

State of Minnesota

HOUSE OF REPRESENTATIVES



Jack Fena v. Barney Bischoff (1968)

Ad and radio broadcasts charging Fena with wrongdoing and improper conduct as an incumbent legislator.

Bischoff was seated with the other members on January 7, 1969.

Court records were referred to the Elections and Reapportionment Committee on January 14, 1969.

A subcommittee was appointed to consider the matter, and the Committee reported to the House on February 6, 1969, that it had concurred in the subcommittee's recommendation that the seat be vacated and a Special Election held.

On February 7, 1969, a committee minority report was presented to the House. The minority report was defeated 40 to 88. The House adopted the Committee recommendation on February 7, 1969, by a voice vote.

Six members issued a recorded protest over the manner in which the expulsion vote was conducted.

Barney Bischoff was once again, sworn in on March 20, 1969.

## FIFTH DAY

SAINT PAUL, MINNESOTA, TUESDAY, JANUARY 14, 1969

The House met at 2:00 p.m. and was called to order by the Speaker.

Prayer was offered by the Chaplain.

The roll being called, the following members answered to their names:

Adams, J.	Erickson	Johnson, C. A.	Murray	Schumann
Albertson	Everson	Johnson, C. M.	Nelson	Schwarzkopf
Andersen, R.	Falk	Johnson, J.	Newcome	Searle
Anderson, D.	Fischer, W. C.	Johnson, N.	Niehaus	Shores
Anderson, H.	Fisher, D.	Johnson, R.	Nolan	Sillers
Anderson, I.	Fitzsimons	Jopp	North	Skaar
Anderson, T.	Flakne	Judge	Norton	Skeate
Bang	Forseth	Keefe	O'Dea	Smith
Bares	France	Klaus	O'Neill	Sommerdorf
Barr	Frenzel	Kleinbaum	Pavlak, R.	Spanish
Becklin	Frick	Knutson	Pavlak, R. L.	Stangeland
Bell	Fudro	Kozlak	Peterson	Stone
Bernhagen	Fuller	Krenik	Plaisance	Swanson
Bischoff	Gearty	Kvam	Prifrel	Swanstrom
Brandt	Gimpl	Larson	Rappana	Theis
Brinkman	Graw	Lee	Reigel	Ticen
Carlson	Gruys	Lindahl	Renner	Tomczyk
Chamberlain	Gustafson, E.	Lindstrom	Richie	Ulland
Chenoweth	Gustafson, W.	Long	Ryan	Voxland
Christensen, R.	Haaven	Mann	Sabo	Weaver
Christianson, M.	Hanson	McFarlin	Salchert	White
Coombe	Haugerud	McMillan, Mrs.	Samuelson	Wingard
Dammermann	Hegstrom	Miller	Sathre	Winter
DeGroat	Heinitz	Moen	Savelkoul	Wolcott
Dirlam	Hoff	Morlock	Schafer	Wright
Dunn	Hoppe	Mueller	Scherer	Mr. Speaker
Erdahl	Humphrey	Munger	Schulz	

A quorum was present.

Mr. Adams, S., was excused.

The Chief Clerk then proceeded to read the Journal of the preceding day, when on the motion of Mr. Johnson, C. M., the further reading was dispensed with and the Journal was approved as corrected.

## PETITIONS AND COMMUNICATIONS

The following reports were received, filed in the Chief Clerk's Office, and distributed to each member: Report of the League of

Minnesota Municipalities, 1969 Legislative Year; Biennial Report of the Department of Labor and Industry, 1966-8; and Biennial Report of the Workmen's Compensation Commission, 1966-8.

A communication and accompanying court records were received from R. S. Christofferson, Administrative Assistant to the Clerk of District Court, St. Louis County, Hibbing, Minnesota, regarding the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, in District 63. The communication and accompanying court records were referred to the Committee on Elections and Reapportionment.

## INTRODUCTION OF BILLS

Messrs. Sathre, Schafer, Searle, Bernhagen, and Skaar introduced:

H. F. No. 26, A bill for an act relating to corporations; limitation on land ownership by corporations and certain individuals; amending Minnesota Statutes 1967, Section 500.22, Subdivision 4, and by adding a subdivision.

The bill was read for the first time and referred to the Committee on Agriculture.

Messrs. DeGroat, Erickson, Long, Mann, and Skaar introduced:

H. F. No. 27, A bill for an act creating a legislative commission to study agriculture; appropriating money therefor.

The bill was read for the first time and referred to the Committee on Agriculture.

Messrs. Fisher, D.; Schumann; and Fuller introduced:

H. F. No. 28, A bill for an act relating to the claim of the town of Rochester in the county of Olmsted; arising from the diversion of traffic onto a town street by the highway department; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Claims.

Mr. Weaver introduced:

H. F. No. 29, A bill for an act relating to the claim of George Dorr; arising from unlawful confinement in the state prison at Stillwater; appropriating money for the payment thereof.

The bill was read for the first time and referred to the Committee on Claims.

