

Title 43.

Elections.

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CHAPTER 1.

GENERAL PROVISIONS.

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§ 1. Franchise. — Every citizen of the Trust Territory shall be entitled to vote in every election conducted under the provisions of this title if that citizen fulfills all the following requirements:

- (1) Is eighteen years of age or older;
- (2) Has fulfilled the residence requirements for registration under this title;
- (3) Is not currently under a judgment of mental incompetency or insanity;
- (4) Is not currently under parole, probation, or sentence for any felony for which he has been convicted by any court of the Trust Territory or any court within the jurisdiction of the United States; and
- (5) Is registered to vote under the provisions of this title. (Code 1966, § 50; Code 1970, tit. 43, § 1.)

Cross references. — Election of Congress of Federated States of Micronesia, Part III, P.L. No. IC 1. Repealed, Federated States of Micronesia, Part III, P.L. IC 1.

§ 2. Elections to be by secret ballot. — All elections for members of Congress of Micronesia and all other elections held in accordance with the provisions of this title shall be by secret ballot. (Code 1966, § 50; Code 1970, tit. 43, § 2.)

§ 3. When general elections held. — General elections for members of the Congress of Micronesia shall be held biennially in each even numbered year on the first Tuesday following the first Monday in November in accordance with the provisions of this title; provided, that in the event of a natural disaster or other Act of God, the effect of which precludes holding the election on the foregoing date, the High Commissioner, with the approval of the Secretary of the Interior, may proclaim a later election in the affected election district or districts. (Code 1966, § 51; Code 1970, tit. 43, § 3.)

§ 4. Special elections to fill vacancies. — Whenever, prior to six months before the date of the next general election, a vacancy occurs in the Congress of Micronesia, the High Commissioner shall call a special election to fill such vacancy. The call of the High Commissioner shall specify the date of the special election, the deadline for registration of electors for such special election, and the period during which the nomination of candidates for such special election may take place. In case of a vacancy occurring within six months of the next general election, no special election shall be held and the district administrator of the district wherein such vacancy arises may fill such vacancy by appointment. In all other respects, special elections to fill vacancies in the Congress of Micronesia shall be held in accordance with the provisions of this title. (Code 1970, tit. 43, § 4.)

§ 5. Conduct and supervision of district and municipal elections. — Any provision of any district or municipal charter, law, or ordinance to the contrary notwithstanding, the election commissioner shall have overall authority and responsibility for the conduct of all elections, the registration of all voters, the tabulation of all votes, and the announcement of the official results of all district and municipal elections in accordance with all provisions of the applicable district law, charter provisions, or municipal ordinance governing the election which are not inconsistent with the provisions of this section; provided, that if there is no applicable district law, charter provisions or municipal ordinance governing any district or municipal election or to the extent that such law, charter, provisions, or ordinance does not fully provide for the conduct of such election, the registration of voters, the tabulation of votes, or the announcement of official results, the election commissioner shall formulate regulations to govern such election which shall be substantially similar to the provisions of this title with due recognition for local conditions. Such regulations shall have the force and effect of law. (Code 1970, tit. 43, § 5.)

Title not applicable to municipal election. does not apply to municipal election. *Benavente v. Ada*, 6 TTR 45 (1972).
— This title was clearly designed to provide for the election of the Congress of Micronesia, and

§ 6. Expenses. — All expenses, including expenses attributable to registration of voters pursuant to section 253 of this title, for elections conducted in accordance with the provisions of this title in any administrative district shall be borne by the Trust Territory government. (Code 1966, § 89; Code 1970, tit. 43, § 6.)

§ 7. Use of government broadcast facilities by candidates. — (1) Government broadcast facilities may be made available to candidates within any administrative district, except on the day of election, pursuant to the discretion of the election commissioner. The election commissioner shall afford each candidate equal opportunity in the use of government broadcast facilities. If the election commissioner cannot provide equal opportunities to the candidates in the use of government broadcast facilities, then no candidate shall be allowed their use whatsoever. Each candidate shall advise the election commissioner not later than twenty-four hours prior to his intended use of government broadcast facilities. Failure to notify the election commissioner of the proposed use of the above-described facilities within the prescribed time limit may disqualify the candidate from the use of these government facilities.

(2) No government facilities other than broadcast facilities may be made available to candidates. (Code 1966, § 75; Code 1970, tit. 43, § 7; P.L. No. 6-104, § 1.)

§ 8. Affidavits to be sworn. — The affidavits required pursuant to this title shall be sworn to before any officer or person authorized by law to administer oaths. (Code 1966, § 83; Code 1970, tit. 43, § 8.)

§ 9. Prohibited acts. — Any person who violates any of the provisions of this title or any rules or regulations promulgated pursuant thereto, for which a penalty is not otherwise provided, who votes or attempts to vote more than one time or interferes with the orderly process of the election, shall be punished by a fine not to exceed five hundred dollars, or imprisonment for not more than one year, or both. (Code 1966, § 90; Code 1970, tit. 43, § 9; P.L. No. 4C-26, § 3.)

§ 10. Intimidating or bribing voter. — Every person who shall, directly or indirectly, in any manner (1) intimidate or threaten a voter in order to induce or compel him to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person at any election or (2) bribe or attempt to bribe any voter in giving his vote, or to deter him from giving it, shall be fined not more than one thousand dollars, or imprisoned for not more than one year, or both. Each intimidation, threat or bribe shall constitute a separate offense. (P.L. No. 4C-26, § 1.)

