be held on the third Tuesday preceding the general fall election and on the third Tuesday preceding the city election; that to secure a place on the primary ballot candidates should file a personal affidavit and pay a fee which for the principal offices amounted to fifteen dollars; that separate ballots uniform in size and color should be printed for the different parties; that the voter should state his party affiliation when he received his ballot; and that the candidates nominated at the primary should select the chairman and secretary of the city and legislative campaign committees. The acts also made provision for the nomination of independent candidates by mass conventions.

In 1902 the popular demand for the direct primary became more general and more insistent. Democratic and Republican conventions alike endorsed it and conventions in rural as well as in urban counties favored it.<sup>21</sup> It was the chief issue in the Republican pre-convention canvass and in the campaign.<sup>22</sup> The renomination and re-election of one who had been characterized as a "barrel" candidate and a "machine" governor served to intensify the demand for legislative action. Some county committees voluntarily tried the direct nomination plan. In Wayne County the chairman of the Republican county committee, advised by leading Republicans, worked out the details of a plan which was adopted by three of the four senatorial committees. It was put into operation October 17, but, due to the lack of legal safeguards, failed to give general satisfaction.<sup>23</sup> In Washtenaw County the chairman of the Republican county committee instituted a direct primary which was less successful than the one in Wayne County, owing in this case to the refusal of the "anti-Judson" Republicans to participate and to the fact that the regular nominating convention was held as usual after the primary election.<sup>24</sup>

---

<sup>21</sup> Detroit Tribune, May 21, June 11, July 26, 1902.

<sup>22</sup> Ibid., May 29, June 22, 24, Aug. 1, 1902.

<sup>23</sup> Ibid., June 4, 27, Sept. 11, 17, Oct. 5, 17, 18, 20, 1902.

<sup>24</sup> Ibid., Aug. 1, 1902. Letter from former County Chairman Green, Sept. 15, 1915.

*Further Local Legislation.*

Governor Bliss in his message to the legislature in 1903 recommended a "satisfactory primary election law."<sup>25</sup> The opposition of the farmers, from the first probably nursed and exaggerated by the politicians, had now apparently disappeared. The State Grange and the State Association of Farmers' Clubs declared for direct primaries.<sup>26</sup> At a referendum election the people of Kent County outside of the city of Grand Rapids voted for the application of the system to the whole county.<sup>27</sup> In addition to the familiar objections already mentioned it was argued, in opposition to the bill that came nearest to enactment, that the fixing of registration and the primary election on the same day would encourage "colonization," that the bill aimed at the destruction of the minority party, and that the convention system was necessary for the adoption of party platforms.<sup>28</sup> The most persistent objection was that the direct primary would hurt the "organization."<sup>29</sup> The upper peninsula members based their opposition on the supposed difficulty under direct primaries of apportioning nominations equitably among the various nationalities.<sup>30</sup> The result of this legislative session was the passing of three local acts: a new one for Kent County, one for Wayne County, and one for Muskegon County.<sup>31</sup>

*General Legislation.*

In the gubernatorial campaign of 1904 the question of the adoption of the direct primary was still the most pressing issue. Public opinion seemed unanimous in demanding the new nominating method.<sup>32</sup> Endorsements came from the League of Michigan Municipalities, the Michigan Political Science Association, the State Association of Farmers' Clubs, the State Grange, and the State Convention of Frémont Voters.<sup>33</sup> The State League of Republican Clubs, representing the younger element of the party, was active in creating direct primary sentiment.<sup>34</sup> Both the Republican city and county

<sup>25</sup> Detroit Tribune, Jan. 9, 1903.

<sup>26</sup> Ibid., Jan. 30, Feb. 19, 1903.

<sup>27</sup> The majority in the county was about 8,000. Grand Rapids Herald, Apr. 21, 1903. The vote in the city of Grand Rapids was: for, 8,008; against, 2,134. Ibid., Apr. 7, 1903.

<sup>28</sup> Detroit Tribune, Apr. 9, 1903.

<sup>29</sup> Ibid., Feb. 22, 1903.

<sup>30</sup> Ibid., Mar. 8, Apr. 3, 1902; Jan. 20, Feb. 26, 1903.

