E. PRACTICE AND PROCEDURE

§ 17. Alternatives to Statutory Election Contests

In addition to the statutory election contest procedures discussed in this chapter, election committees have often dealt with election disputes arising under other procedures, and involving the right of a Member-elect to his seat in the House.[18]

The right to a seat in the House based upon a challenge of an election may be determined pursuant to: (1) an election contest initiated by a defeated candidate and instituted in accordance with law; (2) a protest filed by an elector of the district concerned; (3) a protest filed by any other person; and (4) a motion of a Member of the House.

Of the four procedures described above, only the first, strictly speaking, is an election contest as that term is used in this chapter. The last three, while often considered by an election committee after referral by the Speaker or the House, are treated generally as determinations of the elections and return of Members, and should be distinguished from proceedings in the nature of a proposition to exclude, where the right to a seat based upon the Member-elect's qualifications under the Constitution are called into question, or to expel, where a Member's behavior or qualifications are at issue. Such proceedings are treated elsewhere in this work.[19]

Alternatives to Filing Election Contests

§ 17.1 Where the losing candidate did not file a contest under the statute governing contested elections, but an investigation of the right of a Member-elect to hold the seat was held as a result of charges made by a single voter from the district, the committee report expressed its strong preference for determining contested elections by proceeding under the statute.

In the 1959 Arkansas investigation of the right of Dale Alford to a seat in the House (§ 58.1, infra), the House authorized the election committee investigation as a result of charges made by a single voter from the district, many of the charges made on the basis of hearsay. The losing candidate of-

18. See §§ 17.1, et seq., infra.

19. See Ch. 7, supra, and Ch. 12, infra.

fered to assist in the investigation, although he did not file an election contest under the statute, 2 USC §§ 201 et seq. In the committee report, a strong preference was expressed for determining disputed elections by following the procedures under the contested elections statute. The House ultimately agreed to a resolution seating the Member-elect, who won the election on the basis of write-in votes.

§ 17.2 The House may direct the Committee on House Administration to make an "investigation of the question of the right" of two candidates to a disputed seat in the House, where neither candidate initiates a contest under the statute.

In the 1961 Indiana investigation of the right of J. Edward Roush or George O. Chambers to a seat in the House (§ 59.1, infra), the investigation was conducted by the Subcommittee on Elections, which determined that Mr. Roush was entitled to the seat. The committee report, with which the House expressed its agreement by adopting a resolution, recommended that the candidates be reimbursed for their expenses in accordance with the provisions of law governing election contests, although neither candidate sought to invoke that statute.

§ 17.3 An investigation of the qualification of a Member-elect to be sworn and of his right to a seat was instituted by the filing of a memorial by an individual challenging his citizenship qualifications.

In the 1933 investigation of the citizenship qualifications of a Member-elect from Pennsylvania, In re Ellenbogen (§ 47.5, infra), the investigation was initiated, following the election, by a memorial and accompanying papers filed by Harry Estep (a former Member) with the Clerk, who transmitted it in a letter to the Speaker, who in turn laid it before the House and referred it to the Committee on Elections.

§ 17.4 An investigation of the right of a Member-elect to a seat in the House has been initiated by a letter from a voter in the district.

In the 1959 Arkansas investigation of the right of Dale Alford to a seat in the House (§ 58.1, infra), the House authorized the Committee on House Administration to conduct an investigation of the election on the basis of a letter from a voter in the district, after the Member-elect won as a write-

in candidate. The defeated candidate did not file a contest, but offered to help the investigation. The committee report strongly recommended that in such cases proceedings be under the provisions of the contested elections statute.

Petition

§ 17.5 Contestant, not a candidate in the general election and therefore incompetent to institute a statutory contest, initiated an elections committee investigation by petition.

In Lowe v Thompson (§ 62.1, infra), a losing primary candidate was held to be without standing to institute a statutory contest against a candidate elected in the general election. A committee on elections, however, considered and then denied the petition brought by such primary candidate.

§ 18. Commencing the Contest

Under the Federal Contested Elections Act, the contest is initiated by a notice of contest which is filed with the Clerk and served on the contestee.[20] This was also the practice under the Contested Elections Act, 2 USC §§ 201 et seq.[1]

Compliance With Statutory Requisites

§ 18.1 Where the defeated candidate complains about his opponent's conduct in an election in a letter to the Clerk, but takes no other action or otherwise complies with the laws regulating contested election cases, the Committee on House Administration may decline to take action in the contest.

In the 1959 Illinois election contest of Myers v Springer (§ 58.3, infra), the defeated candidate sent a letter to the Clerk complaining that the contestee had violated the Corrupt Practices Act by appointing the editor of a local paper, which paper had denied coverage to the contestant, to a position as acting postmaster. The letter was transmitted by the Clerk to the Speaker, who laid it before the House and referred it to the Committee on House Administration, and ordered the con-

20. 2 USC § 382(a).

1. The "rules of the elections committees for hearing a contested election case" [6 Cannon's Precedents § 110] are no longer applicable.