

MINUTES OF THE SELECT HOUSE COMMITTEE ON ELECTION CONTESTS.

The meeting was called to order by Chairperson David Heinemann at 8:00 a.m. on February 8, 1995 in Room East Lounge of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:

Victor Miller, Attorney for Joe Shriver
Doug Witteman, Attorney for Danny Jones
Eric Rucker, Attorney for Danny Jones

Others attending:

Chairman Heinemann stated that the court ruled that the vote was tied. It would take four votes of the committee to add or subtract to the total.

RB3 - This was a vote that was not counted by the judge because it had an X through the write-in oval and the oval next to Danny Jones was filled in.

Representative Gross stated that the statute reads, and it's written on the ballot, that if a mistake is made the voter is to return the ballot and receive a new one. Based on this fact RB3 should not be counted. Also, RB2, which has the same markings, should also be thrown out.

Chairman Heinemann commented that the intent of the voter was clear on RB3. He wanted his vote to count for Danny Jones. The statute also reads that if the intent is clear then no portion of the ballot should be void. Therefore both RB2 & RB3 should be counted.

Representative Graeber made a motion to count both RB2 & RB3. Representative Gross seconded the motion. The motion carried.

Edith Dickerson - This ballot was counted by the court. The issue of this ballot involves the intent of the voter.

Representative Garner stated that to be consistent with rulings of the court, this ballot should not be counted. There was clear indication that Ms. Dickerson moved to a new residence more than 30 days prior to the election. There were at least nine other ballots in similar situations whose votes were not counted by the court. It's the law of the state that if she wanted to vote she had to re-register.

Representative Garner made a motion that Edith Dickerson's ballot not be counted. Representative Gilbert seconded the motion.

Chairman Heinemann commented that in two other instances the judge did not allow others to vote. He asked how does one disenfranchise a voter who was probably told by an election worker the wrong thing to do. Ms. Dickerson stated that she felt that both places were her residence. The constitution makes it clear that a qualified elector may vote at the voting area at his former residence. It does not say that one can't vote at another precinct. The judge's decision was right and the ballot should be counted.

Representative O'Neal stated that the issue was that she voted at the wrong place but because election workers are told "never turn anyone away, let them vote" she was allowed to cast a challenged ballot. Legally Ms. Dickerson did change her residence but did everything she was told by the election worker and therefore her vote should not be disenfranchised.

Representative Garner stated voting at her place of employment was a matter of convenience for her. Even if she maintained that her residence was her old house she still voted at the wrong precinct. Citizens of Kansas have to abide by the laws that were written for the state.

The motion that Edith Dickerson's ballot not be counted carried.

Ruby Schalk - This vote was not counted by the court.

Representative O'Neal made a motion that the judge's decision be sustained. Representative Garner seconded the motion. The motion carried.

Glayds Weigand - This vote was deducted by the court.

Representative Garner stated that the judges decision should be sustained. Ms. Weigand was not a qualified voter. There was no information on the elections computer that showed she re-registered and therefore her vote should not count.

Representative Gross commented that there were two issues: the lack of a registration card and the address on the elections computer being the wrong address. Based on these two facts the judges opinion should be sustained.

Representative Graeber made a motion that the judges decision be sustained. Representative Gilbert seconded the motion . The motion carried.

Moddie Graham - This vote was determined illegal by the judge but because Ms. Graham couldn't remember at trial who she voted for no vote was subtracted from the total.

Representative Gross read from the transcript that Ms. Graham stated "If you stood me on a stack of bibles, I would not remember how I voted". She said she was 72 but was really 78. He felt that Ms. Graham really didn't know how she voted, probably because of her age.

Representative O'Neal stated that this was a challenged ballot and once it got counted it got co-mingled with the other ballots, so there was no way to determine who she voted for. Election offices should always keep challenged ballots separate from the other ballots. The committee was faced with the situation that this was probably the deciding vote in the race and it shouldn't be counted but the committee had no way of proving how it was cast.

Representative Gross made a motion that the judges decision be sustained. Representative Gilbert seconded the motion. The motion carried.

Chairman Heinemann stated that the committee had come to the determination that the election was a tie. They added one vote and deleted one vote.

Representative Garner stated that the committee should consider making a recommendation to the full House on how to resolve the tie.

The committee meeting adjourned.