

MOTIONS AND RESOLUTIONS.

1919

Mr. Warner moved that—

The majority report from the Committee on Election Contests and also the minority report from the same committee be laid over for the day and printed in the Journal of January 24th, 1919.

Which motion prevailed.

REPORTS OF STANDING COMMITTEES.

Mr. Teigen, L. O., from the Committee on Election Contests, makes the following report:

State of Minnesota—

In the House of Representatives of Minnesota.

Henry W. Lauderdale, Contestant, vs. Erling Swensen, Contestee. The Committee on Election Contests of the House of Representatives of the State of Minnesota to which the House referred the contest proceedings above entitled, submits the following:

In the general election held on November 5, 1918, Fred Lang, Erling Swensen, Henry W. Lauderdale and Harry L. Scott were Non-Partisan candidates for the office of State Representative for the 35th legislative district of the State of Minnesota, from which district two representatives were to be elected. Upon the count and canvass of the votes by the proper officers the said Fred Lang was declared to have received 3,997 votes, the said Harry L. Scott 2,066 votes, the said Erling Swensen, Contestee, 3,226 votes, and the said Henry W. Lauderdale, Contestant, 3,160 votes; and the said officers duly declared the said Fred Lang and the said Erling Swensen to be the duly elected representatives from said legislative district. Certificates of election were thereafter issued by the proper officers to the said representatives elect, and they are now seated in this body.

Within the time and substantially in the manner provided by law the contestant, Henry W. Lauderdale, instituted a contest against the said Erling Swensen, Contestee, claiming among other things that he, said Henry W. Lauderdale, received a larger number of the legal votes cast in said legislative district for said office than the said Erling Swensen, Contestee, and that by reason thereof the contestant is entitled to said office; and that the said contestant did make application in the District Court of Hennepin County praying for an order for recount of the ballots cast at said election for said office; and that thereafter said Court did order such recount to be made and did appoint three inspectors to make such recount, as provided by law.

That the said inspectors did meet in the office of the custodian of said ballots on the 26th, 27th, 28th and 29th days of November, 1918, and did make an inspection and recount of all the ballots cast at said election for the contestant and contestee for said office in the presence of the contestant and contestee, and did find that the said Henry W. Lauderdale received 3,289 votes, and said Erling Swensen received 3,249 votes, giving the contestant, Henry W. Lauderdale, a majority of forty votes upon such inspection and recount. From which inspection and recount it appears that there were but slight changes in the majority of the precincts of this district, but that in the ninth and fourteenth precincts of the third ward in said district there were substantial differences found, the result showing that the contestant, Henry W. Lauderdale, received forty more votes for said office than the said Erling Swensen, Contestee. In such inspection and recount it was found that there were six disputed ballots and these were divided equally between the contestant and the contestee by their own agreement. It was conceded by the contestant and contestee in the hearing before your Committee that the inspection and recount of the ballots showed that the contestant, Henry W. Lauderdale, received forty more votes than the contestee, Erling Swensen.

That pursuant to a notice given by the contestant to the contestee, in which notice the contestant specified the grounds upon which the contest was made, and to which notice the contestee made answer, specifying additional points upon which testimony should be taken relative to this contest, testimony was taken before certain officers and by them certified to the House.

The contestee questioned the validity of such inspection and recount because of the fact that many of the seals required by law to be placed upon the ballot boxes by the judges of election were not intact. We find from the evidence that the ballot boxes in question were at all times under the care and in the custody of the City Clerk of the City of Minneapolis, who is the legal custodian, and that said ballots were preserved intact and inviolate and are entitled to full credence upon each inspection and recount.

It is claimed by the contestee in this contest that the contestant did violate the provisions of the Corrupt Practices Act in that he had paid to one Jack Miller, a resident and voter of said legislative district, the sum of \$5 for voting for the contestant at said election and for soliciting and procuring others to vote for the contestant; and that he paid to one I. Chalkowitz, a voter and resident of said legislative district, the sum of \$5 for the same purposes, and also prom-

ised to pay said I. Chalkowitz the further sum of \$10 in the event of the contestant's election to said office. From the evidence we find that these payments were made and promised by the contestant to these parties in payment for their services in distributing election cards, and also for their services in soliciting votes for the contestant. That the services so obtained are not a violation of the Corrupt Practices Act.