Salchert	Schumann	Smith	Theis	Wingard
Samuelson	Schwarzkopf	Sommerdorf	Ticen	Winter
Sathre	Searle	Spanish	Tomczyk	Wolcott
Savelkoul	Shores	Stangeland	Ulland	Wright
Schafer	Sillers	Stone	Voxland	Mr. Speaker
Scherer	Skaar	Swanson	Weaver	
Schulz	Skeate	Swanstrom	White	

So the bill was passed and its title agreed to.

H. F. No. 319, A bill for an act relating to the public employees retirement association; respecting membership rights of elected public officers; amending Minnesota Statutes 1967, Section 353.26, Subdivision 3.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 133, and nays 0, as follows:

Those who voted in the affirmative were:

Adams, J.	Erickson	Johnson, C. A.	Nelson	Schwarzkopf
Albertson	Everson	Johnson, C. M.	Newcome	Searle
Andersen, R.	Falk	Johnson, J.	Niehaus	Shores
Anderson, D.	Fischer, W. C.	Johnson, N.	Nolan	Sillers
Anderson, H.	Fisher, D.	Johnson, R.	North	Skaar
Anderson, I.	Fitzsimons	Jopp	Norton	Skeate
Anderson, T.	Flakne	Judge	O'Dea	Smith
Bang	Forseth	Keefe	O'Neill	Sommerdorf
Bares	France	Klaus	Pavlak, R.	Spanish
Barr	Frenzel	Kleinbaum	Pavlak, R. L.	Stangeland
Becklin	Frick	Knutson	Stone	Swanson
Bell	Fudro	Kozlak	Plaisance	Swanstrom
Bernhagen	Fuller	Krenik	Prifrel	Theis
Bischoff	Gearty	Kvam	Rappana	Ticen
Brandt	Gimpl	Larson	Reigel	Tomczyk
Brinkman	Graw	Lee	Renner	Ulland
Carlson	Gruys	Lindstrom	Richie	Voxland
Chamberlain	Gustafson, E.	Long	Ryan	Weaver
Chenoweth	Gustafson, W.	Mann	Sabo	White
Christensen, R.	Haaven	McFarlin	Salchert	Wingard
Christianson, M.	Hanson	McMillan, Mrs.	Samuelson	Winter
Coombe	Haugerud	Miller	Sathre	Wolcott
Dammermann	Hegstrom	Moen	Savelkoul	Wright
DeGroat	Heinitz	Morlock	Schafer	Mr. Speaker
Dirlam	Hoff	Mueller	Scherer	
Dunn	Hoppe	Munger	Schulz	
Erdahl	Humphrey	Murray	Schumann	

So the bill was passed and its title agreed to.

H. F. No. 235, A resolution memorializing the General Services Administration to dispose of the Old Federal Courts Building in St. Paul, Minnesota, consistently with its historical and architectural value.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 130, and nays 0, as follows:

Those who voted in the affirmative were:

Adams, J.	Erickson	Humphrey	Munger	Schumann
Albertson	Everson	Johnson, C. A.	Murray	Schwarzkopf
Andersen, R.	Falk	Johnson, C. M.	Nelson	Searle
Anderson, D.	Fischer, W. C.	Johnson, J.	Newcome	Shores
Anderson, H.	Fisher, D.	Johnson, N.	Niehaus	Sillers
Anderson, I.	Fitzsimons	Johnson, R.	Nolan	Skaar
Anderson, T.	Flakne	Jopp	North	Skeate
Bang	Forseth	Judge	O'Dea	Smith
Bares	France	Keefe	O'Neill	Sommerdorf
Becklin	Frenzel	Klaus	Pavlak, R.	Spanish
Bell	Frick	Kleinbaum	Pavlak, R. L.	Stangeland
Bernhagen	Fudro	Knutson	Peterson	Stone
Bischoff	Fuller	Kozlak	Plaisance	Swanson
Brandt	Gearty	Krenik	Rappana	Swanstrom
Brinkman	Gimpl	Kvam	Reigel	Theis
Carlson	Graw	Larson	Renner	Ticen
Chamberlain	Gruys	Lee	Richie	Tomczyk
Chenoweth	Gustafson, E.	Lindstrom	Ryan	Ulland
Christensen, R.	Gustafson, W.	Long	Sabo	Voxland
Christianson, M.	Haaven	Mann	Salchert	Weaver
Coombe	Hanson	McFarlin	Samuelson	White
Dammermann	Haugerud	McMillan, Mrs.	Sathre	Wingard
DeGroat	Hegstrom	Miller	Savelkoul	Winter
Dirlam	Heinitz	Moen	Schafer	Wolcott
Dunn	Hoff	Morlock	Scherer	Wright
Erdahl	Hoppe	Mueller	Schulz	Mr. Speaker

So the bill was passed and its title agreed to.

## GENERAL ORDERS

Pursuant to Rules of the House, the House resolved itself into the Committee of the Whole, with Mr. Duxbury in the Chair, for the consideration of bills pending on General Orders of the Day.