CHAPTER 2.

CANDIDATES.

Sec.	Sec.
102. Persons disqualified from membership in district legislature.	104. Nomination by political parties.
103. Nomination by petition.	105. Placing candidate's name on ballot.
	106. Time of filing papers; fee.

§ 102. Persons disqualified from membership in district legislature.

— (1) The following shall be disqualified to be a member of any district legislature:

- (a) All judges;
- (b) All policemen;
- (c) All employees of either the Trust Territory or District Administration who hold positions as assistant department heads or higher; and
- (d) All employees of the Congress of Micronesia or district legislatures.

(2) Any of the individuals named in subsection (1) of this section shall be accorded leave without pay or annual leave, under regulations which may be issued by the director of public affairs in consultation with the director of personnel, for the purpose of seeking election to the district legislature, and if any such person is elected, he shall resign from his employment prior to the date upon which his term or office commences. (Code 1966, § 47(e); Code 1970, tit. 43, § 102; P.L. No. 4C-41, § 1.)

§ 103. Nomination by petition. — Nomination of candidates may be made by petition initiated by a candidate or any five citizens registered to vote under the provisions of this title and authorized by the candidate so to initiate a petition. Forms of nominating petitions shall be prescribed by the High Commissioner and shall include a representation that the candidate meets the qualification for office which shall be stated therein. When a signature is indicated by an "X" or other mark, or is written in the Japanese language, such signature must be identified in English and accompanied by the signature, in English, of one witness. Nominating petitions shall be filed with the election commissioner or his appointee or appointees under subsection (6) of section 202 of this title. (Code 1966, § 70; Code 1970, tit. 43, § 103.)

§ 104. Nomination by political parties. — (1) Political parties having at least fifty members who are registered to vote under the provisions of this title in the administrative district in which the political party is seeking registration and which are registered as such with the election commissioner at least seven days before the termination date set for filing nomination, may nominate candidates for office; provided, however, that no political party shall nominate more than one candidate for any one political office.

(2) Political parties may withdraw the names of their nominees in the same manner that a candidate may withdraw his name under section 304 of this title.

(3) Nominations of political parties shall be submitted to the election commissioner in writing and attested by at least two officers of the party. (Code 1966, § 70; Code 1970, tit. 43, § 104.)

§ 105. Placing candidate's name on ballot. — The election commissioner shall examine the nomination papers of all candidates and political parties and investigate all candidates to ensure that all the qualifications of office have been met. If a prospective candidate has not met the qualifications of office as specified in section 101 of this title, if seeking membership in the Congress of

Micronesia, or in any other law or ordinance of the Trust Territory, pertaining to qualifications for such office sought, then the name of the candidate shall not be placed on the ballot. All signatures on the nomination papers shall be verified. All nomination papers shall be reviewed by the election commissioner and if not in order, the nomination papers shall be rejected. (Code 1966, § 70; Code 1970, tit. 43, § 105; P.L. No. 6-104, § 3.)

Editor's Note. Section 101, referred to above, has been omitted as obsolete.

§ 106. Time of filing papers; fee. — Nomination papers shall be filed as follows:

(1) Filing shall be not more than one hundred eighty days nor less than sixty days prior to the day for holding the election except as provided in section 305 of this title.

(2) There shall be deposited with each nomination for Congress a fee of ten dollars. The election commissioner shall pay over all such nomination fees to the treasurer of the Trust Territory as a local revenue general realization, available for appropriation by the Congress of Micronesia.

(3) Upon the receipt at the office of the election commissioner or appointee or appointees of a nomination of a candidate, the day, hour and minute when it was received shall be indorsed thereon. (Code 1966, § 70; Code 1970, tit. 43, § 106; P.L. No. 6-104, § 4.)

CHAPTER 3.
COMMISSIONER.

Sec.

151. Appointment; designation as chief election official.
152. Powers and duties.
153. Official register; maintenance; form; public inspection.

Sec.

154. Same; striking names of disqualified voters.

§ 151. Appointment; designation as chief election official. — (1) The district administrator of each administrative district is hereby appointed as the election commissioner of that district.

(2) The election commissioner shall be the chief election officer of the administrative district wherein he resides, with such powers and duties relating to the registration of voters and the conduct of the election as prescribed in this title. (Code 1966, § 52; Code 1970, tit. 43, § 151.)

§ 152. Powers and duties. — Without additional compensation, the election commissioner shall have the overall supervision and administration of the election and shall perform such duties as are prescribed by law, which shall include, but not be limited to the following:

(1) To appoint all members of the several boards of election as provided for in this title;

(2) To prescribe and promulgate rules, regulations, and instructions, including rules, regulations and instructions for absentee ballots, for the conduct of the election;

(3) To determine, and prescribe forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, and all forms and blanks required by the provisions of this title for use by candidates, boards, committees, and voters and supply the same to boards of election;

(4) To require such reports from the several boards as may be required by law or regulation or as he may deem necessary;

(5) To review and examine voting irregularities or violation of any election laws in accordance with the provisions of chapter 6 of this title;

(6) To establish voting precincts within each election district and designate appropriate polling places within each voting precinct, upon recommendations of the members of the board of election of the particular election district;

(7) To receive nomination petitions and list of all candidates for election in alphabetical order on the ballots for each election district;

(8) To register or cause to be registered all the voters in his administrative district and to maintain the general district register as provided in this title; and

(9) To prepare from the general district register a registered voter's list for each voting precinct prior to any election. (Code 1966, § 52; Code 1970, tit. 43, § 152.)

