

Approved \_\_\_\_\_  
*WJF*MINUTES OF THE House COMMITTEE ON Select Committee on Election Contest.

The meeting was called to order by Chairman Bill Roy at 1:20 p.m. on January 23, 1991 in Room 254-E of the Capitol.

All members were present except: All present

Committee staff present: Pat Mah, Legislative Research  
Arden Ensley, Revisor of Statutes  
Nedra Spingler, Committee Secretary  
Tony Rues, Speaker's Office

Conferees appearing before the committee:  
Karlen Christensen-Jones, Contestant  
Victor Miller, Attorney for Jones  
Rep. Elaine Wells, Contestee  
Ron Hein, Attorney for Wells

Others attending: See attached list

The Chairman called the meeting to order. Attorney Miller, Counsel for Karlen Christesen-Jones, was given time to rebut statements made by Attorney Ron Hein, counsel for Elaine Wells, at the previous day's meeting.

Mr. Miller stated that, if the reason for counting ballot 123 is merely because of the irregularity that the voter failed to re-register, the committee would be giving ordinary citizens the direction that re-registering is not mandatory. He believed the statute regarding voter registration should be observed.

Mr. Miller noted that the ERA amendment to the U.S. Constitution regarding sexual discrimination was never ratified. Therefore, Mr. Hein's reference to the constitutionality of the decision regarding ballot 123 was unfounded.

In regard to ballot 528, a telefaxed ballot, Mr. Miller expressed concern regarding the two signatures involved with the election office. He referred the committee to the court record proceedings on file which contain a letter from the Department of Defense in regard to the issue of telefax voting. He stated he was not saying an irregularity had occurred regarding this ballot but pointed out the appropriate statute should be applied.

Mr. Miller suggested that minutes of the appropriate committee meeting where amendments were made to K.S.A. 25-702 be obtained from Legislative Services and examined to determine the purpose or intent of the statute.

Mr. Miller expressed concern regarding K.S.A. 25-3002 because one section of the law covers technical errors and another section cancels out the other when a torn ballot is regarded as a technical error. He questioned what a technical error was and believed the intent of the law was that each section be considered separately. He knew of no case that had been set aside where the statute had been applied.

In regard to ballots 62, 426, and 428, which were judged to be defaced, Mr. Miller pointed out there was one set of facts regarding ballot 62 and another for ballots 426 and 428. Ballot 62 has comments placed upon it by the voter. He stated that Mr. Hein had argued at the trial that the ballot was spoiled or defaced. Mr. Miller questioned what the definition of "defaced" was. He pointed out that he called to the stand, during the trial,

a person who sat on the counting board in the precinct where the ballot was cast. The person remembered the ballot and gave a history of it. It was pulled because the board did not know what to do with it, and the county clerk advised them to mark it spoiled or defaced. Mr. Miller saw no reason why ballot 62 should not be counted but said the situation was different regarding ballots 426 and 428. He requested the committee to look at K.S.A. 25-3003 as it relates to stringing ballots. He questioned why statutes were needed if they were not observed. He also questioned why Mr. Hein did not accept the statements Mr. Miller obtained from people he talked with in trying to determine why these ballots were not strung. He also questioned why Mr. Hein did not call board members to the stand in regard to this issue?

Mr. Miller objected to Mr. Hein's interpretation of the case *Burk vs. the State Board of Canvassers* regarding absentee ballots. Mr. Miller pointed out that this case dealt with absentee ballot laws in existence in 1940.

Mr. Miller mentioned Mr. Hein's remarks regarding thresholds of appellate review relating to what thresholds have to be reached to undo the court's findings regarding the Stacy Ripley ballot, ballot 122. He pointed out the judge made written findings of fact and believed the proper thresholds had been met.

In regard to the Maizie Trail ballot and the ballot where the voter voted in the wrong voting place (ballot 122), Mr. Miller stated that election boards were limited to information contained on the election list. They do not know where voters are supposed to vote or if they are qualified if they are not on the list. Only the county clerk has this information.

Mr. Hein was given time to rebut some of Mr. Miller's statements. In regard to the case of *Burk vs. the State Board of Canvassers*, he was not certain whether the case he cited in previous testimony to the committee was the same as the one cited in court since he did not have the court transcript. He read Amendment 19 to the U.S. Constitution and noted ballot 123 was thrown out without a ruling on the constitutionality of this procedure. Mr. Hein said ballots 62, 426, and 428 had all been processed the same and there was no distinction among them. All three should be treated equally and counted. A member pointed out there was an adequate explanation of how ballot 62 got where it was found, but ballots 426 and 428 were found in unusual places with no explanation of how they got there. Mr. Hein was asked if he had checked the voter list against the voter roll. He said he had no obligation to do this.

In regard to ballots 426 and 428, he responded to questions by saying he could not speculate as to how these votes got thrown out. There was no concrete evidence of what happened or that fraud had been committed. In regard to Mr. Miller's allegation that Mr. Hein had an obligation to call board members to the stand, Mr. Hein said he was advised the board members present had no knowledge of the treatment of the ballots.

The Chairman noted the court transcript of the trial would not be available for another month.

The committee recessed at 2:00 p.m.

The Chairman reconvened the meeting at 3:20 p.m. Mr. Miller requested a ruling relating to whether either counsel would be allowed to communicate with members of the committee in case counsel felt additional information should be supplied. Following discussion, the Chairman stated both parties had been given ample time to present their cases, and it was not appropriate for them to offer any communication to committee members when it relates to the arguments of this case.

The Chairman stated the committee would be best served and decisions expedited in the long run if it reviewed the Supreme Court decisions cited by both attorneys in the Court Memorandum Decision and Judgment. He requested staff to furnish copies of the cases cited in this document.

The Chairman said the committee would meet the following day at 1:00 p.m. He adjourned the meeting at 3:30 p.m.

