

Chapter CLXXIV.¹

THE MEMBERS.

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190. By rule the Member is restricted as to his movements during business or debate, and as to wearing his hat and smoking.

Members may not remain near the Clerk's desk during a vote.

The Sergeant at Arms and Doorkeeper are charged with the enforcement of certain rules relating to decorum.

On December 12, 1907,² the Speaker,³ after directing the clerk to read section 7 of Rule 13, said:

The Chair has found it necessary to have the rule read, especially the clause relating to smoking, that Members may understand the rule and understand that it is the duty of the Sergeant at Arms and Doorkeeper to see that the rule is strictly enforced.

191. Before the adoption of rules, while the House was proceeding under general parliamentary law, the Speaker held that Members might not remain near the Clerk's desk during a vote.

Prior to the adoption of rules by the House, those rules which embody practices of long established custom will be enforced as if already in effect.

On March 15, 1909,⁴ during a roll call, and prior to the adoption of rules by the House, Mr. Champ Clark, of Missouri, raised the point of order that Members congregated about the Clerk's desk should be required to be seated.

The Speaker³ said:

The rules of the House, if we had rules, prohibit Members from standing at the Clerk's desk during a roll call, and the Chair will assume, analogous to those rules or following those rules or because of the practice of the House heretofore, in this instance that Members win not be at the Clerk's desk during a roll call.

¹Supplementary to Chapter XLL.

²First session Sixtieth Congress, Record, p. 304.

³Joseph G. Cannon, of Illinois, Speaker.

⁴First session Sixty-first Congress, Record, p. 21.

192. Officers and employees of the House may not remain near the Clerk's desk during a vote unless their duties so require.

On January 7, 1910,¹ Mr. Oscar W. Underwood, of Alabama, made the point of order that an officer of the House whose duties did not require his attendance at the desk remained there during a roll call.

The Speaker² said:

The rule is silent as to employees of the House; but the Chair believes that the employees of the House should not be at the Clerk's desk unless their duties require it.

Hitherto, so far as the Chair recalls, with some length of service, employees of the House, both of the majority and minority, have sometimes come to the desk during a roll call without protest; but if protest is made, as it is, the Chair will see, if his attention is brought to it, and even without that, if he notices it, that they do not come to the clerk's desk during a roll call.

193. Discussion of the importance of observing, the rule against remaining at the desk during roll call, and smoking in the Hall of the House.

In order to interrupt a Member having the floor, it is necessary first to address the Chair.

On May 23, 1912,³ while there was no business pending before the House, the Speaker⁴ said:

The Chair wishes to call the attention of Members to two or three rules that are constantly violated, thoughtlessly, no doubt, but the violation of which works absolute confusion. The Chair does this now when nobody is doing the particular thing of which Members complain.

Some of the Members are in the habit of crowding about the desk when a roll call is being called. That is absolutely forbidden by the rules. We got into considerable difficulty at the beginning of the Sixty-first Congress about that very thing.

There is a rule against smoking in the House. That ought to be enforced.

Further, the proper method of procedure when a gentleman has the floor and another desires to interrupt him is first to address the Chair. Of course, the Chair cares nothing about that, except that that is the way to preserve order and keep down dissension in the House.

194. Members may not personally address the clerks at the desk during roll call.

All requests by Members as to whether recorded or how recorded on a roll call are properly addressed to the Speaker from the floor and not to the clerks at the desk.

On March 14, 1914,⁵ at the beginning of a roll call, the Speaker⁴ said:

Before the Chair puts the motion to go into the Committee of the Whole House, inasmuch as there is quite a large attendance of the House this morning, the Chair desires to make a statement. It is against the rule for Members to come to the Clerk's desk during roll call, asking how they voted or trying to get their names in when they did not vote. Of course, Members do it out of no bad intention. It is more thoughtlessness than anything else, but it bothers the clerks, and it has been increasing in frequency, lately. The clerks do not want any trouble with Members of the

¹ Second session, Sixty-first Congress, Record, p. 404.

² Joseph G. Cannon, of Illinois, Speaker.

³ Second session, Sixty-second Congress, Record, p. 7022.

⁴ Champ Clark, of Missouri, Speaker.

⁵ Second session, Sixty-third Congress, Record, p. 4850.

House, and can not afford to have any. The rule prohibits any Members being around the Clerk's desk during roll calls.

195. On June 22, 1916¹ after the previous question had been ordered on the fortifications appropriation bill, the Speaker² said:

Before the votes are taken on the fortifications appropriation bill and the amendments thereto, with the consent of the House the Chair desires to make two or three remarks. There are rules in this House that are habitually violated, generally, the Chair thinks, without any intention of doing so. One of them is that Members shall not crowd about the Clerk's desk when the roll is being called. Members keep coming up and disturbing the Clerk during a roll call, asking whether they are recorded, or how they are recorded, or desiring to be recorded when they have no right to be recorded. It casts suspicion upon the integrity of the proceedings.

196. On March 3, 1919³ Mr. James R. Mann, of Illinois, raised a question of order against Members approaching the desk and addressing the tally clerk while the roll was being called.

The Speaker² sustained the point of order.

197. Members may not introduce occupants of the galleries during a session of the House.

The Speaker is forbidden to recognize for motions to suspend the rule prohibiting the introduction of persons in the galleries.

Section 8 of Rule XIV provides:

It shall not be in order for any Member to introduce to or to bring to the attention of the House during its sessions any occupant in the galleries of the House; nor may the Speaker entertain a request for the suspension of this rule by unanimous consent or otherwise.

This rule was adopted, April 10, 1933,⁴ to protect the House from the interruptions and confusion attending the introduction of visitors in the galleries by Members from the floor. The custom had long been a subject of criticism and Speaker Garner in former sessions⁵ had made it a policy to decline recognition for that purpose.

198. The House has by resolution revoked all leaves of absence and directed the Sergeant-at-Arms to deduct from the salary of Members compensation for days absent without leave.

On August 25, 1914,⁶ the House passed a resolution revoking all leaves of absence granted to Members, and directing the Sergeant-at-Arms to enforce the law requiring him to deduct from the salary of absent Members compensation for the days absent.

Following the passage of the resolution, Mr. Joseph W. Byrns, of Tennessee, asked, as a parliamentary inquiry, if the resolution revoked all previous leaves of absence, including those granted on account of sickness.

¹First session Sixty-fourth Congress, Record, p. 9790.

²Champ Clark, of Missouri, Speaker.

³Third session Sixty-fifth Congress, Record, p. 4914.

⁴First session Seventy-third Congress, Record, p. 1449.

⁵First session Seventy-second Congress, Record, p. 14051.

⁶Second session Sixty-third Congress, Record, p. 14229.

Mr. James R. Mann, of Illinois, contended that it revoked all leaves of absence in effect at the time of its passage, regardless of the cause for which granted.

The Speaker¹ sustained Mr. Mann's contention, and said:

That is true. The Chair will state his recollection for the benefit of other Members, a great many of whom never had anything to do with it, that in the Fifty-third Congress, in the summer of 1894, this statute was enforced, and I paid \$28 and some cents myself to go down in Virginia to make two speeches. But my recollection about it is that the Sergeant at Arms had some kind of a document down there that you had to sign, and you certified how many days you had been absent. If you did not make the certification you would have been here every day.

Speaker Reed sneered at the statute as "a police court regulation." Nevertheless it had the effect of keeping a quorum here.

Mr. Sereno E. Payne, of New York, added:

Mr. Speaker, my recollection about the enforcement of that statute is that there was a certificate gotten up by the Sergeant at Arms which the Members of the House were required to sign, and most of them certified that they were present during the whole time. I think there were only about half a dozen of us—and I was included in that number—that suffered any deduction from our salary on account of it, and my recollection is that nobody suffered after the first month and that they overlooked the certificate.

The resolution remained in force until October 15,² when Mr. Underwood offered the following resolution:

Resolved, That House resolution 601 directing the Sergeant at Arms to enforce section 40 of the Revised Statutes of the United States is hereby repealed.

During debate on the resolution, Mr. Charles R. Crisp, of Georgia, asked if the passage of the pending resolution could be interpreted as providing for the reimbursement of those Members whose salaries had been docked under the provisions of the original resolution.

Mr. Underwood replied in the negative.

The resolution was then agreed to, yeas 81, nays 8.

199. Application for leave of absence is properly presented by filing with the clerk the printed form to be secured at the desk rather than by oral request from the floor.—On December 17, 1931,³ following a number of requests for leave of absence by Members asking recognition from the floor, the Speaker⁴ suggested:

The Chair would like to make this suggestion to gentlemen who in the future desire to provide leaves of absence for their colleagues. There is provided at the Sergeant at Arms desk, on the Speaker's right, blanks for just such purposes. The Chair would suggest that Members avail themselves of that means of securing leaves of absence. These blanks, when filled out and given to the Clerk, will be laid before the House prior to adjournment for the approval of the House. The Chair thinks that by this means much of the time of the House will be saved.

200. It is not in order to request leave of absence for colleagues from the floor.

¹ First session Seventy-second Congress, Record, p. 14051.

² Journal, p. 989; Record, p. 16676.

³ First session Seventy-second Congress, Record, p. 721.

