
SENATOR FROM MINNESOTA

JANUARY 10 (calendar day, JANUARY 17), 1933.—Ordered to be printed

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

REPORT

A petition of Einar Hoidale contesting the election of Thomas D. Schall as Senator from the State of Minnesota for the term beginning March 4, 1931, and for other relief was presented in the Senate by Mr. Walsh of Montana April 11 (calendar day, April 14), 1932, and referred to the Committee on Privileges and Elections and ordered to be printed. It is Senate Document No. 81, Seventy-second Congress, first session.

Under date of July 8, 1932, the petition and accompanying documents were referred to the undersigned subcommittee by the chairman of the Committee on Privileges and Elections (Mr. Shortridge, of California).

Said petition alleges briefly:

1. That the petitioner, Einar Hoidale, and the respondent, Thomas D. Schall, were the candidates of the Democratic and Republican Parties, respectively, of the State of Minnesota at the election of November 4, 1930, for the office of United States Senator from said State for the term of six years beginning March 4, 1931.

2. That the official canvass of the canvassing board of said State showed that at said election said Thomas D. Schall received 293,626 votes, and said petitioner, Einar Hoidale, received 282,018 votes, and a certificate of election as such Senator was duly issued to said Schall, and said Schall, having taken the required oath of office, was duly admitted as a Member of the Senate of the United States and is now serving in that capacity.

3. That the election of said Schall was accomplished by illegal methods and fraud.

4. That said Schall in said election contest violated the provisions of the corrupt practices act of said State of Minnesota (secs. 538 to 579, statutes of 1927), copy of which statute is made a part of the petition.

5. Then follow some general statements upon which the allegations of law violations set out in the petition are based. They may be summarized as follows:

(a) Failure to truthfully report contributions received and expenses incurred by said Schall.

(b) Filing untrue statements of expenses incurred by said Schall.

(c) Violation of corrupt practices act (secs. 307, 309, 310, and 312 U. S. Rev. Stat.) in filing false statements of expenses incurred by said Schall.

(d) That said Schall violated the postal laws of the United States through the wrongful exercise of the franking privilege.

To this petition the contestee, Thomas D. Schall, filed the following answer:

I dislike to make an issue of an incident, especially an imaginary incident brought to the attention of the Senate 18 months after election.

No reply to the petition of Mr. Hoidale, now a Democratic candidate for Congress in the House of Representatives, is indicated. The petition alleges no facts, and contains merely innuendoes. But as a matter of personal privilege, and in defense of the dignity of the body of which I have the honor of being a member, I deny the facts in the petition, if any such may be presumed to be alleged, and deny the insinuations, inferences, and innuendoes, even though they be imaginary and improperly pleaded.

A demurrer admits properly pleaded facts. Were it possible, I would demur to the petition. It is, but for the substitution of the name of the party attempting to bring it, a repetition, and a poor one, of a previous petition which was unanimously dismissed by the Senate Committee on Privileges and Elections. I refer to the findings of such committee, dated June 16, 1926. They speak for themselves.

The proper answer to the present petition is a plea in abatement. The Constitution of the United States, Article I, section 5, clause 1, provides: "Each House shall be the judge of the elections, returns, and qualifications of its own members, * * *."

Sections 570 and 572 of the Revised Statutes of Minnesota (Mason's Edition, 1927) provides that contests shall be filed within 30 days after a general election, if there be a violation of the laws of Minnesota at the election. The election was held November 4, 1930. I was duly and promptly issued a certificate of election. I refer to the findings of the committee cited above, with reference to the weight given by it to a judgment of a State court of the State from which the contest arose. No contest was filed in Minnesota. No violation of Federal law is alleged in the petition.

The Senate need not concern itself with moot questions, nor spend its time and money in considering hearsay and other incompetent evidence. It desires to proceed in an orderly manner and according to law. And, finally, de minimis non curat lex (the law takes no account of trifles).

Hence the petition should be dismissed, and summarily.

THOMAS D. SCHALL.