<sup>31</sup> Local Acts, 1903, Nos. 326, 502, 291.

<sup>32</sup> R. W. Butterfield, "Direct Primaries in Kent County," in Michigan Political Science Association Papers, (1905,) p. 9.

<sup>33</sup> Detroit Tribune, Feb. 11, Apr. 2, May 19, Nov. 2, 1904.

<sup>34</sup> Ibid., Mar. 24, 1904; Grand Rapids Herald, Feb. 22, May 18, 1904.

committees in Wayne County favored the new system.<sup>35</sup> The opposition of conservative Republicans and "machine" leaders was now centered chiefly on the application of the direct nomination principle to general state offices; but they insisted that, even in the counties and districts, the proposition should be subject to party referenda. This was the position taken by the two Republican state conventions<sup>36</sup> and by the Republican nominee for governor.<sup>37</sup> In the First Congressional District, which was co-extensive with Wayne County, the Republican congressional district committee voluntarily adopted a direct primary plan for the selection of delegates and alternates to the national convention; and anti-"machine" delegates were chosen by large majorities.<sup>38</sup> The Wayne County Republican committee decided to do away with the county convention and vote directly for delegates to the state nominating convention.<sup>39</sup> In Alpena County the Republican county convention voluntarily adopted by a vote of sixty-one to five the direct nomination system for all county officers, county committees, and delegates to all conventions.<sup>40</sup> The Democrats declared for general direct primary legislation, and, on this issue, their candidate for governor polled an unusually large vote. Unmistakable indications of the strength of the public demand convinced the Republicans that a general direct primary law of some sort must be enacted. "Machine" leaders and members from the upper peninsula directed their efforts, not to defeat the legislation, but to make minimum concessions and to render the system difficult to put into operation. The act which finally emerged with the governor's signature is a curious sample of a state legislature's handiwork, and there is reason for believing that the law was deliberately framed so that it would not work.

This law<sup>41</sup> applied to no elective state administrative officers except governor and lieutenant-governor, and left the adoption of direct nominations optional with the parties, providing that a separate referendum election should be held in each city, county, legislative district, and congressional district, following the circulation of independent petitions for the election in each of these subdivisions. Furthermore, in the referendum elections and in the subsequent primary elections, only enrolled members of any party could

---

<sup>35</sup> Detroit Tribune, Feb. 11, Apr. 2, May 19, Nov. 2, 1904.

<sup>36</sup> Ibid., May 19, July 1, 1904.

<sup>37</sup> Ibid., Feb. 10, 11, 1904.

<sup>38</sup> Ibid., May 10, 12, 17, 19, 1904.

<sup>39</sup> Ibid., May 29, June 10, 22, 1904.

<sup>40</sup> Ibid., June 19, 1904.

<sup>41</sup> Public Acts, 1905, No. 181.

vote. Voters might enroll at the April election, but enrollment was purely voluntary. The referendum election was to take place on the petition of twenty per cent of the party vote for governor in the last election. It is apparent that twenty per cent of the party vote in the November election represented a larger number than twenty per cent of the enrolled vote; for the vote in the April election is much less than in the November election and not all those voting would enroll. It is true that the important question of nominating candidates for governor and lieutenant-governor was to be submitted to each party without previous petitioning, but on the adoption of the proposition only enrolled party members could vote. To resubmit the question of the direct nomination of governor and lieutenant-governor petitions signed by only twenty per cent of the enrolled party members were required, a more lenient requirement than that for the original submission of the proposition. The law provided, moreover, that in order to be nominated at all a candidate for governor must have received forty per cent of the votes cast at the primary election. Otherwise, the nomination was to be made in convention.