⁴ John N. Garner, of Texas, Speaker.

The rules do not provide for announcement of how colleagues would vote if present, and such procedure is by unanimous consent only.

Members are not permitted to obstruct the well of the House during roll call.

On February 1, 1929,¹ Mr. Bertrand H. Snell, of New York, rising to a parliamentary inquiry said:

I would like to propose a parliamentary inquiry to the Speaker. There has been a growing custom lately that during a roll call Members go into the well of the House and create such confusion that it is very difficult for the clerks to hear and impossible for Members in the Hall to hear their names when called. Furthermore, there is no provision in the rules that provides for a Member to explain his vote or how a colleague would vote if present. I think the Speaker should call attention to these infractions of the rules.

The Speaker² replied:

I am glad that the gentleman from New York has asked this question. The Chair has had in mind making a statement touching the matters he mentions. In the first place, the Chair thinks that gentlemen should not ask leave of absence for their colleagues on the floor of the House. It simply consumes time. They should be in writing and blanks are provided for that purpose. Hereafter the Chair will refuse to recognize gentlemen who ask for leave of absence for their colleagues from the floor.

As to the second question asked by the gentleman from New York, whether the announcement by Members that their colleagues if present would vote so-and-so, is contrary to the rules of the House. The Chair has no knowledge of any rule that gives Members that privilege. Of course, a Member might obtain unanimous consent to make such a statement, and the Chair hereafter will ask if there is objection to making the statement.

With regard to Members standing in the well of the House during an important roll call, Chair thinks that the rule prohibiting it ought to be strictly enforced, and will enforce it from now on.

201. The compensation of Speaker and Members.

The statutes³ fix the compensation of the Speaker at \$15,000⁴ per annum, and the compensation of Members, Delegates from Territories, and Resident Commissioners from Porto Rico and the Philippine Islands, at \$10,000 per annum each.

202. The provision of the act of July 16, 1914, relating to payment of salary of Members of Congress for period elapsing between election and death of predecessor, is permanent law.

Since 1914 Members elected to fill vacancies occasioned by death of predecessor are paid salary from date of election only.

A certificate issued by the Speaker of the House of Representatives within the meaning of sections 47 and 48 of the Revised Statutes and as such is conclusive upon the accounting officers of the Treasury.

At a special election held June 5, 1919, Mr. James O'Connor was elected a Representative from the first congressional district of the State of Louisiana to fill a vacancy occurring by the death, on April 28, 1919, of Albert Estopinal.

¹Second session Seventieth Congress, Record p. 2624.

²Nicholas Longworth, of Ohio, Speaker.

³Revised Statutes, sections 35, 37; U.S. Code, title 2, sec. 31; title 3, sec. 45; title 48, sections 893, 1093. 43 Stat. L., p. 1301.

⁴Speaker raised from \$12,000 and Members from \$7,500 by legislative appropriation act of 1925. (43 Stat. L.)

Following the practice of the Sergeant at Arms since 1914, Mr. O'Connor was paid salary from the date of his election only. A claim for salary for the period elapsing between his election and the death of his predecessor being submitted to the Auditor for the State and Other Departments, the claim was disallowed because of the provisions of the act of July 16, 1914,¹ as follows:

The salaries of Representatives in Congress, Delegates from Territories, and Resident Commissioners, elected for unexpired terms, shall commence on the date of their election and not before.

On appeal to the Comptroller of the Treasury, the comptroller, on July 17, 1919, disclaimed jurisdiction under the following statute:²

SEC. 47. The salary and accounts for traveling expenses in going to and returning from Congress of Senators shall be certified by the President of the Senate, and those of Representatives and Delegates by the Speaker of the House of Representatives.

SEC. 48. The certificate given pursuant to the preceding section shall be conclusive upon all the departments and officers of the Government.

Thereupon the question was submitted in the form of a personal letter to the Speaker,³ who responded:

JULY 28, 1919.

Yours received. I am of the opinion that the act of July 16, 1914, to which you refer, is permanent law. I was on the Committee on Appropriations at the time, and my recollection is that we thought the then-existing practice of giving to an incoming Member salary from the date of the death of his predecessor was unreasonable and that he had no claim for payment for any period before his election, and it was to accomplish that that the legislation was passed. Believing that to be the law, of course I can not encourage you for any remedy.

Thanking you for the courteous manner in which you preferred your request, I am,

Yours respectfully,

F. H. GILLETT.

This letter is construed in the opinion⁴ issued by the Comptroller of the Treasury⁵ under date of August 25, 1919:

The action by the Speaker of the House of Representatives, as expressed in his letter of July 28, 1919, to Mr. O'Connor is a "certificate" within the meaning of sections 47 and 48 of the Revised Statutes and, as such, is conclusive upon the accounting officers of the Treasury, and the appeal is therefore dismissed for want of jurisdiction to determine the case upon its merits.

203. Payment of salaries of Members at any other rate than that fixed by law is not authorized.

A Member may remit back to the United States any portion of his salary, and amounts so remitted are covered into the general funds of the Treasury and are not subject to recovery.

Only one check monthly may be issued to Members in payment of salary, such check to correspond with the legal rate of pay due for the current month.

¹ 2 U.S.C. 37.

² 2 U.S.C. 48.

³ Frederick H. Gillett, of Massachusetts, Speaker.

⁴ Decisions of the Comptroller of the Treasury, Appeal No. 29861.

⁵ Comptroller Walter W. Warwick.

On March 19, 1925,¹ in response to a request from the Sergeant at Arms of the House, the Comptroller General of the United States² rendered the following decision:

Public No. 624 fixes the legal rate of pay for Members of the House of Representatives, and payment at any other rate would be an improper payment. You are advised therefore that acceptance of salary certificates calling for an amount less than at the rate provided by law is not, authorized.

You may only make payment of salary at the rate fixed by law. A declining to receive payment of salary at the rate fixed by law or the difference in amount between the old and the new rate of salary does not necessarily affect the right thereto, nor as a general rule preclude the individual or his legal representatives from subsequently making a claim as for unpaid salary. The accounts of the Government are entitled to be kept and payments made so that the transactions will appear therefrom as closed, and if one does not for personal reasons wish to retain the whole amount which the law provides he shall be paid, he is free to remit back to the United States such amount as he does not wish to retain with a statement of his reasons therefor. The transaction will then appear as an acquittance to the United States of any future claims for salary and the remittance back made by the individual is in the status substantially of a gift to the United States which may properly go into the general funds of the Treasury without being subject, to future claim for unpaid salary, as would be possible should any other rule be followed.

As a general rule, several checks should not be issued to pay a single obligation of the Government and there appearing no interest of the United States to require payment by more than one check, you are advised that one check only should be issued therefor.

204. It is the custom to grant to the widow or other dependent of deceased Member one year's salary.

The payment of a year's salary to widows of deceased Members is a gratuity, and in event of the death of the beneficiary prior to payment there is no authority to make payment to any one else.

In conformity with long-established custom under which a year's salary is granted to the widow or heirs of a deceased Member, the act of March 28, 1918,³ appropriated as follows:

To pay the widow of Ebenezer J. Hill, late a Representative from the State of Connecticut, \$7,500.

Mrs. Hill died May 23, 1918, without having received payment of the amount appropriated, and Clara M. Hill, administratrix of her estate, applied for payment.

On September 26, 1918, in response to a request from the Clerk of the House, the Comptroller⁴ of the Treasury decided:⁵

An appropriation of this character is a gratuity. Prior to making the appropriation there existed no legal right in anyone to the amount provided, and the making the appropriation gave no legal right to anyone beyond the one named in the appropriation. The fact that the widow incurred indebtedness or otherwise obligated herself because of the appropriation furnishes no legal reason for paying the amount to one not named or comprehended in the appropriation. It, is not a relief measure but a gift, and the one named by Congress to receive the gift being unable to receive it because of death, the gift can not be paid to a representative of the one named without, the specific authority of Congress.

¹ MSS. Vol. XLIII, p. 891.

² Comptroller General, J. R. McCarl.

³ Stat. L., p. 497.

⁴ Comptroller Walter W. Warwick.

⁵ 25 Comptroller's Decisions, p. 251.

205. Subsistence expenses of members of committees on official missions are not reimbursed at commuted rates or on per diem allowances but on vouchers for actual expenses.

On April 21, 1931,¹ the Comptroller General of the United States² handed down the following decision:

Members of congressional committees engaged in the examination of estimates in the field are not civilian officers or employees of the departments or establishments within the purview of the subsistence act of 1926, nor are their traveling expenses payable from appropriations for "traveling expenses", but under the specific provisions for "examination of estimates for appropriations in the field." They may not be reimbursed for their subsistence expenses at a commuted rate nor granted a per diem in lieu of subsistence, but are limited to actual expenses.

206. Old and new systems of providing clerks for Members.

Clerk hire is paid from date of filing of credentials and not from date of election.

Clerks designated by Member are placed upon the roll of employees of the House, and are subject to removal by the Member, with or without cause.

Allowance for clerk hire was first authorized in the joint resolution approved March 3, 1893,⁴ not to exceed \$100 for any month during a session to Members who were not chairman of committees entitled to a clerk. By the act of July 7, 1898,⁵ the allowance was extended to all members throughout the year except to chairmen of committees during a session.