Your Committee met January 17, 1919, and agreed to take up a hearing of this case on January 20, 1919, at 3 P. M., at which time the contestant appeared in person and by his attorney, S. R. Child, and the contestee appeared in person and by his attorneys, Larrabee and Olson, and presented their cases; that your Committee also met on the 21st day of January, at which time the evidence and arguments on the part of the parties in this contest were heard, and the undersigned members of this Committee make the following report:

After a thorough review and full consideration of the evidence and after giving diligent attention and due consideration to the arguments made by the attorneys for the parties in this contest, we are of the opinion and do find that the contestant, Henry W. Lauderdale, was duly elected to the office of State Representative from the 35th legislative district of Minnesota by a majority of forty votes over Erling Swensen, Contestee, and is entitled to the seat in this House now occupied by said Erling Swensen, and do recommend that the said Henry W. Lauderdale, Contestant, be declared to be the duly elected representative from the 35th legislative district of Minnesota for this 41st Session, and that he be seated forthwith.

Signed: L. O. TEIGEN, Chairman.
J. O. HAUGLAND,
J. B. PATTISON,
N. T. MOEN.

Mr. Hammer, a member of the Committee on Election Contests, made the following report in the case of Henry W. Lauderdale, Contestant vs. Erling Swensen, Contestee.

FACTS.

The contestant and contestee with two other persons were candidates for the office of Representative from the 35th legislative district at the last general election; this legislative district is composed of certain voting precincts in the third and tenth wards in the City

of Minneapolis; Mr. Lauderdale resides in the Third ward and Mr. Swensen in the Tenth; the count made by the judges at the general election showed Mr. Swensen to be successful by a majority of sixty-six votes and a certificate of election was duly issued to him; on the 22nd of November this contest was begun by service of notice upon Mr. Swensen and from Nov. 26th to the 28th recount was had. It was shown, when the ballot boxes were opened for the recount by the testimony of the inspectors, Messrs. Peabody, Harden and Duffy, that the seals on some of them had been broken. It might be well to here state that Mr. Harden was selected by Mr. Lauderdale, Mr. Duffy by Mr. Swensen and Mr. Peabody by Mr. Harden and Mr. Duffy.

At the time of the recount, according to the testimony of both Mr. Peabody and Mr. Duffy, the seals on the ballot boxes of both the 9th and 14 precincts in the Third ward were broken. According to the testimony of Mr. Harden they were not broken on either box. These boxes were locked with padlocks having the ordinary keys. They were not Yale locks. As four candidates were running and the voter had a right to vote for two the opportunity would be present if access to the box was attained to change the marking of the ballots by filling in the spaces where the voter had voted for one only or had failed to vote for any candidate for a legislative position. Thus the chance for fraud was present. There was some claim that the weather was responsible for the condition of the seals on these boxes but this is overthrown by the fact that the seals on the boxes from the 10th ward were unbroken with the possible exception of one. It might be said that only in the two precincts mentioned was there any material difference in the count while the seals on all or nearly all the boxes in the precinct were broken. It would be natural for a person anxious to avoid the implication of crime to open other boxes than those tampered with and the fact that none were unsealed or showed any evidence of having been tampered with in the precinct where Mr. Swensen lived though weather conditions, so far as shown, were the same and other conditions likewise, creates further suspicion. When the recount was completed it was found that the 9th precinct showed a difference of 90 votes and the 14th precinct of 28 votes in favor of contestant. The other precincts showed only the differences naturally expected but in the end were generally in favor of contestee finally bringing the majority of contestant down to the even number of forty. These peculiar fluctuations and differences occurred wholly in the ward where contestant resided. It seems to me that these

facts should impose upon the contestant the burden of showing by affirmative evidence freedom from the implied fraud which these circumstances might well lead this House to believe existed. If this were to be the position taken by the House contestants' vote upon the recount could be given no force until he showed by affirmative proof freedom from the fraud thus implied. If this House should take any other position the election of no member would be safe.

