

office of the Sergeant at Arms, and fails to pay such indebtedness, the chairman of the committee or the elected officer of the House having jurisdiction of the activity under which indebtedness arose, is authorized to certify to the Clerk the amount of the indebtedness, and the Clerk is authorized to withhold the amount from any funds which are disbursed by him to or on behalf of such employee.⁽⁷⁾

§ 7. Misconduct in Elections or Campaigns

Elections and election contests are treated comprehensively elsewhere in this work.⁽⁸⁾ However, it should be pointed out here that disputes involving alleged misconduct of a Member may be initiated in the House by the defeated candidate pursuant to the Federal Contested Elections Act.⁽⁹⁾ Such contests may also be instituted by means of (a) a protest or memorial filed in the House by an elector of the district involved, (b) a protest or memorial filed by any other person, or (c) a motion made by a Member of the House.⁽¹⁰⁾

7. 2 USC §89a (1958).

8. See Chs. 8, 9, *supra*.

9. 2 USC §§318 et seq., Pub. L. No. 91-138, 83 Stat. 284 (1969). See also Chs. 8, 9, *supra*.

10. H. REPT. NO. 91-569, 91st Cong. 1st Sess., Oct. 14, 1969, "Federal Contested Elections Act," p. 2.

Allegations in election contests pertaining to violations of federal and state corrupt practices acts are considered by the Committee on House Administration.⁽¹¹⁾

Prior to the Supreme Court decision in *Powell v McCormack*, 395 U.S. 486 (1969) in which the Court held that qualifications of a Member-elect other than age, citizenship, and inhabitancy may not be judged by the House in connection with the initial or final right to a seat of such person, both Houses had adopted the premise that violation of a Corrupt Practices Act, federal or state, constituted grounds for exclusion of a Member-elect (see Frank L. Smith, of Illinois, "Senate Election, Expulsion and Censure Cases from 1793 to 1972," p. 133; *Farr v McLane*, 6 Cannon's Precedents 75; *Gill v Catlin*, 6 Cannon's Precedents §79). Although such violations are not grounds for disqualification, evidence thereof may still be given to appropriate prosecuting attorneys for use in an investigation of fraud, misconduct, or irregularities affecting election results.

11. Rule XI, House Rules and Manual §693 (1973). Prior to the adoption of the Legislative Reorganization Act of 1946, 60 Stat. 812, ch. 455, contests were considered by several House elections committees.

Negligence in Preparing Financial Records

§ 7.1 An elections committee ruled that mere negligence in preparing expenditure accounts to be filed with the Clerk should not, absent fraud, deprive one of his seat in the House when he has received a substantial majority of votes.

In a report on an election contest in the 78th Congress, the Committee on Elections No. 3 ruled that the negligence of the contestee, Howard J. McMurray, and his counsel, in preparing expenditure accounts to be filed with the Clerk should not, absent fraud, deprive the contestee of his seat in the House when he has received a substantial majority of votes.⁽¹²⁾ The contestant had charged that the contestee had received contributions and made expenditures in violation of the Federal Corrupt Practices Act.⁽¹³⁾

The statement filed by the contestee with the Clerk had been prepared by an attorney and the figures contained therein reflected

12. 90 CONG. REC. 962, 78th Cong. 2d Sess., Jan. 31, 1944. H. REPT. No. 1032 [H. Res. 426] (contested election case of Lewis D. Thill against Howard J. McMurray, Fifth Congressional District of Wisconsin).

13. H. REPT. No. 1032.

contributions and expenditures by two independent campaign committees for the contestee. The committees were not required to file the accounts under the federal act, and the funds handled by them unbeknownst to the contestee were not subject to expenditure limitations in the federal act. The contestee actually should have filed a federal statement showing no receipts or disbursements.⁽¹⁴⁾

The report stated, "There is no evidence to show that any effort was made to conceal any receipts or expenditures" made on behalf of the candidacy of Mr. McMurray. "Under these circumstances," the report continued, ". . . contestee should not be denied his seat in the House of Representatives on account of this error made in the statement filed by [contestee] with the Clerk of the House of Representatives." The committee, ". . . did not find any evidence of fraud."⁽¹⁵⁾

A resolution dismissing the contest was agreed to by the House.⁽¹⁶⁾

Unauthorized Distribution of Campaign Literature

§ 7.2 A pre-election irregularity such as unauthorized

14. *Id.*

15. *Id.*

16. 90 CONG. REC. 933, 78th Cong. 2d Sess., Jan. 31, 1944 [H. Res. 426].

distribution of campaign literature will not be attributed to a particular candidate where he did not participate therein.

