

## Chapter CXLVII.

### SERVICE OF THE HOUSE.

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1. No officer or employee to be agent for claims. Section 7227.
  2. Compensation of employees. Sections 7228–7231.
  3. Duties, etc., of employees. Sections 7232–7243.
  4. The House restaurant. Section 7244.
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**7227. No officer or employee of the House shall be an agent for the prosecution of a claim against the Government.**

**Duty of the Committee on Accounts to examine as to observance of the rule forbidding officers and employees of the House from being interested in claims.**

**Present form and history of Rule XLIII.**

Rule XLIII relates to the qualifications of officers and employees:

No person shall be an officer of the House, or continue in its employment, who shall be an agent for the prosecution of any claim against the Government, or be interested in such claim otherwise than as an original claimant; and it shall be the duty of the Committee on Accounts to inquire into and report to the House any violation of this rule.

This rule dates from March 8, 1842,<sup>1</sup> and was not changed essentially in the revision of 1880.<sup>2</sup>

**7228. The representatives of an employee deceased before the passage of an act granting a month's extra pay are not entitled to what would be paid to the employee were he alive.**—On March 21, 1895, the Comptroller of the Treasury decided that an appropriation for one month's extra pay of the Senate and House employees borne on the rolls on February 1, 1895,<sup>3</sup> would not authorize payment to the representatives of such an employee who died after that date but prior to the passage of the act making the appropriation.<sup>4</sup>

**7229. In case of a month's extra pay an employee having an annual salary is entitled to one-twelfth of the sum of that salary.**—March 13, 1895, the Comptroller of the Treasury decided that under an appropriation for a month's extra pay to Senate and House employees and the Congressional Record clerk, the latter, being an employee of the Public Printer, should be paid a sum equal to one-

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<sup>1</sup> Second session Twenty-seventh Congress, Globe, pp. 291, 295.

<sup>2</sup> Second session Forty-sixth Congress, Record, p. 207.

<sup>3</sup> 28 Stat. L., 864.

<sup>4</sup> Decisions of Comptroller of the Treasury (Bowler), Vol. I, p. 310.

twelfth of the annual salary which, according to the certificate of that officer, is paid to him.<sup>1</sup>

**7230. Decision as to per diem employees in case of an appropriation for a longer time than their actual employment.**—By the legislative, executive, and judicial appropriation act of July 31, 1894,<sup>2</sup> there was made appropriation sufficient for one hundred and twenty-one days at per diem or monthly rates for certain clerks and other employees of the House of Representatives employed during the session, with the proviso that wherever the words “during the session” occurred they should mean one hundred and twenty-one days, although the actual session covered but ninety-one days. The Comptroller of the Treasury decided that such persons should be paid for each day’s service at the rate of one ninety-first of the amount appropriated for their services, respectively, for the session.<sup>3</sup>

**7231. An ordinary appropriation for session employees is not available at an extra session.**—By the act of March 3, 1893,<sup>4</sup> provision was made for the payment of certain employees of the House of Representatives “during the session.” It was held by the First Comptroller, in a decision rendered July 20, 1893, that the session meant was the regular session beginning on the first Monday in December, 1893, and not the extraordinary session held in August, 1893. The appropriation in the act of March 3, 1893, was therefore not available for use during the extraordinary session. This decision was based upon the fact that at the time the law was passed the regular session must have been the only one in contemplation, and also upon the fact that the act qualified its expression “during the session” by a specification as to number of days which would apply manifestly to the regular session.<sup>5</sup>

**7232. Employees under the Clerk, Sergeant-at-Arms, Doorkeeper, and Postmaster shall generally be assigned only to the duties for which they are appointed.**

**Employees of the House may not sublet their duties or divide their compensation with others.**

The legislative, executive, and judicial act of 1901<sup>6</sup> provides:

Hereafter employees of the House of Representatives under the Clerk, Sergeant-at-Arms, Doorkeeper, and Postmaster shall only be assigned to and engaged upon the duties of the positions to which they are appointed and for which compensation is provided, except that in cases of emergency or congestion of public business incident to the close of a session of Congress or other like cause an employee or employees may be assigned or required to aid in the discharge of the duties of any other employee or employees, and in the discretion of the Doorkeeper not more than one folder may, if necessary, be assigned to do clerical work under the direction of the foreman of the folding room, but all assignments made hereunder shall be without additional compensation and shall not constitute the basis of a claim therefor.