The Speaker resumed the Chair, whereupon the following proceedings of the Committee were reported to the House:

H. F. Nos. 100 and 491 which it recommended to pass.

On the motion of Mr. Dirlam, the report of the Committee of the Whole was adopted.

There being no objection, the order of business reverted to Reports of Standing Committees.

## REPORTS OF STANDING COMMITTEES

### REPORT ON ELECTION CONTEST

Mr. Swanstrom from the Committee on Elections and Reapportionment made the following report regarding the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, in District 63:

On Tuesday, January 14, 1969, a communication and accompanying court records from the Clerk of the District Court, St. Louis County, Duluth, Minnesota, regarding the Fena-Bischoff election contest were reported to the House and were referred to the Committee on Elections and Reapportionment.

On Thursday, January 16, 1969, a subcommittee consisting of Messrs. Newcome, Long, White, Skaar and Ticen was appointed by the Committee on Elections and Reapportionment to consider the above mentioned election contest.

On Thursday, February 6, 1969, the subcommittee made the following report to the full committee on Elections and Reapportionment:

TO THE HONORABLE DWIGHT SWANSTROM, CHAIRMAN OF THE  
COMMITTEE ON ELECTIONS AND REAPPORTIONMENT

Mr. Newcome, for the Subcommittee of House Elections and Reapportionment Committee, considering the above mentioned matter does hereby make its findings, conclusions and report.

Based on the evidence adduced at the public hearing at which the contestant and contestee were present, and on the evidence included in the transcript of testimony of the proceedings before the Honorable Leslie L. Anderson, Judge of the District Court, Sixth Judicial District, County of St. Louis, State of Minnesota, and on arguments and briefs as presented to the committee, the subcommittee finds as follows to-wit:

FINDINGS OF FACT

1. That Jack Fena, Barney Bischoff, Loren S. Rutter and John Spanish were candidates running at large for the two seats to be filled in the 63rd District for the office of State Representative at the general election held on November 5, 1968.

2. That John Spanish received the greatest number of votes and was issued a Certificate of Election. That Loren S. Rutter had the least number of votes. That Barney Bischoff received 10,412 votes and Jack Fena 8,503 votes.

3. That Barney Bischoff was admitted to the Bar as an attorney in the year 1959. That he has been active in party politics and had previous experience assisting others in campaign policies and tactics.

4. That Barney Bischoff composed, authored and was responsible for radio broadcasts and a newspaper ad which are alleged to be violations of the Fair Campaign Practices Act.

5. That during the campaign Barney Bischoff was responsible for the following:

a.) The campaign ad (contestant's Exhibit G) published on November 4, 1968, in the Manney's Weekly Shopper alleged that Jack Fena and others purchased approximately 520 acres near the Hibbing-Chisholm Airport to enrich himself by reason of his possession of inside information concerning the future location or improvement of a public highway benefiting said land.

That said ad was also the subject of several radio broadcasts (as set forth in Exhibits 18 and H). That the radio broadcasts were

instigated and authored at the instance and with the approval of Barney Bischoff.

b.) That further allegations were made in said newspaper ad and radio broadcasts that Jack Fena received an attorney's fee from the Town of Stuntz in the sum of \$7,500 for handling "a single case which never went to court and which required very little effort on his part". That in fact there were two cases, the work involved was more than minimal and the matter had been processed in the tax court of the State of Minnesota.

c.) That the said newspaper ad and radio broadcasts included statements by Barney Bischoff that Mr. Fena, as a member of the House Judiciary Committee, considered salary increases for public defenders. There was a deliberate attempt by innuendo to mislead the public that Jack Fena was responsible for the amount of salary paid to the public defenders.

6. That the subcommittee finds that the statements made by Jack Fena in radio broadcasts in the closing moments of the campaign in rebuttal to the charges made by Barney Bischoff as stated aforesaid were intemperate and improper campaign practices.

That the statements were not an issue in this matter but the subcommittee feels duty bound to comment concerning their impropriety.

CONCLUSIONS

1. That the newspaper ad and radio broadcasts, as set forth herein, were false, serious and of a material nature deliberately made with the intention to deceive the electorate.

2. That the election results were affected thereby and the citizens of the district were denied the right to decide the election based on the relative merits of the candidates by reason of the improper campaign tactics of the said Barney Bischoff.

3. That Barney Bischoff was not legally elected and is not entitled to retain his seat as a Representative of the 63rd Legislative District, County of St. Louis in the State House of Representatives.

4. That there is a vacancy in the office of Representative of the 63rd District, County of St. Louis, Minnesota, and that this vacancy be certified to the Honorable Harold L. LeVander, Governor of the State of Minnesota, in order that he may issue a Writ of Election as provided for by law so that the vacancy may be filled.

Dated this 6th day of February, 1969.

