cial duties under section 190(d) of title 2, United States Code: . . .

The yeas and nays were demanded, and ordered, and there were—yeas 153, nays 217, answered "present" 1. Hence, the resolution was rejected.[13]

§ 4. Committee Expenses; Use of Contingent Fund

Funds for compensation of standing committees' professional and clerical staff are carried in the annual legislative appropriations acts, which also place money in the contingent fund of the House. Each committee, other than the Committee on Appropriations,[14] and (more recently) the Committee on the Budget,[15] must obtain authorization for the payment of those expenses not covered by the legislative appropriation acts from the contingent fund of the House. The Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong. effective Jan. 3, 1975), in clause 1(b), Rule XI provided authorization for all committees to conduct investigations within their jurisdictions and to incur expenses subject to the adoption of expense resolutions reported from the Committee on House Administration.

The rules provide[16] that such an authorization initially shall be procured by one primary expense resolution providing funds for the payment of all the committee's expenses for the year from the contingent fund. The resolution may not be considered in the House unless a printed report on the resolution has been available to Members for at least one calendar day prior to consideration. The report, itself, must:

> (1) state the total amount of the funds to be provided to the committee under the primary expense resolution for all anticipated activities and programs of the committee; and
>
> (2) to the extent practicable, contain such general statements regarding the estimated foreseeable expenditures for the respective anticipated activities and programs of the committee as may be appropriate to provide the House with basic estimates with respect to the expenditure generally of the funds to be provided to the committee under the primary expense resolution.

In practice, each standing committee goes before the Committee on House Administration with its

13. *Id.* at p. 8520.

14. Rule XI clause 5(a), *House Rules and Manual* § 732(a) (1979).

15. See Rule XI clause 5(a), *House Rules and Manual* § 732(a) (1979). This exemption emanated from the Congressional Budget Act of 1974 (88 Stat. 297) and dates from July 12, 1974.

16. Rule XI clause 5(a), *House Rules and Manual* § 732(a) (1979).

funding request. The latter committee possesses jurisdiction under the rules over appropriations and expenditures from the contingent fund.[17] In addition, the rules[18] accord privileged status to the reporting of any matter by the Committee on House Administration which pertains to the expenditure of the contingent fund.

Following the adoption of a committee's primary expense resolution by the House, authorization for the payment from the contingent fund of additional committee expenses not covered by statutory appropriations or by the primary expense resolution may be obtained by one or more additional expense resolutions. Again, any such expense resolution must be accompanied by a printed report made available to Members at least one calendar day prior to the consideration of the resolution.[19] And, the report accompanying such an additional expense resolution must:

> (1) state the total amount of additional funds to be provided to the committee under the additional expense resolution and the purpose or purposes for which those additional funds are to be used by the committee; and
>
> (2) state the reason or reasons for the failure to procure the additional funds for the committee by means of the primary expense resolution.

It should be noted none of the requirements applicable to primary and additional expense resolutions obtain with respect to those resolutions providing for contingent fund payment of a committee's expenses from and after the beginning of a year and before the adoption by the House of the committee's primary expense resolution.[20] Similarly ex-

17. Rule X clauses 1(j)(1), 1(j)(6), *House Rules and Manual* § 679(a) (1979).

18. Rule XI clause 4(a), *House Rules and Manual* § 726 (1979).

19. Rule XI clause 5(b), *House Rules and Manual* § 732 (b) (1979).

20. In recent Congresses, "continuing" resolutions have been considered by unanimous consent at the beginning of each Congress (where the Committee on House Administration had not been organized and could not report privileged resolutions) to provide for temporary payments from the contingent fund, usually for a period of up to three months and at rates in existence at the end of the prior Congress, for expenses of standing and select committees established in House rules (see e.g., H. Res. 84, 121 CONG. REC. 1160, 1161, 94th Cong. 1st Sess., Jan. 23, 1975; H. Res. 11, 123 CONG. REC. 74, 95th Cong. 1st Sess., Jan. 4, 1977; H. Res. 49, 125 CONG. REC.—, 96th Cong. 1st Sess., Jan. 18, 1979). See also § § 13.1–13.9, infra, for discussion of resolutions permitting continued committee employment in new Congresses. This concept of "continuing

cluded from such requirements is:[1]