Under date of July 16, 1932, at a meeting of the Committee on Privileges and Elections, the following vote was adopted:

The Committee on Privileges and Elections of the Senate, to whom was referred the above petition, have considered the same, as well as the reply in the nature of a demurrer filed by said Schall, and have reached the conclusion that said reply should be sustained and that said petition should be dismissed; and said reply in the nature of a demurrer is hereby sustained and said petition is hereby dismissed, unless the petitioner shall on or before the 1st day of September, 1932, file with the committee an amended petition and make more specific his allegations with respect to contributions received by said Schall, by whom said contributions were made, and the amount or amounts thereof; also set forth the several items of expenditures made by said Schall and not reported by him, to whom payments were made, and for what purpose; also set forth the names of the particular postmasters to whom promises were made and from whom contributions were received as a condition of support for appointment to or retention in office.

The records of the committee show that a copy of said vote was mailed by the clerk of the committee to Mr. Einar Hoidale, McKnight Building, Minneapolis, Minn., July 16, 1932.

On August 30, 1932, the undersigned, chairman of the subcommittee of said Committee on Privileges and Elections, charged with the investigation of the facts alleged in said petition, received a notification from the clerk of said committee, that said Hoidale had filed with said committee, an amended petition and that the same had been received at the office of said committee on August 30, 1932.

Thereafter said Schall filed with the committee certain affidavits, and these, together with the amended petition of Einar Hoidale,

appear in a subcommittee print for the use of the Committee on Privileges and Elections.

In said amended petition, as well as in the original petition filed by said Einar Hoidale, it is alleged that the election of Thomas D. Schall to the office of Senator of the United States from the State of Minnesota, was accomplished by illegal methods, viz:

1. Violation of the provisions of the Minnesota corrupt practices act.
2. Violation of provisions of United States Criminal Code.

VIOLATION OF MINNESOTA CORRUPT PRACTICES ACT

This allegation in the original petition sets forth the filing by said Thomas D. Schall of certain statements in the office of the Secretary of the Senate of the United States, showing the receipt of contributions at various times, and that in none of said statements were the contributions reported by said Schall properly itemized, nor was the name of any contributor given. Also that the expenditures set forth in said statements were not itemized. Also that said Schall expended a sum in excess of the amount reported in said statement.

The allegations contained in said Hoidale's amended petition under this head are not unlike those appearing in the original petition which was filed in his behalf, though somewhat more detailed in their nature. Like the allegations in the original petition, however, those appearing in the amended petition are general in character, except as to certain items which will be hereinafter referred to.

VIOLATION OF UNITED STATES CRIMINAL CODE

In the original petition appear allegations that the provisions of the United States Criminal Code were violated by Thomas D. Schall while a candidate for the office of United States Senator from the State of Minnesota because of—

- (a) His failure to truthfully report contributions received and expenses incurred by him.
- (b) Filing untrue statements of expenses incurred by him.
- (c) Violation of the postal laws of the United States by wrongful exercise of the franking privilege.

In the amended petition these allegations are made more specific than in the original petition, in that the names of certain contributors and the amount of their contribution in each instance are set forth. Also in the amended petition Schall is alleged to have delivered to a citizen of Minnesota a quantity of franked and sealed United States envelopes containing printed matter from the United States Congressional Record, and also a large quantity of personal campaign matter; and that he instructed his representatives to open said envelopes, insert said personal campaign matter, reseal the envelopes, and mail them without postage, and that this was done; and that more than 5,000 such envelopes were so mailed. Then follows a general allegation that said Schall mailed many thousands of purely personal campaign letters to Minnesota voters, all in franked envelopes.

The amended petition contains a further allegation, that during his entire official life as United States Senator said Schall has received contributions of money from persons charged with offenses against

the national prohibition laws, upon the promise that through his influence as United States Senator he would have such charges dismissed or the penalties thereunder mitigated. One such instance is that of the sum of \$1,000 alleged to have been paid by one David Rooney on or about September 20, 1927, at which time said Rooney was charged with violation of the national prohibition laws in the United States District Court for the Fourth District of Minnesota.

Such, in brief, are the allegations contained in the original and the amended petitions of Einar Hoidale.

The Committee on Privileges and Elections at a meeting held on the 13th day of January, 1933, gave due consideration both to the allegations contained in said original petition, as well as to those supplemental thereto and made a part of the amended petition filed in said contest, and unanimously voted to recommend to the Senate that said petition and said amended petition be dismissed for the following reasons among others:

I. VIOLATION OF MINNESOTA CORRUPT PRACTICES ACT

Sections 570 and 572 of the Revised Statutes of Minnesota (Mason's Edition 1927) provide that election contests shall be filed within 30 days after general election.