Again it was shown by the evidence of one Jack Miller that the contestant between the last day of October and the date of election gave to said Miller the sum of five dollars and told him to spend it on his friends and that some time before he gave him some cards. According to the oral testimony of Mr. Lauderdale given before the committee, the first time he saw this man was when he had just come out of a saloon and was in a drunken or at least in a partially drunken condition. He accosted Mr. Lauderdale, according to his statement and wanted to work for him politically. Mr. Lauderdale asked him how much he wanted for his services or words to that effect and he placed the amount so high that Mr. Lauderdale would not consider his offer. Mr. Lauderdale also said that afterward he came to his office and after demanding a larger sum finally accepted the sum of five dollars and some of his cards. Mr. Lauderdale's excuse for giving him this money was that he was anxious to go to his home and wanted to get rid of him. He did not know whether the man did any work for him or not. It was also shown by the testimony of Mr. Lauderdale that he had given one Ike Chalkowitz, a Russian Jew, living in his precinct the sum of five dollars to work for him with the promise of giving him ten dollars more in case he should be successful at the election. It appears from Mr. Lauderdale's testimony that this man had demanded a large sum for his services prior to this transaction but finally agreed to accept the sum stated. It appears that Mr. Lauderdale wrote a letter to Mr. Chalkowitz in which he says: "I understand that you are doing nothing but political work at present, and that if you put in some time for me you should be paid something. I am willing to make the following arrangement, and that only. The next time I see you I will give you \$5, and if I am elected, \$10 after election. Note, I do not say, if I carry your precinct, but I say, if elected will pay you \$10 for your labors. This ought to be a safe bet for you as I have 1,000 ahead of number three man in the primaries." There is nothing said in this letter about the distribution of cards or the doing of any other legitimate campaign work. Mr. Lauderdale

admitted the writing and sending of this letter. The full text of the same can be produced and read before the House if the House desires. The amount of this expenditure or of the money paid to Miller was not accounted for in the various accounts filed by Mr. Lauderdale though had the law been adhered to the sum paid to Chalkowitz should have been accounted for on October 26th and the amount paid to Miller should have been accounted for on November 2nd. Also Lauderdale filed another account about ten days after election but said nothing as to either of these expenditures. On November 22nd served notice of contest on Swensen and at that time Swensen told him he had violated the corrupt practices act and that he had heard of the letter to Chalkowitz. After this Lauderdale tried to recover the letter from Chalkowitz but failed and on December 2nd finally filed a supplemental statement of expense showing these two items. How do we know that these items thus accounted for were the only items of like kind expended during the campaign. If we open the gates to illegitimate expenditure in this manner, if we are to excuse the passing of money by the passage at the same time of a few campaign cards on a perfunctory promise of distribution, especially when this promise is made by a saloon bum in the one instance and by a professional political worker in the other, how much chance will a poor man or a genuinely conscientious man stand in the race for public office. What chance of success will the honest, conscientious candidate have in the political field. I am quoting under the heading of the law the statutory enactment governing the conduct of political campaigns as it relates to expenditures:

LAW.

Section 1, Chapter 3 of the Special Session of 1912 provides: No candidate for the nomination or election to any elective office in this state coming within the provisions of this act shall directly or indirectly pay, expend or contribute any money or other valuable thing or promise to do so, except for the following purposes which are hereby declared to be legal expenses:

- (1) For the candidate's necessary traveling expense, for postage, telegraph, telephone or other messenger service.
- (2) For rent and necessary furnishing of a hall or room during such candidacy, for the delivery of speeches, relative to principles or candidates.
- (3) For payment of speakers and musicians at public meetings and their necessary traveling expenses.

(4) Printing and distribution of lists of candidates, sample ballots, pamphlets, newspapers, circulars, cards, hand bills, posters and announcements relative to candidates or public issues or principles.

(5) For copying and classifying poll lists for making canvasses of voters and for challenges at the polls.

(6) For filing fees to the proper public officer and if nominated at any primary, for contribution to party committees.

(7) For campaign advertising in newspapers, periodicals or magazines pursuant to the provisions of Section 2.