Under the provisions of the legislative appropriation act of 1907,⁶ each Member and Delegate received \$1,500 annually for the hire of clerks necessarily employed by him in the discharge of official duties.

On November 8, 1911,⁷ in response to an inquiry from the Clerk of the House, the Comptroller of the Treasury⁸ held that Members elect should be paid this allowance from and including the date on which their credentials were filed and not from date of election.

The amount provided for clerk hire was increased in 1917³ to \$2,000, in 1919⁴ to \$3,200, and in 1924⁹ to \$4,000, with the provision that no person receive a salary therefrom in excess of \$3,300; in 1929,¹⁰ to \$5,000, no person to receive in excess of \$3,900 per annum. The Joint Resolution of January 25, 1923,¹¹ provides that the amount shall—

¹ Comptroller's Decisions, A-36217.

² Comptroller J. R. McCarl.

³ 39 Stat. L., p. 1076.

⁴ 40 Stat. L., p. 1219.

⁵ 30 Stat. L., p. 687.

⁶ 34 Stat. L., p. 942.

⁷ 18 Comptroller's Decisions, p. 337.

⁸ Comptroller Walter W. Warwick.

⁹ 2 U.S.C. 74.

¹⁰ 46 Stat. L., p. 38.

¹¹ 2 U.S.C. 92.

be paid by the Clerk of the House of Representatives to one or two persons to be designated by each Member, Delegate, and Resident Commissioner, the names of such persons to be placed upon the roll of employees of the House of Representatives, together with the amount to be paid each, and Representatives, Delegates, and Resident Commissioners elect to Congress shall likewise be entitled to make such designations.

And further provides—

That such persons shall be subject to removal at any time by such Member, Delegate, or Resident Commissioner with or without cause.

207. The act¹ of June 20, 1929, provides:

The clerk hire for each member, Delegate, and Resident Commissioner shall be at the rate of \$5,000 per annum and shall be paid in accordance with the act of January 25, 1923:² *Provided*, That no person shall receive a salary from such clerk hire at a rate in excess of \$3,900 per annum.

Under this statute the allowance of clerk hire is increased from \$4,000 to \$5,000, and the maximum amount payable to any one person is increased from \$3,300 to \$3,900.

No Member may appoint more than two persons to receive compensation from the allowance and appointments are not retroactive to a date prior to a current month.

The allowance is paid in monthly installments and is not cumulative. Any portion of a monthly allowance not absorbed reverts to the Treasury.

208. Death or resignation of a Member terminates the employment of clerks designated by him.

On July 29, 1919, in response³ to a request of the Clerk of the House, the Comptroller of the Treasury⁴ rendered a decision in the claim of S. L. Irby, designated as clerk to Mr. J. Willard Ragsdale, of South Carolina. Mr. Ragsdale died July 23, 1919, and the question arose as to whether the employment of the clerk was automatically terminated by the death of the Member or whether the clerk served until the appointment of a clerk by Mr. Ragsdale's successor.

The comptroller decided:

In view of the facts that the clerks are personal appointees, that they are subject to removal in the discretion of the appointing authority, and especially that they are necessarily employed by a Member, Delegate, or Resident Commissioner in the discharge of his official and representative duties, as set forth in the act of March 1, 1919, I am of the opinion that the death or resignation of a Member, Delegate, or Resident Commissioner terminates the employment of the clerk appointed by him under the authority of the acts quoted.

209. On March 6, 1920,⁵ in response to a request of the financial clerk of the Senate, the Comptroller of the Treasury² rendered a decision on the status of persons designated by Mr. John H. Bankhead, of Alabama, and acting as personal clerks and as clerks to committees of which he was chairman at the time of his death.

The comptroller held:

¹ 46 Stat. L., p. 32.

² U. S. Code, title 2, sec. 92.

³ 26 Comptroller's Decisions, p. 726.

⁴ Comptroller Walter W. Warwick.

⁵ 26 Comptroller's Decisions, p. 86.

At the time of his death Senator Bankhead was chairman of the Committee on Expenditures in the Interior Department, which committee is not one specifically provided with clerkships. If the clerks who served under him and under his committee were appointed by or for him as his individual clerks you are not authorized to continue them on the pay roll for any period subsequent to his death.

210. The statute providing for clerks for Members does not require the designation of two clerks, but merely limits the number to not more than two.

Payment of clerk hire from lump sum appropriations to persons carried on the rolls in another capacity is additional compensation and prohibited by law.

The statute prohibiting payment of two or more salaries exceeding \$2,000 per annum in the aggregate applies to clerks to members.

One person may be designated as clerk to two Members if the aggregate compensation is within the limitation prescribed by law.

On July 18, 1919,¹ the Clerk of the House submitted to the Comptroller of the Treasury the following inquiries:

First. Is the Clerk of the House authorized to pay compensation at the rate of \$3,200 per annum to one clerk regularly designated and placed on the rolls as clerk to a Member of the House?

Second. May a person be carried on the rolls in the dual capacity of clerk to a Member at \$300 per annum and at the same time as janitor to the Committee on Public Lands, and, if so, may the additional compensation authorized by section 7 of the act of March 1, 1919, be paid in each instance?

Third. May a Member of the House designate a person to be a clerk under the provisions of Joint Resolution No. 104 at compensation of or exceeding \$2,000 per annum if such person be on the roll of employees of the House as a committee clerk or in another capacity?

Fourth. Is the additional compensation authorized by the act of March 1, 1919, payable to a Member's clerk at any rate of basic compensation below \$2,500?

Fifth. May one person be designated as clerk to two Members, provided the aggregate compensation of the two employments, including the so-called bonus, does not exceed \$2,000 per annum?

The comptroller² replied:

You are advised that if a Member shall elect to designate only one person as his clerk at a salary not exceeding \$3,200 per annum and the name of such person shall be regularly placed upon the roll of employees of the House at such rate of compensation, you would be authorized to pay said person at the rate of compensation so fixed.

As to the second point; the salary or compensation of the position of janitor to the Committee on Public Lands is fixed by law.³ Therefore, the payment from the lump sum appropriation for clerk hire of additional compensation to the person holding such position is prohibited by the provisions of section 1765, Revised Statutes.

The so-called bonus at the rate of \$240 per annum is to be paid to each civilian employed (with certain exceptions). In no circumstances can one person receive more than \$240 a year, or at that rate. The bonus does not apply to offices or positions but to a person—a civil employee of the Government. He can not draw more than one bonus.

The third question is answered in the negative as in direct contravention of the provisions of section 6 of the act of May 10, 1916.⁴ See also answer to your second question.

¹ 26 Comptroller's Decisions p. 51.

² Comptroller Walter W. Warwick.

³ 10 Stat., L., 1218.

⁴ U. S. Code, title 5, sections 58, 59.

In answer to your fourth question you are advised that the additional compensation authorized by Section 7 of the act of March 1, 1919,¹ is payable to the clerks in question subject, of course, to all of the limitations and restrictions in said section relative to rates of compensation, the 60 per centum limitation, payments from lump-sum appropriations, requirement of duty with respect to time, certificate as to ability and qualifications, etc.

Your fifth and last question is answered in the affirmative.

211. Compensation of clerks may be paid on the third of each month.

On February 21, 1921² the Comptroller of the Treasury³ decided that the month for dividing the annual compensation of clerks to Members into monthly installments may begin on the 4th of each month, and payment may be made on the 3d of the month, which would be coincident with the payment of Members.

212. A Member unseating another is not entitled to clerk hire prior to taking of oath and designation of clerks.

On February 25, 1921,⁴ the House decided the Pennsylvania election case of John R. Farr *v.* Patrick McLane against the sitting member and seated the contestant. Thereupon, Mr. Farr designated clerks, and the question arose as to whether such clerks were entitled to compensation from the beginning of the Sixty-sixth Congress.

The Clerk of the House addressed to the Comptroller of the Treasury an inquiry as to whether Mr. Farr was entitled to clerk-hire allowance—

as a Member-elect from and including March 4, 1919, to June 30, 1919 “and” to clerk-hire allowance from July 1, 1919, to and including February 24, 1921, he having unseated another who drew clerk-hire allowance from March 4, 1919, to June 30, 1919, and designated persons to receive such allowance from July 1, 1919, to February 25, 1921.

On March 2, 1921,⁵ in response to this inquiry, the comptroller³ decided:

The appropriations for the fiscal years 1920 and 1921⁶ do not provide for the payment to the Member for clerk hire as in the appropriation for the fiscal year 1919,⁷ and I understand also that during the period covered by the second question, July 1, 1919, to February 24, 1921, Mr. Farr did not and could not comply with the requirements of the joint resolution of July 11, 1919,⁸ by designating persons to be paid clerk hire and having them placed upon the roll of employees of the House of Representatives with the amount to be paid to each. In addition there is the express direction in the proviso to the appropriation for the fiscal year 1920,⁹ that no part of the clerk hire “shall be paid to any Member, Delegate or Resident Commissioner.”

Although there is some difference in the language of the last two appropriations from that for the fiscal year 1919, the clear intent of all three appropriations is to pay for clerk hire “necessarily employed” and that there shall be a showing of such employment. This negatives whatever authority there may be in the appropriations for the fiscal year 1919 to pay the Member the clerk hire; and as to the last two appropriations, there being no provision for payment to

¹ 40 Stat., L., 1267.