The law provided for the nomination of candidates for city and county offices, for members of the legislature and of Congress, and for governor and lieutenant-governor. Primary elections were to occur on three dates: for city officers on the second Tuesday preceding the city election; for delegates to conventions on the second Tuesday in June; and for nominations on the first Tuesday in September. Two opportunities were allowed for enrollment: on the first Monday in April and on primary election day for those previously unable to enroll, but there was no provision for the enrollment of independents. Each party was to have a separate ballot. Candidates in the primary were required to file petitions signed by enrolled voters equal in number to two per cent of the party vote for governor, and no fees were exacted. The voter was expected to write in on the ballot the names of delegates to conventions. Any elector "legally qualified and enrolled" might vote in the primary, but he must ask for his party ticket and if challenged swear to his party affiliation. The law made no provision for the election of committees, but provided that all county conventions of any party should be held on a day to be designated by the state central committee and to be within seven days after the primary election. The state convention was to be within sixty days after the primary election, the date and place to be fixed by the state central committee. The law provided for the nomination of candidates of new parties, their

petitions to be signed by "electors" equal in number to one per cent of the total vote for governor in the last election.

The same legislature passed a local act for Alpena County, which contained some features at variance with the public act. The Alpena act<sup>42</sup> provided for the direct nomination of all candidates except those for school district and possibly village offices, for the election and almost complete organization of the city and county committees and for the filing of petitions not only by candidates for office but by delegates to conventions. The chief innovation, however, was the provision that candidates for the principal county and city offices must receive at least twenty-five per cent of all votes cast at the primary, and if no candidate for nomination to a particular office received the required percentage a second primary should be held a week later at which the two leading candidates in the first primary should again be voted for.

Repealing the Wayne County act of 1903, the legislature passed another<sup>43</sup> which provided for the election of ward, city, and county committees, a choice by the candidate between the payment of a fee and the filing of a petition, a separate ballot for each party, challenges on the ground of party affiliation, a change in the date of the primary election, and the holding of the fall primary on three consecutive days in presidential years and on two days in other years, nominations by new parties or non-partisan organizations, and the legalization of the mass convention as an alternative method of nomination for old and new parties alike.

The legislature of 1905 also amended the Kent and Muskegon acts so as to abolish the fee system which had been declared unconstitutional by the state supreme court.<sup>44</sup>

The referenda on direct nominations in 1905 were overwhelmingly favorable in both parties. Of 55,960 Republicans who voted, 46,447 favored the new method. Of 15,022 Democrats, only 2,070 voted in the negative. There was an unfavorable majority in only two of the eighty-three counties, Cass and Tuscola.<sup>45</sup> In Kent County, where direct primaries had been tried longest, ninety-six per cent of the Republicans and ninety-seven per cent of the Democrats voted for the local application of the law. The majorities in

---

<sup>42</sup> Local Acts, 1905, Nos. 476, 620.

<sup>43</sup> *Ibid.*, No. 345.

<sup>44</sup> *Ibid.*, Nos. 340, 341. *Dapper v. Smith*, 138 Mich. 104 (1904). The legislature also passed an act providing for the direct nomination of circuit judge in the fourteenth judicial circuit. Local Acts, 1905, No. 341.

<sup>45</sup> It will be recalled that the latter county was controlled at the time by "Tip" Atwood. *Detroit Free Press*, June 13, 1906.



the upper peninsula were large, although less than in the lower peninsula.<sup>46</sup>

In his messages to the legislature in 1907 Governor Warner recommended amending the primary law to make it less expensive to the candidates and to the public, to provide for one primary day for both delegates and candidates, to add party enrollment to the various local acts, and to regulate the use of money in the primaries. He also urged the enactment of a corrupt practice law and an act providing for publicity of primary expenditures.<sup>47</sup> The legislature passed a general act<sup>48</sup> which repealed the law of 1905 except as to the provisions for party enrollment. This act left the adoption of direct primaries optional with the parties and localities in the case of district, county, and city offices; but in addition to the mandatory provisions for the nomination of candidates for governor and lieutenant-governor, made similar provision for candidates for United States senator. This law afforded an opportunity for the enrollment of independents, for a change of party affiliation, and for nominations by new parties. It made the vote for the candidate for secretary of state a measure of party strength, and introduced into the primary the non-fusion provisions of the general election laws.<sup>49</sup> The first Tuesday in September became the date of the primary both for candidates and for delegates and, accordingly, the county and state conventions were to be held after that date. The legislature in this session passed ten local acts,<sup>50</sup> the most important of these amending the already radical Alpena act so as to make possible in that county the direct nomination of all candidates including those for school district and village offices.<sup>51</sup>

Up to January, 1909, direct primaries had been adopted in the following subdivisions:<sup>52</sup>

	REP.	DEM.	PROHIB.	SOC.	SOC. LABOR
Congressional districts	10	1	2	1	1
Senatorial districts	19	8	8	7	7
Representative districts	56	16	9	9	9
Counties	58	17	5	5	5

<sup>46</sup> *Ibid.*, June 23, 1906.

