

## B. COMPENSATION AND ALLOWANCES

### §4. Salary; Benefits and Deductions

The Constitution directs in article I, section 6, clause 1, that Senators and Representatives shall receive compensation for their services,<sup>(2)</sup> to be paid out of the Treasury of the United States.<sup>(3)</sup>

2. Compensation is pay for official services and does not include allowances, which are reimbursement for actual or presumed expenses and which are additional and separable from the legal rate of compensation. *Smith v U.S.*, 158 U.S. 346 (1895). Therefore, where there has been no appropriation for an allowance, a Congressman cannot claim a constructive allowance as part of his compensation. *Wilson v U.S.*, 44 Ct. Cl. 428 (1909).

For discussion of allowances, see §6, *infra* (travel), and §8, *infra* (office, personnel, and supply allowances).

3. See also 2 USC §47 (congressional compensation as "public accounts").

In the drafting and ratification of the Constitution, there was debate on whether any compensation should be allowed, or whether it should be allowed for only the House and not for the Senate. Story, *Commentaries on the Constitution of the United States*, §§851–52, Da Capo Press (N.Y., Repub. 1970).

It was specifically provided that the compensation be paid out of the U.S. Treasury, rather than the individual state treasuries, in order to

Pursuant to that clause, the rate of compensation is fixed by statute and is periodically reviewed.<sup>(4)</sup> In the 90th Congress, there was established the Commission on Executive, Legislative, and Judicial Salaries, which commission reviews salaries periodically and submits a report to the President who then makes recommendations in his budget message.<sup>(5)</sup>

The salary of Members progressed from \$6 per diem in the

insure the independence of the national legislature and the equality of compensation. *Id.* at §854.

4. The constitutional authority for payment of congressional salaries does not stem from the general taxing and spending power of Congress but from the specific clause providing for a congressional salary to be paid. *Richardson v Kennedy*, 313 F Supp 1282 (W.D. Pa. 1970), *aff'd mem.* 401 U.S. 901 (1971) (taxpayer lacked standing to challenge congressional pay raise effected by the Commission on Executive Legislative, and Judicial Salaries).

As to the fixing of the congressional salary, early objections were voiced on the failure of the Constitution to provide a procedure for fixing and changing the salary. Story, *Commentaries on the Constitution of the United States*, §855, Da Capo Press (N.Y., Repub. 1970).

5. For the establishment of the commission and for the 1969 congressional pay raise effected by the commission, see §4.1, *infra*.

First Congress to a fixed amount of \$42,500 per year in the 90th Congress.<sup>(6)</sup> The statutes also fix

6. Salaries, 1795 to 1906: \$6 per diem before Mar. 4, 1795, \$7 per diem after Mar. 4, Act of Sept. 22, 1789, 1 Stat. 70-71; reduced to \$6 per diem, Act of Mar. 10, 1796, 1 Stat. 448; \$1,500 annually, Act of Mar. 19, 1816, repealed by Act of Feb. 6, 1817, 3 Stat. 257; \$8 per diem, Act of Jan. 22, 1818, 3 Stat. 404; \$3,000 annually, Act of Aug. 16, 1856, 11 Stat. 48; \$250 per month, Act of Dec. 23, 1857, 11 Stat. 367; \$5,000 annually, Act of July 28, 1866, 14 Stat. 323; \$7,500 annually, Act of Mar. 3, 1873, 17 Stat. 486; \$5,000 annually, Act of Jan. 20, 1874, 18 Stat. 4.

1907 to 1936: \$7,500 annually, Act of Feb. 26, 1907, 34 Stat. 993; \$10,000 annually, Act of Mar. 4, 1925, 43 Stat. 1301; \$9,000 annually, Act of June 30, 1932, 47 Stat. 401 (Economy Act of 1932); \$8,500 annually, Act of Mar. 20, 1933, 48 Stat. 14 (Economy Act of 1933); \$9,000 annually, Act of Mar. 28, 1934, 48 Stat. 521; \$9,500 annually, Act of May 30, 1934, 48 Stat. 821; \$10,000 annually, Act of Feb. 13, 1935, 49 Stat. 24.