> any resolution providing in any Congress, for all of the standing committees of the House, additional office equipment, airmail and special delivery postage stamps, supplies, staff personnel, or any other specific item for the operation of the standing committees, and containing an authorization for the payment from the contingent fund of the House of the expenses of any of the foregoing items provided by that resolution, subject to and until enactment of the provisions of the resolution as permanent law.[2]

Allocation of Funds for Committee Personnel; for Minority Party Funding

§ 4.1 The 92d Congress by resolution adopted rules striking out the statutory requirement (which was contained as a rulemaking exercise in an Act passed the previous year) that not less than one-third of funds for standing committee investigative personnel be made available to the minority party, and inserting the requirement that the minority be given fair consideration in the allocation of such funds.

On Jan. 21, 1971,[3] Mr. William M. Colmer, of Mississippi, offered a privileged resolution (H. Res. 5) and asked for its immediate consideration. The resolution provided:

> That the Rules of the House of Representatives of the Ninety-first Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, and the Legislative Reorganization Act of 1970, be, and they are hereby adopted as the Rules of the House of Representatives of the Ninety-second Congress, with the following amendments as part thereof. . . .

Among the amendments which were then listed was the following:

> In Rule XI, strike out clause 32(c)[4] and insert in lieu thereof the following:

resolutions" is to be distinguished from "continuing appropriations joint resolutions" for operation of departments of government pending enactment of annual general appropriations bills, discussed in Ch. 25 (Appropriations), infra, in this work.

1. Rule XI clause 5(c)(2), *House Rules and Manual* § 732 (c) (1979).
2. Information with respect to the compensation of committee employees, as well as particulars about their appointment and employment may be found at § 13, infra.
3. 117 CONG. REC. 14, 92d Cong. 1st Sess.
4. On July 16, 1970 [116 CONG. REC. 24590, 91st Cong. 2d Sess.], by a teller vote of 105 ayes to 63 nays, the Committee of the Whole agreed to an amendment to the Legislative

"(c) The minority party on any such standing committee is entitled to and shall receive fair consideration in the appointment of committee staff personnel pursuant to each such primary or additional expense resolution."

On Jan. 22, 1971,[5] as discussion of House Resolution 5 continued, much of the debate focused on the minority staffing amendment. The Democratic Caucus had bound[6] its members to vote to remove that provision of clause 32(c) [Rule XI which entitled the minority party of an affected committee to control at least one-third of the funds set aside for the appointment of committee staff.

Those in favor of modifying the "one-third funding" provision cited that rule's inflexible and "arbitrary" standard which, it was argued, would impose divisiveness and controversy into committees which already had agreeable and workable arrangements.[7] It was also felt that the rigid standard would be a step in the direction of a "spoils" system and away from the development of professional staff careers.

Those opposing change in the funding provision argued that the "one-third funding" provision ensured development of a minority staff capable of constructively evaluating legislation offered by the majority; offering intelligent alternatives in a strengthened adversary system; fully clarifying or defending minority views; and protecting against abuses in the executive branch.[8]

Reorganization Act of 1970 (H.R. 17654), offered by Mr. Frank Thompson, Jr., of New Jersey, which amended section (c) of the newly proposed clause 32, Rule XI, such that the latter provision [clause 32(c), Rule XI] would read thusly: "The minority party on any such standing committee is entitled to if they so request not less than one-third of the funds provided for the appointment of committee staff personnel pursuant to each such primary or additional expense resolution." This provision, frequently referred to as the "Thompson-Schwengel amendment" owing to its joint authorship by Mr. Thompson and Mr. Fred Schwengel, of Iowa, remained intact when the Legislative Reorganization Act of 1970 became law [Pub. L. No. 91–510], and thus was in effect as of Jan. 1, 1971.

5. 117 CONG. REC. 132, 92d Cong. 1st Sess.

6. A brief discussion of the extent to which caucus members were "bound" was provided by Mr. Frank Thompson, of New Jersey [*Id.* at p. 138]. For further details as to the role of party caucuses, in general, see Ch. 3, supra, particularly § 10, discussing the extent to which party decisions could be made binding on members.