<sup>47</sup> *Ibid.*, Jan. 4, Apr. 24, 1907.

<sup>48</sup> Public Acts, Extra Session, 1907, No. 4.

<sup>49</sup> Providing that no name could appear in more than one party column on the official ballot.

<sup>50</sup> Local Acts, 1907, Nos. 353, 370, 483, 601, 693, 712, 728, 740, 752, 754.

<sup>51</sup> *Ibid.*, No. 754.

<sup>52</sup> House Journal, 1909, p. 43.

Various local acts were in force; and, in practice, the nominating system showed need of simplification, unification, and additional safeguards as to the use of money.<sup>53</sup> In 1909, therefore, the legislature in a more scientific and less reluctant spirit enacted a law<sup>54</sup> which repealed the law of 1907 and all contravening local laws and made detailed and careful provisions for nominations and party organizations throughout the state. It prescribed that direct nominations should apply without a previous referendum vote to the offices of governor, lieutenant-governor, United States senator, representative in Congress, representatives and senators in the state legislature, city officers in Detroit and Grand Rapids, and officers in all counties and cities already having direct nominations, but in other counties and cities and in judicial circuits its adoption was optional. It abandoned the forty per cent provision. Finally, it made elaborate provision for the constitution of district committees and contained stringent corrupt practice provisions. This law, with certain amendments, is still in force.

In the referendum elections of 1910 Saginaw was the only county of the thirty-three voting which rejected direct primaries.<sup>55</sup>

#### *Legislation Since 1909.*

In the session of 1911 the legislature<sup>56</sup> changed the date of the fall primary from the first Tuesday after the first Monday in September to the last Tuesday in August and set the date of the spring primary on the first Wednesday in March. It made mandatory the direct nomination of all officers except city officers in cities of less than 70,000, and made possible the direct nomination of school officers. It expressly provided that independents should not be enrolled. It changed the date of the state conventions and made some changes in the method of selecting committees. Most interesting, however, was the legislative attempt to encourage Democrats to vote in their own primaries, by providing that, if a party failed to poll in the primary fifteen per cent of the party vote for secretary of state in the last preceding election, none of its candidates should be allowed places on the official ballot. The constitutionality of this clause was attacked; but was upheld by the state supreme court, the court declaring that the test "did not destroy the right of franchise because the voter may write the names on the ballot. It may render his vot-

---

<sup>53</sup> Detroit Free Press, Jan. 8, 1909.

<sup>54</sup> Public Acts, 1909, No. 281.

<sup>55</sup> Detroit News, July 8, 1910; Michigan Manual, 1911, p. 411.

<sup>56</sup> Public Acts, 1911, Nos. 279, 169.

ing less convenient, but it does not destroy or take away his right." A dissenting judge maintained, however, that "it is not competent for the legislature to enact laws which seriously impair the right to the elective franchise \* \* \* [and] the right of all political parties to freely nominate their candidates for office is fundamental."<sup>57</sup> The clause providing for the fifteen per cent vote was in many respects ambiguous. The attorney general held that it applied to city and ward offices as well as to state and county offices,<sup>58</sup> but he was in doubt whether the clause meant that the vote in the city or county should be controlling rather than that in the state.<sup>59</sup> The clause was unpopular with the Democrats, at whom it was aimed, and it was repealed in the legislative session of 1913.

