

Administration, and seating neither party to the dispute, although the Governor of Indiana had already certified Chambers as the winner with a 12-vote majority of the 214,615 votes cast.

Citizenship

§ 9.4 A Member-elect who has not been a citizen for seven years when elected or upon the convening of Congress may be challenged as unqualified under the Constitution.

In the 1933 investigation of the citizenship qualifications of a Member-elect from Pennsylvania, *In re Ellenbogen* (§ 47.5, *infra*), initiated by the filing of a memorial by an individual with the Clerk, the committee determined that the Member-elect, who was born in Vienna, Austria on Apr. 3, 1900, and was admitted to citizenship on June 17, 1926, was qualified to take the oath of office at the time of the commencement of the second session of the 73d Congress on Jan. 3, 1934. The Member-elect, who had been a citizen for only six years and five months at the time of his election on Nov. 8, 1932, and for only six years and eight months at the time of the commencement of the first session of the 73d Congress on Mar. 9, 1933, had been a citizen for over

seven and a half years at the time of the convening of the second session of the 73d Congress, thus satisfying the requirements of article I, section 2, clause 2 of the Constitution.

§ 10. Violation of Federal or State Election Laws

Frequently alleged as a basis for an election contest are violations of state and federal laws relating to the conduct of such elections. Whether a challenge based on such grounds will be sufficient to overturn the result of the election depends in part on whether the candidate himself participated, whether the errors were committed by election officials, and whether the violations were of laws regarded as merely directory or mandatory.

Until 1972, campaign practices in congressional elections were governed by the Corrupt Practices Act of 1925, as amended.⁽⁹⁾ The Federal Election Campaign Act of 1971, which became effective 60 days after the date of enactment (Feb. 7, 1972), repealed the Corrupt Practices Act of 1925 and established a new and comprehensive code for campaign practices and expenditures.⁽¹⁰⁾

⁹. 2 USC §§ 241–256 (repealed).

¹⁰. 2 USC §§ 431 et seq.; Pub. L. No. 92–225; 86 Stat. 3, Feb. 7, 1972. Viola-

Corrupt Practices Act

§ 10.1 The violation of those provisions of the federal campaign practices statute, or a state counterpart, which limit the amount which a candidate may spend in his campaign, may be alleged as grounds for an election contest.

In *Schafer v Wasielewski* (§ 52.4, *infra*), a 1944 Wisconsin contest, contestant alleged that contestee had expended more money during his campaign than was permitted by the Federal Corrupt Practices Act and by the election laws of Wisconsin, and that contestee had failed to file correct reports of expenditures as required by law. The committee found, however, that although the Wisconsin statutes limited the amount of money which could be spent by a candidate personally, they placed no limitation upon expenditures of individuals or groups that "might voluntarily interest themselves" in behalf of a candidate. The committee determined that certain sums listed actually represented expenditures of a "voluntary committee" rather than expenditures of a personal

tions relating to campaign expenditures are also treated in Ch. 8, *supra*.

campaign committee; accordingly, the committee found that such expenditures were not personal expenditures and thus not limited by state law.

§ 10.2 A House committee has suggested that censure by the House might be appropriate where a Member has failed to comply with the requirements of federal law as to the filing of forms and statements showing campaign expenditures.

In *McCandless v King*, a 1936 Hawaii contest, (§ 48.2, *infra*), a one-year delay in filing forms under the Corrupt Practices Act showing campaign expenditures was held to subject the contestee to censure, though not forfeiture of his seat. The finding of the committee was based on the fact that although contestee had failed to file within 30 days a complete and itemized account of his expenditures, he did write a timely letter to the Clerk itemizing certain expenditures and stating that on his arrival in Washington he would fill out the required form.

§ 10.3 Mere negligence on the part of a contestee in preparing expenditure accounts to be filed with the Clerk under the Federal Corrupt Practices Act will not, in the

absence of fraud, operate to deprive him of his seat where he has received a substantial plurality of votes.

In *Schafer v Wasielewski* (§ 52.4, *infra*), a 1944 Wisconsin contest, the contestant, who had been defeated in the election by approximately 17,000 votes, alleged *inter alia* that contestee had failed to file correct reports of expenditures as required by law. The committee found, however, that the contestee had negligently listed "voluntary committee" expenditures as "personal" expenditures, though only the latter were limited by state law. The committee found no evidence of fraud, and concluded that it should not deprive contestee of his seat as a result of negligence in preparing the accounts.