Since 1936: \$12,500 annually, effective Jan. 3, 1947, Act of Aug. 2, 1946, 60 Stat. 850; \$22,500 annually, Act of Mar. 2, 1955, 69 Stat. 11; \$30,000 annually, effective Jan. 3, 1965, Act of Aug. 14, 1964, 78 Stat. 415; \$42,500 annually, effective Mar. 1, 1969, Act of Dec. 16, 1967, Pub. L. No. 90-206, 81 Stat. 613 (codified as 2 USC §31); \$57,500 annually, effective Mar. 1, 1977 (recommendations of President submitted Jan. 17,

separate rates of salary for the Speaker and Majority and Minority Leaders of the House.<sup>(7)</sup>

Salary begins for Members-elect at the beginning of their term, even if Congress meets after the constitutional day of Jan. 3.<sup>(8)</sup> The actual entitlement to salary before Congress meets, depends, however, on the filing of duly-certified credentials.<sup>(9)</sup> Once Congress con-

1977, pursuant to Pub. L. No. 90-206).

7. Under 2 USC §31, as amended by the Act of Sept. 15, 1969, Pub. L. No. 91-67, 83 Stat. 107, the Speaker receives \$62,500 annually, and the Majority and Minority Leader receive \$49,500 annually.

Prior to the passage of Pub. L. No. 91-67, the Majority and Minority Leaders received the same salary as the other Members. Their pay raise was effected by the recommendations of the Commission on Executive, Legislative, and Judicial Salaries, as transmitted to Congress in the Presidential Budget Message for 1970. H. Doc. No. 91-51, 91st Cong. 1st Sess., Jan. 17, 1969.

8. 2 USC 34.
9. Members-elect receive compensation monthly between the beginning of the term and the convening of Congress under 2 USC §34, but only if the Clerk has received a certificate showing regular election under 2 USC §26. A person who presents regular credentials must be placed on the Clerk's roll and must receive salary from the beginning of his term. *Page v U.S.*, 127 U.S. 67 (1888).

venes, salaries are regularly paid only to those Members who have taken the oath and who have duly qualified for seats in the House.<sup>(10)</sup> If a Member-elect does not have credentials on file, or if his right to a seat is challenged, he is paid retroactively to the beginning of the term once his right to a seat is determined.<sup>(11)</sup>

As for the salary of Members elected to fill unexpired terms, the statutes formerly provided that such a Member would receive salary from the time that the compensation of his “predecessor” ceased.<sup>(12)</sup> The code now provides that where a person is elected to fill an unexpired term, his salary commences on the date of his election and not before.<sup>(13)</sup>

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If a territory elected a “representative” before admission into the Union, the person elected was entitled to congressional salary only from the time of the admission of the territory as a state into the Union. *Conway v U.S.*, 1 Ct. Cl. 69 (1863).

10. 2 USC §35. The House may, however, authorize a Member-elect whose right to a seat is being investigated to receive salary and allowances pending the result of the investigation (see §4.3, *infra*)
11. See §4.5, *infra*.
12. Resolution of July 12, 1862, No. 54, 12 Stat. 624.
13. 2 USC §37. For the Speaker’s analysis of the change in the provision, see 6 Cannon’s Precedents §203.

The Sergeant at Arms is the accounting and disbursing officer for the salaries of Members.<sup>(14)</sup> Before the salaries are paid out of United States Treasury, however, salary accounts are certified by the Speaker if the House is in session<sup>(15)</sup> or by the Clerk if the

14. 2 USC §78. The function of the Sergeant at Arms in disbursing salary is also dictated by Rule IV clause 1, *House Rules and Manual* §649 (1973), which was amended by H. Res. 5, 92d Cong. 1st Sess., Jan. 22, 1971, and H. Res. 1153, 92d Cong. 2d Sess., Oct. 13, 1972, to extend his services to all Delegates and the Resident Commissioner.

See also 31 USC §148, which authorizes the Treasurer of the United States to disburse the Members’ salaries in the case of the Sergeant at Arms’ disability.

2 USC §80 clarifies the Sergeant at Arms’ duties in relation to the compensation of Members. When he presents the necessary certificates to the Treasurer of the U.S. for Members’ salary, he is acting as a public agent. Where, however, he draws the salary for Members before it is properly due, the transfer of the money to him is not a payment to Members. *Crain v U.S.*, 25 Ct. Cl. 206 (1890).