§ 153. Official register; maintenance; form; public inspection. — The election commissioner of each administrative district shall register or cause to be registered all voters in his administrative district in the general district register. The register shall consist of one or more volumes for each election district with a general alphabetical index of the voters. The general district register shall be divided into as many parts as there are election precincts in the election districts in the administrative district and shall have an index of precincts. The general district register shall be maintained by the election commissioner and shall, at all times during business hours, be open to public

inspection, and shall be a public record. The register shall be ruled and printed in such forms as the election commissioner of each administrative district may direct. The complete general district register shall be published and made available for public inspection at least sixty days prior to any election. (Code 1966, § 55; Code 1970, tit. 43, § 153; P.L. No. 6-104, § 5.)

§ 154. Same; striking names of disqualified voters. — (1) The election commissioner shall ascertain, not less than six months before each election, from the department of public health, or any informing department, information of the death, adjudication of insanity or feeble-mindedness, loss of citizenship, or any other disqualification to vote, of any person registered to vote in his district or who he has reason to believe may be registered to vote therein. He shall thereupon make such investigation as he may deem necessary to prove or disprove such information, giving the person concerned, if available, notice and an opportunity to be heard. If after such investigation he finds that such person is dead, incompetent, has lost his citizenship, or is disqualified for any reason to vote, he shall strike or direct that the name of such person be stricken from the official registry.

(2) The election commissioner shall make and keep an index of all information furnished to him under any requirements of law concerning any of the matters mentioned in this section and shall provide any person authorized to receive affidavits on application for registration with any information the latter may need to ascertain whether or not any applicant is in any manner disqualified to vote.

(3) Any person whose name is stricken from the register of voters under this title may appeal in the manner provided by subchapter IV, chapter 6 of this title. (Code 1966, § 62; Code 1970, tit. 43, § 154.)

CHAPTER 4.

BOARDS.

Sec.

201. Created; appointment, terms and qualifications of members.

202. Powers and duties.

§ 201. Created; appointment, terms and qualifications of members. — The election commissioner shall appoint a board of election for each election district on or before November 1 of each election year whose members shall serve until resignation or until their successors are appointed. The members shall be citizens of the Trust Territory registered to vote under the provisions of this title and be of such numbers as are necessary to have at least one board member present at each polling place. No board member shall participate in an election campaign during his appointment. (Code 1966, § 53; Code 1970, tit. 43, § 201.)

§ 202. Powers and duties. — Each board of election member shall have the powers and duties as follows:

- (1) To perform all duties prescribed by laws;
- (2) To supervise and manage each polling place;
- (3) To receive, preserve and maintain ballot boxes, locks, maps, cards of instructions and other supplies and equipment necessary to conduct the election;
- (4) To give such instruction deemed necessary for the orderly conduct of the election;
- (5) To provide for the issuance of all notices and publications concerning the election;
- (6) To review and examine the sufficiency and validity of nominating petitions and other documents where the election commissioner designates the board to act in his stead;
- (7) To receive and transmit all ballot boxes, locked, and sealed, to the election commissioner;
- (8) To receive, investigate and decide complaints concerning election irregularities and determine the residence qualifications of voters, subject to review according to section 407 of this title;
- (9) To recommend to the election commissioner designation of appropriate polling places within each voting precinct or election district as may be deemed suitable and convenient to the public;
- (10) To perform such other duties as are prescribed by law or rules issued by the election commissioner; and
- (11) To register electors. (Code 1966, § 54; Code 1970, tit. 43, § 202.)

CHAPTER 5.

VOTER REGISTRATION.

Sec.	Sec.
251. Eligibility to register; place of registering and voting.	district register; filing of affidavits.
252. Required in order to vote.	256. Reregistration.
253. Application for registration; affidavit.	257. Voters at previous elections deemed registered.
254. Submission of affidavit to examiners of qualifications.	258. Exception to requirement.
255. Entry of a voter's name in the general	

§ 251. Eligibility to register; place of registering and voting. — (1) Every person who has reached the age of eighteen years, or who will have reached the age of eighteen years on or before the date of the next election, and who has resided in the Trust Territory for nine months and in the representative district of registration three months preceding the date of registration and who, except for the requirement of registration, is otherwise entitled to vote may register to vote in the administrative district in which he resides.

(2) The election commissioner shall designate such place or places within each election district wherein registration of voters may be made.

(3) No person shall register to vote or vote as an elector of any other precinct than that in which he resides; provided, that where there is a mistake in placing the name of the voters on the list of voters of a precinct in which he does not actually reside, such voter shall nevertheless be allowed to vote therein, if otherwise qualified; and the member of the board of election of the particular election district and precinct where such voter has voted shall notify the election commissioner of the error in order that the name of such voter may be placed on the next succeeding list of voters of the precinct where he actually resides.

(4) If any person resides in more than one precinct, he may choose which precinct as an elector of which he will register, but he shall register as an elector of one precinct only. (Code 1966, § 56; Code 1970, tit. 43, § 251.)

§ 252. Required in order to vote. — No person shall be entitled to vote in any election for members of the Congress of Micronesia, or to be listed upon any general district register, or upon any precinct list, who fails to register with the formalities and subject to the restrictions and qualifications required by this title. (Code 1966, § 57; Code 1970, tit. 43, § 252.)