§ 10.4 Mere negligence on the part of a contestee and his counsel in preparing campaign expenditure accounts to be filed with the Clerk is not sufficient to deprive him of his seat in the House, where he received a substantial majority of votes, and there was no evidence of fraud.

In *Thill v McMurray* (§ 52.6, *infra*), a 1944 Wisconsin contest, contestee's statement of expendi-

tures filed with state officials conflicted with those filed with the Clerk of the House. The Committee on Elections considered evidence that the statement filed with the Clerk had been erroneously prepared and signed. It admonished contestee for signing an expenditure statement under oath without being familiar with its contents or the irregularities therein, but refused to recommend that he be deprived of his seat.

§ 10.5 In determining whether contestee's failure to comply with the Corrupt Practices Act should result in forfeiture of his seat, the elections committee may consider such circumstances as the personal character of the contestee, his experience as a candidate for public office, the extent of any improper campaign expenditures, and the effect of such violations on the rights of the contestant.

See *McClandless v King*, a 1936 Hawaii contest (§ 48.2, *infra*), where the Committee on Elections, in determining whether a violation of the Corrupt Practices Act should result in censure or forfeiture of a seat, took into account contestee's naval record, his incomplete knowledge of election

laws and procedures, and the fact that the Clerk had not mailed the required forms to contestee.

Distinction Between Mandatory and Directory Laws

§ 10.6 An elections committee has distinguished between mandatory and directory provisions of state law pertaining to elections.

In the 1961 Indiana investigation of the right of Roush or Chambers to a seat in the House (§ 59.1, *infra*), the elections committee cited the Nebraska case of *Waggoner v Russell*, 34 Neb. 116, 51 N.W. 465 (1892), which stated in part:

In general, those statutory provisions which fix the day and the place of the election and the qualifications of the voters are substantial and mandatory, while those which relate to the mode of procedure in the election, and to the record and the return of the results, are formal and directory. Statutory provisions relating to elections are not rendered mandatory, as to the people, by the circumstance that the officers of the election are subjected to criminal liability for their violation.

The committee followed this guideline in determining whether certain Indiana provisions governing ballot validity and counting were mandatory or merely directory.

§ 10.7 Although violation of state laws governing the con-

duct of election officials, absent fraud, is not sufficient ground for invalidating ballots, statutes regulating the conduct of voters must be substantially complied with, as such laws are mandatory.

In the 1958 Maine contested election case of *Oliver v Hale* (§ 57.3, *infra*), arising from the Sept. 10, 1956, election, the committee followed a state supreme court advisory opinion that certain alleged violations of the provisions of the law touching upon procedure to be followed in handling and preserving of applications and envelopes of absentee votes by election officials were to be viewed as directory rather than mandatory. On the other hand, the committee cited state court decisions which distinguished between acts of the voter and acts of the election officials, and which required the voter to substantially comply with the statute in order for his vote to be considered as properly cast. Therefore, the committee rejected 109 absentee and physical disability ballots.

§ 10.8 An elections committee has adopted a state court opinion which had construed state laws regarding poll procedure and disposition of absentee ballots, envelopes, and

applications as directory rather than mandatory, violations of which would not invalidate the absentee ballots cast.

In the 1958 Maine contested election case of *Oliver v Hale* (§ 57.3, *infra*), arising from the Sept. 10, 1956, election, there were a number of alleged violations by election officials relative to absentee voting, such as failure of the board of registration to retain the application or envelope, or failure of various clerks to send in the application and envelopes along with the absentee ballots. In this situation, the committee followed an advisory opinion of the Supreme Court of Maine, issued under similar circumstances, which concluded that provisions of the statute touching the procedure to be employed at the polls and the disposition of applications and envelopes following the election were directory and not mandatory in nature. Hence, the committee followed the advisory opinion that violation of the statute by election officials, in the absence of fraud, was not a sufficient ground for invalidating the ballots.

§ 10.9 Where a state law required alternation of names on ballots and publication and display of ballots for a

certain period prior to an election, the majority of an elections committee ruled that a violation of the statute was deemed to be a pre-election irregularity and, absent fraud, insufficient to overturn the election.

In the 1951 Ohio contested election case of *Huber v Ayres* (§ 56.1, *infra*), although conceding that there had been discrimination against the contestant because his name had not appeared “substantially an equal number of times at the beginning, at the end, and in each intermediate place . . .”⁽¹¹⁾ in the group of contestants among which his name belonged, the committee majority nevertheless refused to recommend that the election results be overturned, partly because the contestant had not exhausted his remedies under state law. The minority disagreed with the conclusion, contending that it was impossible for the contestant to ascertain the unequal method of rotation in advance of the election in time to invoke state law remedies. Nevertheless, the House agreed to a resolution that the contestee was duly elected and entitled to his seat.