15. 2 USC §48. The Court of Claims has stated that the salary of Members is not dependent upon the Speaker’s certificate. *Wilson v U.S.*, 44 Ct. Cl. 428 (1909) (*dicta*). However, the Speaker’s certificate, even if in the form of a personal letter, is conclusive upon the accounting officers of

House is not in session.<sup>(16)</sup> Congressional salaries are paid out monthly, by statutory mandate, both before and after Congress convenes.<sup>(17)</sup>

The salaries of Members are subject to deductions for federal income tax, and may be made subject, at the election of the individual Member, for deductions for retirement, health, and insurance benefits.<sup>(18)</sup> Authorized by statute are deductions for unauthorized leaves of absence,<sup>(19)</sup> for withdrawal from the congressional seat,<sup>(20)</sup> and for delinquency indebtedness.<sup>(1)</sup>

On one occasion, the House directed that a monthly deduction

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the Treasury. 6 Cannon's Precedents § 201.

The Speaker may designate a substitute to sign the certificates in his name. 2 USC § 50.

**16.** 2 USC § 49.

**17.** 2 USC § 34 (before convening) and 2 USC § 35 (after oath-taking).

**18.** See § 4.10, *infra*.

**19.** 2 USC § 39.

Deductions from a Member's salary for unauthorized leaves may only be taken after he has been sworn in. 2 Hinds' Precedents § 1154. For information on leaves of absence, see § 5, *infra*. On one occasion, a Member requesting a leave of absence not for official business requested a leave of absence without pay (§ 5.10, *infra*).

**20.** 2 USC § 40.

**1.** 2 USC § 40a.

be levied from a challenged Member's-elect salary as punishment for improper conduct in past Congresses.<sup>(2)</sup>

In the event that a Member dies during his term of office, and was due unpaid salary, such salary goes to his designated beneficiary by statute, or to his widow or widower, or children, or parents, or to the person so entitled under state domiciliary law.<sup>(3)</sup> Customarily, the House appropriates an amount equal to one year's congressional salary to the widow of a deceased Member.<sup>(4)</sup> Any such death gratuity payment must be construed as a gift to the specified donee.<sup>(5)</sup>

The question arises as to whether a Member-elect of Congress may receive dual compensation both for (1) his congressional seat and (2) an incompatible office held

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**2.** See § 4.4, *infra*.

**3.** 2 USC § 38a. The claim of the estate of a deceased Member is handled by the Committee on the Judiciary (see § 4.12, *infra*).

Where a Member took leave of absence for military service, and after the Sergeant at Arms had ceased paying Members absent for that purpose, the House paid the deceased's widow the difference between his unpaid House salary and the military salary he had received (see § 4.13, *infra*).

**4.** 6 Cannon's Precedents § 204.

**5.** 2 USC § 38b.

up to the time he takes the oath.<sup>(6)</sup> When that problem recently arose for a Senator-elect, he waived his congressional salary up to the time he took the oath and resigned from his office.<sup>(7)</sup> The House has not expressly ruled on the question whether a Representative would be required to do the same.<sup>(8)</sup>

6. 14 Op. Att'y Gen. 406 (1874) proposed that since a Member-elect could lawfully hold an office under the United States until appearing to be sworn (see §13, *infra*), he was entitled to receive pay for both positions before becoming a Member (assuming Congress met after the beginning of the term). That conclusion was based in part on the decision in *Converse v U.S.*, 62 U.S. (21 How.) 463 (1859), that a person holding two compatible offices under the government is not precluded from receiving the salaries of both by any provision of the general laws prohibiting double compensation. See also 9 Op. Att'y Gen. 508 (1860) and 12 Op. Att'y Gen. 459 (1868).