§ 253. Application for registration; affidavit. — Any person qualified to and desiring to register as a voter in any election district, may present himself at any time during business hours to any of the members of the election board (herein empowered and authorized to administer oaths and take acknowledgments) or persons authorized by law to administer oaths, then and there to be examined under oath as to his qualification as an elector. Each applicant shall make and subscribe to an application in substantially the following form:

AFFIDAVIT ON APPLICATION FOR REGISTRATION

Trust Territory

..... District } ss

- 1. My full name is
2. I was born at on the day of in the year
3. My age is 4. I live at
5. My occupation is
6. I am a citizen and resident of the Trust Territory.
7. I was naturalized as a citizen of the Trust Territory at District on the day of 19.
8. I have resided in the Trust Territory not less than nine months, and in Representative District No. not less than three months, immediately preceding this date on which I now offer to register, to wit, the date of 19.
9. I am not currently under parole, probation, or sentence for any felony for which I have been convicted by any court of the Trust Territory or any court within the jurisdiction of the United States.
10. I am not currently under a judgment of mental incompetency or insanity.
11. I solemnly swear that the foregoing statements are true, so help me God.
.....
Subscribed to and sworn to before me this day of, 19.

The applicant shall strike out allegations that are inapplicable, and shall swear to the truth of the allegations in his application. In any case where the person who administers the oath shall so desire or believe the same to be expedient, he may demand that the applicant produce a witness or witnesses to further substantiate the allegations of his application. (Code 1966, § 58; Code 1970, tit. 43, § 253.)

§ 254. Submission of affidavit to examiner of qualifications. — Every affidavit on application for registration shall be submitted to the persons authorized to examine the qualifications of electors in section 253 of this chapter, not less than ninety days before an election. (Code 1966, § 59; Code 1970, tit. 43, § 254; P.L. No. 6-104, § 6.)

§ 255. Entry of a voter's name in the general district register; filing of affidavits. — (1) If the person authorized to receive an affidavit of application for registration is satisfied that the applicant is entitled to be registered as a voter, he shall number the affidavit consecutively as approved by him, and shall transmit the affidavit to the election commissioner. The election commissioner shall thereupon enter or cause to be entered in the general district register the following facts:

- (a) Number of affidavit;
(b) Date of registration;
(c) Name of applicant in full;
(d) Occupation of applicant;
(e) Age of applicant;
(f) If naturalized, the date of such naturalization;
(g) Residence of applicant; and,
(h) Any other information which the election commissioner may deem necessary.

(2) The election commissioner shall also forthwith enter or cause to be entered the name so registered in its proper place in the general alphabetical index, together with a reference to the page on which the registration appears. A voter having once been registered shall not be required to register again for any succeeding election, except in case of change of name or residence as specified in section 256 of this chapter or intervening disqualification as specified in section 154 of this title; provided, that in the event the voting records are destroyed or lost, the election commissioner may require the re-registration of voters.

(3) The election commissioner shall file the accepted affidavits in consecutive numbers, and keep the same in some convenient place so as to be open to public inspection and examination. (Code 1966, § 60; Code 1970, tit. 43, § 255.)

§ 256. Reregistration. — Any voter who changes his residence from one voting precinct to another, or who changes his name, after registration in any general district register, may register again in such general district register under the proper voting precinct or the proper name and the election commissioner or his authorized representative shall cancel the former registration by drawing one or more lines through the name of such voter as previously registered and enter or cause to be entered his own signature and the date of such cancellation with ink on the same line; provided, that no such registration shall be allowed on account of any change of residence or name made within ninety days before an election. (Code 1966, § 61; Code 1970, tit. 43, § 257; P.L. No. 6-104, § 7.)

§ 257. Voters at previous elections deemed registered. — Notwithstanding any requirements of registration provided by this title, all voters who registered and voted in the first election of the members of the Congress of Micronesia held before, on or after January 19, 1965, shall not be required to register again except where re-registration has become necessitated because of change of name or residency and except where disqualifications enumerated by section 154 of this title have intervened; provided, that in the event voting records have been destroyed or lost, the election commissioner may require re-registration of voters. (Code 1966, § 63; Code 1970, tit. 43, § 257.)

§ 258. Exception to requirement. — No registration in person shall be required of a full time student at any institution of learning, but such person shall make and subscribe to an affidavit substantially similar to the form set forth in section 253 of this chapter and as the election commissioner may prescribe, to establish fully such person's right to vote. Any duly qualified elector may challenge the acceptance of the voted ballot at the time of casting of the ballot under the provisions provided by law. (Code 1966, § 82; Code 1970, tit. 43, § 258.)

CHAPTER 6.

PROCEDURE.

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SUBCHAPTER I.

Ballots.

§ 301. Official ballots required; specimen ballots; imitating. — (1) All elections held in accordance with the provisions of this title shall be held by official ballot only. An official ballot is a written or printed, or partly written and partly printed, paper, designated as an official ballot and containing the names of persons to be voted for and the office to be filled, and issued by the election commissioner of each administrative district. The election commissioner shall have printed two exact copies of each official ballot which is to be used in the general election, for each voting place, such copies to have printed thereon, in large bold letters, and with ink of a color plainly contrasting to the color of the paper used, the word "Specimen." Two copies of each such specimen ballots shall be forwarded to the members of the board of election at the same time with the official ballots and the member or members of the election board shall post one of each such specimen ballots on either side of the entrance of the voting place or other places plainly in sight for the general public.

