

immediately under the name of the last voter, and the judges shall write in ink, opposite to and against the name of each person entered in their registers who is not shown by said registers to have voted, and in the appropriate column headed "voted" the word "no," so that the said column may be wholly filled up, and the judges shall then compare the registers, make them agree and ascertain the number of persons who by said registers are shown to have voted at that polling place on that day, and when they have made comparison and ascertained such facts they shall announce the same in a loud voice.

See notes to sec. 119.

An. Code, 1924, sec. 80. 1912, sec. 73. 1904, sec. 71. 1896, ch. 202, sec. 66. 1901, ch. 2. 1908, ch. 576. 1912, ch. 492. 1914, ch. 225, sec. 71. 1927, ch. 370. 1931, ch. 120.

116. The judges shall open the ballot box and count and announce the whole number of ballots in the box. They shall reject any ballots which are deceitfully folded together and any ballots which do not have indorsed thereon the name or initial of the judge who held the ballots, or if there shall be any mark on the ballot other than the cross-mark in a square opposite the name of a candidate, *or other than the name or names of any candidates written by the voter on the ballot as provided in section 97*, such ballot shall not be counted. Ballots not counted for such defects shall be marked "Defective," on the back thereof and shall be wrapped in a separate package and returned to the ballot-box as hereinafter directed. No vote shall be counted for any candidate opposite whose name no cross-mark shall be placed, and no ballot shall be rejected solely because any part or portion of the cross-mark extends beyond the square, if the point of intersection of the cross-mark is within the square or because the voter has marked more names than there are persons to be elected to an office, but such ballots shall not be counted, for any candidate in the group of names so marked. They shall open the ballots, and all of them shall be canvassed separately by one of the judges sitting between two other judges, which judge shall call out each name and the office for which it is designated and the other judges looking at the ballot at the same time, and the clerks making tally of the same. When all the ballots have been canvassed in this manner, the election clerks shall compare their tallies together and ascertain the total number of votes received by each candidate, and when they agree upon the numbers, one of them shall announce in a loud voice to the judges the aggregate number of votes received by each candidate. If requested by any watcher or challenger present at any canvass it shall be the duty of the judges and each of them to exhibit to such watcher or challenger any ballot cast, fully opened or in such condition and manner that he may fully read and examine the same, but the judges shall not allow any ballot to be taken from their hands. As the ballots are counted they shall be strung upon a strong twine.¹

Amendment to this section by Ch. 120, 1931, eliminating provision as to counting write-in ballots, unconstitutional. *Jackson v. Norris*, 173 Md. 579.

This section referred to in construing sec. 255. *Fitzgerald v. Quinn*, 159 Md. 545.

This section and secs. 114, 117, 119, 120 and 121 referred to as showing the care taken by legislature to secure honest counts and returns and in deciding that canvassers may not give a candidate more votes than the four certificates signed by six election officials show he had, merely because they find three more marks on one of two tally sheets. Presumption is that clerks performed duty required of them by this section, *i.e.*, compared their tallies and ascertained total number of votes for each candidate. *Canvassers of Election v. Noll*, 127 Md. 305.

¹ Sec. 116 is printed to conform to the decision of the Court of Appeals in *Jackson v. Norris*, 173 Md. 597. The matter in italics, which had been eliminated by Chapter 120 of the Acts of 1931, has been restored.