7. See §4.9, *infra*.

8. See the determination of the House, cited at 1 Hinds' Precedents §500, that a Member-elect receiving pay as a military officer was disqualified from taking his congressional seat or from receiving any congressional salary as of the moment the Congress to which he was elected convened, regardless of the time when he would appear to take the oath (the main issue before the committee was not, however, the status of that

During World War I Members who served in the military forces during their congressional terms received compensation for both positions.<sup>(9)</sup> During World War II, however, the Sergeant at Arms did not pay those Members absent for military training or service during their terms, pursuant to an opinion of the Comptroller General.<sup>(10)</sup> When drafting a bill providing for United States representation in the United Nations, Congress specifically provided that any Congressman appointed to the position not receive salary for that position, in order to avoid the prohibition against holding incompatible offices.<sup>(11)</sup>

Member-elect, who resigned before taking the oath, but the entitlement to salary of his successor).

A report cited at 1 Hinds' Precedents §184, while determining that a Member-elect could receive compensation for another governmental office before the convening of Congress, stated that the precedents of the House did not "determine that he [the Member-elect] may also be compensated as a Member of Congress for the same time for which he was compensated in the other office." The question was left open in the report.

9. See 6 Cannon's Precedents §61.

10. See §4.6, *infra*. See also §4.13, *infra* (effect of military absence on payment of congressional salary to widow of deceased ex-Member).

11. See §4.7, *infra*. See *U.S. v Hartwell*, 73 U.S. 385, 393 (1868), implying

Congressional salary may be waived by a Member, in which case the sum is remitted to the Treasury of the United States.<sup>(12)</sup> For example, a Member who was to be imprisoned for a period of four months for a criminal conviction instructed the Sergeant at Arms to return his salary to the Treasury for that period.<sup>(13)</sup>

What has been said above is applicable to Delegates and the Resident Commissioner; contrary to prior practice,<sup>(14)</sup> they now receive the same salary as Members.<sup>(15)</sup> Rule IV clause 1, detailing the functions of the Sergeant at Arms in keeping accounts and disbursing pay to Members, was amended in the 92d Congress to explicitly entitle Delegates and the Resident Commissioner to the financial services of that officer.<sup>(16)</sup>

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that another governmental office without compensation would not be incompatible.

12. 6 Cannon's Precedents § 203.
13. See § 4.8, *infra*.
14. 6 Cannon's Precedents § 201 (differentiation in salary between Members and Delegates and Resident Commissioners).
15. 2 USC § 31.
16. *House Rules and Manual* § 649 (1973). The amendments were accomplished by H. Res. 5, 92d Cong. 1st Sess., Jan. 22, 1971, and H. Res. 1153, 92d Cong. 2d Sess., Oct. 13, 1972.

### Cross References

- Monetary allowances, see § 6, *infra* (travel allowance) and § 8, *infra* (office and personnel allowances; supplies).  
 Compensation and incompatible offices, see § 13, *infra*.  
 Compensation for military service, see § 14, *infra*.  
 Deductions from compensation for absence, see § 5, *infra*.  
 Compensation of officers, officials and employees, see Ch. 6, *supra*.

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### *Fixing Congressional Salary*

#### **§ 4.1 The Commission on Executive, Legislative, and Judicial Salaries, established in the 90th Congress, reviews congressional salaries and submits budget recommendations periodically.**

There was established in the 90th Congress a Commission on Executive, Legislative, and Judicial Salaries.<sup>(17)</sup> The commission's functions are to review once every fourth year the salaries of identified federal officials, including

17. Postal Revenue and Federal Salary Act of 1967, Pub. L. No. 90-206, 61 Stat. 642, § 225 (2 USC §§ 351-361).  
 In *Richardson v Kennedy*, 313 F Supp 1282 (W.D. Pa.), *aff'd mem.*, 401 U.S. 901 (1971), the Supreme Court affirmed a lower court decision that a taxpayer lacked standing to attack a congressional pay raise effected by the commission.

Congressmen, and to submit a report to the President embodying suitable budget recommendations.<sup>(18)</sup>

Pursuant to the report of the commission in 1969, and to the President's budget proposals incorporating its recommendations, the congressional salary was increased to \$42,500 per annum in 1969.<sup>(19)</sup>

### *Funds for Salary*

#### **§ 4.2 The House authorized the Clerk by resolution to transfer unexpended funds to the Sergeant at Arms in order to pay the salaries of Members, where the supplemental appropriation bill was pending before the Senate.**

On May 28, 1969, a resolution was called up authorizing the

18. 2 USC § 356. For the membership of the commission, appointed by the President, the Speaker, the President of the Senate, and the Chief Justice, see 2 USC § 352.