Section 10 of this act provides: "No person or candidate shall either by himself or any other person, while such person or candidate is seeking nomination or election, directly or indirectly, give or provide, or pay, wholly or in part the expense of giving or providing any meat or drink or other entertainment or provisions, clothing, liquors, cigars, tobacco, to or for any person for the purpose of or with the intent or hope to influence that person or any other person to give or refrain from giving his vote at such primary or election to or for any candidate or political party ticket, or measure before the people or on account of such person or other person having voted or refrained from voting at such election. No elector shall take or accept any such meat, drink, entertainment, provision, clothing, liquor, cigars or tobacco and such acceptance shall be ground of challenge to his vote and of rejecting his vote on a contest." It is the opinion of the undersigned member of the Committee on Election Contests that in light of the undisputed evidence of the facts hereinbefore set forth and the law governing such matters this contest proceeding should be dismissed and contestant's application be denied.

O. E. HAMMER.

REPORTS OF STANDING COMMITTEES—CONTINUED.

Mr. Warner, from the Committee on Elections, to which was referred—

S. F. No. 97, A bill for an act relating to special elections.

Reports the same back with the following amendments:

By striking out all of said Senate File after the enacting clause thereof and substituting in place of the matter so struck out, the following:

Section 1. Whenever after the holding of a general election and before the termination of the next succeeding session of the Legis-

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[13th Day

S. F. No. 97, A bill for an act relating to special elections and primaries therefor.

Was read 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 117, and nays none, as follows:

Those who voted in the affirmative were:

Adams,	Dorweiler,	Holmquist,	Nordgren,	Smith,
Anderson,	Emmons,	Hompe,	Nordlin,	Solem,
Aréns,	Enger,	Howard,	Norton,	Sortedahl,
Arneson,	Enstrom,	Jacobson,	Olson,	Spelbrink,
Baxter,	Erickson,	Johnson,	Oren,	Stahlke,
Bendixen,	Fawcett,	Kelly,	Parker,	Strand,
Bernard,	Flahaven,	Kingsley,	Pattison,	Sudheimer,
Berve,	Frisch,	Lagersen,	Pedersen,	Swanson, J.,
Bouck,	Galewski,	Lang,	Perry,	Swanson, S. J.,
Boyd,	Gill,	Lee,	Praxel,	Swensen, E.,
Briggs,	Girling,	Lennon, A. L.,	Prince,	Swenson, O. A.,
Brophey,	Gislason, C. M.,	Lennon, J. G.,	Putnam,	Teigen,
Burdorf,	Gislason, J. B.,	Leonard,	Rako,	Thorkelson,
Carlson,	Gleason,	Levin,	Rodenberg,	Trowbridge,
Chirhart,	Grant,	Long,	Ross,	Urness,
Christensen, A.,	Green, H. M.,	McGrath,	Ryan,	Warner,
Christianson, T.,	Greene, T. J.,	McLaughlin,	Schaleben,	Waters,
Corning,	Hale,	Manske,	Scherf,	Welch,
Cullum,	Hammer,	Miner,	Serline,	West,
Curtis,	Harrison,	Moen,	Shanks,	Wicklund,
Darby,	Haugland,	Nelson, C. N.,	Shirley,	Wilkinson,
Day,	Herreid,	Nelson, J. M.,	Skaiem,	Mr. Speaker.
DeLury,	Hinds,	Nett,	Sliter,	
Dilley,	Hodapp,	Neuman,	Sluke,	

So the bill passed and its title was agreed to.

REPORTS OF STANDING COMMITTEES.

Mr. Hitchcock, from the Committee on Reconstruction and Relief, to which was referred—

H. F. No. 181, A Concurrent Resolution, memorializing Congress of United States to grant a gratuity of Three Months' Pay to honorably discharged soldiers, sailors and marines.

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

Which was adopted.

Mr. Leonard, from the Committee on Universities and State Schools, to which was referred—

H. F. No. 44, A bill for an act to amend Section 3057 and 3058 General Statutes 1913, relating to Free Tuition in the State University and at the State Normal Schools for persons who have rendered certain services during war periods.

Reports the same back with the recommendation that the bill be returned to its author.

Which was adopted.

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[15th Day

Which was read for the first time and referred to the Committee on Judiciary.

Mr. Gislason, J. B., introduced—

H. F. No. 286, A bill for an act entitled, An act relating to street improvements in cities of the fourth class and in villages, and to the payment of the cost thereof.

Which was read for the first time and referred to the Committee on Towns and Counties.