THOMAS W. NEWCOME, Chairman  
VERNE E. LONG  
RICHARD H. WHITE  
THOMAS E. TICEN  
ANDREW SKAAR

On Thursday, February 6, 1969, the Committee on Elections and Reapportionment unanimously adopted the report of the subcommittee and therefore recommends to the House of Representatives that Barney Bischoff was not legally elected and is not entitled to retain his seat as a Representative of the 63rd Legislative District, County of St. Louis in the State House of Representatives. That there is a vacancy in the office of Representative of the 63rd District, County of St. Louis Minnesota, and that this vacancy be certified to the Honorable Harold L. LeVander, Governor of the State of Minnesota, in order that he may issue a Writ of Election as provided for by law so that the vacancy may be filled.

DWIGHT SWANSTROM, Chairman

Mr. Dirlam moved that the report of the Committee on Elections and Reapportionment relating to the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, be printed in the Journal and lie over until Friday, February 7, 1969, on the order of business "Reports of Standing Committees". The motion prevailed.

#### ADJOURNMENT

Mr. Dirlam moved that the House adjourn. The motion prevailed, and the Speaker declared the House adjourned until 2:00 p.m., Friday, February 7, 1969.

EDWARD A. BURDICK, Chief Clerk, House of Representatives

#### TWENTY-THIRD DAY

SAINT PAUL, MINNESOTA, FRIDAY, FEBRUARY 7, 1969

The House met at 2:00 p.m. and was called to order by the Speaker.

Prayer was offered by the Chaplain.

The roll being called, the following members answered to their names:

Adams, J.	Erickson	Johnson, C. M.	Newcome	Searle
Albertson	Everson	Johnson, N.	Niehaus	Shores
Andersen, R.	Falk	Johnson, R.	Nolan	Sillers
Anderson, D.	Fischer, W. C.	Jopp	North	Skaar
Anderson, H.	Fisher, D.	Judge	Norton	Skeate
Anderson, I.	Fitzsimons	Keefe	O'Dea	Smith
Anderson, T.	Flakne	Klaus	O'Neill	Sommerdorf
Bang	Forseth	Kleinbaum	Pavlak, R.	Spanish
Bares	France	Knutson	Pavlak, R. L.	Stangeland
Barr	Frenzel	Kozlak	Peterson	Stone
Becklin	Frick	Krenik	Plaisance	Swanson
Bell	Fuller	Kvam	Prifrel	Swanstrom
Bernhagen	Gearty	Larson	Rappana	Theis
Bischoff	Gimpl	Lee	Reigel	Ticen
Brandt	Graw	Lindahl	Renner	Tomczyk
Brinkman	Gruys	Lindstrom	Richie	Ulland
Carlson	Gustafson, E.	Long	Ryan	Voxland
Chamberlain	Gustafson, W.	Mann	Sabo	Weaver
Chenoweth	Haaven	McFarlin	Salchert	White
Christensen, R.	Hanson	McMillan, Mrs.	Samuelson	Wingard
Christianson, M.	Haugerud	Miller	Sathre	Winter
Coombe	Hegstrom	Moen	Savelkoul	Wolcott
Dammermann	Heinitz	Morlock	Schafer	Wright
DeGroat	Hoff	Mueller	Scherer	Mr. Speaker
Dirlam	Hoppe	Munger	Schulz	
Dunn	Humphrey	Murray	Schumann	
Edahl	Johnson, C. A.	Nelson	Schwarzkopf	

A quorum was present.

Messrs. Adams, S.; Fudro; and Johnson, J., were excused.

The Chief Clerk then proceeded to read the Journal of the preceding day, when on the motion of Mr. Smith, the further reading was dispensed with and the Journal was approved as corrected.

#### REPORTS OF CHIEF CLERK

Pursuant to Rules of the House, printed copies of H. F. No. 323 have been placed in the members' files.

## REPORTS OF STANDING COMMITTEES

Mr. Fitzsimons from the Committee on Appropriations to which was referred:

H. F. No. 343, A bill for an act relating to the legislative retirement study commission; appropriating money therefor.

Reported the same back with the recommendation that the bill do pass.

The report was adopted.

Mr. Mueller from the Committee on Highways to which was referred:

H. F. No. 487, A bill for an act relating to judicial powers and procedure in the administration of highway traffic laws and municipal ordinances; increasing the maximum fine which may be imposed in misdemeanor offenses, creating a new classification of offenses punishable by fine only termed petty misdemeanors, and restricting the right to trial by jury for offenses not punishable by imprisonment; amending Minnesota Statutes 1967, Sections 169.02; 169.03; 169.073; 169.09, Subdivisions 1 and 2, and by adding a subdivision; 169.121, Subdivision 1; 169.13; 169.15; 169.305, Subdivision 2; 169.345, Subdivision 4; 169.47; 169.471; 169.672; 169.80, Subdivision 1; 169.89; Chapter 169, by adding a section; Sections 169.90; 169.91, Subdivision 1; 169.965, Subdivision 2; 169.966, Subdivision 2; 169.99, by adding a subdivision; 170.50; 171.17; 171.24; 171.40; 484.63; 488.04, Subdivision 5; 488.17, Subdivisions 3 and 6; 488.20; 488A.10, Subdivisions 3, 6, and 7; 488A.18, Subdivision 12; 488A.27, Subdivisions 3, 6, and 7; 488A.35, Subdivision 3; 488A.52; 574.35; 609.02, Subdivisions 1 and 3, and by adding a subdivision; 609.025; 609.04; 629.31; 629.42; 629.53; 633.02; 633.33; and Laws 1967, Chapter 792, Section 9, Subdivisions 3, 6, and 7; Extra Session Laws 1967, Chapter 29, Section 10, Subdivisions 3, 6, and 7; and repealing Minnesota Statutes 1967, Sections 169.14, Subdivision 6; 169.202, Subdivision 3; and 169.91, Subdivision 2.

