

§ 11. Acceptance of Foreign Gifts and Awards

The Constitution prohibits any person holding federal office from accepting a gift from a foreign state without the consent of the Congress.⁽¹⁷⁾ However, Congress has provided by statute for employees of the federal government

to accept or retain such a gift if of minimal value.⁽¹⁸⁾ In addition, an employee may accept a gift of more than minimal value when refusal would cause offense or embarrassment to the foreign relations of the United States; in that case, the gift is deemed to be property of the United States and not of the donee.⁽¹⁹⁾

B. NATURE AND FORMS OF DISCIPLINARY MEASURES

§ 12. In General; Penalties

The authority of the House of Representatives over the internal discipline of its Members flows from the Constitution, and the enforcement of disciplinary proceedings by the House against a

Member is carried out under its rulemaking power.⁽²⁰⁾

There are several different kinds of disciplinary measures that have been invoked by the House against one of its Members. These include (1) expulsion, (2) exclusion,⁽²¹⁾ (3) censure, (4) sus-

17. U.S. Const. art. I, § 9, clause 8.

18. 5 USC § 7342(c)(1). See also § 515 of Pub. L. No. 95-105 for revision of this statute. The Select Committee on Ethics [See CONG. REC. (daily ed.), 95th Cong. 1st Sess., May 18, 1977] and the Committee on Standards of Official Conduct have promulgated regulations and advisory opinions applicable to the acceptance of foreign gifts and decorations.

19. 5 USC § 7342(c)(2). "Employee" is defined for the purpose of this section to include a Member of Congress and members of his family and household [5 USC 7342(a)(1) (E) and (F)].

20. U.S. Const. art. I, § 5, clause 1 states: "Each House shall be the

Judge of the Elections, Returns, and Qualifications of its own Members. . . ."

U.S. Const. art. I, § 5, clause 2 provides: "Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two-thirds, expel a Member."

21. Exclusion is apparently no longer a disciplinary procedure to be invoked in cases involving the misconduct of Members but is invoked only for failure to meet qualifications of Members as defined by the Constitution. The United States Supreme Court in

pension of voting rights and other privileges, (5) imposition of a fine, (6) deprivation of seniority status, and (7) requiring an apology.⁽¹⁾

Imprisonment is a form of punishment that is theoretically within the power of the House to impose, but such action has never been taken by the House against a Member.⁽²⁾

Jurisdiction over alleged misconduct rests with the Committee on Standards of Official Conduct. The committee is charged with the responsibility of investigating alleged violations of the Code of Official Conduct by a Member, officer, or employee of the House, or violations by such person of any

law, rule, regulation, or other standard of conduct applicable in the performance of his duties or the discharge of his responsibilities. The committee in such cases, after notice and hearing, is directed to recommend to the House by resolution or otherwise such action as the committee may deem appropriate in the circumstances.⁽³⁾

Each elected officer of the House (who is not a Member) with supervisory responsibilities is authorized to remove or otherwise discipline any employee under his supervision.⁽⁴⁾ Clerks to Members are subject to removal at any time with or without cause.⁽⁵⁾

1963, in *Powell v McCormack*, 395 U.S. 486, held that the power of the House to judge the qualifications of its Members (art. I, §5, clause 1) was limited to the constitutional qualifications of age, citizenship, and inhabitancy (art. I, §2, clause 2). For further discussion of exclusion, see §14, *infra*.

1. See §§13 et seq., *infra*.
2. The U.S. Supreme Court has stated, “[T]he Constitution expressly empowers each House to punish its own Members for disorderly behavior. We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be [for] refusal to obey some rule on that subject made by the House for the preservation of order.” *Kilbourn v Thompson*, 103 U.S. 168, 189, 190 (1880).