Early in 1912 the supporters of Roosevelt in Michigan demanded a presidential preference primary, and, in February, Governor Osborn, who was one of the "Roosevelt Governors," called an extra session of the legislature to enact the desired law. The proposal enlisted the active support of the Roosevelt Republicans and the Wilson Democrats, but it was opposed by the conservatives of both parties and, more specifically, by the mining "interests" in the upper peninsula and the representatives of the "interests" in the lower peninsula.<sup>60</sup> The opposition, however, was not to the bill itself but to the proposal to give it immediate effect. To do this required a two-thirds vote and many of the legislators probably believed that the action would be unconstitutional.<sup>61</sup> In any event, the opponents of Roosevelt and Wilson were successful in the legislature. The act,<sup>62</sup> slightly amended in 1915, provides that a presidential primary election shall be held on the first Monday in April in presidential years. Names of presidential candidates shall be placed on the ballot on the sole petition of at least one hundred of their party supporters in Michigan. The law declares that the "candidate receiving the highest number of votes in the State at said election shall be declared to be the candidate and the choice of such political party for this State." No provision is made in the law for the selection of delegates to the national convention or for their instruction.

To the legislature of 1913 Governor Ferris recommended, among other things, the abandonment of party enrollment, provision for a

---

<sup>57</sup> *Brown v. Kent County Election Commissioners*, 174 Mich. 481 (Mar. 1913).

<sup>58</sup> Report of Attorney General, 1912, p. 347.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Detroit News*, March 4, 5, 6, 1912.

<sup>61</sup> See testimony of Judge Murfin before the Clapp Committee. Senate Documents, 62d Cong., 2d Sess., p. 982.

<sup>62</sup> Public Acts, First Extra Session, 1912, No. 9; 1915, No. 219.

second-choice column on the primary ballot, the repeal of the fifteen per cent clause, and a corrupt practice act. The Republican majority in the legislature, which was factionally opposed to the men then in control of the Republican state central committee, passed a law providing for the legalization, composition, election, and organization of the state central committees.<sup>63</sup> The attorney general, however, held the law to be defective and it was never applied.<sup>64</sup> This legislature also passed a thorough corrupt practice act,<sup>65</sup> and an act for the choosing of national committeemen.<sup>66</sup> Significant of the trend of the times was the introduction of a bill for the incorporation of political parties.<sup>67</sup> In amending the general primary law, the legislature, besides doing away with the fifteen per cent clause, provided for a substitution of the "open" for the "closed" primary, abolishing party enrollment, and providing for a single ballot for all parties.

The next legislature, in spite of Governor Ferris' veto, readopted party enrollment in a modified form without, however, returning to the "closed" primary. The provision is as follows: "When a duly registered and qualified voter shall ask for a ballot as before provided, the inspector shall enter his name upon the list together with the name of the party the ballot of which is requested, and the number of the ballot given to the voter."<sup>68</sup> The law as it now stands does not prevent a Democrat voting in a Republican primary or *vice versa*, but it affords a public record of all so voting. The law makes enrollment an accompaniment of voting rather than a prerequisite and qualification for voting.

### *Corrupt Practice Legislation.*

The local acts of 1901 prohibited electioneering at the polling place or within one hundred feet thereof, drinking or treating in the polling place, repeating, and the soliciting, receiving, or offering of a bribe of money, or promise of money, place, or position in exchange for votes. With some minor changes, elaborations, and specifications these prohibitions have been repeated in all subsequent

<sup>63</sup> Ibid., 1913, No. 395.

<sup>64</sup> The attorney general held the execution of the law to be a physical impossibility, because the county clerk is given ten days to file a return on the names, and the secretary of state is given twenty days to call a meeting of the state board of canvassers, while the law directs that the men elected to the central committee shall meet within ten days after the primary. Detroit Free Press, Aug. 14, 1914.

<sup>65</sup> Public Acts, 1913, No. 109.

<sup>66</sup> Ibid., No. 392.

<sup>67</sup> Detroit News, Feb. 21, 1913.

<sup>68</sup> Public Acts, 1915, No. 313.

direct primary legislation. The public act of 1907 in addition made it unlawful for a state officer to circulate petitions for anyone but himself or to solicit votes for any candidate for governor, lieutenant-governor, or United States senator. This act also provided that saloons should be closed on primary election days.