Reported the same back with the recommendation that the bill be re-referred to the Committee on Judiciary.

The report was adopted.

Mr. Johnson, R., from the Committee on Judiciary to which was referred:

H. F. No. 52, A bill for an act creating an interim commission to study the probate code; appropriating money therefor.

Reported the same back with the recommendation that the bill do pass and be re-referred to the Committee on Appropriations.

The report was adopted.

Mr. Erdahl from the Committee on Labor Relations to which was referred:

H. F. No. 112, A bill for an act relating to public health; reporting of communicable diseases among certain employees and providing penalties; amending Minnesota Statutes 1967, Chapter 157, by adding a section.

Reported the same back with the following amendments:

Section 1, strike all of subdivision 2 and insert in lieu thereof:

*"Subd. 2. The manager of any establishment having knowledge of any employee of such establishment believed to have or suspected of having any disease, presumably communicable, shall report immediately the name and address of any such person to the local health officer. The local health officer shall forward this information to the Minnesota Department of Health, Division of Disease Prevention and Control, after transcribing essential information for permanent local record."*

Page 2, line 5, strike "gross."

With the recommendation that when so amended the bill do pass.

The report was adopted.

Mr. Gustafson, W., from the Committee on Public Institutions to which was referred:

H. F. No. 59, A bill for an act relating to the counties of Becker, Clay, Douglas, Grant, Otter Tail, Pope, Stevens, Traverse, and Wilkin; authorizing the establishment and extension of a community mental health program; appropriating money therefor.

Reported the same back with the recommendation that the bill do pass and be re-referred to the Committee on Appropriations.

The report was adopted.

## REPORT ON ELECTION CONTEST

The report of the Committee on Elections and Reapportionment relating to the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, as printed in the Journal of the House for Thursday, February 6, 1969, was reported to the House.

## MINORITY REPORT

Mr. Sabo, a member of the Committee on Elections and Reapportionment, made the following minority report regarding the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, in District 63:

The report is identical to that of the Committee on Elections and Reapportionment with the following exceptions.

The conclusions should be as follows:

1. That Barney Bischoff and Jack Fena were both guilty of impropriety.

2. That the House of Representatives state that Barney Bischoff and Jack Fena are hereby censured for their improper campaign tactics.

3. That it is difficult to decide if either candidate materially affected the results by their violations of the Fair Campaign Practices Act.

4. That Barney Bischoff was legally elected, notwithstanding his censure.

Delete the last paragraph of the Committee Report.

MARTIN O. SABO

Mr. Sabo moved that the minority report relating to the election contest be substituted for the majority report and that the minority report be now adopted.

A roll call was requested and properly seconded.

Pursuant to Rule 33, Mr. Brandt requested that he be excused from voting. The question was taken on the request, and Mr. Brandt was excused from voting.

Mr. France was excused from the remainder of today's session.

The question being taken on the motion of Mr. Sabo and the roll being called, there were yeas 40, and nays 88, as follows:

Those who voted in the affirmative were:

Adams, J.	Dammermann	Kozlak	Nolan	Sabo
Anderson, I.	Falk	Lee	North	Salchert
Bares	Gearty	Lindahl	Norton	Samuelson
Brinkman	Gustafson, E.	Mann	O'Dea	Shores
Carlson	Hoff	McMillan, Mrs.	Pavlak, R.	Smith
Chenoweth	Judge	Miller	Peterson	Spanish
Christianson, M.	Keefe	Moen	Prifrel	Swanson
Coombe	Kleinbaum	Munger	Ryan	Theis

Those who voted in the negative were:

Albertson	Dirlam	Graw	Johnson, R.	Nelson
Andersen, R.	Dunn	Gruys	Jopp	Newcome
Anderson, D.	Erdahl	Gustafson, W.	Klaus	Niehaus
Anderson, H.	Erickson	Haaven	Knutson	O'Neill
Anderson, T.	Everson	Hanson	Krenik	Pavlak, R. L.
Bang	Fischer, W. C.	Haugerud	Kvam	Plaisance
Barr	Fisher, D.	Hegstrom	Larson	Rappana
Becklin	Fitzsimons	Heinitz	Lindstrom	Reigel
Bell	Forseth	Hoppe	Long	Renner
Bernhagen	Frenzel	Humphrey	McFarlin	Richie
Chamberlain	Frick	Johnson, C. A.	Morlock	Sathre
Christensen, R.	Fuller	Johnson, C. M.	Mueller	Savelkoul
DeGroat	Gimpl	Johnson, N.	Murray	Schafer

Scherer	Sillers	Stone	Voxland	Wolcott
Schulz	Skaar	Swanstrom	Weaver	Wright
Schumann	Skeate	Ticen	White	Mr. Speaker
Schwarzkopf	Sommerdorf	Tomczyk	Wingard	
Searle	Stangeland	Ulland	Winter	

So the minority report of the Committee on Elections and Reapportionment relating to the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, was not adopted.

