

Whereas, the future of our country is dependent on the development of our youth for the ultimate accomplishment of worthy goals, and

Whereas, motivation for such achievement can arise from the free exchange of ideas at a gathering of our young citizenry, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Youth Citizenship Conference may use the Hall of Representatives as a meeting place on Saturday, February 17, 1973, beginning at ten o'clock in the morning.

BILL REFERRED

House bill of the following title was read the first time and referred:

H. 162. An act relating to the Hartford High School Band.

To the Committee on Appropriations.

MESSAGE FROM THE HOUSE

A message was received from the House of Representatives by Mr. Graham their First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate the House has on its part adopted a Joint Resolution entitled:

J. R. H. 10. Joint resolution relating to weekend adjournment.

In the adoption of which the concurrence of the Senate is requested.

I am directed to inform the Senate the House has considered a Joint Resolution originating in the Senate of the following title:

J. R. S. 4. Joint resolution to provide for a Joint Assembly to hear the budget message of the Governor.

And has adopted the same in concurrence.

SPECIAL ORDER: REPORTS OF SPECIAL ELECTION COMMITTEE RECEIVED; SENATOR EXCUSED FROM VOTING; SENATE RESOLUTION REJECTED; PETITION DENIED; ELECTION AFFIRMED

The Report of the special committee established pursuant to S. R. 6 to investigate the senatorial election for Chittenden County,

Was taken up as a Special Order.

Senator Soule, on behalf of himself and Senator Branon, submitted a report as members of this special committee, as follows:

"PROPOSAL FOR 'APPROPRIATE ACTION' OF THE SENATE AS TO SENATE RESOLUTION #6 RELATING TO THE CHITTENDEN COUNTY SENATORIAL ELECTION.

The committee agreed that any of its four members could make a report to the Senate of his recommendations for 'Appropriate Action' in this situation or join in the report of another member of the committee.

Therefore, as chairman of the Committee I make the following report initially.

In view of the conflicting testimony heard by the committee from persons involved in the election and the recount, it is my opinion there can be no proof of fraud but only gross error, particularly in the town of Essex, in the counting and tallying of ballots. For the committee to follow up all avenues of conflict within the time allotted by the Senate resolution is an impossible task and one which only leads to further antagonisms and possible smearing of innocent persons. Furthermore, the Senate is being delayed and hampered in carrying out the duties for which we were elected.

Therefore, I recommend as follows:

1. On the first Saturday in February 1973, an election be held in the town of Essex between the two principal adversaries in the election, namely Senator Smith and Mr. Fayette.
2. That the election be conducted by the Essex Board of Civil Authority supervised by representatives from the Secretary of State's Office.
3. That the four Senate members of the Investigating Committee be in attendance at the election, one of each political party at each polling place in the town of Essex.
4. That following this special election the total votes cast for each individual be added to the recount totals for each of the other towns, in Chittenden County and the combined highest total be declared the individual winner.
5. That until at least the first Tuesday after the Saturday's election, Senator Smith will hold the Chittenden County Senate Seat in question.

To the end of accomplishing this election, I submit now to the Secretary a so-called resolution for a referendum as previously described to the committee by the Attorney General as one approach which he considers legally defensible. The hazards in this approach as described to the committee by the Attorney General, are that an appeal might be taken by either of the contestants or even a citizen voter. To lessen this hazard I also submit a letter from Mr. Fayette which I read as follows:

FREDERICK J. FAYETTE
South Burlington, Vermont

Wednesday, January 10, 1973

Hon. Richard Soule, Chairman
Special Senate Investigating Committee
Montpelier, Vermont

Honorable Sir:

Since my appearance before your honorable committee today, I have given further serious thought to the acceptability of a runoff election between Fred Smith and me in the Town of Essex only.

I am fully cognizant of the predominance of the Republican Party in Essex and the fact that my appeal to the Senate has focused an attention on this Town which may act to my detriment. However, it is the true vote in Essex which is in question. Therefore, I am willing to support fully a runoff election limited to Essex only. This will provide the people of Essex an opportunity to clearly express their position and I will accept their new expression as the people's choice. I will abide the decision reached in this new election and if the vote of the Town when added to the results of the recount in the other towns of Chittenden establish Fred Smith as the winner, I will wish him Godspeed and success and give him my support in his representation of the people of Chittenden County.

I will also commit myself to abide this decision without further appeal, either legislative or judicial.

Respectfully submitted,

/s/ Frederick J. Fayette
Frederick J. Fayette'

I also have verbal assurance from Senator Smith that he will abide by the vote in the same manner and not render an appeal either legal or judicial.

Speaking now for the Committee we have been impressed with particularly the manner in which the two principal contestants have conducted and represented themselves. We are grateful to the numerous people who have heeded our requests and questions in interviews without the necessity of using the subpoena power granted us in the resolution.

Personally I thank the Senate and particularly the Committee members for their cooperation in giving of their time beyond the call of duty in this rather unpleasant situation.

Submitted by

Richard C. Soule, Chairman
Investigating Committee for
Chittenden County Senatorial Election"

Thereupon, Senator Westphal, on behalf of himself and Senator Newell, submitted a report as members of this special committee, as follows:

"REPORT TO THE SENATE BY SENATORS WESTPHAL AND
NEWELL

Re: S. R. 6

We entered upon this thoroughly distasteful task with the premise that it is for the Senate to decide whether the Chittenden County Senatorial election should be invalidated.

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Wednesday, January 10, 1973

Our conclusion after participation on this committee: we cannot recommend an invalidation.

We have been made aware of election errors, omissions and irregularities but we have not been persuaded that fraud has been perpetrated. There is no actionable criminal fraud.

Subsequent to a legal recount, sustained by the Supreme Court which ordered a certificate of election, no new evidence has been developed suggesting actionable fraud. And in the absence of any prosecution of fraud on the part of the county officials who have thoroughly studied all aspects of the situation and in the absence of any overweening evidence presented to the Committee of fraud, we are convinced that no further action by the Senate is justifiable.

We reject the proposal for either an election or a referendum on the basis that no subsequent election or referendum can create the same participating body politic as participated last November. An election for all twelve candidates would be fairest yet that gives voters who did not vote at all in November, and voters who in November did not vote for either candidates Fayette or Smith the chance to reconsider their November action. This puts them at an advantage over voters in other counties who today could wish a chance to reconsider their senatorial vote of last November.

Further, a new election or referendum could open the affair to further litigation brought by a citizen or citizens, former election officials or any other candidates.

A referendum for which there is no precedent would not be legally binding.

We feel since it is constitutionally incumbent upon the Senate to decide and the Senate *will decide* eventually, the decision can and should be made now by the Senate.

We recommend the results of the recount be affirmed and that the certificates of election issued for the November 7, 1972 general election stand.

/s/ Fred Westphal
/s/ Graham S. Newell"

Thereupon, pending any action to be taken on these reports by the Senate, Senators Soule and Branon offered a resolution which was read and is as follows:

S. R. 7. Senate resolution relating to an advisory referendum in the town of Essex.

Whereas, Senate Resolution 6 established a committee to investigate the senatorial election in Chittenden County, and

Whereas, pursuant to that resolution the committee met and took testimony from the candidates, their representatives, the Attorney General, the Secretary of State, the Chittenden County Sheriff, the Chittenden County State's Attorney, the Chairman of the Recount Committee, the attorney for