

Approved: March 16, 1995  
Date

## 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 9, 1995 in Room West 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:

The committee reviewed the Report of The Select Committee on Contested Elections. (Attachment 1)

Representative Gross commented that he was not comfortable with sending a report to the House without suggesting a way to determine how to break the tie. The body doesn't have to accept that recommendation but deciding by lot would give each candidate a 50/50 chance.

Chairman Heinemann replied that the statute is clear in that it doesn't give the committee the responsibility of addressing how to break a tie.

Representative Garner mentioned that the committee has the responsibility to the body to recommend how the tie should be broken. K.S.A. 25-3208 states that in a tie election of any election done by the Board of Canvassers, the tie is determined by a lot. The majority party at the time of the tie legislative election has the power to place the candidate who they want, but that isn't the fair way.

Representative Graeber commented that this election was a dead heat and was put in that situation by the voters within the 79th Legislative District. He felt that it was objectionable that the decision as to who should be elected would be turned over to the House, which was so heavily made up of Republicans. This disenfranchises the voters of the 79th District. He recommended that it be kept equal and fair for the people of the 79th Legislative District who voted for these two men.

Representative O'Neal stated that he was concerned that there is no authority in the statute for the Election Contest Committee to determine how a tie should be broken. It could be an easy fix if the parties would agree to a lot by themselves and not put the issue of how to break a tie vote on the committee or the House.

Representative Garner stated that he respects the opinion of the Chairman but disagrees with him and felt that there was nothing prohibiting the committee from making a recommendation to the full House on how to break a tie. He made a motion that the committee recommendations sent to the full House include that the committee also recommends that if the House agrees, with the committee report declaring a tie, that the tie should be decided by a lot conducted by the Chief Clerk of the House. Representative Gross seconded the motion. The motion carried.

Representative Joe Shriver stated that he appreciated everything the committee had gone through, because it had been hard. "Danny and I have suffered with this for three months; the time to make the decision is here. As a voter from Cowley County, I share Mr. Graeber's concern with regards to a body outside Cowley County deciding the election. As a candidate, the election laws need to be changed so no candidate would ever have to go through this again. As a Representative, I see the partisan responsibility on the elected leaders. I went outside the statute and allowed a double recount, which I could have asked the court to put a stop to, but I wanted to find the truth. I would hate to place my colleagues on the House floor in the same position that the six committee members have been in the last week." He made an offer to have the committee or leadership decide the race by a coin flip to end this now. He commented that he would abide by the decision, and ask his caucus to cast a unanimous vote for the winner of the coin flip. "Danny and I would like our lives back."

Danny Jones stated that because the people of Cowley County couldn't determine who should serve the 79th Legislative district he would feel comfortable with letting the House of Representatives, who represent the state vote on who should be elected. However, he didn't see anything wrong with the election being decided by lot.

## REPORT OF THE SELECT COMMITTEE ON CONTESTED ELECTIONS

Mr. Speaker: Your Select Committee on Contested Elections submits the following report on the contest of election for the 79th District seat to the House of Representatives and recommends that the report be adopted. The notice of Contest of Election was filed by Danny P. Jones, Contestant. Joe D. Shriver is the Contestee.

In the original canvas of the results of the election by the Cowley County Board of Canvassers, it was declared that Jones received 3,040 votes and Shriver received 3,031 votes. Upon a recount by hand requested from Shriver, Shriver received 3,037 votes and Jones received 3,005 votes. The County Board of Canvassers, concerned with the discrepancies, refused to certify the results of the election and ordered a recount by opti-scan and by a hand recount on November 21, 1994. The opti-scan recount recorded Jones receiving 3,030 votes and Shriver receiving 3,028 votes. However, the hand recount indicated that Shriver had received 3,038 votes and Jones had received 3,037. Shriver was declared the winner by Cowley County Board of Canvassers by a vote of 3,038 to 3,037 on November 23, 1994. The State Board of Canvassers accepted the County Board's decision and declared Shriver the winner on November 25, 1994, and issued to him a Certificate of Election.

Following the filing of the notice of the Contest of Election by Jones on December 7, 1994, District Judge Stephen Hill, 19th Judicial District Court of the State of Kansas, granted the motions of both parties for the inspection of ballots pursuant to K.S.A. 25-1447.