7. See remarks of Mr. John A. Blatnik (Minn.) at 117 CONG. REC. 138, 92d Cong. 1st Sess.

8. See, generally, 117 CONG. REC. 135140, 92d Cong. 1st Sess.

After debate, the resolution was amended[9] in a manner not affecting the minority staffing provision. As amended, House Resolution 5 was agreed to,[10] on a roll call vote thereby eliminating the "one-third control" proviso and substituting the requirement of "fair consideration" in the allocation of such funds to the minority.

Parliamentarian's Note: Subsequently, in the 93d Congress, the House tentatively restored, effective Jan. 3, 1975, the requirement for one-third minority staff funding (the Committee Reform Amendments of H. Res. 988, 93d Cong.). This requirement,, however, was never effectuated, being in turn superseded on Jan. 14, 1975, by clause 5(d) Rule XI, in which the 94th Congress provided instead a new mechanism for staff entitlement and selection. Thus, for example, one subcommittee staff member is provided for each chairman and ranking minority subcommittee member, to be counted against permanent staff positions unless made available pursuant to an expense resolution reported from the Committee on House Administration. (See future editions for more detailed treatment of this rule.)

9. *Id.* at p. 143.

10. *Id.* at pp. 143, 144.

Resolution Paying Expenses from Contingent Fund; Privilege of Resolution

§ 4.2 A resolution reported by the Committee on House Administration, providing for the payment of a standing committee's expenses from the contingent fund of the House, is reported and called up as privileged.

On Aug. 10, 1967,[11] Charles M. Price, of Illinois, Chairman of the Committee on Standards of Official Conduct, introduced a resolution (H. Res. 871) authorizing funds for the operation of the Committee on Standards of Official Conduct pursuant to House Resolution 418.[12] The measure was referred to the Committee on House Administration.

Several weeks later, on Sept. 21, 1967,[13] Mr. Samuel N. Friedel, of Maryland, was recognized by the Speaker[14] and proceeded to make the following statement:

> Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Repts. No.

11. 113 CONG. REC. 22340, 90th Cong. 1st Sess.

12. See § 2.1, supra.

13. 113 CONG. REC. 26375, 90th Cong. 1st Sess.

14. John W. McCormack (Mass.).

651) on the resolution (H. Res. 871) authorizing funds for the operation of the Committee on Standards of Official Conduct pursuant to House Resolution 418, and ask for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 871

Resolved, That, effective April 13, 1967, in carrying out its duties during the Ninetieth Congress, the Committee on Standards of Official Conduct is authorized to incur such expenses (not in excess of $10,000) as it deems advisable. Such expenses shall be paid out of the contingent fund of the House on vouchers authorized and approved by such committee, and signed by the chairman thereof.

Sec. 2. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration under existing law.

Parliamentarian's Note: The rules provide that certain committees shall "have leave to report at any time" on certain matters.[15] Under this proviso, the Committee on House Administration may report at any time "on all matters of expenditure of the contingent fund of the House," among other things.

Use of Motion to Recommit Relative to Funding

§ 4.3 That which may not be done directly by amendment may not be done indirectly by motion to recommit with instructions; thus, where the amount of authorized funds provided in an investigatory resolution is diminished by floor amendment, a motion to recommit with instructions to restore the difference by again changing the same sum is out of order.

On Apr. 5, 1967,[16] the House entertained consideration of a privileged resolution (H. Res. 221) reported from the Committee on House Administration providing investigatory funds from the contingent fund for the Committee on Un-American Activities. The proposed authorization having then been reduced by floor amendment[17] from $400,000 to $350,000, Speaker John W. McCormack, of Massachusetts, recognized Mr. John M. Ashbrook, of Ohio, who offered the following motion to recommit:

Mr. Ashbrook moves to recommit the resolution (H. Res. 221) to the Committee on House Administration with instructions to report the resolution forthwith with the following amendment: On page 1, line 5, strike out "$350,000" and insert in lieu thereof "$400,000."

Immediately thereafter, the ensuing exchange took place:

15. Rule XI clause 22, *House Rules and Manual* § 726 (1973).

16. 113 CONG. REC. 8419–43, 90th Cong. 1st Sess.

17. *Id.* at p. 8441.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker——

THE SPEAKER: For what purpose does the gentleman rise?