Multiple Penalties

§ 12.1 A House committee recommended a resolution pro-

3. Rule XI clause 19, *House Rules and Manual* §720 (1973).

The Senate created a Select Committee on Standards and Conduct, 110 CONG. REC. 16938, 88th Cong. 2d Sess., July 24, 1964 [S. Res. 338, amended], and adopted a Code of Conduct, 114 CONG. REC. 7406, 90th Cong. 2d Sess., Mar. 22, 1968 [S. Res. 266], Rules XLI, XLII, XLIII, XLIV, *Senate Manual*. 93d Cong. 1st Sess. (1973).

4. 2 USC §60-1, 84 Stat. 1190, Pub. L. No. 91-510 (1970). See also 2 USC §85.
5. 2 USC §92.

viding for the imposition of multiple forms of punishment on a Member-elect, including censure, fine, and loss of seniority; subsequently the House adopted a resolution providing for a fine and loss of seniority.

At the commencement of the 91st Congress, the House agreed to a resolution (1) authorizing the Speaker to administer the oath to Representative-elect Adam Clayton Powell, of New York, but (2) providing for a fine of \$25,000 to be deducted on a monthly basis from his salary, (3) reducing his seniority to that of a first-term Congressman (thus eliminating consideration of any prior service in the computation of seniority), and (4) specifying that Mr. Powell must take the oath before Jan. 15, 1969, or his seat would be declared vacant.⁽⁶⁾

6. 115 CONG. REC. 29, 34, 91st Cong. 1st Sess., Jan. 3, 1969 [H. Res. 2].

Similar recommendations plus a recommendation of censure had been considered and rejected in the previous Congress. See H. Res. 278, 90th Cong. 1st Sess., 113 CONG. REC. 4997, Mar. 1, 1967, for the resolution embodying the recommendations of the select committee pursuant to H. Res. 1. The motion for the previous question on this resolution was defeated (113 CONG. REC. 5020), and a substitute amendment excluding the

Disciplinary Actions Against Committee Chairmen

§ 12.2 The authority of the chairman of a committee of the House was curtailed by the House through adoption of a resolution that restricted the power of the chairman to provide for funds for investigations by subcommittees of that committee.

In the 88th Congress, the Chairman⁽⁷⁾ of the House Committee on Education and Labor was disciplined by the House through adoption of a resolution providing that funds for sub-

Member-elect was proposed and adopted (113 CONG. REC. 5037, 5038).

With respect to the committee's recommendation, the committee Chairman, Emanuel Celler (N.Y.), stated: "You will note that we went beyond censure. Never before has a committee devised such punishment short of exclusion which went beyond censure." (113 CONG. REC. 4998).

In opposing the multiple punishment, Representative John Conyers, Jr. (Mich.) stated: "A fine and a loss of seniority is a completely unprecedented procedure for the House to use in punishing a Member. There is simply no precedent whatsoever for the House to punish its Members other than by censuring or expelling." (113 CONG. REC. 5007).

7. Adam Clayton Powell (N.Y.).

committee investigations be made directly available to the subcommittees.⁽⁸⁾

The chairman of the committee had requested authorization to withdraw \$697,000 from the contingent fund of the House for expenses of committee investigations. However, the authorizing resolution, as amended, provided only \$200,000, of which \$150,000 was made available to each of the committee's six subcommittees (at \$25,000 each).⁽⁹⁾ The amendment (offered by the Committee on House Administration) read:

. . . Page 1, line 5, strike out "\$697,000" and insert "\$200,000".

Page 1, line 11, after "House" insert a period and strike out all that follows down through and including the period on page 2, line 1 and insert in lieu thereof the following: "Of such amount \$25,000 shall be available for each of six subcommittees of the Committee on Education and Labor, and not to exceed \$50,000 shall be available to the Committee on Education and Labor. All amounts authorized to be paid out of the contingent fund by this resolution shall, in the case of each subcommittee, be paid on vouchers authorized and signed by the chairman of the subcommittee, cosigned by the chairman of the committee and approved by the Committee on House Administra-

8. 109 CONG. REC. 3525-31, 88th Cong. 1st Sess., Mar. 6, 1963, H. REPT. NO. 61 [H. Res. 254].

