

nicate the fact of the vacancy to the Governor of Louisiana.

Power of Summary Dismissal of Election Contest

§ 4.4 The House may dismiss an election contest, on the ground that contestant is incompetent to initiate the proceeding, by adoption of a resolution.

In the 1941 Ohio election contest of *Miller v Kirwan* (§51.1, *infra*), the Majority Leader called up as privileged a resolution dismissing an election contest, which resolution the House adopted without debate and by voice vote. The resolution stated that the contestant who had been a candidate in the party primary, but not in the general election, was not a person competent to bring a contest for the seat.

§ 4.5 Election contests are ordinarily referred to a committee for investigation and study; however, there have been instances in which the House, acting without committee action and consideration, has dismissed a contest.

In *Miller v Kirwan* (§51.1, *infra*), a 1941 Ohio contest, the House dismissed an election contest which had not been referred

to the Committee on House Administration; it appeared that contestant had not been a candidate in the general election he disputed, and was therefore incompetent to initiate the proceeding.

Notification to Governor of Vacancy

§ 4.6 The House authorized the Speaker to notify a Governor of the existence of a vacancy, where neither party to a contest was found to be validly elected.

In the Kemp and Sanders investigation (§47.14), a committee on elections concluded that neither of two elections held to fill a vacancy in a Louisiana seat in the 73d Congress was valid. Subsequently, House Resolution 231 was called up as privileged and adopted by voice vote. The resolution set forth the conclusion of the committee and authorized the Speaker to notify the Governor of the existing vacancy.

§ 5. Election Committees

Jurisdiction over contested elections is given to the Committee on House Administration by the House rules;⁽¹²⁾ and the responsi-

12. Rule XI clause 9(k), *House Rules and Manual* §693 (1973).

bility for hearing contested election cases falls on the Committee on House Administration.⁽¹³⁾

Under the Federal Contested Elections Act, the term “committee” means the Committee on House Administration of the House of Representatives.⁽¹⁴⁾

In this chapter, the term “committee,” or “election committee,” refers generally to the Subcommittee on Elections of the Committee on House Administration in the case of contests after 1946, or the particular election committee investigating a contest (such as Elections Committee No. 3) in the case of contests prior to the 1946 congressional reorganization.

Prior to the 1946 reorganization of House committees, election contests were brought before an “elections” committee. Such a committee had been created in 1794 and divided into three committees in 1895, each consisting of nine members.⁽¹⁵⁾ In 1946, these committees were merged in the Committee on House Administration, as was the Committee on the Election of the President, Vice President, and Representatives in Congress, which had been in existence since 1893. Generally, the

latter committee was responsible for regulating the time and manner of elections, and campaign expenditures and practices.⁽¹⁶⁾

Jurisdiction Over Contests Initiated Under the Contested Elections Statutes

§ 5.1 Among the election disputes that were referred to a committee on elections for disposition was a contest initiated under the contested election statute by an individual who, though not a candidate, was protesting the elections of Members from states having poll taxes.

See *In re Plunkett* (§ 53.2, *infra*), a 1945 dispute, wherein a letter of explanation from the Clerk was referred to the elections committee; the committee took no action in the matter, it appearing that the contestant, not being a candidate in the disputed election, was not qualified to initiate the proceedings.

^{13.} 2 USC § 392(a).

^{14.} 2 USC § 381(g).

^{15.} 4 Hinds' Precedents § 4019.

^{16.} For information regarding the creation and history of the Committee on the Election of the President, Vice President, and Representatives in Congress, see 4 Hinds' Precedents § 4299; and 7 Cannon's Precedents § 2023.

Overlapping Jurisdiction; Committee to Investigate Campaign Expenditures

§ 5.2 Parliamentarian's Note: Prior to the 93d Congress, a Special Committee to Investigate Campaign Expenditures was often created with subpoena authority to expedite the investigation of certain elections.⁽¹⁷⁾

In the 1963 Minnesota election contest of Odegard v Olson (§ 60.1, *infra*), several minority members of the election committee pointed to the "confusion which may be created during the period surrounding a general election by the existence of two separate committees of the House having parallel and overlapping jurisdiction." The contestee had complained about allegedly improper evidence submitted by the contestant to the Special Committee to Investigate Campaign Expenditures of the 87th Congress, which evidence had been referred to the Committee on House Administration.