² 27 Comptroller's Decisions P. 743.

³ Comptroller Walter W. Warwick.

⁴ Third Session Sixty-sixth Congress, Journal p. 253; Record, p. 3910.

⁵ 27 Comptroller's Decisions P. 766.

⁶ 41 Stat., 637.

⁷ 40 Stat., 764.

⁸ 41 Stat., 162.

⁹ 40 Stat., 1219.

the Member, the requirements to designate the persons to receive payment precludes payment to anyone else.

The two questions are answered negatively.

213. The disposition of stationery allowance to Members through the stationery room.

Purchase through the stationery room of articles other than stationery and necessary office, supplies is restricted by law.

Since 1893 a sum has been regularly appropriated allowing each Member \$125 for stationery for each regular and special session of Congress. This allowance is placed to the credit of Members in the stationery room at the beginning of each session and may be disposed of in two ways: A Member may either draw the entire allowance of \$125 in cash when the session of Congress for which the allowance is made convenes, or may leave it to his credit and charge against it for stationery and office supplies, as needed, until exhausted.

A Member drawing the allowance in cash thereby withdraws his official credit account from the stationery room and thereafter purchases are on a cash basis, chargeable to him personally. When the allowance is permitted to remain to the Member's credit and exhausted through the purchase of supplies charged against it, additional stationery or supplies are likewise charged to his personal account.

For the convenience of Members, purchases from the stationery room made after official accounts have been closed, are charged to their personal accounts and statements rendered to them monthly.

Purchases through the stationery room of articles other than stationery and office supplies necessary to the conduct of public business is restricted by the Act of February 20, 1923,¹ as follows:

No part of the funds herein appropriated shall be used for the purpose of purchasing by or through the stationery rooms articles other than stationery and office supplies essential to and necessary for the conduct of public business.

214. Statutes authorize the sale of stationery for official use and the binding of official documents for Members by the Public Printer at cost.—

The sale of stationery by the Public Printer at cost is authorized by the act of June 5, 1920,² which provides:

Paper, envelopes, and blank books required by the stationery rooms of the Senate and House of Representatives for sale to Senators and Members for official use may be purchased from the Public Printer at actual cost thereof and payment therefor shall be made before delivery.

Orders for such supplies are placed through the House stationery rooms and payment is required before delivery.

The following resolution adopted by the Joint Committee on Printing August 14, 1913, restricts the requisitioning of embossing:

Resolved, That the Public Printer be requested to discontinue the embossing of letterheads, note heads, and envelopes for Congress, its officials, committees, and Members: Provided, That such embossing may be done if the cost thereof, in excess of the amount that printing the same would cost the Government, is charged to the person so ordering.

¹42 Stat. L., p. 1280; U. S. Code, title 2, secs. 110–112.

²U.S. Code, sec. 110, p. 9.

Authorization for binding of official documents by the Public Printer at cost is provided by law ¹ as follows:

That the Public Printer be authorized to bind at the Government Printing Office any books, maps, charts, or documents published by authority of Congress, upon application of any Member of the Senate or House of Representatives, upon payment of the actual cost of such binding.

215. Boxes are provided for the mailing of frankable matter.

On May 9, 1911,² Mr. John C. Floyd, of Arkansas, from the Committee on Accounts, submitted a report³ from which the following is an excerpt:

The duty of distributing packing boxes for frankable matter remains that of the Clerk, and it will not impose a heavy duty on the force at his command to discharge it in such manner as the Clerk may direct. Heretofore these boxes have been distributed from the Clerk's document room. For the information of new Members we will state that an annual appropriation of \$3,000 is made as a part of the House contingent fund for packing boxes, intended for the shipment of bulky frankable matter. This custom has obtained for any years, the item dating back to 1857, when "boxes for books" were provided for; in 1862 the term "packing boxes" was first and has since been employed. These boxes are secured by contract pursuant to the act of March 3, 1901 (Supp. R. S., vol. 2, p. 1530), and paid for out of the contingent fund upon vouchers approved by the Committee on Accounts. Each Member is entitled to 3 boxes—1 large pine, 1 large redwood, and 1 small pine. The latter is generally used for sending out bedding plants from the Botanic Garden to any given address, the box being labeled here and sent to the garden with a Member's frank. The large boxes are convenient for mailing documents and files of official correspondence to Member's homes at the end of a session.

With the increase in the membership of the House in 1913, this appropriation was increased to \$4,500 and has remained unchanged in subsequent appropriation bills, except in that of 1920, when it was stricken out on a point of order. In 1921, although included in the bill, the appropriation was not expended as the rapid rise in prices following the war rendered it inadequate. The following year it was found sufficient to provide each Member with one box, and since, that time the quota has been limited to one substantial box for each Member.

216. Discussion of various services of the House, including the House restaurant, House barber shops, and stationery and mileage allowances to Members.

On April 6; 1922,⁴ in a debate proceeding under unanimous consent, Mr. Frank W. Mondell, of Wyoming, discussing various services of the House, said:

Mr. Speaker, in view of what has been said about the restaurant, the barber shop, and the stationery room, I think it is proper that there would be a brief statement made with regard to those institutions at this time. For many years, certainly far beyond my 25 years of service, certain colored men have been employed in the House who in addition to their other duties, for which they were paid a small salary, serve the Members and the employees of the House as barbers. I have never been shaved or had a hair cut in the House for which I have paid less than I would pay at any commercial shop anywhere. The necessity for the maintenance of barber shops in the House is apparent to anyone who knows anything about the business of the House. Members and employees can not always find the time to go down town. It is necessary to have a barber shop. The barbers in the House are paid a small sum for work which they actually perform.

¹ U. S. Code, sec. 161, p. 1425.

² First session Sixty-first Congress, Record, p. 1153.

³ House Report No. 25.

⁴ Second session Sixty-second Congress. Record, p. 5120.

In addition to that they serve the Members and employees, and they are paid for that service by the Members or the employees whom they serve.

We have had for many years a session allowance of \$125 each for stationery. We procure that stationery through the stationery room. There lies on my desk to-day a statement from the stationery room to the effect that my stationery account is exhausted. That is not an uncommon experience; it is, I think, the usual experience of Members who endeavor to serve their constituents by answering promptly and fully their correspondence.

We do furnish a room for a restaurant in this building. That is absolutely essential for the conduct of the business of the House and for the accommodation of those who have business with the House and its committees or of the visiting public. All are treated alike and all pay the same price. Quite recently an arrangement has been made under which under certain condition it is possible that there will be something of a charge on the contingent fund for the maintenance of the restaurant, but that is doubtful. We pay at the restaurant for what we obtain there, and pay, I think, a very good price.

The mileage allowance is granted once a session of Congress. For one, I desire to offer testimony to the effect that during my service here, while I never have traveled except as it was necessary to travel between Washington and my home, the mileage allowance made to me, though it is a considerable sum, has not fully paid the bill.

During the course of the debate Mr. Finis J. Garrett, of Tennessee, asked:

I would like to ask the gentleman from Wyoming if he knows how long it has been the law that a Member of Congress shall receive 20 cents a mile each way over the shortest traveled route between his home and Washington?

Mr. William H. Stafford, of Wisconsin, replied that the rate was established in 1866, and Mr. Thomas U. Sisson, of Mississippi, added:

One of the first controversies that came up on the floor of the House after the Government was organized was the equalization of compensation of Members of Congress. In order that their compensation might be equalized the fathers of this Republic and the First Congress—or I think the second—provided that mileage should be paid from the home of the Member to the city of Washington and return, so that every Member of Congress might receive exactly the compensation for services rendered here.

Continuing the discussion, Mr. James R. Mann, of Illinois, said:

Each Member of the House is entitled to a credit in the stationery account of \$125 for each session of Congress. The average cost to the average Member of the House for his stationery supplies amounts to a great deal more than \$125 for each session of Congress. That allowance was made years ago, before a Member of Congress even had a secretary, much less two. It is credit in the stationery room. The Member of Congress can withdraw the entire \$125 in cash if he chooses to do so. That is what I have usually done since I have been a Member of the House. Then he pays for his stationery or other supplies of that character as he gets them in cash out of his own pocket. Having the right to withdraw the \$125 in cash, he may obtain from the stationery room any kind of supplies which they will purchase for him, and it is then charged up to his \$125, but when he does that he pays the other bills for his stationery out of pocket.

217. Conditions under which the franking privilege is exercised by the Member.

There is no provision of law under which the frank may be used for return reply.

Limit of weight of matter mailed under frank is specified by law.

The franking privilege does not extend to air mail, or with certain exceptions to foreign mails unless forwarded by Department of State.

The franking privilege extends to telegraph service relating to official business.

Ex-Members of Congress are entitled to the franking privilege until the first day of December following expiration of their term of office.

The law¹ extends to Members of Congress the privilege of mailing free under their frank the Congressional Record and extracts therefrom, public documents printed by order of Congress, and correspondence upon "official or departmental business."