19. Act of Sept. 15, 1969, Pub. L. No. 91-67, § 2, 83 Stat. 107.

For the President's 1969 salary recommendations, see 34 Fed. Reg. 2241 (1969), reprinted at 2 USCA § 358. For the President's message to Congress transmitting his recommendations and analyzing the commission, see Message from the President, H. Doc. No. 91-51, 91st Cong. 1st Sess.

transfer of funds left over from 1968 House appropriations and of funds for 1969 House appropriations, in order to meet the payroll of the House:<sup>(20)</sup>

MR. [SAMUEL N.] FRIEDEL [of Maryland]: Mr. Speaker, by direction of the Committee on House Administration, I call up the resolution (H. Res. 425) and ask unanimous consent for its immediate consideration.

THE SPEAKER:<sup>(1)</sup> Is there objection to the request of the gentleman from Maryland?

There was no objection.

The Clerk read the resolution, as follows:

#### H. RES. 425

*Resolved*, That the Clerk of the House and Sergeant at Arms be and is hereby directed to pay such sum as may be necessary, from the balance available of the 1968 appropriation and the various funds of the 1969 appropriation, where balances may be available, for the House of Representatives to meet the May and June payroll of Members, officers of the House, and employees of the House. Moneys expended from these funds and/or appropriations by the Sergeant at Arms and the Clerk will be repaid to the funds and/or appropriations from the Sergeant at Arms and Clerk's supplemental appropriation upon its approval.

The House adopted the resolution, after Mr. Friedel explained that the purpose of the resolution was to enable meeting the payroll

20. 115 CONG. REC. 14165, 91st Cong. 1st Sess.

1. John W. McCormack (Mass.).

of the House for the next month, pending enactment of a supplemental appropriation bill containing funds for such payroll.

*Parliamentarian's Note:* The resolution was not in fact privileged for consideration under Rule XI clause 22, since it did not involve payment from the contingent fund of the House.

### ***Salary of Challenged Member-elect***

#### **§ 4.3 Where a Member-elect was excluded from the House pending an investigation of his right to be sworn, the House by resolution authorized salary and allowances for such Member pending a final determination of his right to the seat.**

On Jan. 10, 1967,<sup>(2)</sup> the House agreed to House Resolution 1, as amended, excluding Member-elect Adam C. Powell, of New York, from the House pending an investigation of his right to be sworn. The resolution, referring to a select committee the question of his right to his seat, permitted Mr. Powell to draw all the pay, allowances, and emoluments authorized for Members of the House:

*Resolved,* That the question of the right of Adam Clayton Powell to be

2. 113 CONG. REC. 24, 90th Cong. 1st Sess.

sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House. . . .

Until such question and right have been decided, the said Adam Clayton Powell shall be entitled to all the pay, allowances, and emoluments authorized for Members of the House.

#### **§ 4.4 When affirming the right of a Member-elect to his seat, challenged for improper conduct in past Congresses, the House may provide for punishment by levying deductions from his congressional salary.**

On Jan. 3, 1969, the House authorized by resolution (H. Res. 2) challenged Member-elect Adam C). Powell, of New York, to take his seat.<sup>(3)</sup> Clause 2 of House Resolution 2 read as follows:

3. 115 CONG. REC. 34, 91st Cong. 1st Sess.

For a summary of Mr. Powell's alleged improper conduct in past Congresses, see the remarks of Mr. Gillespie V. Montgomery (Miss.), *id.* at p. 21.



That as punishment Adam Clayton Powell be and he hereby is fined the sum of \$25,000, said sum to be paid to the Clerk to be disposed of by him according to law. The Sergeant at Arms of the House is directed to deduct \$1,150 per month from the salary otherwise due the said Adam Clayton Powell, and pay the same to said Clerk until said \$25,000 fine is fully paid.<sup>(4)</sup>

**§ 4.5 Where a challenged Member-elect was declared entitled to a seat following a recount of the votes cast in the election, the House adopted a resolution entitling him to congressional salary from the beginning of the term to which elected.**

On June 14, 1961,<sup>(5)</sup> the House adopted House Resolution 339, reported as privileged from the Committee on House Administration, declaring that J. Edward Roush, of Indiana, was entitled to a seat in the House from the Fifth Congressional District of Indiana. The committee had conducted a

4. For legal basis for the salary deductions, as based on the constitutional power of the House to punish Members, see the remarks of Mr. Frederick Schwengel (Iowa), *id.* at pp. 32, 33. Mr. Schwengel also stated that the resolution would not bar civil litigation to recover any moneys found to be due Congress from Mr. Powell. *Id.* at p. 33.
5. 107 CONG. REC. 10391, 87th Cong. 1st Sess.

recount of the votes cast in the election, pursuant to House Resolution 1 of the 87th Congress.

