dicated a miscount of over 1,000 votes. The report of the Committee on Elections determined that the contest had not been formally brought before the House, and that the House should not intervene in a local contest merely to gather evidence for the parties.

B. JURISDICTION AND POWERS

§ 4. The House

The House acquires jurisdiction of an election contest upon the filing of a notice of contest.[8] Normally the papers relating to an election contest are transmitted by the Clerk to the Committee on House Administration, pursuant to 2 USC § 393(b), without a formal referral or other action by the House. However, the House may initiate an election investigation if a Member-elect's right to take the oath is challenged by another Member, by referring the question to the committee. The House may also summarily dismiss a contest by the adoption of a resolution providing therefor.[9] In some cases, the House has even advised a contestant that it will not consider any future petitions or matters relating to the case.[10]

One way that the House exercises its control over election contests is by refusing to administer the oath to a party in an election contest until the contest is resolved.[11]

Notice of Contest as Basis of Jurisdiction

§ 4.1 Jurisdiction of a contested election is acquired by the House upon the filing of a notice of contest as required by the contested elections law with the Clerk of the House. Jurisdiction cannot be conferred on the House, or on a committee thereof, by any joint agreement of the parties.

In the 1943 Missouri contested election case of Sullivan v Miller (§ 52.5, infra), the parties filed a joint application proposing that the House order the Missouri Board of Election Commissioners to conduct a recount. The Clerk's letter to the Speaker advised that the parties had submitted a joint letter and drafts of resolutions or-

8. § 4.1, infra.
9. §§ 4.4, 4.5, infra.
10. § 51.1, infra.
11. § 4.3, infra.

dering the recount and extending time for taking testimony, together with depositions in support thereof. After further investigation, the election committee recommended in its report that the House should not intervene in the contest "that has been initiated but not brought officially to the House . . . ." During brief debate in the House, a Member stated that the effect of the committee's unanimous report would be to establish that jurisdiction could not be "conferred on the House or any of its committees by any joint agreement of parties to an alleged election contest unofficially or otherwise submitted."

Power Over Administration of Oath to Candidate in Election Contest

§ 4.2 The House, by resolution, may authorize the Speaker to administer the oath of office to a Member-elect whose election is in dispute, even though he does not possess a certificate of election.

In the 1933 Maine election contest of Brewster v Utterback (§ 47.2, infra), a Member objected to the oath being administered to Member-elect Utterback, who then stood aside while other Members-elect and Delegates-elect were sworn. The House then adopted a resolution authorizing the Speaker to administer the oath to Mr. Utterback even though the latter did not possess a certificate of election from his state.

§ 4.3 Where two persons claim the same seat in the House from the same congressional district, the House may refuse to permit either candidate to take the oath of office pending a determination of their rights by the House.

In the Kemp, Sanders investigation (§ 47.14, infra), arising from a special election held in Louisiana to fill the vacancy created by the death of Bolivar E. Kemp, the widow of Mr. Kemp claimed to be elected to the seat on the basis of an election held on Dec. 5, 1933, and the contestant claimed the seat on the basis of an election held on Dec. 27, 1933. Confronted with allegations that the Governor had personally selected the candidates and given unreasonable notice of the time, place, and manner of the election, the House declined to seat either party on the convening of the second session of the 73d Congress on Jan. 3, 1934. Ultimately, the House resolved, after investigation, that neither party had been validly elected and directed the Speaker to commu-

nicate the fact of the vacancy to the Governor of Louisiana.

Power of Summary Dismissal of Election Contest

§ 4.4 The House may dismiss an election contest, on the ground that contestant is incompetent to initiate the proceeding, by adoption of a resolution.

In the 1941 Ohio election contest of Miller v Kirwan (§ 51.1, infra), the Majority Leader called up as privileged a resolution dismissing an election contest, which resolution the House adopted without debate and by voice vote. The resolution stated that the contestant who had been a candidate in the party primary, but not in the general election, was not a person competent to bring a contest for the seat.

§ 4.5 Election contests are ordinarily referred to a committee for investigation and study; however, there have been instances in which the House, acting without committee action and consideration, has dismissed a contest.

In Miller v Kirwan (§ 51.1, infra), a 1941 Ohio contest, the House dismissed an election contest which had not been referred to the Committee on House Administration; it appeared that contestant had not been a candidate in the general election he disputed, and was therefore incompetent to initiate the proceeding.

Notification to Governor of Vacancy

§ 4.6 The House authorized the Speaker to notify a Governor of the existence of a vacancy, where neither party to a contest was found to be validly elected.

In the Kemp and Sanders investigation (§ 47.14), a committee on elections concluded that neither of two elections held to fill a vacancy in a Louisiana seat in the 73d Congress was vaIid. Subsequently, House Reso]ution 231 was called up as privileged and adopted by voice vote. The resolution set forth the conclusion of the committee and authorized the Speaker to notify the Governor of the existing vacancy.

§ 5. Election Committees

Jurisdiction over contested elections is given to the Committee on House Administration by the House rules;[12] and the responsi-

12. Rule XI clause 9(k), *House Rules and Manual* § 693 (1973).