JUDGING QUALIFICATIONS AND ELECTIONS OF A LEGISLATOR-ELECT

CONSTITUTIONAL BASIS of LEGISLATIVE AUTHORITY

U. S. CONSTITUTION
Article 1, section 5, clause 1:

ALL STATE CONSTITUTIONS

➢ Recognize each house of the legislature’s power to judge the qualifications and elections of its members-elect
➢ Two separate, distinct inquires: Qualifications and the Election

QUALIFICATIONS

➢ Set by your constitution
➢ Not to be expanded by rule, statute or interpretive gloss
➢ Age, citizenship, residence are the three most common qualifications
➢ Some additional disqualifications: elector, registered voter, non-felon, incompatible other office, office or position of profit
  ➢ ALL must be constitutionally based

AGE

➢ Normally by direct recitation

CITIZENSHIP

➢ 14th amendment to U.S. constitution

RESIDENCE

➢ Power to judge a Candidate’s Residence is Expressly Provided in the Constitution
➢ A Candidate may have more than one residence.
➢ A Challenge to the Residence of a Candidate May be Considered by a Court Before the Election
➢ After the General Election, a Court has No Power to Judge that a Candidate is Not Qualified
➢ A Challenge to the Residence of a Candidate May Not Be Considered by a Court after the Candidate Has Been Duly Seated by the Body, Except as Expressly Provided in the Constitution
➢ The Judgment of a Legislative Body May Differ from that of a Court

SEPARATION OF POWERS

➢ Dual office holding/dual employment
CANDIDATE’S STATUS

- Must a candidate be a registered voter?
- Status as a convicted felon, even with restored rights

ELECTIONS

- Judicial Authority Over Elections and Returns is Statutory
- Each Legislative body is the SOLE judge of whether or not a candidate has been duly elected;
- Any judicial authority over elections and returns is statutory
- Judiciary may compel executive officials to carry out ministerial duties
- Judiciary may not compel election officials to change the vote count
- The judiciary may NOT fix irregularities in an election after a legislative body has taken up the matter
- Whether the judiciary may take evidence in contested cases may, or may not, be for the legislature to decide
- A legislative body may initiate a contest on its own motion at any time
- Judgement of a Legislative body may differ from that of the Judiciary:

PROCEDURAL ISSUES

- Who may initiate a contest or objection to the qualifications and election of a Member-elect
- How is a contest or objection to the qualifications and election of a Member-elect initiated
- When is a contest or objection to the qualifications and election of a Member-elect to be made
- What is the effect of a contest or objection to the qualifications and election on a Member-elect

Objection, Investigation, Hearing, Report and Consideration

- Procedural due process rights of the Member-elect and the objecting party
- Investigation
- Make a recommendation to the house
- Scope of investigation
- Conduct of hearing
- Report of the committee findings
- Consideration of the report by the house
- Vote required to adopt the report