

REPORT OF THE SUBCOMMITTEE ON PRIVILEGES AND ELECTIONS, TO THE COMMITTEE ON RULES AND ADMINISTRATION, RE SWEENEY AGAINST KILGORE (WEST VIRGINIA)

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JULY 28 (legislative day, JUNE 2), 1949.—Ordered to be printed

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Mr. MYERS, from the Committee on Rules and Administration, submitted the following

REPORT

(To accompany S. Res. 142)

Your Subcommittee on Privileges and Elections, to which has been referred the petition of Hon. Tom Sweeney, contesting the election on November 5, 1946, of Hon. Harley M. Kilgore, for a seat in the United States Senate representing the State of West Virginia, has had the matter under consideration and study and respectfully reports as follows:

Tom Sweeney was the candidate for the above office on the Republican ticket and Harley M. Kilgore, then a member of the United States Senate, was the candidate therefor on the Democratic ticket. The secretary of state of the State of West Virginia certified to the United States Senate that Mr. Kilgore received 273,151 votes and that Mr. Sweeney received 269,617 votes, resulting in a majority of 3,534 votes for Mr. Kilgore.

Thereupon, Harley M. Kilgore was administered the oath as a United States Senator from the State of West Virginia on January 4, 1947, and is now serving in that capacity.

On January 3, 1947, contestant filed with the United States Senate his sworn petition, setting forth the grounds of his contest. After reciting that the State of West Virginia is composed of 55 counties with a total of 2,799 voting precincts, contestant named 12 counties, to wit, Kanawha, Logan, Raleigh, Boon, Cabell, Mingo, McDowell, Wayne, Mercer, Wyoming, Monroe, and Fayette as the ones in which irregularities and fraudulent practices were prevalent and in which an investigation should be conducted.

On January 6, 1947, contestant's petition was referred, by the President pro tempore of the United States Senate, to the Committee on Rules and Administration, and subsequently, by such committee to the Subcommittee on Privileges and Elections.

On July 15, 1947, the incumbent, Harley M. Kilgore, filed his "motion to dismiss and verified answer," in which he moved that contestant's complaint be dismissed on the ground that "the same is so vague, general, and indefinite that it does not fairly advise of the matters and things therein alleged with reference to time, place, persons, or events; and on the further ground that said complaint amounts to a general attack upon the integrity of both Democrat and Republican county and election officials without factual basis or particularization, and as such is unfair to this contestee as well as such officials and the electorate and people of West Virginia."

The allegations of contestant's petition and the answers filed thereto by incumbent may be summarized as follows, with the allegations being designated by (a) and the answers by (b):

1. (a) "That there were errors, irregularities, illegalities, and fraud in said election affecting the result, which, if corrected, would show that this contestant received a majority of the votes legally cast at said election for said office."

(b) Incumbent denied that there were errors, irregularities, illegalities, and fraud, which, if corrected, would change the result of the election.

2. (a) That in all of the 12 counties, except Monroe County, at least two and in some instances three county court commissioners who controlled the appointment of precinct election officials were Democrats; that a "great number" of county commissioners, and election officials appointed by them, were intense partisans of incumbent and that "every opportunity existed" for the election officials "who were so inclined" to permit various irregularities, illegalities, and fraud in the casting, counting, and canvassing of votes and the certification of results.

(b) That the fact that in some counties a majority of commissioners of the county courts were Democrats is consistent with the constitution and laws of the State of West Virginia, that no inference of wrongdoing can arise therefrom, and that should any such official be derelict in his duties he is subject to mandamus by the courts of West Virginia. Further, that the blanket allegation that "opportunity existed" for wrongdoing is "scandalous and impertinent and a reflection by inference and innuendo upon a large number of honorable men without direct assertion or specification."

It is added that in many counties of the State the situation was reversed with a majority of the members of the county court being Republicans.

3. (a) That the registration records which are under the control of the county courts, whose employees are largely Democrats, contained thousands of names of persons who are not "legal, authorized, and qualified voters" under West Virginia law, or who changed residence from one precinct to another within the county without proper transfer of registration, or who moved out of the county but whose names were not stricken from the registration records; that, consequently, thousands of illegal votes were cast by persons not legally qualified and registered voters of the respective precincts or by persons purporting to be those persons whose names appear on the registration records, and that such illegal voting was permitted by "grossly inefficient, negligent, careless, or irregular action of precinct election officials, thereby preventing a true and correct election in such precincts and

amounted to deliberate fraud or acts in gross violation of the election laws of said State, and that of such votes so cast the contestee received the benefit."