Communications which a Member of Congress desires to send to his constituents containing a recital of facts relating exclusively to his public record in Congress or requesting their views on questions pertaining to legislative matters, but embodying no comment of a personal nature or solicitation of personal favor, are regarded as upon official business and, therefore, frankable. The test of frankability of mail is whether its contents relate solely to official or departmental business. Letters and other matter mailed under the congressional frank should be wholly official and not directly or suggestively personal.

There is no provision of law under which a person receiving a request from a Member of Congress for information, official or otherwise, may send such information in the mails free of postage in an envelope bearing the frank of such Member of Congress furnished by the Member.²

The weight for official correspondence mailed under the frank of a Member of Congress is limited to 4 ounces. The limit of weight of matter on official or departmental business except "for books and documents published or circulated by order of Congress," is not exceeding 4 pounds for each package.³

Public documents are mailable regardless of their weight, and, therefore, a packing box containing public documents only, is mailable under frank without regard to its weight. If a box weighs more than 4 pounds and contains any matter in addition to public documents, it is not frankable. A package containing stationery and correspondence constituting the official files of a Member of Congress addressed to himself, to be mailable under frank, must not exceed 4 pounds in weight. Correspondence sent by a Member of Congress upon official business to other than a Government official can not be mailed under frank if it exceeds 4 ounces in weight.

Official mail in franked envelopes is not entitled to be dispatched by air mail unless the regular postage for air mail is prepaid thereon.

Ex-members of Congress are entitled to the franking privilege until the first day of December following the expiration of their respective terms of office. The Congressional Record or parts thereof may not, however, be carried in the mails free of postage under the frank of an ex-Member of Congress.⁴

The franking privilege extends to the Territories and insular possessions of the United States and, by special conventions, to Canada, Mexico, Cuba, and Panama, but to no other foreign country.

¹ U.S. Code, title 39, sec. 235; 20 Stat. L. p. 10.

² Sections 608 and 610, Postal Laws and Regulations, 1932.

³ U.S. Code, title 39, sec. 327; section 577 Postal Laws and Regulations, 1932.

⁴ 18 Stat. L., p. 343; 28 Stat. L., p. 622. U.S. Code, title 39, sec. 325, title 39, sec. 326.

However, official mail addressed under the frank of a Member to accredited representatives of the United States in foreign countries and forwarded in care of the Department of State will be carried free in diplomatic pouches.

Telegrams relating to official or departmental business are frankable when endorsed by the Member as "official business" or "Government business." Such messages are subject to review by the Committee on Accounts, and when found to relate to other than official business are charged to the personal account of the Member. The payment of telegraph tolls on a frank of a Member began in 1906 with the discontinuance of franks issued gratuitously to Members by telegraph companies. Such payment is without specific statutory authorization except as a necessary expense of the House and is provided through allocation from the fund for miscellaneous items appropriated in the legislative bill.

218. The weight of official correspondence and public documents mailable under the frank is specified by law.—On June 6, 1929.¹ Mr. Ross A. Collins, of Mississippi, under leave to extend his remarks in the Record, inserted the following:

POST OFFICE DEPARTMENT,
THIRD ASSISTANT POSTMASTER GENERAL,
Washington, July 23, 1928.

Mr. WILLIAM TYLER PAGE,

Clerk, House of Representatives, Washington, D.C.,

MY DEAR MR. PAGE: In reply to your letter of the 18th instant, in regard to the franking privilege of Members of Congress, I have to say that section 85 of the act of January 12, 1895 (28 Stat. 622), embodied in sections 479 and 481, Postal Laws and Regulations, provides as follows with regard to the franking by Members of Congress of public documents and mail upon official or departmental business:

"The Vice President, Senators, Representatives, and Delegates in Congress, the Secretary of the Senate, and Clerk of the House of Representatives may send and receive through the mail all public documents printed by order of Congress; and the name of the Vice President, Senator, Representative, Delegate, Secretary of the Senate, and Clerk of the House shall be written thereon, and the proper designation of the office he holds; and the provisions of this section shall apply to each of the persons named therein until the last day of December following the expiration of their respective terms of office. (Sec. 479, Postal Laws and Regulations.)

"The Vice President, Members and Members elect of, and Delegates and Delegates elect to Congress shall have the privilege of sending free through the mails, and under their frank, any mail matter to any Government official or to any person, correspondence, not exceeding 1 ounce in weight upon official or departmental business. (The limit of weight for official correspondence under this paragraph was increased to 4 ounces by the act of April 28, 1904, 33 Stat. 441, sec. 481, Postal Laws and Regulations.)"

Except as indicated in the preceding paragraph, the limit of weight of public documents and matter on official or departmental business mailed under the frank of a Member of Congress is governed by the law embodied in section 450, Postal Laws and Regulations, which, in so far as it is applicable to matter mailed under the frank of a Member of Congress, provides that the limit of weight of mail matter "is hereby declared to be not exceeding 4 pounds for each package thereof * * * except for books and documents published or circulated by order of Congress."

It will be seen from the foregoing that the 4-pound weight limit does not apply to public documents. However, in order that a package may be exempt from this restriction as to weight and be mailable under frank, it must contain public documents only. If a package or box weighs

¹First session Seventy-first Congress, Record, p. 2435.

more than 4 pounds and contains any matter in addition to public documents, it is not frankable. A package containing stationery and correspondence constituting the official files of a Member of Congress addressed to himself, to be mailable under frank, must not exceed 4 pounds in weight. Correspondence sent by a Member of Congress upon official business to other than a Government official can not be mailed under frank if it exceeds 4 ounces in weight.

If matter which is not frankable should be inclosed in a package or box with public documents, the whole would be thereby rendered unfrankable.

The foregoing is the law which governs the mailing of all public documents and official matter by Members of Congress, and is applicable regardless of whether the matter is deposited for at Washington, D. C., or at any other post office.

Sincerely yours,

R. S. REGAR.

Third Assistant Postmaster General.

219. There is no provision of law under which the frank may be used for return reply.—On July 21, 1930, in reply to an inquiry from the Clerk¹ of the House, submitted at the instance of Mr. Conrad G. Selvig, of Minnesota, the Third Assistant Postmaster General² rendered the following opinion:

Is it improper under the law to furnish envelopes bearing frank for the use of individuals in reply to letters, and individuals receiving such envelopes can not lawfully use them to mail matter free of postage under the frank of a Member of Congress. * * * Furthermore, there is no provision of law under which a person receiving a request from a Member of Congress for information, official or otherwise, may send such information in the mail free of postage in an envelope bearing the frank of such Member of Congress.

220. The Committee on Accounts reserves the right to limit the franking privilege on telegrams and declines to authorize the franking of cablegrams.—On March 9, 1933, the Committee on Accounts issued the following bulletin:

The Committee on Accounts desires to bring to the attention of Members of the House, with a view to their cooperation, the practice of using telegrams and cablegrams, payment for which is made out of the contingent fund of the House with the sanction of the Committee on Accounts.

This practice, and it is only a practice, is neither specifically authorized by law nor prohibited.

The Postmaster General pursuant to law, has established Government rates, and Members of Congress are accorded the privilege, somewhat analagous to the franking privilege on letter correspondence, of sending telegrams on official business. Each member is provided with an identification card furnished by the telegraph companies through the Committee on Accounts, to which committee the companies submit monthly bills, accompanied by the telegrams. These telegrams are carefully checked, and for telegrams on other than official business refunds are made by the senders and the amounts covered back into the contingent fund. The franking privilege of a Member will be revoked if he fails to make such refund by the sixth day of the month following the receipt of the notice.

(1) "Book," block, or identic telegrams to a list of newspaper addresses, telegrams in the nature of news, congratulations, condolence, or of a political or personal nature are not official, and will be charged back to the Members. No telegram shall be held to be official giving the result of legislation in committee or on the floor, or in answer to propaganda desiring to know the views of Members. Telegrams notifying candidates for office of their appointment are not official. No telephone call carrying any toll will be considered as official.

¹ William Tyler Page, of Maryland, Clerk.

² Third Assistant Postmaster General Robert S. Regar.

(2) The Committee on Accounts has no authority to O. K. cablegrams. Such communications may be sent through the medium of the State Department.

221. Opinion of the Attorney General on the law authorizing the franking of public documents.

While speeches or reports printed in the Congressional Record are frankable, the addition of price lists, indices, or any other matter, written, printed, or stamped, destroys the privilege.

The statute authorizing the addressing of franked matter "on behalf of" a Member does not authorize the extension of such privilege to purchasers of frankable documents.

On March 9, 1914,¹ in response to a request of the Third Assistant Postmaster General, the following opinion was transmitted:

POST OFFICE DEPARTMENT,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
Washington, March 9, 1914.

THIRD ASSISTANT,

Division of Classification:

I have considered your letter of March 4, 1914, submitting pamphlet of a speech of Representative George J. Kindel, delivered in the House of Representatives on January 16, 1914, on the back of which is an imprint reading as follows:

"Every citizen will profit by studying the tables contained in Kindel's speech on express and parcel-post rates. Copies of speech in franked envelopes delivered to your address at the rate of 1 copy free; 10 copies, 10 cents; 100 copies, \$1; 1,000 copies, \$10; 10,000 copies, \$100. Address George J. Kindel, M. C., Washington, D. C."

This imprint is not a part of the Congressional Record.