Mr. Skeate moved that the report of the Committee on Elections and Reapportionment relating to the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, be laid on the table. The motion lost.

Mr. Swanstrom moved that the report of the Committee on Elections and Reapportionment relating to the election contest of Jack Fena, contestant, against Barney Bischoff, contestee, as reported to the House on Thursday, February 6, 1969, and as printed in the Journal for that day, be now adopted and that it be determined that Barney Bischoff was not legally elected and is not entitled to retain his seat as a Representative of the 63rd Legislative District, County of St. Louis in the State House of Representatives, and that there is a vacancy in the office of Representative of the 63rd District, County of St. Louis, Minnesota, and that this vacancy be certified to the Honorable Harold LeVander, Governor of the State of Minnesota, in order that he may issue a Writ of Election as provided for by law so that the vacancy may be filled.

The question was taken on the motion of Mr. Swanstrom and the motion duly prevailed and the report of the Committee on Elections and Reapportionment was duly adopted, and the House duly determined that Barney Bischoff was not legally elected and is not entitled to retain his seat as a Representative of the 63rd Legislative District, County of St. Louis in the State House of Representatives and that there is a vacancy in the office of Representative of the 63rd District, County of St. Louis, Minnesota, and that this vacancy be certified to the Honorable Harold LeVander, Governor of the State of Minnesota, in order that he may issue a Writ of Election as provided for by law so that the vacancy may be filled.

## SECOND READING OF HOUSE BILLS

H. F. Nos. 343 and 112 were read for the second time.

## INTRODUCTION OF BILLS

Messrs. Erickson; Fuller; Stone; Long; and Fischer, W. C., introduced:

H. F. No. 691, A bill for an act relating to indemnification for destruction of livestock; amending Minnesota Statutes 1967, Section 35.133.

The bill was read for the first time and referred to the Committee on Agriculture.

CERTIFICATION BY THE HOUSE OF REPRESENTATIVES  
OF THE STATE OF MINNESOTA  
TO THE HONORABLE HAROLD LEVANDER, GOVERNOR

You are hereby notified that on this date the House of Representatives determined that Barney Bischoff was not legally elected and is not entitled to retain his seat as a Representative of the 63rd Legislative District, County of St. Louis in the State House of Representatives, and that there is a vacancy in the office of Representative of the 63rd District, County of St. Louis, Minnesota, and that this vacancy be certified to you as Governor of the State of Minnesota, in order that you may issue a Writ of Election as provided for by law so that the vacancy may be filled.

This constitutes my certification of said vacancy in said district so that you may issue a Writ of Election as provided by law.

L. L. DUXBURY, Speaker

Dated this 7th day of February, 1969.

ANNOUNCEMENT BY THE SPEAKER

The Speaker announced the following change in the schedule of Committee Meetings for the 1969 Regular Session:

The Committee on Education will meet on Wednesday and Friday at 8:00 a.m. in Room 15 instead of Room 107.

ADJOURNMENT

Mr. Dirlam moved that when the House adjourns today it adjourn until 2:00 p.m., Monday, February 10, 1969. The motion prevailed.

Mr. Dirlam moved that the House adjourn. The motion prevailed, and the Speaker declared the House adjourned until 2:00 p.m., Monday, February 10, 1969.

EDWARD A. BURDICK, Chief Clerk, House of Representatives

TWENTY-FOURTH DAY

SAINT PAUL, MINNESOTA, MONDAY, FEBRUARY 10, 1969

The House met at 2:00 p.m. and was called to order by the Speaker.

Prayer was offered by the Chaplain.

The roll being called, the following members answered to their names:

Adams, J.	Erdahl	Johnson, C. M.	Nelson	Schumann
Adams, S.	Erickson	Johnson, J.	Newcome	Schwarzkopf
Albertson	Everson	Johnson, N.	Niehaus	Searle
Andersen, R.	Falk	Johnson, R.	Nolan	Shores
Anderson, D.	Fischer, W. C.	Jopp	North	Sillers
Anderson, H.	Fitzsimons	Judge	Norton	Skaar
Anderson, I.	Flakne	Keefe	O'Dea	Skeate
Anderson, T.	Forseth	Klaus	O'Neill	Smith
Bang	France	Kleinbaum	Pavlak, R.	Sommerdorf
Bares	Frenzel	Knutson	Pavlak, R. L.	Spanish
Barr	Frick	Kozlak	Peterson	Stangeland
Becklin	Fudro	Krenik	Plaisance	Stone
Bell	Fuller	Kvam	Prifrel	Swanson
Bernhagen	Gearty	Lee	Rappana	Swanstrom
Brandt	Gimpl	Lindahl	Reigel	Theis
Brinkman	Gruys	Lindstrom	Renner	Ticen
Carlson	Gustafson, E.	Long	Richie	Tomczyk
Chamberlain	Gustafson, W.	Mann	Ryan	Ulland
Chenoweth	Haaven	McFarlin	Sabo	Voxland
Christensen, R.	Hanson	McMillan, Mrs.	Salchert	Weaver
Christianson, M.	Haugerud	Miller	Samuelson	Wingard
Coombe	Heinitz	Moen	Sathre	Winter
Dammermann	Hoff	Morlock	Savelkoul	Wolcott
DeGroat	Hoppe	Mueller	Schafer	Wright
Dirlam	Humphrey	Munger	Scherer	Mr. Speaker
Dunn	Johnson, C. A.	Murray	Schulz	

