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Elections—Form of Ballots

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It would seem that in the absence of any contrary decisions or provisions of other statutes, the right of a town board to act in such a case is clearly established by the applicable statute.

Form of Ballots

*Beary v. English*¹⁰ involved a summary proceeding by the petitioner pursuant to section 330 of the Election Law.¹¹ Mrs. Beary, the petitioner, was a candidate for member of a state committee of the Democratic Party. The primary ballot listed her name with those of another woman and two men. After each name appeared the designation "(Male)" or "(Female)". The petitioner brought the present proceeding to require the board to change the arrangement of the names on the primary ballot and separate the candidates by sex. The Court affirmed a dismissal of the proceeding.

The provisions of the Election Law are controlling on political parties, their organization, their committees and their operations.¹² Section 11 of the Election Law provides that the state committee of each party "may provide for the equal representation of the sexes" from each unit and if it does, the primary ballots "shall carry such party positions separately by sexes."¹³ There is a similar provision in the New York Constitution.¹⁴

The state committee of the Democratic Party has provided for equal representation of the sexes. The petitioner interpreted the clause of section 11 providing for designation of "party positions separately by sexes" as requiring on the ballot a separate designation of "Member of State Committee (Male)" and "Member of State Committee (Female)" with the two proper names under each. A minority

10. 1 N. Y. 2d 338, 135 N. E. 2d 313 (1956).

11. N. Y. ELECTION LAW §330. The supreme court is vested with jurisdiction to summarily determine any question of law or fact arising as to any of the subjects set forth in this section, which shall be construed liberally . . . 2. The nomination of any candidate, or his election to any party position, in a proceeding instituted by any candidate aggrieved . . .

12. *People ex rel. Coffey v. Democratic General Committee of Kings County*, 164 N. Y. 335, 58 N. E. 124 (1900).

13. N. Y. ELECTION LAW §11. The state committee of each party shall have power to make its own rules as to the number of its members, the units of representation from which its members shall be elected, and may provide for the equal representation of sexes from each unit. By any rule herein provided for, each unit of representation shall have an equal number of members When any such rule provides for the equal representation of sexes from each unit, the designating petitions and primary ballots shall carry such party positions separately by sexes

14. N. Y. CONST. art. XIII, §1. Members of the legislature, and all officers, executive and judicial, . . . before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation . . . and no other oath, declaration, or test shall be required as a qualification for any office of public trust, except the committee of a political party may, by rule, provide for equal representation of the sexes on any such committee

of the court agreed. The majority, however, refused to entertain such a strict interpretation of the section and held that it was satisfied by any method whereby there was a clear designation of the sex of the candidates. Furthermore, such an interpretation, they felt, is fortified by the provision in the Election Law stating that the order in which the names appear on the ballot is determined by lot.¹⁵

The majority's view is the more realistic approach. The provisions of the Election Law should be liberally construed to allow ballots in a form which could cause no possible confusion or difficulty.¹⁶ But in the present case it does not appear how clear the ballot was in fact. If there was no indication that the voter should vote for one male and one female, there could reasonably be votes cast for two males, for instance, and the ballot should have been made clearer. The Court, however, apparently found otherwise.

INSURANCE LAW

Presumption Against Suicide

A very popular protective feature which is included in many life insurance contracts is the so-called double indemnity clause.¹ In most instances, this provides for payment of an additional sum equal to the face value of the policy upon receipt by the insurer of due proof that the sole cause of the insured's death was bodily injury and that bodily injury was produced solely by external, violent and accidental means.² The insured's self-destruction, of course, is not death by accidental means, and double indemnity clauses expressly exclude this risk.³

In *Begley v. Prudential Ins. Co. of America*,⁴ the insured's body was found beneath the window of his second-story hospital room; no one had witnessed the events leading to his fatal injury; and investigation disclosed that the window was up and the screen broken. There was some evidence that the insured who had been suffering from various diseases was mentally depressed during the weeks immediately preceding his death. In the death proofs submitted by the beneficiary death was attributed to certain head injuries, but copies of the death certificate and the medical examiner's report contained the added comment "*Jumped or fell from window of Veterans Hospital 7/4/52.*"

15. N. Y. ELECTION LAW §104. Order of names upon ballot . . . 2. The officer or board with whom or which is filed the designations for a public office or party position shall determine by lot, . . . the order in which shall be printed on the official primary ballott, . . . the names of candidates for a party position

16. *Belford v. Board of Elections*, 306 N. Y. 70, 115 N. E. 2d 658 (1953).

1. This protection is offered by most major life insurance companies. See *THE NATIONAL UNDERWRITER CO., WHO WRITES WHAT* (1955) p. 82.

2. See samples of company contracts set forth in *CHILTON CO., THE SPECTATOR HANDY GUIDE* (1956).

3. *Id.*

4. 1 N. Y. 2d 530, 136 N. E. 2d 839 (1956).