(2) Any person who knowingly, wilfully, and unlawfully prints, copies, imitates, or distributes, or causes to be printed, copied, imitated, or distributed any official ballot or any document that is so substantially similar in style or content to the official ballot as to cause the likelihood of confusion with the

official ballot without the authorization of the election commissioner shall be guilty of a misdemeanor. (Code 1966, § 64; Code 1970, tit. 43, § 301.)

§ 302. **Contents.** — A ballot shall contain the names of the persons and the offices to be voted for, the administrative district, the election district in which the election is being held, and the term or terms of the respective offices being voted for. The election commissioner shall append to the name of any candidate nominated by a political party the name of that political party on the printed ballots. (Code 1966, § 65; Code 1970, tit. 43, § 302.)

§ 303. **Printing and distributing.** — (1) The ballots shall be printed by order of the election commissioner at government expense. The election commissioner shall deliver an adequate amount of ballots to each election precinct.

(2) At least ten days before the election the election commissioner shall print a specimen ballot and shall forthwith submit copies of the same to the members of the several boards of election and to the several candidates at their addresses as given on their nomination papers, and the members of the boards shall post a copy of the same in a conspicuous place in their office or a public place. (Code 1966, § 68; Code 1970, tit. 43, § 303; P.L. No. 6-104, § 8.)

§ 304. **Withdrawal of candidates.** — (1) Any candidate may withdraw before an election by giving notice in writing to the member or members of the board of election or to the election commissioner, whichever is more practical, in the election district or administrative district in which such candidate was seeking nomination or election. If a candidate withdraws or dies after the printing of the ballots, the election commissioner shall cause the name of the candidate so withdrawing or the name of any candidate who may have died to be stricken from the ballots and, in that regard, may require the services of the election board of the district or precinct in which any person was a candidate and shall notify in writing such election board of the withdrawal or death, whereupon notice thereof shall, before the opening of the polls on election day, be posted at the polling place.

(2) If a candidate withdraws his name later than twelve days before an election and the ballots are in the process of or have been printed and it becomes necessary in the opinion of the election commissioner or the election board for a reprinting of the ballots or a striking out of a candidate's name by a reprint block-out, all expenses thereof, except in case of a withdrawal necessitated for medical cause and so certified by a physician, shall be a charge against the withdrawing candidate and shall be paid by him within sixty days after such withdrawal to the election commissioner. Moneys so received shall be deposited into the Trust Territory treasury, as a local revenue general realization, available for appropriation by the Congress of Micronesia.

(3) Any person who shall, directly or indirectly, physically threaten or intimidate any candidate so as to cause or attempt to cause the candidate to withdraw from an election shall upon conviction be fined not more than two thousand dollars, or imprisoned for not more than five years, or both. (Code 1966, § 66; Code 1970, tit. 43, § 304; P.L. No. 4C-26, § 2.)

§ 305. **Substitute candidates.** — In the case of the death, withdrawal or disqualification of candidates after the deadline for filing nominations, substitute candidates may be nominated prior to ten days before the date of an election. A person nominated as a substitute for a candidate nominated by petition must be nominated by petition in the same manner as the candidate who has died, withdrawn, or been disqualified. A substitute candidate nominated by a political party must be nominated by the same political party which nominated the candidate for whom he is a substitute. The election

commissioner in the case of any substitute candidate filling a vacancy caused by death, withdrawal, or disqualification of a candidate shall cause the name of any substitute candidate to be placed upon the proper ballots by reprinting, over-printing or through the use of stamps or such other means as the election commissioner may deem satisfactory for the purpose and may require the services of members of the election board who may be in the election district or precinct in which such a person is a candidate. The election board shall post a notice at the polling place of the name and office sought by any such substitute candidate. (Code 1966, § 67; Code 1970, tit. 43, § 305.)

§ 306. Packaging; sealing; record of distribution. — When printed, the ballots shall be fastened together in blocks of one hundred each, in such manner that each ballot may be detached and removed separately. They shall be forwarded by the election commissioner to the member or members of the election board in sealed packages, which shall not be opened until the opening of the polls. A record of the number of ballots sent to each election board member shall be kept by the election commissioner. (Code 1966, § 69; Code 1970, tit. 43, § 306.)

SUBCHAPTER II.

Absentee Voters.

§ 351. "Voter" and "ballot" defined. — (1) Any registered voter qualified to vote at any general or special election shall be entitled and enabled to vote by absentee ballot if:

(a) He is confined to his home or hospital by reason of such illness or physical disability as will prevent him from attending the polls; or

(b) He is prevented from voting by reason of being at sea or absent from the administrative district in which he is registered.

(2) An absentee ballot is an official ballot which is authorized by this title to be voted outside of any designated polling place or prior to the date of the election. (Code 1966, § 79; Code 1970, tit. 43, § 351; P.L. No. 6-104, § 9.)

§ 352. Confined persons. — Any registered voter qualified to vote at any general or special election who is confined to his home or hospital by reason of such illness or physical disability as will prevent him from attending the polls, shall be entitled to vote in such manner as may be prescribed by rules and regulations which shall be promulgated by the election commissioner. Such rules and regulations shall provide for voting by such persons in such manner as to insure secrecy of ballot and to preclude tampering with the ballots of such voters and other election frauds; provided, that any voter who by reason of physical disability is unable to mark his ballots shall be authorized to receive assistance in the marking thereof. Such rules and regulations may require affidavits, certificates, and other written statements under oath. (Code 1966, § 80; Code 1970, tit. 43, § 352.)

