

Approved 

MINUTES OF THE House COMMITTEE ON Select Committee on Election Contest.

The meeting was called to order by Chairman Bill Roy at 9:00 p.m. on January 28, 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 at 9:00 a.m.

Mr. Ron Hein, attorney for Ms. Wells, requested permission to submit an affidavit which could impact on the committee's decision for Ballots 426, 428, and 100. This information was not available at the trial. Mr. Victor Miller, attorney for Ms. Christensen-Jones, objected to the affidavit being presented without first having a chance to review it in order to respond. The Chairman stated the committee would pass over Mr. Hein's request at this time. Mr. Hein stated that Mr. Miller would be given the opportunity to review the affidavit when the Chairman is ready to hear it. Rep. Solbach said that, if additional information was given regarding these ballots, he would like to reconsider the motion he made concerning the faxed ballot (Ballot 528). He moved that ballot 528 be reconsidered. The motion died for lack of a second.

Ballot 156. The Chairman explained that the ballot 156 has markings in each of the two voting boxes for the 59th House seat, an X for one candidate and an 0 for the other. The issue on this ballot being whether the intent of the voter can be determined. Rep. Solbach moved that ballot 156 should not be counted. The motion was seconded by Rep. Sawyer. During discussion, it was noted that it is unknown why the ballot was marked in this way and that the intent of the voter is unclear. Another member who opposed the motion stated that the law says it must be impossible to determine the intent of the voter. The voter who marked this ballot consistency used an X to select his or her choice for each candidate for office. The member opposing the motion also said that the vote by the committee on this ballot should be consistent with the committee's decision on a similar ballot, ballot 59, which the committee counted. In support of the motion, a member stated that it is clear what the intent of the voter is regarding ballot 59. The voter just put an arrow beside the name of each candidate that was selected on ballot 59. However, ballot 156 involved markings in both voting boxes for the 59th House seat. Another member who did not support the motion commented that the law says determination of intent is made by the local election board and local courts, and that the judge did count the ballot. The vote on the motion failed to carry with two in favor, three against, and the Chairman abstaining. For those members requesting that their vote be recorded, the vote was as follows: Rep. Sawyer voted in favor of the motion; Rep. Shallenburger voted against the motion; Chairman Roy abstained. Rep. Snowbarger then made a motion to continue to count ballot 156. Rep. O'Neal seconded the motion.

Motion carried by a vote of three to two, with the Chairman abstaining. For those members requesting that their vote be recorded, the vote was as follows: Rep. Shallenburger voted in favor of the motion; Rep. Sawyer voted against the motion; Chairman Roy abstained.

The Chairman stated that, based on the committee's decision to count ballot 156, the rebuttal ballot (ballot 314) raised by counsel in regard to ballot 156 was no longer at issue.

Ballot 153. The Chairman stated that there is a number written upon ballot 153 which corresponds to the voter's number in the poll books who cast the ballot. The number was never clipped from the ballot as required by law. Rep. Solbach moved that the ballot should not be counted. The motion was seconded by Rep. Sawyer. In discussion, it was pointed out that, statutorily, if a ballot has an identifying mark, it cannot be counted. There is no way of knowing why this ballot has an identifying mark left on it and current law does not provide for any exceptions to allow for identifying marks. A member said that Representative Solbach appeared to be inconsistent in his motions and votes regarding similar ballots, such as this ballot as compared to the absentee ballots that are at issue. Rep. Solbach said that for things to be consistent, they must measure the same in all respects. None of the ballots are alike in all respects. The Chairman commented that the process for handling absentee ballots is separate from the election day process and that the two processes cannot be compared equitably. A member who opposed the motion said that by not counting this ballot, a voter was being disenfranchised because of a technical error made by an election worker. The judge made the determination that the ballot did not have an identifying mark and, therefore, the judge counted it. Another member said that the opportunity for fraud can be created in situations where there is failure to clip the identifying numbers off ballots. The motion to not count ballot 153 carried by a vote of 4 to 2. For those members requesting that their vote be recorded, the vote was as follows; Reps. Shallenburger, Sawyer, and Roy voted in favor of the motion. The Chairman noted that the committee's action deletes one vote for Wells.