It shall not be lawful to appoint or employ in any position under the House of Representatives more than one person at any one time, or to require or permit any such person to divide with another any portion of his salary or compensation while so employed.

It shall not be lawful to require or permit any person in the employ of the House of Representatives to sublet to another the discharge of any portion of the duties of the position to which he is appointed.<sup>7</sup>

<sup>1</sup> Decisions of Comptroller of the Treasury (Bowler), Vol. I, p. 297.

<sup>2</sup> 28 Stat. L., 166.

<sup>3</sup> Decisions of Comptroller of the Treasury (Bowler), Vol. I, p. 98.

<sup>4</sup> 27 Stat. L., 675.

<sup>5</sup> Decisions of the First Comptroller (Bowler), 1893, 1894, p. 45.

<sup>6</sup> 31 Stat. L., 968.

<sup>7</sup> See, also, 28 Stat. L., 771.

**7233. No page, except chief pages and riding pages, shall be under twelve or more than eighteen years of age.**

**The officers of the House, except the Speaker, are required to make monthly certificates as to the presence of the employees on their pay rolls.**

**The Committee on Accounts are to inquire into the enforcement of the statutes relating to employees of the House, and are empowered to send for persons and papers.**

The legislative, executive, and judicial act of 1901<sup>1</sup> provides:

No person shall be appointed or employed as a page in the service of the House of Representatives who is under 12 years or more than 18 years of age; but this provision shall not apply to chief pages, riding pages, and telephone pages.

The Clerk, Sergeant-at-Arms, Doorkeeper, and Postmaster shall make certificate each month to their respective pay rolls, stating whether the persons named in such pay rolls and employed in their respective departments have been actually present at their respective places of duty and have actually performed the services for which compensation is provided in said pay rolls, and in each case where a person carried on such pay roll has been absent and has not performed the services in whole or in part for which payment is proposed, the reason for such absence and for such nonperformance of services shall be stated.

The violation of any of the foregoing provisions of law shall, upon ascertainment thereof, be deemed to be cause for removal from office.

It shall be the duty of the Committee on Accounts of the House of Representatives from time to time to inquire into the enforcement or violation of any of the foregoing provisions of law;<sup>2</sup> and for this purpose they are hereby authorized to send for persons and papers, and to administer oaths; and they shall report to the House at least once every session their compliance with the duty herein imposed.

**7234. Decision of the Comptroller of the Treasury as to the employment of the index clerk.**—On April 20, 1897, the Comptroller of the Treasury decided that the Clerk of the House of Representatives was authorized to pay the assistant index clerk employed by him for the first session of the Fifty-fifth Congress, beginning March 15, 1897, the per diem compensation fixed by the appropriation,<sup>3</sup> although the assistant index clerk employed during the last session of the Fifty-fourth Congress continued to serve under the terms of the appropriation for his payment<sup>4</sup> for eighty-nine days after the close of the session, on March 3, 1897. The provisions of the act of February 19, 1897, were so modified by the joint resolution of March 24, 1897, as to authorize the employment of both clerks.

**7235. The Postmaster having died, it was held that contracts for carrying the mails must be made by the Clerk and not by the Assistant Postmaster.**—On May 31, 1895, the Comptroller of the Treasury decided that upon the death of the Postmaster of the House of Representatives the Assistant Postmaster does not become the acting Postmaster so as to be authorized to make contracts under the act of March 3, 1891,<sup>5</sup> for conveying the mails. Such contracts must, during a vacancy in the office of Postmaster, be entered into by the Clerk of the House.<sup>6</sup>

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<sup>1</sup> Stat. L., p. 968.

<sup>2</sup> This refers also to the provisions in section 7032.

<sup>3</sup> 29 Stat. L., 541, act February 19, 1892.

<sup>4</sup> 29 Stat. L., 144, act May 28, 1896.

<sup>5</sup> 26 Stat., 914.

<sup>6</sup> See Decisions Comptroller of the Treasury (Bowler), Vol. I p. 496.