(b) Incumbent denied that thousands of illegal votes were cast by persons not legal, qualified, and registered voters; stated that contestee is without information concerning the allegation that the registration records contained the names of many unqualified voters as well as how many of such persons, if any, voted, and which candidate, if either, received the benefit therefrom; and further denied that the election officials permitted thousands of unqualified voters to vote.

4. (a) That many ballots legally cast for contestant were "wholly rejected and thrown out and not duly and properly counted by the election officers of such precincts."

(b) Incumbent denied the above allegation and asks that contestant identify and specify any ballot or ballots in this category.

5. (a) That many ballots were cast by persons who received money to vote the Democratic ticket "and of such votes the contestee received the benefit."

(b) That incumbent "does not possess information on the basis of which to admit or deny that ballots were cast by persons who received money therefor to vote the Democratic ticket; and contestee believes, avers, and charges that many ballots were cast by persons who received money therefor to vote the Republican ticket, but this contestee has not at any time had any part in or knowledge of any such practice, and deplors the use of money by either Democrats or Republicans in the purchase of votes."

6. (a) That in some precincts whisky was used by Democratic Party workers to influence votes for the Democratic ticket "and that of such votes cast the contestee received the benefit."

(b) That incumbent has no knowledge of the use of whisky by workers of either party.

7. (a) That in at least one precinct the election officials were intoxicated and illegally carried and exhibited firearms in a manner which intimidated voters who would otherwise have voted for contestant.

(b) Incumbent denied the above allegation.

8. (a) That many ballots legally voted for contestant were illegally and fraudulently marked and counted for incumbent.

(b) Incumbent denied the above allegation and said that it is beyond the knowledge of contestant to know which "x" mark was first placed on the ballot and by whom it was so placed.

9. (a) That incumbent and others in his behalf expended sums of money far in excess of those reported as required by law, and that said sums "were unconscionably used and expended by and in behalf of said contestee to influence said election, and the use of money on such an unprecedented scale affected unfairly the electorate on behalf of the said contestee and caused votes to be cast for him that otherwise would not have been so cast."

(b) Incumbent denied all allegations concerning the spending of money in excess of the sums reported as provided by law.

10. (a) "That partisan intensity was such and political power so long and deeply entrenched in many of the counties designated in subparagraph (a) preceding, that corruption became rampant and was

engaged in so flagitiously that following the said election and while a recount of the ballots was pending before the board of canvassers in one of said counties, prominent members of the Democratic Party actually were caught in the act of returning, to the courthouse safe in such county, ballots which they had stolen therefrom for the purpose of fraudulently marking them for the contestee and other local candidates, and the whereabouts of approximately 2,600 ballots, so stolen, is unknown at this time."

(b) Incumbent denied the allegations concerning fraud and the stealing of ballots and states that he is without knowledge as to what local candidates may have done or intended to do; he added that if any of the acts charged by contestant did occur such acts may have equally benefited contestant and incumbent.

11. (a) That in some precincts where the Republican election officials did not appear the vacancies were filled by Democrats and that in some precincts all of the election officials were Democrats.

(b) That if in some precincts all election officials were Democrats, it was no fault of the incumbent but the fact that the appointed Republican officials did not appear is the fault of contestant and his party, and that the substitute officials were chosen in a manner consistent with the laws of West Virginia.

12. (a) That in many precincts the election officials made and reported results without examining the poll books or verifying the number of votes cast as shown by the names of voters listed on the poll books.

(b) Incumbent denied the above allegation.

13. (a) Contestant asked for an investigation of the above allegations and, on account of the fact that the State law provides that ballots and other election records be destroyed 60 days after the election, that such ballots and other election records be ordered impounded and preserved.

Contestant further stated that under the law of West Virginia he could demand a recount but that upon such recount the body performing the same has no jurisdiction to hear and determine "matters of fraud, intimidation, coercion, gross irregularities, negligence, carelessness, and violations of law for the purpose of finding the true and correct results of an election," and that a recount of votes cast by illegal and unqualified persons or by persons other than, but purporting to be, the qualified and legally registered voters, cannot and will not materially change the results certified by the election officials. Consequently, it was stated, the United States Senate is the only "tribunal or body before whom matters of fraud and gross irregularities, carelessness, negligence, and violations of law may be heard and determined with respect to the office of United States Senator." The contestant concluded by saying that upon a fair investigation and determination of the afore-mentioned irregularities, illegalities, fraud, etc., contestant would be declared "to have been duly and lawfully elected United States Senator from the State of West Virginia."

(b) Incumbent claimed that the complaint did not state facts sufficient to justify an investigation but demanded that should an investigation be held, it include all 55 counties of the State, and also include the use of money by and for contestant, as well as contestant's failure to conform to the West Virginia Corrupt Practices Act.