The act of 1909 enumerated in great detail corrupt practices in primary elections. Besides penalizing the various forms of direct and indirect bribery, repeating, treating, and electioneering in or near the polls, the law prohibited payment in any manner for "any campaign work, electioneering, [or] soliciting votes," "it being the intent of this clause to prohibit the prevailing practice of candidates hiring with money and promises of positions, etc., workers on primary day and prior thereto."<sup>69</sup> The law prohibited the public posting by any candidate for nomination of "any campaign card, banner, hand bill, poster, lithograph, half-tone engraving, photograph or other likeness of himself, or other advertising matter used" for the advancement of his candidacy.<sup>70</sup> The law specified that campaign cards or other advertising matter except postal cards and letters must not be larger than two and one-fourth inches in width by four inches in length, and that this advertising matter should contain no likeness of the candidate larger than one and one-half inches in width by two inches in height. Campaign advertising is absolutely prohibited "in or upon any magazine, program, bill of fare, ticket for any ball or other entertainment, or upon or in any other substance or publication whatsoever, except in a daily, weekly, or monthly newspaper which has been regularly and bona fide published and circulated for at least three months before such advertisement is to be inserted therein." The act provided that the type used in the body of political advertising should not be larger than that used in the editorial section of the paper, and that charges for political advertising should not be higher than for non-political.<sup>71</sup>

The corrupt practice act of 1913,<sup>72</sup> without repealing the provisions just noted, added a number of detailed regulations as to the use of money in primary campaigns. The law limits primary campaign expenses to twenty-five per cent of one year's compensation. Candidates for governor and lieutenant-governor, however, may spend not to exceed fifty per cent of one year's salary. No candidate is to be restricted to an expenditure less than one hundred dol-

---

<sup>69</sup> *Ibid.*, 1909, No. 381.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.* 1913, No. 109.

lars. Expenditures are permitted only for certain specified purposes.<sup>73</sup>

To aid in the enforcement of these provisions as to expenditure the law provides that, within ten days after the primary election, every candidate shall file with the county clerk of the county in which he resides a detailed statement, sworn before a notary, setting forth each item of contribution and expenditure, the date of each receipt, the names of persons from whom received or to whom disbursed, the objects of expenditures, together with a statement of unpaid debts and obligations. The law provides that these statements shall be open to public inspection, and that failure to file shall disqualify for the holding of the office to which the candidate has been elected and shall render him liable to criminal prosecution.

As to contributions, the law makes provision for publicity as above stated and also imposes restrictions on contributions. No one not a candidate or a member of a political committee is authorized to accept a contribution for campaign expenses. Contributions are to be given and entered in the accounts only in the name of the person by whom the contributions were actually furnished. No candidate is permitted to disburse money received from an anonymous source. Contributions from any one acting for a corporation are prohibited.

The law seeks also to prohibit the intimidation of employes by their employers. It makes unlawful the enclosing in pay envelopes of political notices containing threats expressed or implied intending to influence the political opinions of the employes, and the posting within ninety days of any election or primary in any factory or place of business of placards containing a threat or notice that in case any ticket or candidate shall be nominated or elected work will cease, the establishment be closed, or the wages reduced.

The law requires that political advertisements in newspapers shall be marked paid, and prohibits the giving or receiving of payment for editorial support.

---

<sup>73</sup> Candidates for nomination or for election and political committees are permitted to make no disbursements except for travelling expenses and incidental personal expenses, for printing, stationery, advertising, postage, expressage, freight, telegraph, telephone and public messenger service, for dissemination of printed information, for political meetings, demonstrations, and conventions, for the rent, maintenance and furnishing of offices, for the payment of clerks, typewriters, stenographers, janitors, and messengers, for the employment of the legal number of challengers, for the payment of public speakers and musicians and their travelling expenses, for the copying and classifying of election registers or poll lists, investigating the right of persons to vote so listed or registered, and conducting proceedings to purge the registers and lists and prevent improper or unlawful registration or voting, for making canvasses of voters, for conveying infirm or disabled voters to and from the polls, and for the employment of counsel.

Finally, the law penalizes the making of false statements reflecting on a candidate's character, and prohibits the soliciting of donations from candidates by religious, charitable, or other organizations.

The penalties provided by the law are adequate: a maximum fine of one thousand dollars or a maximum imprisonment of two years or both.

On the whole, the corrupt practice laws of Michigan seem now fairly complete and effective. While the political assessment of office-holders is not expressly prohibited, the provisions in regard to bribery might be construed to prohibit such contributions.