§ 5.3 A "Special Committee to Investigate Campaign Expenditures of the House of Representatives" of the preceding Congress rec-

17. For a more complete discussion of this subject. see Ch. 8 § 14, *supra*.

ommended that the Committee on House Administration investigate certain disputed returns and report to the House by a certain date.

In the 1958 Maine contested election of Oliver v Hale (§ 57.3, *infra*), arising from the Sept. 10, 1956, election, representatives from a special House committee established by the 84th Congress were present at a recount conducted under a Maine state law; the committee later issued a report recommending that the Committee on House Administration immediately investigate the approximately 4,000 ballots in dispute and report to the House by Mar. 15, 1957. The committee minority contended unsuccessfully that a committee of the 84th Congress should not "purport to dictate to the Committee on House Administration of the 85th Congress how it shall conduct its operations or when it shall file its report."

Qualifications of Members on Subcommittee on Elections

§ 5.4 The members of the Subcommittee on Elections of the Committee on House Administration are chosen on the basis of their seniority and legal experience.

In the 1965 Iowa election contest of Peterson v Gross (§ 61.3,

infra), during debate on a resolution dismissing the contest, a Member criticized the composition of the subcommittee on elections because, as he stated, no Member on the majority side was “from north of Virginia or west of the Mississippi River.” In response, House Administration Committee Chairman Omar T. Burlison, of Texas, stated that subcommittee members were chosen because they were lawyers and on the basis of seniority.⁽¹⁸⁾

Power to Dismiss Contests

§ 5.5 The power to dismiss a contest, on proper grounds, is one normally exercised by the House itself; however, there have been instances in which the power to recommend dismissal has been exercised by the committee to which the contest had been referred.

In the 1940 Tennessee election contest of Neal v Kefauver (§ 50.1, *infra*), the election committee submitted a report stating that it had dismissed the contest for failure of the contestant to take evidence and because there was no evidence before the committee of the

matters charged in his notice of contest, and no briefs filed. The contestant had not appeared in person as requested by the committee. The House adopted a resolution from the committee that the contestee was entitled to the seat.

§ 5.6 A motion to dismiss a contest for failure of contestant to take testimony within the time prescribed by law will be referred to the committee with jurisdiction over election disputes.

In the 1947 Illinois contested election case of Woodward v O'Brien (§ 54.6, *infra*), the Clerk transmitted the contestee's motion to dismiss for failure of the contestant to take testimony within the time prescribed by law to the Speaker for reference to the Committee on House Administration, which subsequently issued a report recommending dismissal of the contest.

Actions to Preserve Evidence in Election Contests

§ 5.7 An elections committee may request county auditors to retain and preserve the ballots and other papers for use in an election contest, although declining to assume custody of the ballots.

18. 111 CONG. REC. 26503, 89th Cong. 1st Sess., Oct. 11, 1965, during debate on H. Res. 602.

In the 1957 Iowa contested election of Carter v LeCompte (§57.1, *infra*), the Committee on House Administration denied a motion by the contestant that the committee assume custody of the ballots. However, the committee did, by telegram, request county auditors to preserve all ballots and other papers for possible use by the committee. The request was honored in each county. The committee noted that the laws of Iowa afforded no mode of preserving the ballots cast, and in fact directed the auditors to destroy the ballots in congressional elections after six months.

§ 5.8 Where state law mandated destruction of the ballots after an election, an elections committee notified state officials to preserve the ballots notwithstanding the state law.

In the 1959 Kansas election contest of Mahoney v Smith (§58.2, *infra*), an elections committee acted upon the contestant's motion for preservation of the ballots by notifying state officials to preserve ballots despite state law which required their destruction six months after the election. Certain county clerks, however, had not been officially notified of the pending contest and had de-

stroyed ballots prior to the filing of the contestant's motion.

§ 5.9 An elections committee may go to the site of an election and take physical custody of the ballots and other materials to facilitate the investigation of the right of a Member-elect to a seat in the House.