§ 353. Request for ballot. — (1) Any registered voter qualified to vote in any election may request and cast an absentee ballot with the election commissioner; provided, that he meets the requirements as set forth in section 351.

(2) Any registered voter qualified to vote by absentee ballot may, not more than ninety days nor less than twenty days before the election, request the election commissioner in writing for an absentee ballot to be voted at the election. The request shall include information stating the voter's voting

precinct, election district, reasons for being absent, address to which he wishes his ballot forwarded and the establishment of his right to a ballot. (Code 1966, § 81; Code 1970, tit. 43, § 353; P.L. No. 6-104, § 10.)

§ 354. Marking and return of ballot; voting at polls. — (1) The election commissioner or the board of election, as the case may be, shall, at least twenty days prior to an election, provide to any person who may be entitled to vote by absentee ballot, and who requests the same, an official ballot, a ballot envelope, an affidavit prescribed by the high commissioner, and a covering reply envelope. The absentee voter shall mark the ballot in the usual manner provided by law and in such manner that no person can see or know how the ballot is marked except as provided in section 352 of this chapter. The absentee voter shall then deposit the ballot in the ballot envelope and securely seal the same. The absentee voter shall then complete and execute the affidavit. The ballot envelope and the affidavit shall then be enclosed and sealed in the covering reply envelope and shall be mailed or delivered to reach the election commissioner of his administrative district issuing the absentee ballot not later than the established closing hour of business on the fourth day before the election, except as provided in section 352 of this chapter.

(2) It shall be unlawful for any person having voted an absentee ballot to cast a ballot at the polls on election day. (Code 1966, § 84; Code 1970, tit. 43, § 354; P.L. No. 6-104, § 11.)

§ 355. Disposition of ballots. — (1) Upon the receipt of the envelope marked "Absentee Ballot Enclosed" within the period prescribed in section 354 of this chapter from any person voting under the provisions of this chapter, the election commissioner, or his appointee, shall open it, remove the ballot envelope, and examine the statement as to its proper execution, the person's qualification to register as an elector, and to vote. If the election commissioner determines that the person is qualified to vote by absentee ballot, the ballot envelope shall be deposited unopened in a container retained for the purpose. The container shall be securely sealed except for an opening sufficient to permit deposit of ballot envelopes and shall be marked with the name and official title of the election commissioner, or his appointee, and the words "This container holds absentee ballots and must be opened only pursuant to law." The election commissioner or his appointees shall safely keep each container in his office until the day of election and at such time he shall publicly open the container, extract and segregate the ballot envelopes and deliver such envelopes to the counting and tabulation committee.

(2) In case the statement is found to be insufficient or in case the signatures do not correspond, or in case the voter has not complied with the requirements of section 354 of this chapter, or is not a duly qualified elector or the ballot envelope is open or has been opened and resealed, the ballot envelope shall not be opened and the election commissioner or his appointees shall mark across its face "Rejected," giving the reason therefor, and shall preserve the same in the manner provided by law.

(3) If the ballot is received after the time fixed in section 354 of this chapter, the ballot envelope shall be indorsed by the election commissioner or his appointees with the day and hour of receipt and it shall be safely kept unopened by the election commissioner or his appointees for the period of time required for the preservation of ballots used at such election, and shall then, without being opened, be destroyed in accordance with applicable law.

(4) If upon receiving the ballot envelope from the election commissioner or his appointees it is found that the voter has already voted, the election inspectors shall immediately cancel the ballot envelope and write "Rejected" across its face, giving the reason therefor and shall preserve the same in the manner provided by law. (Code 1966, § 85; Code 1970, tit. 43, § 355.)

§ 356. Voting at another polling place. — (1) A voter shall have the right to vote on election day at a polling place other than the polling place at which he is legally registered to vote if the following conditions are met:

(a) The voter is present within his administrative district on the day of election;

(b) He is lawfully registered to vote in his representative or election district; and

(c) He notifies the election commissioner in writing at least seven days before the election that he will not be voting in his proper voting place and that he requests to vote at a specific voting place.

(2) Upon receipt of a voter's request for a change in polling place, and no later than five days from such receipt if request is made seven days before the election, the election commissioner shall immediately assign and notify the voter by any means of communication, including the use of radio, as to the place where the voter may vote. Upon such notification, the voter shall be permitted to vote only at that polling place.

(3) The election commissioner shall cause a mark to be placed next to the name of the voter in that part of the general district register for the election precinct or the polling place where the voter would normally cast his ballot. This mark shall indicate that the voter will be casting his ballot at another polling place and that he is prohibited from voting in that election at his usual polling place. The election commissioner shall provide the proper ballot at the newly designated polling place for each voter who complies with the provisions of this section. (P.L. No. 6-104, § 12; P.L. No. 7-9, § 1.)

SUBCHAPTER III.

Conduct of Elections.

§ 401. Supervision of polling places. — The election commissioner shall ensure that polling places are supervised by the election board and such other officials as the election commissioner shall deem necessary, who must be present at the designated polling places during the election. Public schools and other public places shall be utilized insofar as practicable as polling places. Rent shall not be charged or paid for the use thereof. (Code 1966, § 72(a); Code 1970, tit. 43, § 401.)

§ 402. Equipping and supplying polling places. — Each polling place shall be provided with necessary ballot boxes, locks, official ballots, cards of instructions, pencils, registered voters lists, papers, and all other necessary supplies. (Code 1966, § 72(b); Code 1970, tit. 43, § 402.)