**7236. Authority of the Committee on Accounts and the accounting officers of the Treasury over the expenditure of the contingent fund of the House.**—July 16, 1895, the Comptroller of the Treasury decided that under the act of March 2, 1895,<sup>1</sup> making the approval of the temporary Committee on Accounts, House of Representatives, “conclusive upon all the departments and auditing officers of the Government,” the Comptroller has no jurisdiction to render a decision upon any question involved in the payment of accounts which have been so approved.<sup>2</sup>

The approval by the Committee on Accounts of expense lawfully chargeable to the contingent fund<sup>3</sup> of the House is conclusive on all departments of the Government.<sup>4</sup>

The act of February 14, 1892 (32 Stat. L., p. 26) has since provided, however:

That hereafter appropriations made for contingent expenses of the House of Representatives or the Senate shall not be used for the payment of personal services, except upon the express and specific authorization of the House or Senate in whose behalf such services are rendered. Nor shall such appropriations be used for any expenses not intimately and directly connected with the routine legislative business of either House of Congress, and the accounting officers of the Treasury shall apply the provisions of this paragraph in the settlement of the accounts of expenditures from said appropriations incurred for services or materials subsequent to the approval of this act.

**7237. As to the allowances for clerk hire to the chairman of the temporary Committee on Accounts.**—On April 19, 1895, the Comptroller of the Treasury decided that the chairman of the temporary Committee on Accounts of the House of Representatives, provided for by the act of March 2, 1895,<sup>5</sup> was chairman of a committee of the Fifty-fourth Congress, and was therefore not deprived of the allowance for clerk hire, after the adjournment of Congress, made to Members of the Fifty-third Congress.<sup>6</sup>

**7238. Extra services of employees are properly compensated under authority of a resolution agreed to by the House.**—On February 12, 1903,<sup>7</sup> the House, on recommendation of the Committee on Accounts, agreed to the following resolutions:

House resolution 416.

*Resolved*, That the Committee on Appropriations is authorized to provide in the general deficiency appropriation bill for the payment to Herman Gauss of the sum of \$500 for extra and expert services to the Committee on Invalid Pensions as assistant clerk of said committee by detail.

House resolution 417.

*Resolved*, That the Committee on Appropriations is authorized to provide in the general deficiency appropriation bill for the payment to D. S. Porter of the sum of \$500 for extra and expert services to the Committee on Pensions as assistant clerk of said committee by detail.

<sup>1</sup>28 Stat. L., p. 764.

<sup>2</sup>Decisions of Comptroller of the Treasury (Bowler), Vol. II, p. 24.

<sup>3</sup>The legislative, etc., appropriation bill makes annual appropriation for the contingent funds of the two Houses. The act of 1907 (34 Stat. L., p. 942) appropriated \$158,100 for contingent expenses of the House, apportioning sums for paper, stationery, fuel, etc.

<sup>4</sup>Supplement of the Revised Statutes (1892–1895), p. 414, which also has provision as to the making of contracts involving the employment of horses.

<sup>5</sup>28 Stat. L., p. 768.

<sup>6</sup>Decisions of the Comptroller of the Treasury (Bowler), Vol. I, p. 384.

<sup>7</sup>Second session Fifty-seventh Congress, Journal, p. 237; Record, pp. 2070, 2072.

**7239. The House has at times laid down general principles to govern the selection of its employees.**—On June 27, 1864,<sup>1</sup> on motion of Mr. William S. Holman, of Indiana, the House agreed to the following:

*Resolved*, That the officers of this House having authority to employ others in duties connected with this House ought to give the preference in making their appointments, other things being equal, to disabled soldiers, who have been permanently disabled while in the military service of the United States in the line of duty, and honorably discharged.

*Resolved*, That the officers of this House, in making future appointments, be governed by the principle above expressed.

**7240. On December 5, 1865,<sup>2</sup> Mr. Thomas T. Davis, of New York, offered the following resolution, which was agreed to:**

*Resolved, as the sense of this House*, That the appointment of the sons of Members of the House to any office under the Clerk, Doorkeeper, Sergeant-at-Arms, or Postmaster thereof is improper, and the same is therefore prohibited.