A Board of Inspection for Cowley County was appointed by Judge Hill. The Board inspected all ballots for all precincts in the 79th District. The Board identified nine ballots and four resolution ballots for inspection by Judge Hill that were questionable in some respect and could not be agreed upon by the unanimous vote of the inspectors.

Counsel to the parties reviewed the questionable ballots and agreed on how they should be counted, except for nine ballots and four resolution ballots that remained in question. Counsel also questioned the legality of several votes cast in the election. Judge Hill reviewed these ballots and heard arguments from counsel concerning the legality of questionable votes. He issued the finding that 3,031 legal votes were cast for Shriver and 3,031 legal votes were cast for Jones.

Pursuant to K.S.A. 25-1451, the Speaker of the House of Representatives appointed the Select Committee to consider files, records, and evidence transmitted from the court and to hold public hearings on the contested election.

The Select Committee on Contested Elections held public meetings on several different occasions. The Committee first established its rules of order and decided on the direction the Committee would proceed. A motion was adopted by the Committee to prohibit any new evidence to be presented to the Committee. The Committee would only hear evidence which had previously been presented to the court. Counsel for the contestant and contestee were asked by Committee members to present arguments on any election ballots that they considered to be at issue. The Committee also counted ballots in certain precincts when the recounts of these precincts appeared to be inconsistent. After those precinct votes had been determined, the Committee was satisfied its total for each precinct verified the vote totals as reported in the court documents.

Following final oral arguments of the counsel for the parties, the Committee reviewed the election ballots at issue, discussed the legality of certain votes, and made the following recommendations.

### **Resolution Ballot-3 (RB-3)**

**Issue:** RB-3 is a vote cast by a voter who placed a dark pencil mark in the oval next to a candidate's name on the ballot. The voter also placed a pencil mark in the oval next to the write-in space along with an "X" mark pencilled through the oval. The vote was challenged by the election officer, placed in a sealed envelope, and not counted.

**Court Ruling:** The Judge, according to K.S.A. 25-3002 (b) (2) (B), ruled that whenever a voting mark is placed in the square at the left of a space where no candidate is listed that portion of the ballot shall be invalidated. The election court did not count RB-3 as a legal vote.

**Committee Recommendation:** The Committee recommended by unanimous vote to count Resolution Ballot-3 as a legal vote and add it to the vote total.

**Related Ballot:** The Committee agreed that if Resolution Ballot-2 was counted, then Resolution Ballot-3 also should be counted. Resolution Ballot-2 had a dark pencil mark in the oval next to the name of one of the candidates and a light pencil mark in the oval next to the other candidate's name on the ballot. The court ruled that the intention of the voter could be determined (K.S.A. 25-3002 (b) (1)). Resolution Ballot-2 had been counted as a legal vote and it had been added to the vote total.

### **Ballot (A)**

**Issue:** Ballot (A) was cast by a registered voter who cast her vote at an incorrect polling place. The ballot was challenged by an election officer, placed in a sealed envelope, and not counted. Two questions were at issue: if the voter had legally moved to a new residence more than 30 days next preceding the election and, if the voter was disenfranchised from the voting procedures to which she was entitled.

**Court Ruling:** The Judge ruled that Ballot (A) should be counted. According to the Judge, the qualified elector of the 79th Representative District moved within 30 days next preceding the election. The two addresses are in different polling precincts. According to the testimony, the voter had sold her home and moved to a new address. The voter stated that she would return to her home if the sale was not finalized. The Judge ruled that the voter intended her residence to be the home of 20 years and only changed when forced to give up possession of the dwelling due to divorce. According to the Judge, since the voter had moved her residence within 30 days of the election, the voter was entitled to vote in the voter's former precinct (K.S.A. 25-3701 and 25-3702). The voter appeared at her new polling place and filled out an affidavit used when a voter moves within the same precinct. The election officer allowed the elector to vote by a challenged ballot. The Judge ruled no evidence was found that the voter meant to violate election laws and that the election board did not allow the voter to follow the law and go to her original polling place to vote. The elector's vote was counted and included in the vote totals.