§ 403. Opening and closing of polls. — At exactly seven o'clock a.m. of the day of the election, a member of the election board shall proclaim aloud at each place of election that the polls are open, and shall be kept open until seven o'clock p.m., of the same day, after which time the polls shall be closed; provided, that if at the hour of closing there are any other voters in the polling place, or in line at the door, who are qualified to vote and have not been able to do so since appearing, the polls shall be kept open a sufficient time to enable them to vote; provided further, that if all registered voters appearing on a registered voter's list for any polling place have voted, that polling place may close irrespective of the time of day. (Code 1966, § 72(c); Code 1970, tit. 43, § 403.)

§ 404. Checking of register. — Any person appearing in the polling place shall report his name, in full and his address to the election officials. An election official shall clearly and audibly announce them. Another election official shall then check the register of voters as to whether or not the person appearing is a registered voter, and if so, shall announce the name and address appearing in the register. At this point a challenge may be interposed on the grounds that the ballot is subject to challenge under law or rules or regulations issued by the election commissioner. Voting shall then proceed in accordance with procedures prescribed by the election commissioner; however, all voting shall be by secret ballot. (Code 1966, § 72(d); Code 1970, tit. 43, § 404.)

§ 405. Campaigning and alcoholic beverages at polling places. — No campaigning shall be conducted within one hundred feet of a ballot box on election day and no alcoholic beverages shall be sold or otherwise provided to any person in the Trust Territory during election day while the polls are open. No candidate shall be allowed within one hundred feet of any ballot box except for the purpose of casting his ballot. There shall be no campaigning over any district broadcast station on election day. (Code 1966, § 72(e); Code 1970, tit. 43, § 405.)

§ 406. Poll watchers. — Each candidate shall be entitled to have not more than two poll watchers at each polling place. (Code 1966, § 72(f); Code 1970, tit. 43, § 406.)

§ 407. Election irregularities. — Any person may file an oral or written complaint of any election irregularity with a member of the election board present at the polling place. The board member shall give an individual against whom the complaint is made time to present witnesses and explanation, if any, but in no event shall such time be granted so as to prevent the election board from making a decision prior to the time for the closing of the polls. The complainant or the individual against whom the complaint is made may appeal the decision to the election commissioner or his designated representative. The election commissioner, or his said representative shall, as soon as possible, examine the finding of the election board and may hear witnesses, if he deems necessary. The election commissioner or his said representative shall make his decision prior to the time of the closing of the polls, and the aggrieved party may appeal the decision in accordance with section 453, subchapter IV of this chapter. In the event the decision of the election commissioner or his designated representative cannot be obtained as heretofore provided, the aggrieved party may appeal the decision of the election board in accordance with section 453, subchapter IV of this chapter. (Code 1966, § 72(g); Code 1970, tit. 43, § 407.)

Quo warranto proceeding ineffective for contesting election to congress. — Quo warranto proceeding is ineffective to contest election for members of Congress of Micronesia, since congress is sole judge of elections and qualifications of its members. *Liberal Party v. Election Comm'r*, 3 TTR 293 (1967).

Courts have jurisdiction over election contests only as granted by legislation. — None of the courts of the Trust Territory have jurisdiction over contests for election of members of the Congress of Micronesia except

to extent and under circumstances that such jurisdiction is expressly granted by legislation. *Liberal Party v. Election Comm'r*, 3 TTR 293 (1967).

Contestant has burden of proof in election contests. — In action to contest election results, where it is alleged illegal votes were cast and it is not possible for either party to prove how alleged illegal votes affected result, the contestant, having burden of proof, must fail. *Liberal Party v. Election Comm'r*, 3 TTR 293 (1967).

§ 408. Disposition of ballot boxes after completion of voting. — After all voting is completed, all ballot boxes shall be secured and locked. The locked boxes and all other supplies provided to the polling places by the election commissioner shall be collected by election officials and delivered to the election commissioner or his duly authorized representative by the safest and most expeditious means available and be certified to the election commissioner that the ballots so delivered were cast in accordance with the provisions of this title. (Code 1966, § 72(h); Code 1970, tit. 43, § 408.)

§ 409. Counting of ballots; announcement of unofficial results. — The election commissioner shall establish a counting and tabulation committee composed of not less than five members. The said committee shall publicly count and tally all votes cast and determine the acceptability thereof. Such counting of ballots cast in any election district shall begin after all the polls in such election district are closed and shall continue until all votes cast shall have been counted. Each candidate or his authorized representative shall be entitled to be present at the tabulation of the votes. Upon the completion of the counting and tabulation of all votes cast in the election district, public announcement of the unofficial results shall be made. (Code 1966, § 73; Code 1970, tit. 43, § 409.)

§ 410. Certification of election results. — Upon completion of the counting and tabulation of election results, the election commissioner shall certify the results and submit the results as certified to the High Commissioner. The High Commissioner shall declare as the winning candidates for the Congress of Micronesia from each election district the candidates receiving the plurality of votes cast in each election. (Code 1966, § 74; Code 1970, tit. 43, § 410.)

§ 411. Resolution of ties. — After all votes have been tabulated and certified to the election commissioner, if two or more candidates shall have received an equal number of votes, such tie shall be resolved by the election commissioner by lot in the presence of the tied candidates, or their designated representatives should such candidates desire to be present or represented. (Code 1966, § 77; Code 1970, tit. 43, § 411.)