Mr. Grant introduced—

H. F. No. 287, A bill for an act to amend Section 1 of Chapter 273 of the General Laws of the State of Minnesota for 1917, relating to the levying of a half mill tax for the purpose of providing musical entertainment in public buildings or upon public grounds in incorporated villages.

Which was read for the first time and referred to the Committee on Municipal Affairs.

Messrs. Solem, Ryan and Nordlin introduced—

H. F. No. 288, A bill for an act to amend Sections 3541 and 3545, General Statutes 1913, relating to fraternal beneficiary associations.

Which was read for the first time and referred to the Committee on Insurance.

MOTIONS AND RESOLUTIONS.

Mr. Nelson, C. N., moved that 1,000 extra copies of H. F. No. 273 be printed.

Which motion prevailed.

Mr. Teigen moved that the House at this time take up the reports of the Election Contests Committee, on the contest instituted by Henry W. Lauderdale vs. Erling Swensen.

Which motion prevailed.

Mr. Pattison moved that Mr. Lang be excused from voting on the Swensen-Lauderdale contest.

Which motion prevailed.

Mr. Teigen moved a call of the House.

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

Adams,	Baxter,	Boyd,	Burrows,	Christianson, T.
Anderson,	Bendixen,	Briggs,	Carlson,	Corning,
Arens,	Bernard,	Brophey,	Chirhart,	Cullum,
Arneson,	Berve,	Burdorf,	Christensen, A.,	Curtis,

Darby,	Hale,	Leonard,	Parker,	Spelbrink,
Day,	Hammer,	Levin,	Pattison,	Stahlke,
DeLury,	Harrison,	Long,	Pedersen,	Strand,
Dilley,	Haugland,	McGivern,	Perry,	Sudheimer,
Emmons,	Herreid,	McGrath,	Pittenger,	Swanson, J.,
Enger,	Hinds,	McLaughlin,	Praxel,	Swanson, S. J.,
Enstrom,	Hitchcock,	McPartlin,	Prince,	Swensen, E.,
Erickson,	Hodapp,	Manske,	Rako,	Swenson, O. A.,
Fawcett,	Holmquist,	Miner,	Rodenberg,	Teigen,
Flahaven,	Hompe,	Moen,	Ross,	Thorkelson,
Frisch,	Hulbert,	Murphy,	Ryan,	Urness,
Galewski,	Iverson,	Nelson, C. N.,	Schaleben,	Warner,
Gill,	Jacobson,	Nelson, J. M.,	Scherf,	Waters,
Girling,	Johnson,	Nett,	Serline,	Welch,
Gislason, C. M.,	Kelly,	Neuman,	Shirley,	West,
Gislason, J. B.,	Kingsley,	Nimocks,	Skaiem,	Wicklund,
Gleason,	Lagersen,	Nordgren,	Sliter,	Wilkinson,
Goodspeed,	Lang,	Nordlin,	Sluke,	Mr. Speaker.
Grant,	Lee,	Norton,	Smith,	
Green, H. M.,	Lennon, A. L.,	Olson,	Solem,	
Greene, T. J.,	Lennon, J. G.,	Oren,	Sortedahl,	

Mr. Bendixen moved that further proceedings under the call of the House be dispensed with.

Which motion prevailed.

Mr. Siegel moved that the rules be so far suspended as to allow Mr. Harrison to explain his vote regarding the Lauderdale vs. Swensen election contest.

Which motion prevailed.

The question being taken on the adoption of the Minority Report, And the roll being called, there were yeas 49, and nays 79, as follows:

Those who voted in the affirmative were:

Anderson,	Galewski,	Long,	Perry,	Stahlke,
Arens,	Gislason, C. M.,	McGivern,	Pittenger,	Strand,
Arneson,	Gleason,	McGrath,	Rodenberg,	Thorkelson,
Bouck,	Green, H. M.,	McLaughlin,	Ryan,	Urness,
Day,	Hammer,	McPartlin,	Scherf,	Waters,
Dilley,	Hodapp,	Manske,	Siegel,	Welch,
Enger,	Iverson,	Miner,	Skaiem,	West,
Enstrom,	Johnson,	Nelson, J. M.,	Sliter,	Wicklund,
Flahaven,	Lennon, A. L.,	Neuman,	Sluke,	
Frisch,	Leonard,	Olson,	Spelbrink,	