**Committee Recommendation:** The Committee determined that the voter changed residence more than 30 days before the election and did not reregister as required by law. Therefore, the Committee recommends, by a vote of four to two, that Ballot (A) not be counted and the vote be deducted from the vote total.

**Ballot (B)**

**Issue:** Ballot (B) was a vote cast by a voter who was not registered at the precinct where the elector voted. The vote was challenged by the election officer, placed in a sealed envelope, and not counted.

**Court Ruling:** The Judge ruled that the voter had moved from her former residence into a new residence which occurred more than 30 days next preceding the election. The two addresses are in different voting precincts. The Judge stated, in the court ruling, that although she claimed to be registered to vote at her new address, no such registration could be found or presented as evidence to the court. The Judge therefore ruled the voter was not a registered voter eligible to vote in this election. The Judge based his ruling on K.S.A. 25-2316c (b) which states "When a registered voter changes residence, such voter must reregister in order to be eligible to vote . . . ."

**Committee Recommendations:** The Committee recommended by a unanimous vote to concur with the court's decision. The Committee agreed that there was insufficient evidence to substantiate the voter's statement that she had reregistered. Ballot (B) was not counted as a legal vote. Since the court had not counted the vote, no changes occurred in the vote total and, therefore, the Committee recommendation did not change the vote total.

**Ballot (C)**

**Issue:** Ballot (C) was a vote cast by a voter who was not registered at the precinct where the elector voted. The vote was challenged by the election officer, placed in a sealed envelope, and not counted.

**Court Ruling:** The Judge ruled that the voter had moved from her former residence into a new residence which occurred more than 30 days next preceding the election. The two addresses are in different voting precincts. The Judge stated, in the court ruling, that although she claimed to be registered to vote at her new address, no such registration could be found or presented as evidence to the court. The Judge therefore ruled the voter was not a registered voter eligible to vote in this election. The Judge based his ruling on K.S.A. 25-2316c (b) which states "When a registered voter changes residence, such voter must reregister in order to be eligible to vote . . . ."

**Committee Recommendations:** The Committee recommended by a unanimous vote to concur with the court's decision. The Committee agreed that there was insufficient evidence to substantiate the voter's statement that she had reregistered. Ballot (C) was not counted as a legal vote. Since the court had not counted the vote, no changes occurred in the vote total and therefore, the Committee recommendation did not change the vote total.

The decision, by the Committee, not to count Ballot (B) and Ballot (C) was for the same reason; there was insufficient evidence to substantiate the voters' statement that they had reregistered.

**Ballot (D):**

**Issue:** The vote was cast by a voter who cast the ballot at an incorrect precinct. This ballot was challenged by the election officer.

**Court Ruling:** The Judge ruled that the voter had changed residence more than 30 days before the next election and had failed to reregister. The court ruled that the voter was not legally entitled to vote, but was unable to determine how the elector voted because her ballot was commingled with other ballots and therefore could not be identified. The voter was summoned to court and under sworn testimony the voter stated that she did not remember how she voted. The Judge ruled that he could not make a finding because he could not determine which candidate the elector voted for in the election. Therefore, the Judge ruled that the vote was not legal but he could not deduct the vote from the vote total.

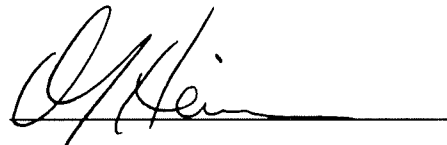
**Committee Recommendation:** The Committee recommended, by a vote of five to one, to concur with the court's decision and therefore declare the vote as not legal but not deduct the vote from the vote total.

Based on the recommendations of the Select Committee on Contested Elections, a total of 3,031 legal votes is cast for Joe D. Shriver and a total of 3,031 legal votes is cast for Danny P. Jones.

**Committee Recommendation for Resolution of a Tie Vote**

The Committee recommends that, if the House of Representatives after debate concurs in the Committee's finding of a tie, the House determine the outcome of the election by lot.

Respectfully submitted,



Rep. David Heinemann, Chairperson  
Select Committee on Contested Elections

February 9, 1995

Rep. Jim Garner, Vice-Chairperson  
Rep. Delbert Gross  
Rep. Ruby Gilbert

Rep. Michael O'Neal  
Rep. Clyde Graeber