Ballot 100. The Chairman explained that the voter who cast ballot 100 made two errors in marking it. To correct his mistakes, the voter wrote "error" beside the marks and wrote his initials to indicate that he had made the corrections. Rep. Solbach moved that ballot 100 not be counted. There was no second to the motion. A member then requested that Mr. Hein's information affecting this ballot be heard. After Mr. Miller reviewed the affidavit, he said that he had no objection to the information being presented as long as he could offer comments on it. Mr. Hein said that the voter of this ballot had been identified through a process of calling several individuals who had the initials which were used on the ballot. Therefore, the initials alone were not used to identify the ballot's voter. The information provided by Mr. Hein is a certificate from the Deputy Osage County Clerk/County Election Officer (Attachment 1). It list the names of five people who live in the same voting precinct and who have the same initials as the voter of ballot 100. Mr. Miller said that the issue is whether initials made by an individual are identifying marks. Rep. Shallenburger moved that ballot 100 be counted. The motion was seconded by Rep. O'Neal. In discussion, a member argued that the voter was trying to do the right thing and that the voter should not be denied his or her right to vote. The motion that ballot 100 be counted carried by a vote of 3 to 2, with one member abstaining. Reps. Shallenburger, O'Neal and Snowbarger voted in favor of the motion. Reps. Roy and Solbach voted against the motion. Rep. Sawyer abstained. Representative Sawyer then requested that his vote be changed to no. The Chairman ruled that the vote was completed prior to Representative Sawyer's request to change his vote. Therefore, the committee recommends that ballot 100 be counted.

Ballot 122. The Chairman said that ballot 122 was a challenged ballot of a person who voted at an incorrect polling place. Rep. Sawyer moved that the ballot not be counted. The motion was seconded by Rep. Solbach. When asked to give his reason for the motion, Rep. Sawyer said that the the person was not on the poll books for the precinct where the vote was cast. The person still insisted on voting a challenged ballot. A legal precedent should not be established to allow people to vote any place except where they are registered. The Chairman pointed out that the judge found the circumstances pertaining to ballot 122 to be different, but that to allow this exception would open up a "Pandora's box." The motion to not count ballot 122 carried by a vote of four to two. For those members requesting that their vote be recorded, the vote was as follows: Reps. Sawyer and Roy voted in favor of the motion; Rep. Shallenburger voted against the motion.

Ballot 62. The Chairman stated that ballot 62 was not counted by the election board. The ballot had editorial comments written on it. The judge determined that the ballot should be counted. Rep. Solbach moved that ballot 62 should be counted. The motion was seconded by Rep. Sawyer. In discussion, it was stated that the voter made it clear by comments made on the ballot why he or she did not vote for certain candidates. However, the comments are not identifying marks. A member said that in his opinion ballot 62 should be excluded since the committee, in its prior actions, excluded ballots 426 and 428. The committee would be inconsistent if they chose to include ballot 62. It also may create a situation where the committee would have to hear additional evidence in regard to ballots 426 and 428. The motion to count ballot 62 carried by a vote of four to two. For those members requesting that their vote be recorded, the vote was as follows: Reps. Sawyer, Roy and Shallenburger voted in favor of the motion.

Ballot 532. The Chairman stated ballot 532 was an absentee ballot counted by the court. The husband of the disabled voter had failed to file an affidavit of assistance even though he had helped his wife complete her ballot. Rep. Solbach moved to continue to count ballot 532. The motion was seconded by Rep. Sawyer. In discussion, a member commented that it was clear that the voter had made good faith efforts to comply with directions and that the wife's identifying declaration was signed. Other absentee ballots brought before the committee for its consideration did not have their identifying declarations properly signed. A member objected to considering this absentee ballot as different from the other absentee ballots brought before the committee. The member remarked that the committee would be inconsistent if this ballot was counted. The motion to continue to count ballot 532 resulted in a tie, with Reps. Roy, Sawyer, and Solbach voting in favor of the motion. Reps. Snowbarger, Shallenburger, and O'Neal voted against the motion. Therefore, the committee made no recommendation regarding ballot 532.