MR. HAYS: Mr. Speaker, I make a point of order against the motion to recommit on the grounds that the House has just adopted the committee amendment to cut the amount from $400,000 to $350,000. The gentleman now offers a motion to recommit to restore it from the $350,000 to $400,000 and it is clearly out of order.

THE SPEAKER: Does the gentleman from Ohio [Mr. Ashbrook] desire to be heard?

MR. ASHBROOK: Yes, Mr. Speaker.

Mr. Speaker, it appears to me that we voted to order the previous question on the amendments and the motion to recommit, in my opinion, would be a proper motion to recommit. I hope that the Chair will so hold.

THE SPEAKER: The Chair will call attention to that fact that the previous question was ordered and the amendments were adopted by the House.

It is not in order to do indirectly by a motion to recommit with instructions that which may not be done directly by way of amendment.

An amendment to strike out an amendment already adopted is not in order. The subject matter of the motion to recommit has already been passed upon by the House.

The Chair sustains the point of order.[18]

§ 4.4 The House having under consideration an investigatory, funding resolution for the Committee on Un-American Activities, a motion to recommit that resolution to the Committee on House Administration with instructions that open hearings be held to justify such funding, was rejected on a roll call vote.

On Apr. 5, 1967,[19] following lengthy consideration of an investigatory funding resolution (H. Res. 221) for the Committee on Un-American Activities, Speaker John W. McCormack, of Massachusetts, recognized Mr. Don Edwards, of California, who offered the following motion to recommit:

> Mr. Edwards of California moves to recommit the resolution (H. Res. 221) to the Committee on House Administration with instructions that open hearings be held on justification for such additional funds of the House Committee on Un-American Activities as provided in House Resolution 221.

Immediately thereafter, the Chair put the question on the motion, and on a roll call vote of yeas 92, nays 304, it was rejected.

§ 4.5 A resolution providing for payment of a standing committee's expenses out of the contingent fund of the House is subject to a motion to recommit (with instructions).

18. *Id.* at pp. 8441, 8442.

19. 113 CONG. REC. 8442, 90th Cong. 1st Sess.

On Mar. 1, 1961,[20] after the previous question was ordered on a resolution (H. Res. 167) providing $331,000 for the operations of the Committee on Un-American Activities, the Speaker[21] initiated the following exchange:

THE SPEAKER: The question is on the resolution.

MR. [JAMES] ROOSEVELT [of California]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ROOSEVELT: Is it not proper to offer a motion to recommit at this point?

THE SPEAKER: If the gentleman can qualify.

MR. ROOSEVELT: I think I can qualify, Mr. Speaker.

I offer a motion to recommit.

THE SPEAKER: Is the gentleman opposed to the resolution?

MR. ROOSEVELT: I am, Mr. Speaker.

THE SPEAKER: The Clerk will report the motion to recommit.

The Clerk read as follows:

> Mr. Roosevelt moves to recommit the resolution to the Committee on House Administration with instructions to report forthwith with the following amendment: On page 2, after the period, line 1, add the following: "*Provided*, That the committee shall not use any of its funds to undertake any investigation of any subject which is being investigated by any other committee of the House."

THE SPEAKER: The question is on the motion to recommit.

The motion to recommit was rejected and the resolution was agreed to.

Contingent Fund Moneys for Subcommittee's Expenses

§ 4.6 The House refused to agree to a resolution authorizing the use of contingent fund moneys to cover the expenses incurred by a subcommittee on poverty created by the Committee on Education and Labor.

On Aug. 14, 1964,[22] by direction of the Committee on House Administration, Mr. Samuel N. Friedel, of Maryland, called up House Resolution 663. The Clerk then read the resolution, as follows:

> *Resolved*, That the expenses of an investigation authorized by H. Res. 103, Eighty-eighth Congress, with respect to the proposals for an attack on poverty recommended by the President in a special message to Congress incurred by the ad hoc subcommittee of the Committee on Education and Labor which was specially created to make such investigation, not to exceed $20,000, including expenditures for the employment of necessary professional and stenographic assistance, and all expenses necessary for travel and subsistence incurred by members and employees who will be engaged in the ac-

20. 107 CONG. REC. 2989, 87th Cong. 1st Sess.