A quorum was present.

Messrs. Fisher, D.; Graw; Hegstrom; Larson and White were excused.

The Chief Clerk then proceeded to read the Journal of the preceding day, when on the motion of Mr. Schumann, the further reading was dispensed with and the Journal was approved as corrected.



## GENERAL ORDERS

Pursuant to Rules of the House, the House resolved itself into the Committee of the Whole, with Mr. France in the Chair, for the consideration of bills pending on General Orders of the Day.

The Speaker resumed the Chair, whereupon the following proceedings of the Committee were reported to the House:

H. F. No. 268 upon which it recommended re-referral to the Committee on General Legislation, Veterans, and Consumer Affairs.

H. F. Nos. 137, 315, 87, 514, 190, 154, 323 and 343 which it recommended to pass.

Mr. Renner moved that the Committee recess subject to the call of the Chair. The motion prevailed.

## RECESS

The Honorable Clark MacGregor, Representative in Congress from the Third Congressional District of Minnesota, briefly addressed the members of the Committee during the recess.

## RECONVENED

The Committee reconvened and was called to order by the Chair.

H. F. No. 32 which it recommended to pass with the following amendment:

The printed bill, in Sec. 1, line 4 after the word "for" and before the words "public park purposes" insert the word "non-profit".

Strike Sec. 2 and insert in lieu thereof the following:

"Sec. 2. Subdivision 1. The lands to be conveyed herein shall automatically revert to the state of Minnesota if ever said city should grant, convey or assign the premises above described in Section 1, or any part thereof, or in the event the said lands described in Section 1 cease to be used for public park purposes.

Subd. 2. The instrument of conveyance shall contain a reversionary clause in favor of the state of Minnesota providing that title in fee shall revert to the state if ever said city should grant, convey or assign the premises above described in Section 1, or any part thereof, or in the event the said lands shall cease to be used for public park purposes."

Add a new Section 3 as follows:

"Sec. 3. Any fees or charges made in the operation of said park shall be used only for the construction, development and maintenance of the park and its facilities; provided, that such charges shall be comparable to the charges made for comparable purposes in state parks."

H. F. No. 112 upon which it recommended progress.

On the motion of Mr. France, the report of the Committee of the Whole was adopted.

## PROTEST AND DISSENT

The undersigned members of the House of Representatives hereby protest and dissent to the proceedings of the House on Friday, February 7, 1969, whereby Barney Bischoff, a duly elected and certified member of said House of Representatives was expelled from membership, the reasons for said dissent and protest being as follows, to wit:

1. The proceedings on the Election Committee report, which was in effect an expulsion proceeding, was conducted on the basis of a simple majority vote in direct violation of Article IV, Section 4 of the Minnesota Constitution.

2. That the House Journal for Friday, February 7, 1969, fails to note (1) that a point of inquiry was made as to whether the expulsion proceedings were to be conducted under Article IV, Section 4, requiring concurrence of two-thirds of the members or under Article IV, Section 3, which does not specifically cover the expulsion question, (2) that a ruling was made that the proceedings were to be under Article IV, Section 3, and that only a simple majority would be required, (3) that the vote on the committee report—which was in effect a vote for expulsion—was by voice vote and that the language stating that the report "was duly adopted" means only that it was passed by a simple majority.

Dated: February 10, 1969

Signed:

Martin O. Sabo  
L. J. Lee  
Richard M. Nolan

John Bares, Jr.  
Fred C. Norton  
Willard M. Munger

## ADJOURNMENT

Mr. Dirlam moved that the House adjourn. The motion prevailed, and the Speaker declared the House adjourned until 2:00 p.m., Tuesday, February 11, 1969.

EDWARD A. BURDICK, Chief Clerk, House of Representatives

Mr. Speaker:

I hereby announce the passage by the Senate of the following Senate File, herewith transmitted:

S. F. No. 1154, A bill for an act relating to public indebtedness; maximum interest rate; amending Minnesota Statutes 1967, Section 475.55.

H. Y. TORREY, Secretary of the Senate

### FIRST READING OF SENATE BILLS

S. F. No. 1154, A bill for an act relating to public indebtedness; maximum interest rate; amending Minnesota Statutes 1967, Section 475.55.