**7241. The House has insisted on its right to determine the compensation of its own officers and employees.**—On March 3, 1881,<sup>3</sup> the House, by a resolution of instructions to its conferees, insisted on its right to determine the compensation of its officers and employees, and forced the Senate to recede.

**7242.** In 1875,<sup>4</sup> a prolonged disagreement occurred between the House and Senate over the Senate amendments to the legislative appropriation bill. The Senate insisted on diminishing the amount of compensation of the clerks at the desk of the House, and the House insisted that that was a matter in which the courtesy between the two Houses should leave it to the House to fix. There were four conferences without an agreement. The fifth conference agreed, on March 3, and the report was drawn up on the principle as stated by Mr. Horace Maynard, of Tennessee, chairman of the House conferees, “that each House shall be intrusted by the other to regulate the number and pay of its own employees.”

**7243. By concurrent resolution the two Houses authorized their Sergeants-at-Arms to appoint special police for an important occasion.**—On January 31, 1877,<sup>5</sup> the House agreed to the following:

*Resolved by the Senate (the House of Representatives concurring)*, That the Sergeants-at-Arms of the Senate and House of Representatives, respectively, be, and they are hereby, authorized each to appoint fifty men to serve as a special police at the Capitol during the canvassing of the votes for President and Vice-President, or for such portion of said time as they shall deem necessary, said special police to be paid equally from the contingent funds of the Senate and House of Representatives.

The House also at this time adopted a rule that admission to the House during the counting of the vote should be by tickets to be distributed under direction of the Committee on Rules of the House and Senate.

**7244. References to the practice governing management of the House restaurant, especially as to the sale of intoxicating liquors.**—On December

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<sup>1</sup> First session Thirty-eighth Congress, Journal, p. 912; Globe, pp. 2310, 2311.

<sup>2</sup> First session Thirty-ninth Congress, Journal, p. 17; Globe, p. 9.

<sup>3</sup> Third session Forty-sixth Congress, Journal, pp. 600, 604.

<sup>4</sup> Second session Forty-third Congress, Record, p. 2259.

<sup>5</sup> Second session Forty-fourth Congress, Journal, pp. 341, 344; Record, p. 1138.

4, 1867,<sup>1</sup> a debate occurred which showed the former method of letting out the restaurant of the House to the highest bidder.

On November 2, 1902,<sup>2</sup> in the District court of appeals, Chief Justice Alvey handed down a decision reversing, the action of the police court in the cases of the managers of the House and Senate restaurants, convicted of violation of the excise law of March 3, 1893, in selling or offering for sale intoxicating liquors in the Senate and House restaurants in the United States Capitol building. The court of appeals held that the defendants in this case did not come within the meaning, of the excise law referred to, and the cases were remanded to the police court, with directions to quash the informations against the defendants and dismiss the proceedings.

The court held that the sole question for decision was whether or not the act of Congress of March 3, 1893, applied to Congressional restaurants in the Capitol building, managed by the committees of Congress for the sole use of Congress and the Members thereof. The act of March 3, 1893, is very broad in its provisions, the court held, for it provides that no person shall sell, offer for sale, traffic in, barter, or exchange for goods any intoxicating liquor in the District of Columbia, with sundry exceptions, which do not apply to the case at hand, without first having applied for and obtained a license to carry on such sale, etc., from the excise board of the District of Columbia to conduct business under the rules and regulations therein provided. This law, it is declared, is very comprehensive, and provides for all contingencies. There is, however, no word or action to show that there was any express or definite intention on the part of Congress to include within its provisions the restaurants in the Capitol building, and thus to modify the rules of the Houses of Congress and to transfer the regulations of Congress from the committees of the two Houses to the municipal agents.

The decision of the court was therefore that to make the law apply to Congress it must be definitely provided and specifically stated that the provisions included apply with equal force to the restaurants in the Capitol and those in other parts of the city for the municipal authorities to secure and exercise jurisdiction over them. As these two restaurants are by acts of the two Houses placed under the exclusive control of the committees thereof, the restaurant keepers thereby become quasi agents and officers of their respective Houses in carrying out and enforcing the regulations for the conduct of the restaurants which were made by these committees.<sup>3</sup>

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<sup>1</sup>Second session Fortieth Congress, Globe, p. 27.