21. Sam Rayburn (Tex.).

22. 110 CONG. REC. 19711, 88th Cong. 2d Sess.

tivities of the subcommittee, shall be paid out of the contingent fund of the House. All accounts authorized to be paid out of the contingent fund by this resolution shall be paid on vouchers authorized and signed by the chairman of the committee, and approved by the Committee on House Administration.

With the following committee amendment:

Page 1, line 7, strike out "$20,000" and insert "$10,000".

Discussion ensued, and in an effort to clarify what had transpired, Mr. James Roosevelt, of California, stated:[1]

MR. ROOSEVELT: May I say again that I must emphasize what the distinguished chairman of the Committee on House Administration said, that the full committee did not envision any such activity as was called for under the poverty program, and that the chairman of the Committee on Education and Labor found it necessary to form an ad hoc committee to undertake that work, and that we then went to the Committee on House Administration and asked for a reasonable sum, $10,000, in order that this very special work might be carried out.

Shortly thereafter, Mr. Peter H. B. Frelinghuysen, Jr., of New Jersey, was recognized and responded to Mr. Roosevelt's statement, saying:

. . . The only problem was that the Committee on House Administration took no action with respect to that request for additional funds. Yet the Committee on Education and Labor in effect went ahead and spent the money anyway. It strikes me that this is unconscionable procedure. I am not saying the bill should not be paid, because that would just be making a bad matter worse, but I am pointing out the irregularity under which our committee operates. I am not pointing the finger of blame at any one individual. I am just saying if we were in charge of that committee, we would not be spending money unless it were available and we had some positive assurance that our request for funds was going to be honored. So far as I know, there was no such informal understanding that something would be forthcoming and therefore, the Committee on Education and Labor could go ahead and spend the money and simply submit its bill.

Following additional discussion of the matter, Speaker pro tempore Wilbur D. Mills, of Arkansas, put the question on the resolution.[2] The yeas and nays were then demanded and ordered, the question was taken again; and there were—yeas 115, nays 156, answered "present" 1. Accordingly, the resolution was rejected.

Use of Contingent Fund Where Fiscal Year Expenses of Committees Underestimated

§ 4.7 The House has authorized by resolution the transfer of certain sums from the contingent fund to meet com-

1. *Id.* at p. 19712.

2. *Id.* at p. 19714.

mittee payrolls where committee expenses had been underestimated for the fiscal year, resulting in a shortage of appropriated funds.

On June 29, 1966,[3] Speaker pro tempore Carl Albert, of Oklahoma, recognized Mr. Omar T. Burleson, of Texas, who called up the following resolution (H. Res. 900, reported from the Committee on House Administration on that day) and asked for its immediate consideration:

> *Resolved,* That the Clerk of the House be and is hereby directed to pay such sum as may be necessary, from the contingent fund of the House of Representatives, to meet the June 1966 payroll of committee employees.

No objection was heard to Mr. Burleson's request, and shortly thereafter the question was put,[4] and the resolution was agreed to.

§ 5. Establishing Select Committees; Procedure

Privilege of Resolution Creating Select Committee

§ 5.1 A House resolution providing for the creation of a select committee is reported and called up as privileged by the Committee on Rules.

On July 8, 1969,[5] Mr. Ray J. Madden, of Indiana, reported, from the Committee on Rules, a resolution (H. Res. 472) creating a select committee to be known as the Committee on the House Restaurant The resolution was referred to the House Calendar.

Two days later, on July 10, 1969,[6] Speaker John W. McCormack, of Massachusetts, recognized Mr. Madden who proceeded to make the following statement:

> Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 472 and ask for its immediate consideration.

The resolution was then read by the Clerk, as follows:

> *Resolved,* That (a) there is hereby created a select committee to be known as the "Committee on the House Restaurant," which shall be composed of five Members of the House of Representatives to be appointed by the Speaker, not more than three of whom shall be of the majority party, and one of whom shall be designated as chairman. Any vacancy occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.
>
> (b) On and after July 15, 1969, until otherwise ordered by the House, the

3. 112 CONG. REC. 14623, 89th Cong. 2d Sess.
4. *Id,* at p. 14624.
5. 115 CONG. REC. 18712, 91st Cong. 1st Sess.
6. *Id.* at p. 19080.