9. 109 CONG. REC. 3525, 88th Cong. 1st Sess.

tion; in the case of the committee, such amount shall be paid on vouchers authorized and signed by the chairman of the committee and approved by the Committee on House Administration."

There had been alleged abuses in the hiring of committee staff, and one of the members of the committee reported to the House that, "we (the members of the Committee on Education and Labor) had a bipartisan front in the House Administration Committee to try to control the expenditure of these funds."⁽¹⁰⁾

Mr. John M. Ashbrook, of Ohio, a member of the Committee on Education and Labor, explained the reason for the action:⁽¹¹⁾

MR. ASHBROOK: Mr. Speaker, I wish to commend the Committee on House Administration for this action in which it has vindicated the entire membership of this House. Because of the manner in which the affairs of the Committee on Education and Labor have been conducted during the past 2 years, I feel that each Member of this body was in the position of deciding whether or not we should condone and continue the policies which will now be held in close check due to the timely action of this watchdog committee.

Some will say that the cuts are too deep. I think not. As the gentleman from Georgia [Mr. Landrum] so well put it, it will very definitely mean cutting back on some of the employees whom we never saw, rarely heard of,

10. *Id.* at p. 3526.

11. *Id.* at p. 3530.

and little benefited by. It will mean fewer opportunities for lavish spending, fewer trips, and without doubt, less waste of taxpayers' money. The basic work of our committee will be accomplished on the fourth floor suite of the Old House Office Building. It will be accomplished by Members of Congress whose pay is not charged against this committee. If we buckle down and proceed expeditiously, we can do as much or more with less costly expenditure. The effort of the committee members and not the dollars expended will be the true test of accomplishment.

Mr. Joe D. Waggoner, Jr., of Louisiana, gave further reasons for the action taken:⁽¹²⁾

MR. WAGGONER: Mr. Speaker, as a member of the House Administration Committee and a member of the Subcommittee on Accounts of that committee, I have consistently opposed the granting of Chairman Powell's budget request for \$697,000. I have maintained that his budget should be cut to the bare essential needed for his committee to function because of the unacceptable manner in which he has served in his capacity as chairman. I would advocate even greater cuts in his budget except for the fact that I do not want to cripple the good men who are members of his committee and who have consistently done a good job. With the addition of further restrictions as to how and by whom this money is spent and for what purpose it is spent, I hope we can by this action, restore the faith of the people in this committee and in the Congress. Certainly that is my desire.

12. *Id.*

§ 12.3 The membership of a House committee, in a move to discipline its chairman, amended the rules of the committee so as to transfer authority from the chairman to the membership and the subcommittee chairmen.

On Sept. 22, 1966, the membership of the House Committee on Education and Labor, in a move to discipline Chairman Adam Clayton Powell, of New York, amended the rules of the committee so as to transfer authority from the chairman to the membership and the subcommittee chairmen. A copy of the newly adopted rules was printed in the *Congressional Record*.⁽¹³⁾

Mr. Glenn Andrews, of Alabama, described the occasion to the House:⁽¹⁴⁾

. . . [A]s a member of the House Education and Labor Committee of this body, I was present at this morning's historic meeting [which was instrumental] in the action which was taken to limit the powers of the chairman of the Education and Labor Committee.

Mr. John M. Ashbrook, of Ohio, stated to the House reasons set forth for the action:⁽¹⁵⁾

13. 112 CONG. REC. 23797, 23798, 89th Cong. 2d Sess., Sept. 26, 1966.

14. 112 CONG. REC. 23722, 89th Cong. 2d Sess., Sept. 22, 1966.

15. 112 CONG. REC. 23308, 89th Cong. 2d Sess., Sept. 20, 1966.

. . . I for one will vote to strip him [Mr. Powell] of all powers or for any partial limitations on his powers because, on the merits, he has exercised them in such a manner as to bring discredit on the entire House of Representatives. . . .

. . . [O]ur chairman has been openly accused of 3 number of violations of House Rules. . . . It is rumored that Mr. Powell's wife gave him a power of attorney to sign [her House of Representatives salary] checks. A House rule apparently makes it illegal for Mrs. Powell to be paid for work in Puerto Rico.