The election at which Thomas D. Schall was elected a Senator from the State of Minnesota was held November 4, 1930. Up to the present time no contest has been instituted in the State of Minnesota. The enforcement of this statute is essentially a function of the courts of the State of Minnesota. It was, so far as we are informed, quite possible for the petitioner to have brought charges to the attention of the courts of that State, but he appears not to have done so. Nor does he set out in his petition or his amended petition any reason for his failure to act in this regard. Had he, as a citizen of the State of Minnesota, knowing as he now contends, that the State law had been violated, proceeded against the respondent and had he succeeded in sustaining the charges which are now made a part of his petition and the amendment thereto, this committee might find justification for consideration of the facts involved. The petitioner not only did not institute such proceedings, but he did nothing either in the State of Minnesota or in the Senate of the United States until after the expiration of the time fixed in the statute for bringing such proceedings in said State, not even filing his petition which is now pending before this committee within that period.

These facts lead us to the conclusion that no useful purpose could be served by an investigation into the truth or falsity of the allegations under this head.

2. VIOLATION OF FEDERAL CORRUPT PRACTICES ACT

The allegations on this point contained in the original petition were so general in character that the committee did not feel justified in granting a hearing upon them or considering them as the basis of a criminal prosecution.

In the amended petition, however, there are allegations setting forth specifically the persons alleged to have contributed to the campaign funds of said Thomas D. Schall, and the amount of the contribution

of each, and this upon representations by Schall that said persons owed their appointments to him and that they might in some instances look to him for the favor of reappointment.

After the filing of said amended petition, said Schall filed with the Committee on Privileges and Elections affidavits of the persons whose names appear in said amended petition and who are alleged to have contributed to the campaign fund of said Schall at his instance and request. These affidavits are made a part of the subcommittee print, which also contains the amended petition.

To our minds, no useful purpose could be served in directing that a hearing be held on these particular charges, in the light of the facts as they are disclosed in said affidavits, as we feel we are justified in assuming that what said affiants have said in their affidavits, they will repeat on the witness stand; and inasmuch as in most of said affidavits the affiants not only deny the truth of the allegations against them, but set forth in some detail the circumstances under which they made contributions, if any, your Committee has reached the conclusion that said allegations of the petitioner have been sufficiently answered.

VIOLATIONS OF UNITED STATES POSTAL LAWS

Under this head there appears in addition to general allegations, one of a specific nature, to the effect that Thomas D. Schall caused more than 5,000 franked envelopes to be used for other than governmental purposes and to further his interests in the campaign at which he was a candidate for the office of United States Senator.

It is alleged that said envelopes were used for the sole purpose of furthering Schall's interests, but there is an admission on the part of the petitioner that said envelopes did contain printed matter from the United States Congressional Record, and that Schall caused to be inserted therein certain personal campaign matter in addition.

Without being definitely informed of the nature of the printed matter which is charged to have been inserted in these envelopes, in addition to the parts of the Congressional Record which they contained, the fact as alleged in said amended petition that somewhere in the neighborhood of 5,000 such envelopes were mailed, would lead to the conclusion that whatever violation of the postal laws had been committed by such action would involve a fraud upon the Government of perhaps not to exceed the sum of \$100. It is true that there appear in said amended petition allegations of a general nature to the effect that many thousands of purely personal campaign letters were mailed under franked envelopes to citizens of the State of Minnesota. In this latter respect your committee was not disposed to give consideration to such general charges, though they did consider this specific allegation to which reference has been made. So far as the specific allegation of having mailed some 5,000 envelopes under frank in violation of the postal law is concerned, your committee is of the opinion that inasmuch as the amount involved would probably not exceed \$100, they would not be justified in going to the expense of extended hearings to verify the truth of such allegations; and if the truth were established they did not feel that this would be ground for the expulsion of a Senator. Again, even if the charges were true, the petitioner would then be called upon to establish by substantial

evidence that the instances of violation were something more than the occasional inclusion in an official communication of a reference to the candidacy of the respondent.

CONCLUSION

We conclude that as to the allegations of the petition and of the amendment thereto, which are for the most part so general in character and so indefinite in their implications, we would not be justified in proceeding further to investigate them. As to those allegations which are more specific in their nature, they have either been answered satisfactorily or are of such little consequence that we would deem the incurring of any expense involved in their investigation to be unwarranted.

We therefore recommend that the petition and the amendment thereto be denied and dismissed.