You ask to be advised whether the imprint is, under the law, a permissible addition to copies of the Congressional Record, or parts thereof, mailed under frank in parcels not exceeding 4 ounces in weight.

The law authorizing the franking of the Congressional Record and parts thereof by Members of Congress in section 5 of the Postal Service appropriation act of March 3, 1875 (18 Stat. L., 343), which is as follows:

"That from and after the passage of this act the Congressional Record, or any part thereof, or speeches or reports therein contained, shall, under the frank of a Member of Congress, or Delegate, to be written by himself, be carried in the mail free of postage, under such regulations as the Postmaster General shall prescribe."

On December 19, 1913, I advised you that, under the provisions of this act, the addition of an index, which did not appear in the Congressional Record, made to a pamphlet containing speeches delivered in the Senate, rendered the matter unmailable under the frank of a Senator. This opinion was in accord with a former opinion of this office of November 3, 1905 (4 Ops. A. A. G. P. O. D., p. 1), in which a similar ruling was made.

The addition of the imprint on the back of the pamphlet submitted by you in this case appears to me to be a more flagrant violation of the letter and the spirit of the act than the added index in the case cited, in view of the fact that the index related to the subject matter of the speeches included in the pamphlet, while the matter contained in the stamp is advertising and relates solely to the sale and distribution of the pamphlet in this case. You are therefore advised that the addition of the imprint renders the pamphlet of Mr. Kindel's speech unmailable under the act above quoted.

The following appears in the imprint on the speech above referred to: "Copies of speech in franked envelopes delivered to your address at the rate of 1 copy free; 10 copies, 10 cents; 100 copies, \$1," etc. Apparently, Mr. Kindel proposes not only to frank this unfrankable matter in

¹Second session Sixty-third Congress. Record, p. 5544.

bulk, in direct violation of law, but to sell to the purchaser the right to use the frank in the distribution of the matter by the purchaser himself.

The act of January 12, 1895 (ch. 23, Sec. 85, 28 Stat. L., 601, 622), confers authority for franking public documents printed by order of Congress. This office has decided that two conditions are necessary to authorize the franking of matter mentioned therein:

1. That the matter shall be sent or received by one of the designated parties; and
2. That the matter transmitted shall be a public document printed by order of Congress.

The opinion continues:

“This statute does not give the right to Congressmen to extend to others the privilege of sending public documents printed by order of Congress through the mails, but simply gives the right to Congressmen themselves to send such documents. This of course, does not mean that the actual mailing of the documents shall be made by the Congressman, but simply that the mailing shall be in truth the sending by the Congressman of such matter.” (4 Ops. A. A. G. P. O. D., p. 4.)

Section 494 of the Postal Laws and Regulations, authorizing the sending of franked matter in bulk to an addressee, who may address and mail it, was adopted under authority of the act in question. This section authorizes the placing of addresses on such franked matter by the addressee only, “on behalf of “the Congressman whose frank is used, and cannot be extended so as to legalize such a transaction as the one in question, where the privilege itself is being made the subject of sale, and the proceeds of which flow to the Congressman whose frank is thus being used. Aside from the fact that none of the pamphlets are subject to frank, in view of the addition of this imprint, as explained in the first part of this opinion, even if they were originally frankable, their distribution by purchaser under the frank would be illegal.

You are further advised that the advertising features of the imprint render the pamphlet unavailable as official correspondence under section 492 of the Postal Laws and Regulations.

The pamphlet is returned to you herewith.

W.H. LAMAR,
Assistant Attorney General.

222. Subject matter eligible to the franking privilege. Application of the law governing the franking privilege.

On September 6, 1916,¹ Mr. Charles Curtis, of Kansas, caused to be read, in the Senate, a circular letter mailed by Mr. Henry F. Ashurst, of Arizona, under his frank. The letter, which was addressed to Mr. Ashurst's constituents, discussed his record in the Senate, outlined his position on certain public questions, enumerated bills which he had supported, named the Senate committees on which he was serving, and gave his vote on various measures considered in the Senate. Mr. Curtis stated that he considered the letter a violation of the franking privilege. Thereupon, Mr. Ashurst submitted the following opinion on the propriety of transmitting the letter under frank:

POST OFFICE DEPARTMENT,
THIRD ASSISTANT POSTMASTER GENERAL,
DIVISION OF CLASSIFICATION,
Washington, July 6, 1916.

HON. HENRY F. ASHURST,
United States Senate, Washington, D.C.

MY DEAR SENATOR: Referring to your call to-day, submitting a draft of a circular letter, a copy of which is inclosed, which it is your desire to send to your constituents and inquiring whether

¹First session Sixty-fourth Congress, Record, p. 13918.

it is frankable, I have to say that a careful examination of the circular shows that it is upon official business, and therefore frankable under the law.

Yours very truly,

A. M. DOCKERY,

Third Assistant Postmaster General.

223. The franking privilege is authorized by statute, and denial or curtailment of the privilege to any particular Member may not be made by simple resolution.

On November 11, 1919,¹ Mr. Thomas L. Blanton, of Texas, proposed to offer, as privileged, a resolution prohibiting the mailing under frank of a certain speech appearing in the Congressional Record of the previous day.

Mr. Joseph Walsh, of Massachusetts, made the point of order that the franking privilege was authorized by law and could not be limited by simple resolution.

The Speaker² sustained the point of order.

224. There is no statutory provision for the mailing of matter under the frank of a deceased Member.

On January 13, 1930, in response to a formal inquiry from the Clerk³ of the House, the Third Assistant Postmaster General⁴ submitted the following decision:

In reply to your letter of the 10th instant, I have to invite your attention to the inclosed abstract from the laws governing the franking privilege and to inform you that there is no provision of law under which matter can continue to be mailed free of postage under the frank of a deceased Member of Congress.

225. Opinion of the Attorney General as to construction of the statute forbidding Members being interested in contracts.

Definition of the terms "agreements" or "contracts" within the meaning of the statute prohibiting Members from entering into certain contracts.

On March 12, 1908,⁵ the Secretary of the Interior addressed to the Attorney General a request for an official opinion upon the following question:

Are agreements for the purchase of lands, for water rentals, for conveyance of water rights and similar instruments, contractual in form, relating to the adjustment of vested water rights, executed in behalf of the United States by some officer of the Reclamation Service for purposes within the purview of the reclamation act⁶ "agreements" or "contracts" within the meaning of Revised Statutes, sections 3739-3742, requiring the insertion of the stipulation in section 3741."

The opinion of the Attorney General⁷ submitted March 20, after quoting the material sections of the statutes referred to, says:

The language of section 3739 is not that which it would seem natural to use in framing a statute intended to forbid all contracts by Members of or Delegates to Congress, made with or on behalf of the United States, except those specially excepted. Language similar to that in the

¹ First session Sixty-sixth Congress, Record, p. 8308.

² Frederick H. Gillett, of Massachusetts, Speaker.

³ William Tyler Page, of Maryland, Clerk.

⁴ F. A. Tilton, Third Assistant Postmaster General.

⁵ Opinions of Attorneys General, p. 537.

⁶ U. S. Code, title 39, sections 411 et seq.

⁷ Attorney General Charles J. Bonaparte.

beginning of section 3742, would seem more appropriate for such purpose. And for this reason, and because of the language used in other portions, this section might be thought to only forbid that any Member of or Delegate to Congress should be interested in or in part the beneficiary of any contract made by another person with or on behalf of the United States. But the same reason and policy which would dictate this would, equally at least, forbid that such Member or Delegate should be the sole party in interest in such contract.

Besides this, the language, when carefully considered, makes it clear that the sections were intended to prevent any such Member or Delegate from being in any way a party to such contracts. Thus-section 3739 provides that no such Member or Delegate shall "undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into on behalf of the United States by any officers or persons authorized to make contracts on behalf of the United States."

This plainly forbids any such Member or Delegate to make or be a party to such contract, either by himself or with others. And while section 3741, in saying that in any such contract with the United States there "shall be inserted an express condition that no Member of (or Delegate to) Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise therefrom," would seem to indicate something different from a contract made directly with such Member or Delegate, yet I do not think this can overcome the plain meaning of the other portions of the sections and especially of section 3742, which provides that—

"Every officer who, on behalf of the United States, directly or indirectly, makes or enters into any contract, bargain, or agreement in writing or otherwise, other than as are hereinbefore excepted, with any Member of [or Delegate to] Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars."

This plainly includes every such contract not thus excepted, and, as we can not suppose that it was intended to impose this penalty for an act which the other sections permitted, it must be taken that their prohibition is as broad as is that of this section.

The papers to which you refer and samples of which are transmitted with your note are certainly "contracts" or "agreements" as those words are used in the sections referred to, and as they are executory and continuous in their nature, and for an indefinite future performance, they are not within the exception of section 3740, but are within the prohibition of these sections.

This construction makes these provisions forbid that any Member of, or Delegate to, Congress shall be a party to, or interested in any contract with, or on behalf of, the United States, which is in its nature executory and continuous as to future performance, and perhaps this is just what was intended by these sections.

With the policy or expediency of forbidding a Member of Congress to be a party to, or interested in a contract which Congress alone can authorize, or how far such prohibition should, or should not, extend we have no concern. This is for Congress alone.