Maizie Trail Ballot. The Maizie Trail ballot is an unopened absentee ballot. Rep. Snowbarger moved to recommend that the ballot not be opened. The motion was seconded by Rep. O'Neal. During discussion, it was stated that there was a number of irregularities concerning this ballot. There was no evidence that it was delivered to the election commissioner before the close of polls. It was pointed out that the ballot was properly delivered to the court house drop box ten hours before the polls closed, but that the ballot was not found until the following day. A member then commented that absentee ballots must be delivered prior to the closing of the polls in order to be counted. The burden of risk is placed on the voters to make sure that their completed ballots get to the right place on time. The point was made that, if the motion carried, the committee would be inconsistent because of its action taken on ballot 122. Action on the motion resulted in a tie vote of three to three. Reps. Snowbarger, Shallenburger, and O'Neal voted in favor of the motion. Reps. Roy, Sawyer, and

Solbach voted against the motion. Therefore, the committee made no recommendation in regard to the Maizie Trail ballot.

At the conclusion of the committee's action on the ballots, it was determined that a total of 3,481 legal votes is cast for Elaine L. Wells and a total of 3,478 legal votes is cast for Karlen Christesen-Jones. The totals do not include sealed Ballot 123, which the committee recommended be opened by the House. Nor do the totals include the Maizie Trail Ballot, upon which the committee was unable to reach agreement. Ballot 532, which the committee was unable to agree on, is included in the totals.

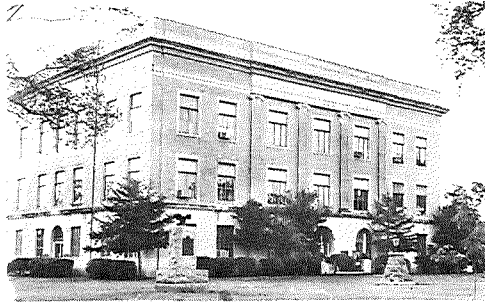
There was discussion regarding any further meetings of the committee beyond its assigned task of making recommendations as to this particular election contest. The Chairman said he would discuss with the Speakers Office about having the committee meet again to perhaps report about its observations and recommendations of the election process apart from this particular contest.

The committee decided that arrangements would be made with the House to have the report read into the records by the Chairman. The written committee report then would be submitted for printing in the Journal of the House by the end of today's printing deadline. The Chairman stated that each member would be given the opportunity to accept or recommend changes in the report before the report was submitted for printing in the Journal of the House.

The meeting was adjourned at 10:30 a.m.



25 # 1-1-91



COUNTY COMMISSIONERS:

CHAS. A. HUTCHISON  
Burlingame-First District

ELDON H. CHRISTESEN  
Carbondale-Second District

WILLIAM H. YOCKEY  
Lyndon-Third District

VIRGINIA KERSTEN  
Clerk

(attachment 1)

OFFICE OF THE COUNTY CLERK

OSAGE COUNTY

LYNDON, KANSAS 66451

STATE OF KANSAS ]  
                          ] ss.  
COUNTY OF OSAGE ]

I, Karen Persinger, Deputy County Clerk/Deputy County Election Officer of Osage County, Kansas, do hereby certify that the names listed below are all registered voters of Elk Precinct, Osage County, who have the initials "L. T." Also designated beside each name is whether or not the person voted in the 1990 General Election.

Lauretta A. Taylor	voted
Lawrence A. Temple	voted
Laura Elizabeth Torneden	voted
Larry Steven Turner	did not vote
Linda K. Turner	did not vote

Witness my hand and the seal of Osage County, Kansas this 25th day of January, 1991.

(SEAL)

Karen Persinger  
Karen Persinger  
Deputy County Clerk/Deputy County Election Officer, Osage County, Kansas

House Select Committee on  
Election Contest

ATTACHMENT # 1

01-28-91