§ 10.10 Mandatory election laws confer rights of suffrage

11. Ohio Constitution, art. V, § 2a, adopted Nov. 8, 1949.

and by their terms invalidate ballots not cast in compliance therewith, while directory election laws prescribe procedures to be followed by election officials, departure from which will not vitiate ballots without a further showing of fraud or uncertainty of result.

In *Chandler v Burnham*, a 1934 California contest (§47.4, *infra*), contestant alleged various instances of illegal ballot counting, invalid election boards, unattested tally sheets, and irregular ballots. In evaluating these charges, the Committee on Elections considered the distinction between “mandatory” laws, which void an election unless certain procedures are followed, and “directory” statutes, which fix penalties for violation of procedural safeguards, but do not invalidate an election in the event of noncompliance. The committee further declared that the rules prescribed by law for conducting an election are designed to afford an opportunity for the free and fair exercise of the elective franchise, to prevent illegal voting, and to ascertain with certainty the result. A departure from the mode prescribed will not vitiate an election, the committee stated, if the irregularities do not involve these considerations. The

committee concluded that contestant had alleged violations of statutes that were merely “directory” in nature.

§ 10.11 Noncompliance with administrative requirements imposed by state election laws will not vitiate an election unless the procedures involved are declared by law to be essential to the validity of the election.

In *Clark v Nichols* (§52.1, *infra*), a 1943 Oklahoma contest, the Committee on Elections found that certain administrative requirements imposed by state law, including the keeping of precinct registration books, were not declared by law to be essential to the validity of the election; the committee regarded such requirements as merely directory, not mandatory, and refused to disturb what it considered the certain decision of the electorate.

§ 10.12 Violations of a state's registration and election laws prohibiting transportation of voters to places of registration, providing qualifications for registrars, confining registration to certain hours, and requiring detailed registration lists were held not to affect the correct result of the election, and

therefore did not nullify the election.

In *Wilson v Granger* (§ 54.5, *infra*), a 1948 Utah contest, a contestee with a 104-vote majority prevailed despite “numerous and widespread errors and irregularities in many parts of the district, which revealed a lack of knowledge of the law and a failure to enforce properly the registration and election statutes by those charged with that duty.”

Violations and Errors by Officials

§ 10.13 In determining whether the violation of election laws by election officials will justify a recount or nullify the election, the House will look to the sufficiency of the evidence of legal fraud or intentional corruptness.

In *Brewster v Utterback* (§ 47.2, *infra*), a 1933 Maine contest, it appeared that in certain precincts irregularities occurred in the election procedure in the Third Congressional District of Maine. The committee found that, even assuming the validity of contestant’s allegations as to voting booth and ballot irregularities, contestee was left with a clear majority. The committee further found that there was insufficient evidence of

fraud or corruption to justify a recount of ballots or to sustain the contestant’s allegations.

§ 10.14 Ballots will not be voided for failure of election officials to be sworn, their acts under color of office being binding as to election returns that are otherwise proper.

In *Chandler v Burnham*, a 1934 California contest (§ 47.4, *infra*), a committee on elections rejected contestant’s claims that ballots in certain precincts should be voided because certain election officials had not been sworn. The committee found that all such officials, with the exception of inspectors, had in fact subscribed to the required oath, and added that, in any event, an election will not be invalidated based on such failure, the acts of election officials under color of office being binding.

§ 10.15 Where there have been violations of state laws (governing absentee voting) by election officials throughout the district, the results of the election will not be overturned when the contestant has failed to exhaust his state remedies to prevent improper absentee ballots from being cast or to punish those responsible.

In the 1957 Iowa contested election of Carter v LeCompte (§ 57.1, *infra*), the election committee majority found that there had been widespread violations by election officials of state laws regarding absentee voting, but as contestant had not proven fraud by contestee and had not challenged absentee ballots under state law, he had not sustained his burden of proving that the election result was changed. Therefore, the results of the election could not be “overturned because of some pre-election irregularity.”

§ 10.16 In the absence of fraud, charges of irregularities as to registration and the failure of election officials to assign ballot numbers to electors will not invalidate the votes cast.

In the New York contested election of Macy v Greenwood (§ 56.4, *infra*), arising from the 1950 election, the contestee won by a plurality of only 135 votes, which induced the contestant to allege violations as to voter registration procedures. However, the House agreed to a resolution dismissing the contest and declaring the contestee entitled to his seat.

