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Section of Judges

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SELECTION OF JUDGES

The Bar Association of this State has an able committee on the selection of judges of which John F. Sullivan, of Mandan, is chairman. We are not alone in seeking an improvement in the present hit-or-miss method of selecting judicial officers. The February, 1935, number of the Journal of American Judicature Society contains an interesting discussion of the subject.

Reference is made to the system recently adopted in California by an amendment to the Constitution which has been adopted by popular vote and is now in force. Briefly, provision is made for the appointment of judges who, at the expiration of their term, have the privilege of having their names placed on the ballot without competition, and a majority of votes in favor of retaining them in office will give them an additional term. If any of them fails to obtain a majority, an appointment is made to fill the vacancy thus created.

The Journal states that the Washington State Bar, the Utah State Bar, members of the Cincinnati, Ohio, Bar, the Florida State Bar, and the Wisconsin Bar are considering plans more or less similar in principle to the California plan. Doubtless there are other states doing likewise. We quote from the Journal on the subject of the selection of candidates for the bench by primary election:

"It seems to be very generally understood that the worst feature of selecting judges by popular vote is the non-partisan primary. Nor is the partisan primary much better, though it provides sponsorship for nominees. Very generally in the larger cities the primaries leave no opportunity for the voters to make a wise choice. Bar advice as between candidates none of whom measure up to reasonable standards becomes equally futile.

"The view that nominations by an electorate which understands neither the standards for judicial service nor the qualifications of individual candidates amounts in reality to disposing of the office of judge to the lowest bidder derives from an incident vouched for by one of the country's most highly esteemed lawyers.

"This lawyer tells of an old general who had been so long in the engineer corps that competitive bidding on plans and specifications seemed to him to be the only way to select contractors. In his old age this soldier found himself in need of extensive dental work, so he wrote out a description of the teeth needing attention in the form of plans and specifications, which were submitted to dentists for competitive bids. The lowest bidder was an inexperienced and incompetent young dentist who nearly killed his patient, and supplied him with teeth through which he could not talk and with which he could not eat.

"Our correspondent points the moral by saying:

"Selecting judges by popular vote is likely to produce corresponding results. Those chosen are usually good joiners, look well in the regalia of their lodges and have ingratiating manners, but have usually neglected those severer and more lonely occupations which equip men with the ability to study and give them the detachment of judgment requisite to the judicial function."

"And this story may be supplemented with another, equally vouched for, of a legislator in a mid-western state who believed that the supreme court judges were being paid too much.

"Why, I could find you a thousand lawyers," he declared, "who would take the job for half as much salary."