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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

for bringing election contests, and in part on the failure to avail themselves of the legal steps to challenge alleged discrimination prior to the elections.

The Committee report did state, however, that in arriving at such conclusions, the committee did not condone disenfranchisement of voters in the 1964 or previous election, nor was a precedent being established to the effect that the House would not take action, in the future, to vacate seats of sitting Members. It noted that the Federal Voting Rights Act of 1965 had been enacted in the interim and that if evidence of its violation were presented to the House in the future, appropriate action would be taken.

"Prizes" to Campaign Workers

§ 11.4 A contestee's offer of prizes to his precinct captains has been found by an elections committee not to be a violation of that section of the Corrupt Practices Act prohibiting expenditures to influence votes.

In McAndrews v Britten (§ 47.12, infra), a 1934 Illinois contest, the contestant had alleged in his notice of contest that the contestee had "offered prizes to the various precinct captains whose precincts voted the largest votes in proportion to the Republican votes that were given in these precincts." The offering of such prizes was acknowledged by the contestee on the floor of the House during debate. The committee found that this offering of prizes was not a violation of 2 USC § 150, which made it unlawful "for any person to make or offer to make an expenditure . . . either to vote or withhold [a] vote or to vote for or against any candidate. . . ."

§ 12. Voting Booth and Balloting Irregularities

As a basis for contesting an election, a wide variety of charges have been made in election contests with respect to use of voting booths and voting machines and equipment. Similarly, alleged improprieties in balloting are frequently cited as a reason for overturning the result of an election.

Voter Confusion as Excuse for Official's Entering Booth

§ 12.1 In determining whether an election official, in entering a voting booth and conversing with voters, was act-