From the nature of the contract transmitted with your note it is manifest that in case a person with whom it is desired to make such contract is a Member of, or Delegate to, Congress, it would interfere with the carrying out of what is contemplated by the reclamation act referred to, if he could not enter into such contract, when willing to do so; and that it would be to the advantage of the Government to be permitted to make such Member the same kind of contract that it makes with any other person in aid of such reclamation project. And it may well be thought as it is urged here, that Congress did not intend that these sections should operate to prohibit such contracts as these, and that, had the attention of Congress been called to this, it would have modified these sections as to their application to the reclamation act.

But in dealing with a statute fairly plain in its meaning, such considerations have no place; and in such cases the legislative intent, even if it were susceptible of legal ascertainment, cuts little figure except as it is expressed in legislative enactments, and when so expressed the legal meaning of what is said must be taken to express the legislative intent, wherever that interest is material.

And it is familiar law that even in a clear casus omissus a matter omitted by inadvertence or by being overlooked or unforeseen, cannot be supplied by construction.

After careful examination of the whole subject, I am of the opinion that the contracts to which you refer are within the prohibition of sections 3739, 3740, 3741, and 3742, Revised Statutes, and your question is answered in the affirmative.

226. A Member may resign his seat by a letter transmitted to the House alone.

Instance wherein a Member tendered his resignation to take effect at a future date.

While not required, it is customary for a Member to notify the House of his resignation.

When received, a resignation is laid before the House by the Speaker and no action by the House is required.

On January 5, 1921,¹ the Speaker² laid before the House the following communication:

1089 COMMONWEALTH AVENUE,
Boston, Mass., January 3, 1921.

Hon. FREDERICK H. GILLBERT,
Speaker of the House of Representatives,

Washington, D.C.

Sir: I hereby tender my resignation as the Representative in the Sixty-sixth Congress from the ninth congressional district of Massachusetts, such resignation to take effect on the 5th day of January, 1921.

Respectfully, yours,

ALVAN T. FULLER.

In response to a parliamentary inquiry by Mr. Joseph Walsh, of Massachusetts, as to whether any action should be taken by the House in acceptance of the resignation, the Speaker said:

The Chair finds the precedents are to the effect that when a person resigns he generally resigns to the governor of his State and notifies the Speaker, although there are precedents where a person has resigned directly to the Speaker; and in that case, at least in one instance, the House has adopted a resolution ordering the Speaker to direct the Clerk to notify the governor of the State. The Chair does not think it necessary that that be done. The Chair presumes the governor of the State will also be notified by the gentleman himself.

In answer to a further parliamentary inquiry by Mr. Martin B. Madden, of Illinois, as to whether a Member was required to notify the House of his resignation the Speaker replied that while it was not necessary it was customary.

227. Instance wherein a Member tendered his resignation to take effect at a future date.

A Member having resigned during vacation, transmitted to the Clerk a letter of notification which was laid before the House when Congress reconvened.

¹ Third session Sixty-sixth Congress, Record, p. 1017.

² Frederick H. Gillett, of Massachusetts, Speaker.

On December 1, 1924,¹ the first day of the session, the Speaker laid before the House the following communication, which was read and laid on the table:

AUGUST 28, 1924.

THE CLERK, HOUSE OF REPRESENTATIVES,

Washington, D.C.

DEAR SIR: Quite a long time ago I forwarded a formal resignation of my seat in Congress to Gov. R. A. Nestos, Bismarck, N. Dak., to take effect on September 2, 1924.

Yours, respectfully,

GEORGE M. YOUNG.

228. A Member who has tendered his resignation to take effect at a future date is entitled to exercise all rights of membership prior to that time.—On May 13, 1929,² the Speaker laid before the House the following communication:

WASHINGTON, D. C., *May 10, 1929.*

HON. NICHOLAS LONGWORTH,

Speaker of the House of Representatives, Washington, D. C.

MY DEAR MR. SPEAKER: I beg leave to inform you that I have this day transmitted to the Governor of the State of Minnesota my resignation as a Representative in the Congress of the United States from the fifth district of Minnesota, to be effective at the close of business June 30, this year.

Respectfully yours,

WALTER H. NEWTON.

Subsequently, on June 13³ Mr. Newton answered to his name on a yea-and-nay vote on the passage of the bill (H. R. 1) to establish a Federal Farm Board to promote the effective marketing of agricultural commodities in interstate and foreign commerce, and to place agriculture on a basis of economic equality with the other industries.

The roll call having been completed, Mr. John N. Garner, of Texas, submitted a parliamentary inquiry as to Mr. Newton's vote.

The Speaker⁴ replied:

His resignation does not take effect until June 30.

229. An exceptional instance wherein a Member having notified the House by letter of his resignation to take effect at a future date was permitted to withdraw the communication.

A request for unanimous consent that the Journal show proceedings which did not take place was denied by the House.

The Record failing to include communications read from the desk and objection being made on that account, the Speaker directed that they be printed in the Record of the following day.

On February 3, 1927,⁵ Mr. Finis J. Gaxrett, of Tennessee, submitted as a parliamentary inquiry:

¹ Second session Sixty-eighth Congress, Record, p. 6.

² First session Seventy-first Congress, Record, p. 1195.

³ Record, p. 2789.

⁴ Nicholas Longworth, of Ohio, Speaker.

⁵ Second session Sixty-ninth Congress, Record, p. 2908.

Mr. Speaker, I desire to make an inquiry concerning the Record. Yesterday there was read to the House from the Clerk's desk a letter from the gentleman from New York, Mr. Mills, advising, as I recollect, that there was being transmitted therewith a copy of a letter which he had addressed to the Governor of the State of New York, being his resignation as a Member of the House. That proceeding does not appear in the Record. I presume the Chair has some knowledge of the reasons why it did not appear?

The Speaker¹ explained:

The Chair will be glad to relate the circumstances. The Chair laid before the House just before adjournment a letter from the gentleman from New York inclosing a copy of a letter which he had just addressed to the Governor of New York announcing his resignation as a Member of this House. Subsequently, just after adjournment, a gentleman came to the office of the Speaker with the statement that the gentleman from New York had decided to withhold his resignation for some time and had telegraphed, as the Chair understood, to the Governor of New York, stating that he did not desire to present his resignation at this time, and requested the Chair to withhold his original letter from the Record. In view of the fact that the gentleman from New York intends to withhold his resignation as a Member of this House and has not been sworn in as Undersecretary of the Treasury, his letter being simply a statement of the fact that he was about to transmit a letter of resignation on which the House was not compelled to take any action whatever, the Chair assumed that there would be no objection to leaving out of the Record the fact that his letter had been sent. Of course, if any gentleman should make any objection to that course or should request that the letter be printed in the Record, under all the circumstances the Chair would be glad to have that done.

The letter from the gentleman from New York simply notifies the Speaker of the House that his resignation was in course of transmission. It had not been accepted. Of course, the ordinary procedure, as the Chair recollects, is, when a Member resigns, to tender his resignation to the governor of the State, and when the resignation is accepted, he notifies the House to that effect. Then the House is officially notified of the resignation. In this particular case the House was not notified because the resignation was not accepted.

Mr. John N. Garner, of Texas, protested:

Mr. Speaker, in the interest of the integrity not only of the Record but of the Journal of the House of Representatives, I think that letter and the letter to the Governor of New York ought to appear in the Record. If no withdrawal of the resignation had occurred upon the part of the gentleman from New York, that letter would have been sufficient for the Clerk, in the organization of the House, to have known that Mr. Mills was no longer a Member of the House of Representatives.

I am sure there is no objection to Mr. Mills continuing as a Member of the House of Representatives. I really wish he could continue as a Member. I think he more ideally represents and has a better knowledge of a class of people in this country that are potential politically than any other man who has been here during my time. I think this instance here illustrates it very conclusively. We have the gentleman from New York appointed as Undersecretary of the Treasury. We have his name sent to the Senate in the morning and confirmed in the afternoon. We find on the same afternoon—and his purpose was to take the oath to-day, I might say—that he visits the White House, that the President and he have an interview, and that he wires the Governor of New York withdrawing his resignation as a Member of Congress for the time being. I do not know at the present moment for how long.

I think in the interest of the integrity of the Record, as well as of the Journal, this matter should appear in the Record and the Journal.

¹Nicholas Longworth, of Ohio, Speaker.

Mr. Carl R. Chindblom, of Illinois, submitted a request for unanimous consent that:

both the Journal and the Record may show that on yesterday the gentleman from New York informed the Speaker that he had withdrawn his resignation, which he had intended to submit to the governor of his State, and that he requested that his communication to the House be withdrawn from the House.

Mr. Garrett objected.

Mr. Speaker, I would venture to suggest that it does not seem to me it is proper to have that request granted, for this reason, that it was not something which occurred in the House. The letter from Mr. Mills was, of course, read from the desk. Privately, Mr. Mills advised the Speaker that he had withdrawn his resignation.

Now the query is: Can you have your Journal show what occurred outside of the House at a private conference with the Speaker?

Ought the House to grant unanimous consent to show an act which did not take place in the House? Certainly I am not trying to embarrass anybody about this matter, but I do question whether the Journal of any legislative body on earth ought to show or ever has been made to show something that occurred outside of that body.