Corrupt practice legislation is a comparatively recent development in Michigan. Prior to 1909 the provisions were few and did not reach the real evils. Appearing at the end of twelve years of experimentation with direct primaries, the detailed law of 1913 seems to show an appreciation of the inadequacy of mere machinery to produce good nominations and also a realization of the power of those financial influences which, having perverted and discredited the convention system of nomination, seemed about to do the same with the direct primary system.

#### *Summary.*

Since 1900 the Michigan legislature has passed more than thirty acts, original and amendatory, having to do with direct nominations. From 1901 to 1905 the legislation was entirely local; from 1905 to 1909 it was both local and general but optional with the parties and with the localities; since 1909 it has been general and mandatory.

Legislation has been halting and half-hearted. The history of it illustrates the strength, the slowness and the sureness of the action of a well-defined public opinion, stimulated by newspapers, on a reluctant legislature which has been usually dominated, at least in respect to this legislation, by leaders who were hostile to any legislative interference with their organization activities. Among the influences which led to the formation of this public opinion none was stronger than the evidence of the selfish control of the convention system by men of wealth and by corporations. It was not so much that the convention worked badly; for it had long worked badly. But it now became apparently an effective instrument for an undemocratic and sinister domination, and the struggle between the forces which sought to control it developed into a public scandal. The best politicians and thinking people in general were not dissatisfied with conventions *per se*, but they felt that, as a means of popular expression, the convention had become incoherent and ineffect-

ual, that it had been perverted from its true ends, and that it had become subject to influences which were antagonistic to the public welfare. It has been charged that the public demand for direct primaries was originally a newspaper demand, advanced largely through motives of self-interest. The newspapers naturally had much to do with creating public opinion on the subject and how far they were disinterested it is impossible to say.

The movement for direct nominations started within the majority party. After the beginning of the movement, emphatic Democratic endorsements seem to have had slight effect on the course of events. Democratic influence in the legislature was practically nil, for in the legislature of 1905, which passed the first general law, there was not a single Democratic member.

In the course of debates and newspaper discussions laws of other states were occasionally cited, and among these the Minnesota law was most frequently mentioned.

Michigan's direct primary legislation, as it now stands, is still far from perfection. The most thoughtful politicians are not satisfied with it. They say that it occupies a half-way position: it must either return to the old system or advance to a more simple and effective means of popular expression. In the past, the various laws have been experiments and they have been experiments undertaken by a party which, as represented by its managers, has not at heart believed in the principle underlying the laws. The direct primary acts have been not only experiments; they have also been sops. This legislation has exhibited a hesitancy out of all proportion to any danger that might result from it, and some of it has revealed downright insincerity.

Lawmaking has been affected not only by the desire to save as much as possible of the old system, but the party managers, trained in the methods of the old system, have participated in the drafting of the new laws. The Republican state central committee, or, chiefly, its chairman and secretary, played an important, perhaps a decisive, part in the enactment of primary laws and especially the law of 1905.<sup>74</sup> In 1915 the Republican state central committee appointed a sub-committee on revision of the primary law. The report of this sub-committee was adopted in full<sup>75</sup> and presented to the legislature in the form of a petition, but, owing partly to temporary political exigencies,<sup>76</sup> it was not enacted into law. The influence of party managers on legislation has probably been greater in this field than in any other. It has been constant, active, and sometimes very

---

<sup>74</sup> *Detroit Tribune*, Feb. 17, May 29, 1903; Apr. 6, 24, 27, 1905.



direct and effective. Not always reactionary, it has been, nevertheless, generally unscientific and opportunistic.

Opportunism has marked the course of direct primary legislation. Its early defeats in the legislature were partly occasioned by factional antagonisms growing out of the personality and policies of Governor Pingree. The forty per cent clause in the law of 1905 was probably designed to protect the "machine" candidate for governor in 1906. The presidential primary bill of 1912, the act for the election of state central committees in 1913, and the revision of the general law in 1915 were all influenced more or less by Republican factional fights.