Those who voted in the negative were:

Adams,	Carlson,	Emmons,	Harrison,	Kelly,
Baxter,	Chirhart,	Erickson,	Haugland,	Kingsley,
Bendixen,	Christensen, A.,	Fawcett,	Herreid,	Lagersen,
Bernard,	Christianson, T.,	Gill,	Hinds,	Lee,
Berve,	Corning,	Girling,	Hitchcock,	Lennon, J. G.,
Boyd,	Cullum,	Gislason, J. B.,	Holmquist,	Levin,
Briggs,	Curtis,	Goodspeed,	Hompe,	Moen,
Brophey,	Darby,	Grant,	Howard,	Murphy,
Burdorf,	DeLury,	Greene, T. J.,	Hulbert,	Nelson, C. N.,
Burrows,	Dorweiler,	Hale,	Jacobson,	Nett,

Nimocks,	Pattison,	Ross,	Solem,	Teigen,
Nordgren,	Pedersen,	Schaleben,	Sortedahl,	Trowbridge,
Nordlin,	Praxel,	Serline,	Sudheimer,	Warner.
Norton,	Prince,	Shanks,	Swanson, J.,	Wilkinson,
Oren,	Putnam,	Shirley,	Swanson, S. J.,	Mr. Speaker.
Parker,	Rako,	Smith,	Swenson, O. A.,	

So the minority report was rejected.

Mr. Tiegen moved—

That the majority report of the Committee on Election contests in the case of Henry W. Lauderdale, contestant, vs. Erling Swensen, contestee, be adopted, and that Henry W. Lauderdale be declared to be the duly elected representative from the 35th Legislative District and that he be seated forthwith.

The question being taken on the adoption of the majority report, And the roll being called, there were yeas 85, and nays 42, as follows:

Those who voted in the affirmative were:

Adams,	Cullum,	Haugland,	Murphy,	Schaleben,
Anderson,	Curtis,	Herreid,	Nelson, C. N.,	Serline,
Arens,	Darby,	Hinds,	Nett,	Shanks,
Baxter,	Day,	Hitchcock,	Neuman,	Shirley,
Bendixen,	DeLury,	Holmquist,	Nimocks,	Smith,
Bernard,	Dorweiler,	Hompe,	Norderen,	Solem,
Bouck,	Emmons,	Howard,	Nordlin,	Sortedahl,
Boyd,	Erickson,	Hulbert,	Norton,	Sudheimer,
Briggs,	Fawcett,	Jacobson,	Oren,	Swanson, J.,
Brophey,	Gill,	Kelly,	Parker,	Swanson, S. J.,
Burdorf,	Girling,	Kingsley,	Pattison,	Swenson, O. A.,
Burrows,	Gislason, J. B.,	Lagersen,	Pedersen,	Teigen,
Carlson,	Goodspeed,	Lee,	Praxel,	Trowbridge,
Chirhart,	Grant,	Lennon, J. G.,	Prince,	Warner,
Christensen, A.,	Greene, T. J.,	Levin,	Putnam,	West,
Christianson, T.,	Hale,	McGivern,	Rako,	Wilkinson,
Corning,	Harrison,	Moen,	Ross,	Mr. Speaker.

Those who voted in the negative were:

Arneson,	Gleason,	McGrath,	Rodenberg,	Strand,
Berve,	Green, H. M.,	McLaughlin,	Ryan,	Thorkelson.
Dilley,	Hammer,	McPartlin,	Scherf,	Urness,
Enger,	Hodapp,	Manske,	Siegel,	Waters,
Enstrom,	Iverson,	Miner,	Skaiem,	Welch,
Flahaven,	Johnson,	Nelson, J. M.,	Sliter,	Wicklund,
Frisch,	Lennon, A. L.,	Olson,	Sluke,	
Galewski,	Leonard,	Perry,	Spelbring,	
Gislason, C. M.,	Long,	Pittenger,	Stahlke,	

So the majority report was adopted and the Speaker announced Henry W. Lauderdale duly elected as a member of the House of Representatives for Minnesota, from the 35th Legislative District.

The Speaker administered the oath of office to Mr. Lauderdale.