Following the 1958 Arkansas election of write-in candidate Dale Alford to a seat in the House (§58.1, *infra*), the House authorized the Committee on House Administration to send for persons and papers and to examine witnesses under oath. The Committee on House Administration in turn requested the federal authorities in possession of the ballots and other documents to release them to the committee. To facilitate the investigation, the Subcommittee on Elections traveled to Little Rock, Arkansas, to take physical custody of the ballots and other materials.

Power to Examine and Recount Disputed Ballots

§ 5.10 The Committee on House Administration has adopted motions to conduct an examination and recount of disputed ballots and to request counsel for both par-

ties to reduce the number of ballots in dispute.

In the 1958 Maine contested election of Oliver v Hale (§57.3, *infra*), arising from the Sept. 10, 1956, election, the Committee on House Administration on Apr. 30, 1958, adopted motions to conduct an examination and recount of the disputed ballots, and to request counsel for both parties to reduce further, if possible, the number of ballots in dispute. Accordingly, counsel reduced the number to 142 regular ballots and 3,626 absentee ballots in dispute, thus giving contestee a stipulated plurality of 174 votes.

§ 5.11 An elections committee has the power to declare invalid an entire group of ballots, but it will exercise such power only where it cannot distinguish the valid ballots from the invalid ballots.

In Chandler v Burnham, a 1934 California contest (§47.4, *infra*), the contestant alleged numerous irregularities concerning the method of counting ballots, the composition of election boards, the preparation of tally sheets, and the like. The contestant sought to have the returns rejected in total. The elections committee, however, while recognizing its power to reject an entire group of ballots, de-

clared that such power would be exercised only “where it is impossible to ascertain with reasonable certainty the true vote.”

Continuing Investigations

§ 5.12 Upon adoption by the House of a resolution sanctioning it, the Committee on House Administration may continue its investigation into a contested election case notwithstanding any adjournment or recess of a session of Congress.

In Wilson v Granger (§54.5, *infra*), a 1948 Utah contest, the House agreed by voice vote and without debate to a resolution (H. Res. 338) authorizing the Committee on House Administration to continue an investigation that had been delayed over a year by numerous extensions granted to the parties in a contested election case. The expenses of the investigation were authorized to be paid out of the contingent fund of the House and any testimony and papers referred by the Speaker to the committee were to be printed as House documents of the next succeeding session of the Congress.⁽¹⁹⁾

¹⁹ See also Lowe v Davis, §54.1, *infra*; and Mankin v Davis, §54.2, *infra*.

Advisory Opinions on State Law

§ 5.13 An elections committee may accept the opinion of a state attorney general as to the effect of state laws for disputing an election.

In the 1957 Iowa contested election of *Carter v LeCompte* (§ 57.1, *infra*), the election committee expressly rejected the ruling in *Swanson v Harrington* (§ 50.4, *infra*), a 1940 Iowa election contest in which the contestant had been required to show, by seeking recourse to the highest state court, that the Iowa election laws did not permit him a recount. This time, however, the committee adopted the view of the Iowa attorney general, as expressed in a letter to the Governor and secretary of state, that the laws of Iowa contained no provision for contesting a House seat.

§ 5.14 An advisory opinion by a state supreme court that ballots from certain precincts should be discounted for failure of election officials to perform duties made mandatory by state law may be accepted as binding by an elections committee of the House.

In *Brewster v Utterback* (§ 47.2, *infra*), a 1933 Maine contest, con-

testant alleged the fraudulent or negligent failure of election officials to perform their duties as required by state law. He claimed that election officials had neglected to provide voting booths in certain precincts, that in another precinct more ballots had been cast than there were voters, and that in yet another precinct officials had illegally permitted and assisted unqualified voters to cast ballots.

The Committee on Elections assumed the validity of the state supreme court opinion to the effect that certain ballots should be discounted for failure of election officials to perform duties required by state law.

§ 6. The Clerk; Transmittal of Papers

Under the modern practice, all papers filed with the Clerk pursuant to the Federal Contested Elections Act are to be promptly transmitted by him to the Committee on House Administration.⁽²⁰⁾ By long-standing practice, testimony taken by deposition in an election contest is transmitted to the Clerk.⁽²¹⁾

Under the prior contested elections statute, the Clerk trans-

^{20.} 2 USC § 393(b).

^{21.} 1 Hinds' Precedents §§ 703, 705.