The opinions rendered by the attorney general reveal numerous shortcomings and ambiguities in the laws.<sup>77</sup> For example, in the law of 1909 there was no provision for the filling of vacancies among nominees for the legislature.<sup>78</sup> In 1910, where the county commissioner of schools was elected in the fall, direct primaries applied to his office; where he was elected in the spring they did not apply.<sup>79</sup> Circuit judges are nominated in the direct primaries; supreme court judges are not. The history of direct primaries in Kent County is a record of legislative blundering. The law of 1901 applied only to the city of Grand Rapids; the law of 1903 applied to the whole county; from 1905 to 1909 there were two laws applying to the county. On account of overlapping local and general acts the city of Grand Rapids had a congressional primary on September 4, 1906 and a county primary just a week later.<sup>80</sup> In the amending act of 1907 the legislature absentmindedly omitted to re-enact the provision for the direct nomination of city officers; so the city of Grand Rapids, which was the first to have direct primaries, had to nominate in 1908 under the old system.<sup>81</sup> At the present time, when the principle of direct nomination has been finally accepted, all state officers elected in the spring, including the supreme court judges and regents of the University, all elective state administrative offi-

---

<sup>75</sup> Detroit Free Press, Dec. 30, 1914.

<sup>76</sup> A factional fight in Detroit.

<sup>77</sup> Difficult to explain are certain differences in the acts passed for Wayne and Kent counties in 1903. The Wayne act provided for a single ballot; the Kent act for separate ballots. In Kent independent candidates could be nominated; in Wayne there was no method provided for their nomination. In Wayne township officers might be nominated directly; in Kent they could not be. In the latter county, the candidates selected the party committees; in the former, they did not.

<sup>78</sup> Report of Attorney General, 1911, p. 193.

<sup>79</sup> *Ibid.*, p. 73.

<sup>80</sup> *Ibid.*, 1906, p. 99.

<sup>81</sup> *Ellis v. Boer*, 150 Mich. 453 (Dec., 1907); *Dykstra v. Holden*, 151 Mich. 293 (1908).

cers except governor and lieutenant-governor, and all township and village officers<sup>82</sup> are still nominated by the old method, a method which is also used in its entirety for the selection of delegates to national conventions,<sup>83</sup> and in a modified form for the drafting of party platforms.

Besides the general retention of the delegate conventions of the old régime, Michigan, as a matter of party politics rather than of principle, adhered up to 1909 pretty faithfully to the doctrine that the adoption of direct nominations should be subject to local and party option. In practice the doctrine proved of little value, as the people were overwhelmingly in favor of direct nominations. The State has experimented with certain features of the direct nomination system such as party enrollment, the forty per cent provision, the fifteen per cent provision, the second election, and the blanket ballot, and has either partially or wholly abandoned them, but on the other hand it has shown little inclination to try the preferential vote.<sup>84</sup>

Throughout this legislation, at least one consistent principle has been maintained: that the conduct of direct primary elections should be removed from the control of the party organizations. Yet, in legal theory, the direct primary is a party, not a public affair. Said the state supreme court in 1908: "A primary election is not an election to public office. It is merely the selection of candidates for office by the members of a political party in a manner having the form of an election."<sup>85</sup> Accordingly, when the direct primaries fail to nominate, or when a vacancy occurs in the party ticket, the appropriate party committee is uniformly empowered by the primary laws to fill the vacancy. The direct primary is a method of nomination, not of election.<sup>86</sup>

ARTHUR C. MILLSPAUGH.

*Whitman College, Walla Walla, Washington.*

---

<sup>82</sup> Report of Attorney General, 1910, pp 167, 191.

<sup>83</sup> *Ibid.*, 1908, p. 165.

<sup>84</sup> It was recommended, however, by Gov. Ferris in 1913. House Journal, 1913, pp. 27-29.

<sup>85</sup> *Line v. Board*, 154 Mich. 331 (1908).

<sup>86</sup> At a recent meeting of the Republican state central committee three changes were proposed in the primary laws: (1) an amendment of the section of the law which requires candidates for county offices to select the chairman of the county committee; (2) the institution of a pre-primary convention for the nomination of state candidates, using the primary as a means to give the rank and file of the party powers of endorsement, rejection, and substitution; and (3) an earlier date for the primary in order to give an opportunity for factional sores to heal. Detroit Free Press, July 21, 1916.