Mr. Garner then requested that the communication appear in the Record and the Speaker, by unanimous consent, directed:

The Chair will, then, direct that the letters be inserted in the Record.

The letters referred to follow:

FEBRUARY 2, 1927.

Hon. NICHOLAS LONGWORTH,

House of Representatives, Washington, D. C.

MY DEAR MR. SPEAKER: I inclose herewith a copy of a letter to the Governor of the State of New York, tendering my resignation as a Representative in Congress from the seventeenth New York district.

Very sincerely yours,

OGDEN L. MILLS.

FEBRUARY 2, 1927.

Hon. ALFRED E. SMITH

Executive Chamber, Albany, N. Y.

MY DEAR SIR: I hereby tender my resignation as Representative in Congress from the seventeenth district of New York, to take effect at noon on Thursday, February 2, 1927.

I shall very much appreciate it if you will do me the courtesy of sending your acceptance by wire, addressed to me collect, House of Representatives, Washington, D. C.

Very truly yours,

OGDEN L. MILLS.

230. The Speaker having been elected Vice President and a Member of the succeeding Congress at the same election, transmitted to the governor of his State his resignation as a Member elect.—On January 1, 1933, John N. Garner, of Texas, who had been elected Vice President and a Member of the Seventy-third Congress in the general election of November 8, 1932, transmitted to the governor of his State the following communication:

Hon. ROSS STERLING,
Governor of Texas.

SIR: I hereby tender to YOU my resignation as a Member elect to the National House of Representatives for the Seventy-third Congress, the term of which commences on March 4, 1933.

My election as Vice President of the United States makes it impossible for me to qualify as a Member of the Seventy-third Congress.

I submit my resignation at this time so you may take such action as you deem proper to select my successor that he may qualify by March 4 next.

Respectfully,

JOHN N. GARNER.

231. Form of resignation of a resident commissioner and notification of the appointment of his successor.—On April 4, 1932,¹ the Speaker laid before the House the following communication:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., April 4, 1932.

Hon. JOHN N. GARNER,
Speaker of the House of Representatives,

Washington, D. C.

SIR: I beg leave to inform you that I have this day transmitted to the Governor of Porto Rico my resignation as Resident Commissioner from Porto Rico, to take effect April 11, 1932.

Respectfully yours,

FELIX CORDOVA DAVILA.

On April 28,² the following was received from the Clerk and laid before the House:

HOUSE OF REPRESENTATIVES,
CLERK'S OFFICE,
Washington, D. C., April 28, 1932.

Hon. JOHN N. GARNER,
House of Representatives, Washington, D. C.

DEAR SIR: I beg to inform you that the certificate of appointment of Hon. José L. Pesquera as Resident Commissioner from Porto Rico to fill the vacancy caused by the resignation of Hon. Felix Cordova Davila, in due form of law, has been filed in this office.

Yours very truly,

SOUTH TRIMBLE,
Clerk of the House of Representatives.

Thereupon, Mr. Pesquera, appeared and took the oath of office.

No action was taken by the House with reference to either announcement.

232. The executive of a State sometimes informs the House that he has received the resignation of a Member.

On June 30, 1921,³ the Speaker laid before the House a communication from the Governor of Iowa, informing the House that Hon. James W. Good, Member of Congress from the fifth district of Iowa, had tendered his resignation, effective June 15.

¹First session Seventy-second Congress, Record, p. 7419.

²Record, p. 9142.

³First session Sixty-seventh Congress, Record, p. 3253.

233. A discussion of the unwritten rule of seniority of service.—On May 11, 1928,¹ Mr. Guy U. Hardy, of Colorado, in the course of remarks inserted in the Record said:

Seniority is a powerful influence in the United States Congress. The unwritten law of seniority of service is rarely set aside.

The preferred office rooms in the House Office Building are assigned the Member of longest service. A Member's rank in committee is according to seniority and his place at committee table is in order of length of service. The chairman of the committee, while selected by the committee on committees, is almost always the oldest member of his party on the committee.

Conferees who meet with the conferees of the Senate to iron out differences on bills where the two Houses have not agreed are usually the oldest members on the committee which has that particular bill in charge.

The committee on committees is made up for the most part of the Members who have served longest from their respective States. As a rule, Members have to serve some years before they are put on the Appropriations or Ways and Means Committees. The Rules Committee is made up of older Members—no majority member having served for less than 10 years. And the same may be said of the steering committee, there is no one on that committee who has served less than 10 years.

Fifty-seven Members in all out of the total membership of 435 have served 16 years or more. The Speaker, both party leaders, and 15 chairmanships are held in this group. Those who have served five terms—10 years or more—number only 182. All the key positions, nearly all the chairmanships, almost every Member who is ever a conferee, a large majority of the Ways and Means and Appropriation Committees, all the Rules Committee, all the steering committee, most all of the committee on committees, and minority ranking Members (future possible chairmen) on practically all committees are included in this group.

234. The title “Father of the House” as applied to the member of longest continuous service.—On March 4, 1933, Mr. Gilbert N. Haugen, of Iowa, retired from the House, having served without interruption from March 4, 1899, a term of 34 years, the longest continuous service in the history of the House.

On March 23, 1932,² Mr. Bertrand H. Snell, of New York, the minority leader, rising in his place, said:

Mr. Speaker, I desire to call the attention of the House and of the country to the fact that we have with us a man who, to-day, completes 33 years and 20 days of continuous service in the House of Representatives.

This is the longest period of continuous service that any person has ever been privileged to serve in this House. I refer to that grandest old Roman of them all, Gilbert N. Haugen, of Iowa. [Applause, the Members rising.]

Mr. Speaker, may I add that during all these years Mr. Haugen has always stood foursquare to every political wind that has blown. He has not only rendered able, honest, and efficient service to his district, but he has rendered patriotic service to his Government. I know I speak the voice of both his Republican and Democratic colleagues when I extend to him our heartiest congratulations on his long and useful service. I want the people of his district and the State of Iowa to know that he has the affection and respect of all his colleagues here in the House, and we hope his life may be spared for another 33 years and that he may be with us and continue his efficient and useful service here.

The Members of the House again rose and stood in applause.

¹First session Seventieth Congress, Record, p. 8440.

²First session Seventy-second Congress, Record, p. 6730.

235. At the close of the Sixty-seventh Congress, Mr. Joseph G. Cannon, of Illinois, retired from the House, after a service extending from March 4, 1873, to March 4, 1923, with the exception of the Fifty-second and Sixty-third Congresses, a total of 46 years, the longest service in the history of either House. He presided as Speaker in the Fifty-eighth, Fifty-ninth, Sixtieth, and Sixty-first Congresses.

On December 29, 1920,¹ under a special order in honor of the occasion, Mr. William A. Rodenberg, of Illinois, said:

Mr. Speaker, this day marks an important event in the political history of our country. Until yesterday the record for length of service in the Congress of the United States was held by the late Justin Smith Morrill, of Vermont, whose combined service in the House and Senate covered a period of 43 years 9 months and 25 days. To-day that remarkable record of congressional service is surpassed by one day by our distinguished and beloved colleague, the Hon. Joseph Gurney Cannon, of Illinois. An event of such great national interest calls for more than passing mention. Twice during his long service he went down in defeat, but they were only temporary defeats, and he was on each occasion returned by his constituency at the following election. The two occasions to which I refer were the elections for the Fifty-second and the Sixty-third Congresses.

These interruptions operated against his being known as "Father of the House" when on some four or five occasions other Members who had seen but a fraction of his service attained the title. This has caused the historian to say:

"Very early in its history the House adopted the English custom of designating for this duty (i. e., administering the oath to the Speaker elect) the Member of longest continuous service, known as "Father of the House." For four Congresses John Quincy Adams bore this title. Lewis Williams, of North Carolina, held it for six terms, and William D. Kelley, of Pennsylvania, sustained it with great credit for 16 years out of a service of 15 terms. Speakers Randall and Crisp interrupted the custom by designating William S. Holman, of Indiana, to officiate. Holman had served as many terms as the then "Father," but not consecutively."²

But, irrespective of the temporary interruptions in his long and distinguished career, the event we commemorate today securely establishes Joseph G. Cannon in the place of "Father of the American Congresses."

In the course of the proceedings, Mr. Champ Clark, of Missouri, who was in charge of time, in yielding to Mr. Isaac R. Sherwood, the date of whose birth was August 13, 1835, said:

Mr. Speaker, I yield 10 minutes to the oldest man that ever served in the House of Representatives, General Sherwood, of Ohio.

Mr. Sherwood said in part:

Mr. Speaker, it is true that I am the oldest man who ever served in this historic Chamber, but I have always been told that there is no virtue in being old. If there were, I would be the most virtuous here.

Uncle Joe Cannon has honored this Chamber with the longest service of any man who ever served in any parliamentary body in the world.

In conclusion Mr. Sherwood said:

After the 4th of March next I shall bid farewell to Congress, and Uncle Joe will then be the oldest Member of Congress and the oldest member of any parliamentary body in the world, and I wish him a parting God bless with all my heart.

¹Third session Sixty-sixth Congress, Record, p. 794.

²Alexander's History and Procedure of the House of Representatives, p. 35.