
IN RE SENATOR FROM WEST VIRGINIA.

JUNE 24 (calendar day, JUNE 26), 1918.—Ordered to be printed.

Mr. POMERENE, from the Committee on Privileges and Elections, submitted the following

REPORT.

The Committee on Privileges and Elections, to whom was referred the petition and memorial of William E. Chilton to the Senate of the United States in the matter of the election of a United States Senator from the State of West Virginia for the term of six years beginning on the 4th day of March, 1917, adopted as its report thereon the following report of the subcommittee of the Committee on Privileges and Elections and directed that it be respectfully submitted to the Senate, and recommends the adoption of the resolution accompanying said report:

REPORT OF THE SUBCOMMITTEE OF THE COMMITTEE ON PRIVILEGES AND ELECTIONS.

MAY 15, 1918.

On the 4th day of March, 1917, Hon. William E. Chilton presented to the Senate of the United States a memorial praying for an investigation to determine whether or not Howard Sutherland was duly elected to the office of United States Senator.

The petition seeks to set aside the election of Howard Sutherland as Senator for two reasons, which may be stated in general terms as follows:

First. That Howard Sutherland was not the nominee of the Republican Party for the office of United States Senator, because his nomination was brought about by practices which violate the statutes of West Virginia, in that no candidate is permitted to spend at the primary more than \$75 for each county in the State; that there are 55 counties in the State, making a maximum amount to be expended \$4,125; that the statement of his receipts and expenditures which he filed June 6, 1916, before the primary, shows a total expenditure by him of \$4,395.69, which is \$270.69 in excess of the amount permitted to be spent under the statute; that after the primary, on or about June 20, 1916, he filed another statement, as required by the statute, in which he recites among other things that the sum of \$375 was improperly charged to primary-campaign expenses in the first account filed, leaving a balance of \$4,020.69; that expenses incurred by him after the filing of the first account amounted to \$155.94, making the total amount thus expended in the primary campaign \$4,176.63, or \$51.63 in excess of the maximum permitted by the West Virginia statute; and that, because of these facts, the election should be set aside and his seat declared vacant.

Second. The petitioner further charges that Howard Sutherland's election was brought about by practices which were corrupt and illegal, in that hundreds of persons known to be dead or nonresident of Mingo County were placed on the registration books; that an appeal was made to the county courts, under the statute, to hear evidence touching the legality of these registrations, but the court declined to hear the evidence; that said names were allowed to remain on the registration list and were used in repeating for the Republican ticket, including the said Sutherland; that thousands of votes were cast by persons not registered; that they voted the Republican ticket in various localities; that enough such votes were cast to change the result in the election of the United States Senator; that large sums of money were used for the purpose of corrupting the voters of the State and inducing them to vote the Republican ticket; and that, except for such expenditures contrary to the laws of the State and such illegal votes, the said Howard Sutherland would not have been elected.

On the 29th day of December, 1917, the petitioner wrote the committee in substance:

That the preprimary expense account of Mr. Sutherland showed that he had spent more than the statute permitted; that by reason thereof he was not entitled to have his name upon the Republican ticket; that large sums of money were spent in the State to defeat him; and that enough votes were cast for Mr. Sutherland and enough people were voted who were not entitled to vote to change the election.

But he says he does not have at hand evidence enough to establish this fact; that he has neither the time nor the money to look up the proof; that as soon as war was declared he decided that he would do nothing, by word or deed, to inject a political note into the affairs of Congress; and that he does not desire to involve the Senate in a political investigation while the war is going on; and to do so would be very objectionable to him, and he would not want to take the responsibility of doing it. He therefore suggests that if, in the opinion of the committee or the Senate, there is nothing in the point of the reports made by Mr. Sutherland before and after the primaries to violate the law of the State of West Virginia so as to vitiate his election he declines to offer any evidence as to other charges.

Mr. Sutherland in his answer to the original petition and memorial of Mr. Chilton, as well as in his reply to Mr. Chilton's letter of December 29, 1917, denies all of the charges against him concerning excessive primary-election expenses, except that he admits his preprimary account shows an apparent excessive expenditure of \$270.69, and that after certain deductions made by him in his afterprimary account there is an expenditure of \$51.63 in excess of the amount permitted by the West Virginia law. He claims, however, that these accounts contained items aggregating \$1,500 which are not considered an expenditure within the limits prescribed by the Federal statutes.

He denies all charges of corrupt, or illegal, or improper registration or voting, which affected the result of the election.

In view of these statements by Mr. Chilton and Mr. Sutherland, your committee is of the opinion that there is no evidence before it to justify any investigation of alleged improper registration or improper or illegal voting, and that the charges in respect thereto have been entirely abandoned.

It therefore remains for us only to consider the effect of the alleged excessive expenses incurred by Howard Sutherland during the primary campaign, as shown by the accounts filed by him.

The corrupt-practice act of West Virginia, as amended in 1915, limits the amount of expenditures by the senatorial candidate at the primary election to \$75 for each of the 55 counties in the State, or to \$4,125. His preprimary account, as filed, shows a total expenditure of \$4,395.69, or \$270.69 in excess of the amount permitted by the statute.