Improperly Conducted Special Elections

§ 10.17 Where a Governor's proclamation fails to give

proper notice, as required by state law, of a special election called to fill a vacancy in the House, the House may conclude that the election was invalid.

The 1934 Kemp, Sanders investigation (§ 47.14, *infra*), arose from the death of Bolivar E. Kemp, which created a vacancy in the Sixth Congressional District of Louisiana. The Governor of Louisiana issued a proclamation calling for a special election to fill this vacancy within eight days, although state law required that primary elections to nominate candidates for special elections be held “not less than 10 days” after the call for such special election. The Committee on Elections concluded that the Governor, in his proclamation, was required to give 10 days notice of the special election, and his failure to do so rendered it invalid.⁽¹²⁾

§ 10.18 An election to fill a vacancy in Congress, conducted by a “Citizens’ Committee,” is invalid where state law does not provide for such a procedure.

In the Kemp, Sanders investigation (§ 47.14, *infra*), a special elec-

^{12.} The subject of elections to fill vacancies is discussed extensively in Ch. 8, *supra*.

tion was called by the Governor of Louisiana to fill the vacancy created by the death of Bolivar E. Kemp, from the Sixth Congressional District of Louisiana. One of the candidates was J. Y. Sanders, and a certificate of his election, prepared by the "Citizens' Election Committee" of the Sixth Congressional District was laid before the House. This committee had met in the district and fixed the date for the "election" 30 days after the meeting. This election was found to be illegal and void, there being no provision under the laws of Louisiana for the holding of such an election.

Improperly Conducted Primary Elections

§ 10.19 Where state law requires the nomination of candidates by direct primary elections called by party committees, the nomination of a candidate by a committee is illegal and void.

In the 1934 Kemp, Sanders investigation (§47.14, *infra*), arising from a Louisiana special election, it was shown that state law required that candidates be nominated in a primary election called by a political party committee. Since the contestant was nominated, not by a direct primary election but by the party com-

mittee itself, his "election" was found to be void.

Illegal Use of Funds

§ 10.20 The illegal use of campaign funds may be alleged as a basis for an election contest.

In *Lovette v Reece*, a 1934 Tennessee contest (§47.11, *infra*), contestant alleged the illegal use of funds to influence the election; it was contended that contestee's brother had collected large sums of money to finance contestee's election. However, the committee found that such claims were associated more closely with the race for Governor and involved transactions occurring after the election not connected with contestee.

Illegal Nominating Procedure

§ 10.21 Alleged violations of state law with respect to the nomination of a candidate cannot sustain a contest brought by a losing primary candidate against the contestee, who was elected in the subsequent general election.

In *Lowe v Thompson* (§62.1, *infra*), a committee on elections denied a petition based on alleged illegality in the nomination of the candidate of petitioner's party,

where the opponent of such party nominee won the subsequent general election.

§ 11. Improper Attempts to Influence or Confuse Voters

Confusing the Voters

§ 11.1 In determining whether to credit a candidate with certain ballots, an election committee considered whether his opponent had induced or procured a “third party” candidate or had improperly participated in the makeup of “third party” ballots.

In *Fox v Higgins* (§47.8, *infra*), a 1934 Connecticut contest, the Committee on Elections found that the contestant had failed to sustain his allegations that contestee, in an attempt to confuse the voters, had procured the candidacy of a “third party” candidate. The committee also found that contestee, in his capacity as secretary of state, had not deliberately prepared ballots in such a manner as to be confusing or to obtain unfair advantage.

Financing Extra Editions of Magazine

§ 11.2 An elections committee found no evidence that the

contestee financed extra editions of a magazine which supported his candidacy.

In the 1951 New York contested election case of *Macy v Greenwood* (§ 56.4, *infra*), which the contestant lost by only 135 votes, he alleged that the contestant had violated the Corrupt Practices Act by either financing or inspiring the printing of extra editions of “*Newsday*,” which had been devoted exclusively to the defeat of the contestant. The committee found no evidence supporting the allegation and recommended that the contest be dismissed, and the House followed this recommendation.

Racial Discrimination

§ 11.3 Discrimination against potential voters based on race may afford grounds for bringing an election contest.

In the 1965 Mississippi election contest of *Wheadon et al. v Abernethy et al.* [The Five Mississippi Cases] (§61.2, *infra*), the Committee on House Administration recommended dismissal of the election contests arising out of the November 1964 Mississippi congressional elections. The dismissal recommendation was based in part on the contestants’ failure to follow the established procedure