

STATE OF MINNESOTA

Report of the

SENATE RULES AND ADMINISTRATION COMMITTEE

SUBCOMMITTEE ON ELECTION CONTEST EXPENSES,

Interim Activities and Recommendations

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The Election Contest Expenses Subcommittee of Rules met on May 19.

Its charge was to promulgate "adequate standards and guidelines for future elections and election contests to the end that all parties concerned including the Senate itself, might be advised of the financial consequences of an election contest and the continuing attitude of the Senate and the extent of its liability."

In considering what standards should be recommended the subcommittee took cognizance of a survey of the 50 states by the Revisor's Office. The questionnaire used in the survey asked each state whether its legislature reimbursed a legislative candidate for expenses incurred in an election contest. Only four states, Illinois, Iowa, Nebraska, and Nevada indicated that they paid election contest expenses. Of these, only Illinois and Iowa paid the expenses of both the winner and loser.

The Subcommittee also considered the practical consequences of continuing or discontinuing the practice of paying election contest expenses. Discontinuing the payment of such expenses, would have the effect of discouraging the bringing of election contests. Meritorious as well as frivolous contests would be discouraged. Continuing the payment of such expenses would have the opposite effect. It would encourage the bringing of both meritorious and frivolous election contests. If a potential plaintiff knows that it will cost him nothing to bring an election contest there is nothing to deter him from doing so even though the prospects for success are almost nonexistent. The Subcommittee also recognized that any action which would discourage the bringing of election contests would also thereby reduce the deterrent effect such contests have against violations of the Fair Campaign Practices Act.

The Subcommittee decided election contests which are recounts and election contests based on an alleged violation of the Corrupt Practices Act are sufficiently different to warrant separate consideration in the development of its recommended standards. The difference is based on the involvement of the government in the two types of election contests. A recount involves the responsibility of the government to conduct the election accurately. On the other hand, an unfair campaign practice does not involve state responsibility. Instead, it involves individual responsibility in the same manner as any dispute between two individuals where one claims to be aggrieved by the other.

RECOMMENDATIONS

I. Violations of Fair Campaign Practices Act

A. The Subcommittee recommends that no payment be made for the expenses incurred in prosecuting of election contests based on violations of the Fair Campaign Practices Act.

This recommendation is based on three considerations:

1. The beneficial effect of eliminating or significantly reducing frivolous election contests outweighs the detrimental effect that some meritorious election contests will not be brought.

2. In an election contest based on the Unfair Campaign Practices Act, it is an individual rather than a state responsibility that is involved. While there is public interest involved in such contests, it is not of such a degree as to require the state to bear the costs of the contests.

3. More than ninety percent of the other 49 states make no payments for expenses incurred in election contests.

B. The Subcommittee further recommends that the next legislature enact a law that would permit a judge of an election contest to award up to \$500 in attorney's fees and costs, to a plaintiff who is successful in his contest.

This recommendation is based on the consideration that such a law would remove to some degree the financial obstacle of bringing a potentially successful election contest. It is felt that such a law would pose a threat to very few candidates. The only candidates which might be endangered by the law would be those who chose to violate the law and those who chose to ski so close to the brink of unethical conduct that they unintentionally slid over that brink. The state has an interest in deterring each type of conduct.

II. Recounts

The Subcommittee recommends that the legislature pay expenses for meritorious election contest recounts. A recount shall be considered meritorious if the result of the election is changed. In addition a recount shall be considered meritorious if at the time of its commencement, the circumstances were such that a politically experienced neutral observer would conclude that there was a reasonable chance that a recount might change the result of the election. The Senate Rules Committee is the body that should rule on whether

a recount is meritorious. In doing so the Rules Committee should consider such factors as: the number of votes case, the margin of victory, whether the balloting was by machine or paper ballot, deviations from established voting patterns, possible transpositions of figures, etc.

Upon determining that an election contest recount is meritorious the Rules Committee should authorize payment for all expenses reasonably incurred in bringing the contest. However the Rules Committee should require a certified itemization of all expenses for which they authorize payment. With regard to attorney's fees, the itemization should reflect the hours spent each day and the type of work done. Where an election contest involves both a recount and an allegation of unfair campaign practices, the attorney shall in his itemization of expenses allocate the time spent between the two basis for the contest.

The recommendations are based on the following considerations:

1. A recount involves the governmental responsibility of accurately determining the winner of elections. Where it appears that the government may have made a mistake the state should bear the costs of checking its work.
2. The state should not bear the costs of recounts where there appears to be no reasonable chance that any possible errors made in counting the ballots could effect the result of the election.
3. It is not practicable to pay only a set percentage of expenses.
4. The Rules Committee should have a detailed itemization of expenses to enable it to determine that each expense bears a reasonable relation to the recount.