The bill was read for the first time.

Mr. Scherer moved that S. F. No. 1154 and H. F. No. 1446, now on General Orders, be referred to the Chief Clerk for comparison. The motion prevailed.

### OATH OF OFFICE

The oath of office was administered by the Speaker to Mr. Barney Bischoff of the Sixty-third District, and Mr. Bischoff took his seat in the House.

### CALENDAR

H. F. No. 549, A bill for an act relating to cemeteries; amending Minnesota Statutes 1967, Sections 306.21, Subdivision 1; 306.23; and amending Chapter 306, by adding a section.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 129, and nays 0, as follows:

Those who voted in the affirmative were:

Adams, J.	Dammermann	Graw	Klaus	Nelson
Albertson	DeGroat	Gruys	Kleinbaum	Newcome
Andersen, R.	Dirlam	Gustafson, E.	Knutson	Niehaus
Anderson, D.	Dunn	Gustafson, W.	Kozlak	Nolan
Anderson, H.	Erdahl	Haaven	Krenik	North
Anderson, I.	Erickson	Hanson	Kvam	Norton
Anderson, T.	Everson	Haugerud	Larson	O'Dea
Bang	Falk	Hegstrom	Lee	O'Neill
Bares	Fischer, W. C.	Heinitz	Lindahl	Pavlak, R.
Becklin	Fisher, D.	Hoff	Lindstrom	Pavlak, R. L.
Bell	Fitzsimons	Hoppe	Long	Peterson
Bernhagen	Flakne	Humphrey	Mann	Plaisance
Bischoff	Forseth	Johnson, C. A.	McFarlin	Rappana
Brandt	France	Johnson, C. M.	McMillan, Mrs.	Reigel
Brinkman	Frenzel	Johnson, J.	Miller	Renner
Carlson	Frick	Johnson, N.	Moen	Richie
Chamberlain	Fudro	Johnson, R.	Morlock	Ryan
Chenoweth	Fuller	Jopp	Mueller	Sabo
Christensen, R.	Gearty	Judge	Munger	Salchert
Coombe	Gimpl	Keefe	Murray	Samuelson

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Sathre	Searle	Spanish	Ticen	Wingard
Savelkoul	Shores	Stangeland	Tomczyk	Winter
Schafer	Sillers	Stone	Ulland	Wolcott
Scherer	Skaar	Swanson	Voxland	Wright
Schumann	Skeate	Swanstrom	Weaver	Mr. Speaker
Schwarzkopf	Sommerdorf	Theis	White	

So the bill was passed and its title agreed to.

H. F. No. 407, A bill for an act relating to divorce and the grounds therefor; amending Minnesota Statutes 1967, Section 518.06.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 105, and nays 21, as follows:

Those who voted in the affirmative were:

Adams, J.	Fisher, D.	Johnson, J.	Morlock	Savelkoul
Albertson	Flakne	Johnson, N.	Mueller	Schumann
Andersen, R.	Forseth	Johnson, R.	Munger	Schwarzkopf
Anderson, D.	France	Jopp	Murray	Searle
Anderson, H.	Frenzel	Judge	Nelson	Shores
Anderson, I.	Frick	Keefe	Newcome	Skaar
Anderson, T.	Fudro	Kleinbaum	Nolan	Skeate
Bang	Gearty	Knutson	Norton	Stangeland
Bares	Gimpl	Kozlak	O'Dea	Stone
Becklin	Graw	Krenik	O'Neill	Swanson
Bell	Gruys	Kvam	Pavlak, R.	Swanstrom
Brinkman	Gustafson, E.	Larson	Peterson	Theis
Chamberlain	Gustafson, W.	Lee	Rappana	Ticen
Chenoweth	Haaven	Lindahl	Reigel	Ulland
Christensen, R.	Hanson	Lindstrom	Renner	Voxland
Dammermann	Haugerud	Long	Richie	Weaver
Dirlam	Heinitz	Mann	Ryan	White
Dunn	Hoff	McFarlin	Sabo	Wingard
Everson	Humphrey	McMillan, Mrs.	Salchert	Wolcott
Falk	Johnson, C. A.	Miller	Samuelson	Wright
Fischer, W. C.	Johnson, C. M.	Moen	Sathre	Mr. Speaker

Those who voted in the negative were:

Bernhagen	Erdahl	Klaus	Schafer	Winter
Bischoff	Erickson	Niehaus	Scherer	
Brandt	Fitzsimons	North	Sillers	
Carlson	Fuller	Pavlak, R. L.	Sommerdorf	
Coombe	Hoppe	Plaisance	Tomczyk	

So the bill was passed and its title agreed to.

H. F. No. 1512, A bill for an act relating to the notice to be given affected property owners when a municipality passes a resolution ordering a local improvement or the obligation to pay special assessments is deferred; amending Minnesota Statutes 1967, Section 429.031, Subdivision 1.

The bill was read for the third time and placed upon its final passage.

The question being taken on the passage of the bill and the roll being called, there were yeas 128, and nays 0, as follows: