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the Speaker informing him that the Clerk had received a letter from the contestant withdrawing the contest. The contestant's letter asked that the contest be dismissed by the House. The Speaker laid the communication before the House and then referred it to the Committee on Elections No. 3 and ordered it printed as a House document.

§ 33.6 Where, during the time required by law for the taking of testimony, the contestant notifies the Clerk of his withdrawal of the contest and of his request that it be dismissed, the Clerk communicates such request to the House for reference to an elections committee by the Speaker.

In Smith v Polk (§ 50.3, infra), a 1939 Ohio contest, contestant notified the Clerk of the House by letter of his withdrawal of the contest which he had instituted under the Federal Contested Elections Statutes against the seated Member (James G. Polk). This letter asked that the contest be dismissed by the House. Contestant's decision to withdraw and dismiss his notice of contest was based on his belief as to the expense of obtaining evidence and what he perceived as a difficulty in obtaining a favorable determination from an elections committee, the majority of which represented members from another political party.[2]

J. EVIDENCE

§ 34. Generally

The ordinary rules of evidence govern in election contests as in other cases; thus, the evidence must be relevant and confined to the point in issue.[3]

Evidence taken ex parte and not in conformity with the election contests statutes will not be considered.[4] Evidence gathered by a

2. In debate on a resolution dismissing the 1965 Iowa election contest of Peterson v Gross (§ 61.3, infra), Neal E. Smith (Iowa), stated that election contest procedures cost from $10,000 to $30,000 at a time when "few, if any, Democratic candidates for Congress in Iowa ever had $10,000 available to spend in a general election campaign, let alone a contest. . . ." 111 CONG. REC. 26502, 89th Cong. 1st Sess., Oct. 11, 1965.

3. Cannon's Precedents § 77.

4. § 34.3, infra.

special committee investigating campaign expenditures, however, has been submitted to the Committee on House Administration in anticipation of the filing of an election contest.[5]

Collecting Evidence for Future Use

§ 34.1 The findings of a special committee to investigate campaign expenditures for the House, a committee established by the preceding Congress, were given to the Committee on House Administration in the event that a contest would be filed, to be used by the parties to the contest to support their case.

In the New York contested election of Macy v Greenwood (§ 56.4, infra), arising from the 1950 elections, the Committee on House Administration accepted the findings of the Special Committee to Investigate Campaign Expenditures. This committee had been specially created by the preceding Congress, the 81st, and directed to report to the House by Jan. 3, 1951. The special committee reported that the votes in this election had been fairly tabulated.

The House subsequently agreed to a resolution that the contestee was duly elected and entitled to his seat.

Necessity of Producing Evidence

§ 34.2 The Subcommittee on Elections informed a contestant, after the filing of notice but before referral, that the House would not order a recount without evidence and before testimony had been taken.

In the 1949 Michigan contested election case of Stevens v Blackney (§ 55.3, infra), the Subcommittee on Elections responded on Feb. 15, 1949, to a letter from a contestant, informing him that the House could, "on recommendation from the committee, order a recount *after* all testimony had been taken, in precincts where the official returns were impugned by such evidence." [Emphasis supplied.]

As the minority report later pointed out, before the contest was presented to the House on Sept. 22, 1949, "There was nothing before the subcommittee or the House except the contestant's notice and contestee's answer thereto."

Evidence From Ex Parte Proceedings

§ 34.3 Transcripts of testimony before local canvassing

5. § 34.1, infra.

boards, taken ex parte and prior to the initiation of the election contest in the House, are incompetent as evidence and will not be considered by the Committee on Elections.

In Hicks v Dondero (§ 53.1, infra), a 1945 contest, the contestant submitted two copies of transcripts of proceedings before the Wayne County, Michigan Canvassing Board, which were held prior to the initiation of his election contest in the House. The Committee on Elections ruled that such transcripts were entirely ex parse and incompetent as proof of any issues urged by contestant.

Testimony at State Inquiry

§ 34.4 A committee on elections stated that it was not bound by the actions of a state court in supervising a recount; but the committee denied contestant's motion to suppress testimony obtained at a state inquiry where the contestant had initiated the state recount procedure and would be estopped from offering rebuttal testimony as to the result of the recount.

In Kent v Coyle (§ 46.1, infra), proceedings took place as described above. A partial recount had been conducted by a state court pursuant to state law; but a committee on elections held that contestant had failed to sustain the burden of proof of fraud where a discrepancy between the official returns and the partial recount was inconclusive.

§ 35. Burden of Proof

Under the Federal Contested Elections Act, the burden is on contestant to prove that the election results entitled him to contestee's seat, even where the contestee fails to answer the notice of contest or otherwise defend as provided by such act,[6] and even in opposition to a motion to dismiss submitted by contestee in advance of submission of formal evidence.[7]

Administration of Oath as Prima Facie Evidence of Right to Seat

§ 35.1 The administration of the oath to the contestee may establish his prima facie right to the seat.

In the 1965 Mississippi election contest of Wheadon et al. v

6. 2 USC § 385.
7. See Tunno v Veysey, discussed in § 35.7, infra.