§ 12.4 The members of a House committee took action against the chairman of that committee by restricting his authority to appoint special subcommittees.

In the 83d Congress, first session,⁽¹⁶⁾ during debate on a resolution⁽¹⁷⁾ relating to expenditures by the House Committee on Government Operations, mention was made of the fact that the committee had recently disciplined its chairman⁽¹⁸⁾ by withdrawing from him authority to appoint special subcommittees, a blanket authority which it had granted to him at the beginning of the session.⁽¹⁹⁾

16. 99 CONG. REC. 10360-63, July 29, 1953.

17. H. Res. 339, amending H. Res. 150, 83d Cong. 1st Sess. [H. REPT. NO. 1020].

18. Clare Hoffman, of Michigan.

19. 99 CONG. REC. 10362, remarks of Mr. Charles Halleck, of Indiana.

The chairman had created some 12 or 13 special subcommittees, and it was alleged that "these subcommittees were undertaking to operate outside the jurisdiction of the committee and there was a suggestion made that they were infringing on the jurisdiction of the regularly established subcommittees."⁽²⁰⁾ It was also alleged that the chairman had not consulted with the ranking minority member or the committee membership in creating the subcommittees, and that he appointed some minority members to the special subcommittees without consulting the Democratic (minority) members of the committee.⁽²¹⁾

The committee membership, in July 1953, reacquired the power to authorize special subcommittees. The committee rules were changed to provide that subcommittees could be created upon motion of the chairman but subject to the approval of the committee.⁽²²⁾

In addition, the Committee on House Administration reported out a resolution (H. Res. 339),

20. *Id.*

21. 99 CONG. REC. 10362, remarks of Mr. John McCormack, of Massachusetts.

22. 99 CONG. REC. 10362, remarks of Mr. Charles Halleck, of Indiana.

after a hearing on July 22, 1953, at which all members of the Committee on Government Operations were invited to be present. The resolution was declared to be “. . . a solution of a situation which was described as intolerable by a considerable number of the members of the Committee on Government Operations.”⁽²³⁾

The resolution allotted specific funds to all but one of the regular subcommittees, to be drawn on the voucher of the subcommittee chairman, and allotted the remainder for committee expenses, expenses of special subcommittees and the expenses of one regular subcommittee.⁽²⁴⁾ (Note: Under H. Res. 150, which was amended by H. Res. 339, provision had been made for having all vouchers signed by the committee chairman.)⁽²⁵⁾

§ 13. Expulsion

The House has the power to expel a Member under article I, section 5, clause 2 of the U.S.

23. 99 CONG. REC. 10360, remarks of Mr. Karl M. LeCompte, of Iowa.

24. 99 CONG. REC. 10360, H. Res. 339.

25. Mr. Hoffman had raised a question of personal privilege and had addressed the matter prior to House consideration of H. Res. 339. See 99 CONG. REC. 10351–59, July 29, 1953.

Constitution. It provides that each House may “with the concurrence of two thirds, expel a Member.”⁽²⁶⁾

Expulsion is the most severe sanction that can be invoked against a Member. The Constitution provides no explicit grounds for expulsion, but the courts have set forth certain guidelines that may be applied in such cases. Thus, the U.S. Supreme Court has remarked: “The right to expel extends to all cases where the offense is such as [to be] inconsistent with the trust and duty of a Member.”⁽²⁷⁾

One judge of the United States Court of Appeals for the District of Columbia said in describing the elements of an analogous proceeding: “That action was rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government.”⁽²⁸⁾

26. See *House Rules and Manual* §§62 et seq. (1973). See also *Powell v McCormack*, 395 U.S. 486, 507, footnote 27 (1969).

27. *In re Chapman*, 166 U.S. 661, 669 (1897).

28. *Powell v McCormack*, 395 F2d 577, concurring opinion of Judge McGovan, p. 607 (C.A., D.C. 1968), reversed on other grounds, 395 U.S. 486.