

§ 44.3 A single resolution may dispose of several contested elections.

In *Roberts v Douglas* (§ 54.4, *infra*), a 1947 California contest, without debate and by voice vote, the House agreed to a resolution disposing of three contested elections simultaneously on July 25, 1947. In none of the cases had any testimony been taken on behalf of the contestants within the time prescribed for taking of testimony.

In another instance in 1949, after the committee report recommended that three contested elections be dismissed on the grounds that no testimony had been received by the Clerk within the requisite time period, the house agreed without debate and on a voice vote to a resolution dismissing the contests simultaneously. See *Browner v Cunningham* (§ 55.1, *infra*), *Fuller v Davies* (§ 55.2, *infra*), and *Thierry v Feighan* (§ 55.4, *infra*).⁽²¹⁾

§ 45. Costs and Expenses; Compensation and Allowances

A witness whose deposition is taken under the Federal Con-

²¹. See also *Michael v Smith*, § 54.3, *infra*.

tested Elections Act is entitled to receive the same fees and travel allowance paid to witnesses subpoenaed to appear before the House of Representatives or its committees.⁽¹⁾

The Committee on House Administration may allow to any party reimbursement, from the contingent fund of the House, for his reasonable expenses of the case, including reasonable attorney's fees. An application for such reimbursement should be accompanied by a detailed account of such expenses, together with supporting vouchers and receipts.⁽²⁾

Under the former Contested Elections Act, 2 USC § 226, no contestant or contestee was to be paid more than \$2,000 for expenses in election contests. Payment of any sum under the former statute was subject to several conditions and obligations. No such limit, other than the term "reasonable expenses" is contained in the present statute, 2 USC § 396.

Payments From Contingent Fund

§ 45.1 Where authorized by the House, the Committee on House Administration may

1. 2 USC § 389(b).
2. 2 USC § 396.

make payments, even after the House adjourns, from the House contingent fund for its expenses incurred in its investigation of an election contest.

In *Wilson v Granger* (§54.5, *infra*), a 1948 Illinois contest, following numerous extensions of time granted by the Committee on House Administration to the parties in an election contest, the House agreed to a resolution providing for payments, after adjournment, by the committee of a limited amount from the contingent fund, to cover the costs of employment of investigators, attorneys, and clerical, stenographic, and other assistants involved in the investigation.

§ 45.2 The House may agree to a resolution providing for payment of expenses incurred by an elections committee, from the contingent fund of the House.

In *Roy v Jenks* (§49.1, *infra*), a 1938 New Hampshire contest, a committee on elections having been directed to conduct an additional investigation in a contested election case, the House agreed to a resolution called up by unanimous consent by a member of the committee which provided for payment of its expenses from the contingent fund of the House.

Payments From Treasury Authorized by Joint Resolution

§ 45.3 Congress may, by joint resolution, appropriate money from the Treasury to pay expenses incurred by the parties in an election contest.

In *Lanzetta v Marcantonio* (§48.1, *infra*), a 1936 New York contest, on the final day of the second session of the 74th Congress, a House joint resolution was introduced from the floor which made appropriations for the payment of expenses incurred in an election contest for a seat in the House from New York. Payment was authorized to both contestant and contestee for expenses incurred, as audited and recommended by the Committee on Elections. The joint resolution was passed without debate and by voice vote.

Payments to Candidates Involved in Election Dispute Investigation

§ 45.4 In an investigation of the right of two candidates for a seat in the House in a disputed election, the House has authorized by resolution the reimbursement of both candidates for mileage and expenses actually incurred

in connection with the investigation by the Committee on House Administration.

In the 1961 Indiana investigation of the right of J. Edward Roush or George O. Chambers to a seat in the House (§59.1, *infra*), the committee report reasoned that “had the investigation . . . been an actual ‘election contest,’ both the contestant and the contestee would have been authorized reimbursement of those expenses actually incurred in connection with the investigation conducted by the committee”; hence the House resolved to reimburse both candidates.

Retroactive Payments

§ 45.5 When, in a disputed election, the right of a candidate to a seat in the House has been determined, the Member-elect may be retroactively given the compensation, mileage, allowances, and other emoluments of a Member from the time he would otherwise have been sworn, had not his right to the seat been investigated.

In the 1961 Indiana investigation of the question of the right of J. Edward Roush or George O. Chambers to a seat (§59.1, *infra*), the House ultimately resolved

that Roush was entitled to the seat and awarded him the compensation, mileage, and the like, of a Member from the time that the Congress had convened (when he would otherwise have taken the oath).

Reimbursement Request Where Contest Has Abated

§ 45.6 A request for reimbursement of legal expenses incurred in a contested election was submitted to the Clerk even though the contest had abated by reason of the contestant’s failure to produce evidence in support of his case within the time required by law.

In the 1937 Tennessee election contest of Rutherford v Taylor (§49.2, *infra*), the contestee claimed that he was entitled to reimbursement for legal expenses as permitted by 2 USC §226.⁽³⁾ Eventually the Clerk transmitted a letter to the Speaker notifying him that the contest had abated, but not before the contestant had served notice of the contest upon the contestee, who answered the notice. Also, some testimony was taken before the case abated. The

³. Now 2 USC §396.

Committee on Elections never issued a final report on the case.

Payments Conditioned on Good Faith in Filing the Contest

§ 45.7 A contestant's petition for expenses may be denied by an elections committee on the ground that contestant did not display good faith in filing the contest and made no showing of probable cause for relief.

In *McEvoy v Peterson* (§52.2, *infra*), a 1944 Georgia contest, an elections committee concluded that contestant had not filed the contest in good faith, and denied his petition for reimbursement of expenses, it appearing that he had not been a member of any registered political party in the state, his name had not been on any ballots' and he had not received any votes.

M. SUMMARIES OF ELECTION CONTESTS, 1931-72

§ 46. Seventy-Second Congress, 1931-32

§ 46.1 Kent Coyle

In the general election held on Nov. 4, 1930, Everett Kent was a candidate on the Democratic ticket and William R. Coyle was a candidate on the Republican ticket for election as Representative in Congress from the 30th Congressional District of Pennsylvania. The election officials certified in the regular manner that in the election William R. Coyle received 28,503 votes and Everett Kent 27,621 votes. Thereupon the Governor of Pennsylvania, on Dec. 2, 1930, declared William R. Coyle elected, and on the same day issued his certificate of such election.

Citizens and residents of several election districts filed petitions with a state court alleging, upon information, that fraud was committed in the computation of the votes cast in said districts, and asking that a recount of the ballots therein be ordered and held pursuant to an act of the legislature which stated it to be the duty of the court, upon proper petition, to appoint a recount board and to sit with the same and supervise a recount of the ballots.

On Dec. 11, 1930, Mr. Kent caused notice of an election contest to be served upon Mr. Coyle, and answer thereto was served upon Mr. Kent on Jan. 9, 1931.

On Mar. 28, 1931, that being next to the last of the 40 days al-