§ 412. Local counting and tabulating committees. — In precincts or other areas where the election commissioner deems it impracticable that ballot boxes be delivered to a central place for counting and tabulating, the election commissioner shall appoint a local committee to count, tabulate, certify and report votes in such manner and according to such rules and regulations as the election commissioner shall establish. (Code 1966, § 78; Code 1970, tit. 43, § 412.)

§ 413. Rejected ballots. — All ballots which have been declared invalid due to defacement or other irregularity shall be sorted and a notation placed upon them indicating that they are rejected ballots. Upon completion of the counting of the ballots, the rejected ballots shall be placed in the ballot box and returned by the counting and tabulating committee to the election commissioner with the validly cast ballots. (P.L. No. 6-104, § 13.)

§ 414. Imperfectly marked ballots void. — Two or more markings in one voting square or a mark made partly within and partly without a voting square or space does not make a ballot void. (P.L. No. 6-104, § 13.)

§ 415. Spoiled ballot. — Any voter who spoils a ballot may return it to a member of the election board and receive another in its place. He shall be given

one ballot at a time; provided that, the number of ballots given him is not to exceed three in all. (P.L. No. 6-104, § 13.)

§ 416. Rejection of ballot for technical error. — At any election a ballot shall not be rejected for any technical error which does not render it impossible to determine the voter's choice, even though the ballot is soiled or partially defaced. (P.L. No. 6-104, § 13.)

§ 417. Rejection of invalid portions. — If for any reason a ballot is imperfectly marked or if it is impossible to determine the voter's choice for any office, his ballot shall not be counted for that office, but the rest of his ballot, if properly marked, shall be counted. (P.L. No. 6-104, § 13.)

§ 418. Write-in votes. — Any name written upon a ballot shall be counted as a vote for the person whose name is so written for the office under which it is written. (P.L. No. 6-104, § 13.)

SUBCHAPTER IV.

Recounts and Appeals.

§ 451. Petition for recount. — A petition for recount may be filed by any candidate in an election who believes that there was fraud or error committed in the casting, canvassing or return of the votes cast at said election. The petition shall be filed with the election commissioner or the board of election of the election district in which the recount is requested. Such petition shall contain a statement sworn to before a notary public or other person authorized to administer oaths that the petitioner has reason to believe and does believe that the records or copies of records made by the board of election of such district are erroneous, specifying wherein he deems such records or copies thereof to be in error, or that votes were cast by persons not entitled to vote therein, and that he believes that a recount of the ballots cast in the district will affect the election of one or more candidates voted for at such election. The petition may not be filed later than two weeks after the election at which the votes were cast unless such filing is prevented by circumstances beyond the control of the petitioner. (Code 1966, § 76(a); Code 1970, tit. 43, § 451.)

§ 452. Recommendation by board of election. — If a petition for recount is filed with a board of election, that board shall recommend to the election commissioner within three days from the receipt of the petition whether the recount shall take place. (Code 1966, § 76(b); Code 1970, tit. 43, § 452.)

§ 453. Denial of petition; appeal of denial to district court. — (1) If the election commissioner decides not to approve the petition and grant the recount, he shall record the reasons for such decision. The aggrieved candidate may, within five days after receipt of the decision of the election commissioner, appeal his case to the district court. The district court shall review the appeal promptly and render a decision. If the decision is in favor of recount, the election commissioner shall be so notified and shall proceed as provided in sections 454 and 455 of this chapter.

(2) Appeals may be had in the manner prescribed in subsection (1) of this section from any decision of the election commissioner concerning a ruling of an election board with respect to a challenge affecting the acceptability of a vote or votes. A petition hereunder for appeal shall contain the information specified in section 451 of this chapter for a petition for a recount. A decision

of the district court in favor of the petitioner may have the effect of disallowing the challenged votes but shall not halt or delay balloting or counting and tabulating. (Code 1966, § 76(c) and (d); Code 1970, tit. 43, § 453.)

Election contests are responsibility of legislative branch and are generally beyond control of judiciary. — Election contests are essentially a responsibility of the legislative branch of government under the theory of separation of powers and are generally beyond the control of the judiciary except to the extent that responsibility therefor has been expressly given the judiciary by legislation. *Basilus v. Election Comm'r*, 5 TTR 290 (1970).

Trial division of high court has jurisdiction only to order recount in election contest. — Under sections 451 through 455 of this Code the trial division of the high court may order a recount in a contested election; however, the court does not have jurisdiction to order anything else. *Basilus v. Election Comm'r*, 5 TTR 290 (1970).

§ 454. Approval of petition; notice of recount. — Regardless of whether a petition for recount is first filed with a board of election or with the election commissioner, if the election commissioner determines that there is a substantial question of fraud or error and that there is a substantial possibility that the outcome of the election would be affected by a recount, he shall cause notice of the recount to be given in a manner decided by him. (Code 1966, § 76(b); Code 1970, tit. 43, § 454.)

§ 455. Recount by counting and tabulating committee. — The recount shall be held by the counting and tabulating committee within ten days after the decision of the election commissioner and shall be public. The counting and tabulating committee shall make certificates of such determination under oath showing the result of the election and what persons were declared elected to fill office, one of which shall be filed with the High Commissioner, one with the election commissioner, one with each board of election concerned, and one with the person filing the petition for recount. The person receiving the greatest number of votes shall be deemed to have been elected, but if two or more candidates shall receive an equal number of votes for the office, the tie vote shall be resolved in accordance with section 411, subchapter III of this chapter. (Code 1966, § 76(b); Code 1970, tit. 43, § 455.)