<sup>2</sup>Page v. District of Columbia, 20 Tucker, p. 469.

<sup>3</sup>The brief for the plaintiffs in error in this case gives this resume of the system of administering the restaurants:

<sup>4</sup>"It is historically true that intoxicating liquors were permitted to be sold in the Capitol without question by either House up to the Twenty-fifth Congress and up to the time of the completion of the new wings of the Capitol; it was permitted to be sold in the crypt for a time and afterwards in a room set apart for that purpose known as 'a hole in the wall,' easily accessible from the old Supreme Court and Senate Chambers, and in a similar room in the old south wing for the accommodation of the House of Representatives.

"The Twenty-fifth Congress passed two concurrent resolutions, the first prohibiting the sale of intoxicating liquors in the Capitol, and a second resolution as follows: *Resolved*, That no spirituous liquors shall be offered for sale or exhibited within the Capitol or on the public grounds adjacent thereto.' This was and still is known as joint rule 19. Both were imperfect.

"In the Thirty-ninth Congress, for the purpose of enlarging the nineteenth rule, the Senate passed a concurrent resolution known as the Wilson Resolution. It was upon the subject of this resolution

The act of March 3, 1903,<sup>1</sup> provides:

That no intoxicating liquors of any character shall be sold within the limits of the Capitol building of the United States.

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that Senator McDougal, of California, made his famous speech in opposition. The resolution was as follows: *Resolved*, That the sale of spirituous liquors, wines, and intoxicating drinks of any description whatever is hereby prohibited in the Capitol building and grounds, and it shall be the duty of the Commissioner of Public Buildings and Grounds, under the direction of the President of the Senate and Speaker of the House of Representatives, immediately to cause to be moved therefrom such articles and prevent the sale hereafter of the same in the Capitol building and grounds.' The House concurred in this, but with an amendment and the resolution failed in conference. (First session Thirty-ninth Congress, Globe, p. 1879.)

"In the Fortieth Congress, March, 1867, Mr. Fessenden, from the Committee on Public Buildings and Grounds, reported a concurrent resolution on this subject, as follows: *Resolved by the Senate (the House of Representatives concurring)*, That the nineteenth joint rule of the two Houses be amended so as to read as follows: "No spirituous or malt liquors or wines shall be offered for sale, exhibited, or kept within the Capitol or any room or building connected therewith, or on the public grounds adjacent thereto; and it shall be the duty of the Sergeants-at-Arms of the two Houses, under the supervision of the presiding officers thereof, respectively, to enforce the foregoing provisions, and any officer or employee of either House who shall in any manner violate or connive at the violation of this rule shall be discharged from office."<sup>1</sup> This passed both Houses. (See Senate Journal, first session Fortieth Congress, p. 43.)

"Under the operation of this rule the keeper of the House restaurant surrendered his contract and in the second session of the Fortieth Congress (Dec. 4, 1867; see Globe, first session Fortieth Congress, p. 333) a House resolution permitting him to resume his contract, with the privilege of selling small beer and malt liquors, was introduced and referred to the Committee on Rules.

"Mr. Blaine reported a substitute for this from the committee as follows: *Resolved*, That the subject of leasing the restaurant and prescribing the rules under which it shall be kept is hereby committed to the Committee on Revisal and Unfinished Business, with full power to make such regulations as may to them seem expedient; and all resolutions heretofore passed relating thereto are hereby repealed.'

"In the Forty-first Congress (April 8, 1869) the House passed a resolution as follows: *Resolved*, That the House restaurant be placed in charge of the Committee on Public Buildings and Grounds, with the same powers heretofore possessed by the Committee on Revisal and Unfinished Business.'

"The House thus committed, with all the force of law, to its Committee on Public Buildings and Grounds the full power to prescribe the rules under which its restaurants shall be kept and to select the person or persons by whom its business shall be conducted.

"The Senate also made it the duty of its Committee on Rules by a standing order 'to make all rules and regulations respecting such parts of the Capitol, its passages and galleries, including the restaurant, as are or may be set apart for the use of the Senate and its officers, to be enforced under the direction of its presiding officer.' (See rule 34, Standing Rules of the Senate, p. 29.)

<sup>1</sup>32 Stat. L., 1221.