The afterprimary account, as filed, recites that \$375 was improperly charged to primary campaign expenses, and after deducting this sum his disbursements totaled \$4,176.63, or \$51.63 in excess of the amount permitted to be spent by the West Virginia statutes.

The only evidence before the committee as to the amount of the expenditures are the statements referred to and which are attached to the memorial or petition. If we accept them as correct, without other proof before us, we must also assume that the sum of \$375, claimed to be improperly charged to primary expenses, was in fact improperly charged.

If, then, the sum of \$51.63 was spent in excess of the statutory limitations, what is the legal effect? It is not claimed that any of the money set forth in the accounts referred to was corruptly spent, the only complaint relates to the amount.

Paragraph b of section 14 of the West Virginia "corrupt-practice act" provides that for certain violations of its provisions, which include excessive expenditures, any person "shall, on conviction, be disqualified from voting or holding any public office or employment during a period of three years from date of conviction, and if elected to or occupying any public office or employment, such office or employment shall be vacated from the date of conviction." But no arrest has been made for this alleged violation of this statute and no conviction has been had for such violation. Senator Sutherland is therefore not subject to the penalties therein provided.

The only other provisions of the corrupt-practice act of West Virginia which seems to shed any light upon the subject before the committee are sections 15 and 16. They provide that a candidate for United States Senator, upon giving proper bond, can present to any circuit judge his petition, under oath, setting forth that corrupt and illegal practices contrary to the provisions of the act, specifying the same, were committed in connection with such election, naming any candidate as defendant, and praying for a judicial inquiry into the alleged facts. Under this act, if the judge is of the opinion that the interests of public justice require a judicial inquiry, he may authorize it. If corrupt and illegal practices connected with the election are shown, "the evidence, opinion, and determination of the court" shall be certified and transmitted "to the proper authorities of the United States Government for such action as said authorities may deem proper."

Mr. Chilton filed his petition in the circuit court before Hon. James H. Miller, one of the judges of that court, asking for judicial inquiry into the election.

Mr. Sutherland filed his petition with the judges of the Supreme Court of Appeals of West Virginia for a writ of prohibition against Judge Miller. To this petition he answered, and Mr. Chilton filed his demurrer and answer thereto.

In passing upon this case the supreme court of appeals held that these statutes violated both the constitution of West Virginia and the Constitution of the United States.

They contravene the constitution of the State because, to quote the language of the syllabus:

"In so far as sections 15 and 16, chapter 27, act 1915, purport to authorize a judge to whom application is made, as therein provided, to order a judicial inquiry, if in his opinion the interests of public justice require it, to ascertain whether a candidate for United States Senator, in person or by agents, expended to secure his election money or other things of value in excess of the amount allowed in that chapter sufficient to influence materially the result of the election, and to require the judge to certify his opinion and determination and the evidence adduced before him upon such investigation 'to the governor of the State, who shall transmit the same to the proper authorities of the United States Government for such action as said authorities may deem proper,' they are obnoxious to and conflict with Article V of the constitution of this State, in that they attempt to empower a member of the judiciary as such to exercise a volition to determine when, to what extent, or whether the judicial inquiry into alleged corrupt practices shall be undertaken by him upon such application."

They also violate the Constitution of the United States, to again quote the syllabus of the Supreme Court of Appeals, because:

"In the Senate of the United States, under an express declaration of the Federal Constitution, vests the exclusive power and authority to judge of the election, returns, and qualifications of its Members, and no other power or body lawfully can interpose or in any wise attempt to control or influence the determination of these questions, or declare void an election held to select such a Member."

In conclusion, let it be observed that Mr. Sutherland filed with the secretary of state his preprimary expense statement May 26, 1916, and his afterprimary statement June 20, 1916, as the statutes of West Virginia required. The information contained therein became accessible to all the electors of the State from the dates these accounts were filed.

So far as this committee is informed no one before the election saw fit to challenge Mr. Sutherland's right to a place on the ticket as a candidate for

Senator because of these excess expenditures, and no one either before or since the election has seen fit to institute criminal proceedings against him under the criminal statutes of the State, to which reference is above made. He has neither been arrested nor convicted of any offense against the corrupt-practices act of the State, and the subcommittee does not therefore believe that it would be justified, under all of the circumstances, in holding that this excess expenditure of \$51.63 should operate to vacate his seat, particularly when that fact itself is disputed.

The subcommittee, however, believes that all election laws, State or Federal, relating to the election of Senators should be strictly complied with, and therefore does not desire this report to be regarded as a precedent for disregard of State laws limiting expenditures in elections, under circumstances differing from those of this particular case. They therefore recommend the adoption of the accompanying resolution.

Resolved by the Senate of the United States, That Howard Sutherland has been elected as Senator from the State of West Virginia for a term of six years commencing on the fourth day of March, nineteen hundred and seventeen, and that he is entitled to a seat in the Senate as such Senator."

ATLEE POMERENE,
T. J. WALSH,

I concur in the result.

JAS. A. REED,
P. C. KNOX,
WM. S. KENYON,

Subcommittee of the Committee on Privileges and Elections.