In House Report No. 1172, on the right of Dale Alford, of Arkansas, to a seat in the 86th Congress, the Committee on House Administration determined that a pre-election irregularity such as unauthorized distribution of campaign literature should not be attributed to a particular candidate where he did not participate therein. The committee report stated:⁽¹⁷⁾

UNSIGNED CIRCULAR

The subcommittee conducted an intensive investigation of the unsigned pre-election circular used in the campaign. This circular was used in violation of both Arkansas and Federal law. The person responsible for this circular admitted that he used it without the knowledge of either the write-in candidate or his campaign manager. This person was interrogated by the Federal grand jury then sitting at Little Rock and no indictment was brought in.

The distribution of unsigned campaign material is strongly condemned, but there is no evidence showing that the write-in candidate was even aware of the existence of such material. This is one of the several instances wherein the write-in candidate is sought to be held responsible for an irregularity

17. H. REPT. No. 1172, p. 19, 86th Cong. 1st Sess.

which occurred, but over which he had no control and in which he did not participate. The investigation revealed many irregularities which could erroneously be attributed to either candidate, but the mere existence of an irregularity in any campaign should not be attributed to a particular candidate where he did not participate therein. The subcommittee felt this to be a sound and equitable rule, and it was followed throughout the investigation with respect to both candidates.

A resolution holding that Mr. Alford was duly elected was agreed to by the House on Sept. 8, 1959.⁽¹⁸⁾

Violation of Corrupt Practices Act

§ 7.3 An elections committee ruled that contestant had not established by a fair preponderance of the evidence that contestee had violated the California Corrupt Practices Act or the Federal Corrupt Practices Act.

In a report in the 76th Congress, the Committee on Elections No. 2, with reference to a contest for a seat from California,⁽¹⁹⁾ stat-

18. 105 CONG. REC. 18610, 86th Cong. 1st Sess. [H. Res. 380].

19. H. REPT. No. 1783, 76th Cong. 3d Sess., Mar. 14, 1940, on the contested election case of Byron N. Scott, contestant, versus Thomas M. Eaton, contestee, from the 18th District of California.

ed that the pleadings presented several main issues, namely:

Did the Contestee [Thomas M. Eaton] violate the Corrupt Practices Act of the State of California?

Did the Contestee violate the Federal Corrupt Practices Act? Did the violation of either or both acts directly or indirectly deprive the contestant from receiving a majority of the votes cast at [the] election?⁽²⁰⁾

The committee summarily ruled that the contestant had failed to meet the burden of proof and to establish by a fair preponderance of the evidence the issues raised.⁽¹⁾

A resolution declaring that the contestee was elected was reported to the House but was not acted upon.⁽²⁾ Mr. Eaton had been sworn in at the convening of the Congress.⁽³⁾

§ 7.4 An elections committee admonished a contestee who signed under oath an expenditure statement to be filed with the Clerk when the contestee did not know its contents or the irregularities therein.

In the 78th Congress, the Committee on Elections No. 3 in a re-

²⁰ H. Rept. No. 1783.

¹ *Id.*

² 86 CONG. REC. 2885, 76th Cong. 3d Sess., Mar. 14, 1940.

³ 84 CONG. REC. 12, 76th Cong. 1st Sess., Jan. 3, 1939.

port admonished a contestee who signed under oath an expenditure statement to be filed with the Clerk of the House when he was not familiar with its contents or the irregularities therein.⁽⁴⁾ Said the committee:

Neither does it (Committee on Elections No. 3) attempt to condone the action of the contestee, Mr. McMurray, in signing under oath the statement filed with the Clerk of the House of Representatives, without being familiar with the contents of the statement or the irregularities which it contained.⁽⁵⁾

§ 8. Financial Matters; Disclosure Requirements

The House rules (Rule XLIV) require the disclosure, each year, of certain financial interests by Members, officers, and principal assistants. They must file a report disclosing the identity of certain business entities in which they have an interest, as well as certain professional organizations from which they derive an income.⁽⁶⁾

⁴ 90 CONG. REC. 962, 78th Cong. 2d Sess., Jan. 31, 1944. H. REPT. No. 1032 [H. Res. 426]; (contested election case of Lewis D. Thill against Howard J. McMurray, Fifth Congressional District of Wisconsin). See also § 7.1, *supra*.

⁵ H. REPT. No. 1032.

⁶ Rule XLIV, *House Rules and Manual* § 940 (1973)