The House then adopted House Resolution 340, also reported as privileged from the Committee on House Administration, providing that Mr. Roush be entitled to compensation, mileage, allowances, and other emoluments from the commencement of the term of the 87th Congress (and providing suitable compensation for the other contestant for the seat):

*Resolved*, That the House of Representatives having considered the question of the right of J. Edward Roush or George O. Chambers, from the Fifth Congressional District of Indiana, to a seat in the House in the Eighty-seventh Congress, pursuant to H. Res. 1, Eighty-seventh Congress, and having decided that the said J. Edward Roush is entitled to a seat in the House in such Congress with the result that the said J. Edward Roush is entitled to receive and will be paid the compensation, mileage, allowances, and other emoluments of a Member of the House from and after January 3, 1961, there shall be paid out of the contingent fund of the House such amounts as are necessary to carry out the provisions of this resolution in connection with such decision of the House, as follows:

(1) The said George O. Chambers shall be paid an amount equal to compensation at the rate provided by law for Members of the House for the period beginning January 3, 1961, and ending on the date of such decision of the House.

(2) The said J. Edward Roush and the said George O. Chambers each shall be paid an amount equal to the mileage at the rate of 10 cents per mile, on the same basis as now provided by law for Members of the House, for each round trip between his home in the Fifth Congressional District of Indiana and Washington, District of Columbia, in response to the request of the Committee on House Administration for his appearance before the committee in connection with the investigation authorized by H. Res. 1, Eighty-seventh Congress.

(3) The said J. Edward Roush and the said George O. Chambers each shall be reimbursed for those expenses actually incurred by him in connection with the investigation by the Committee on House Administration authorized by H. Res. 1, Eighty-seventh Congress, in accordance with that part of the first section of the Act of March 3, 1879 (20 Stat. 400; 2 U.S.C. 226), which provides for payment of expenses in election contests.

### ***Dual Compensation***

#### **§ 4.6 During World War II, the Sergeant at Arms of the House did not disburse congressional salary to those Members who were presently on leaves of absence and serving in the military.**

In accordance with an opinion given him by the Comptroller General, Sergeant at Arms of the House Kenneth Romney, did not pay congressional salary to those

Members of the House who were during World War II on leaves of absence because of service in the armed forces. The action was taken because such service was construed as incompatible with House service.<sup>(6)</sup>

#### **§ 4.7 The House passed a bill denying extra compensation for any Member appointed as a United Nations representative, thereby avoiding in such cases the prohibition against holding incompatible offices.**

On Dec. 18, 1945, the House was considering a proposed bill to provide for the participation of the United States in the United Nations.<sup>(7)</sup> A committee amendment was offered to the bill, denying compensation for the position of

6. See H. REPT. NO. 2037, from the Committee on House Accounts, to accompany H. Res. 512, 79th Cong. 2d Sess. (H. Res. 512 authorized the Sergeant at Arms to pay the widow of a deceased ex-Member the difference between his congressional pay and his military pay, where the ex-Member had obtained a leave of absence from the House to serve in the armed forces. In accordance with the practice of the Sergeant at Arms during the war, neither the Member nor his widow could draw full compensation for both positions.)

7. 91 CONG. REC. 12267, 79th Cong. 1st Sess.

representative to the United Nations for any Member who might be designated as such representative; the amendment had been drafted in order to avoid the possible conflict of a Member holding an incompatible office with compensation, under article I, section 6, clause 2, of the Constitution.<sup>(8)</sup> Before the House agreed to the amendment,<sup>(9)</sup> Mr. Sol Bloom, of New York, explained that it would not preclude a Member appointed as representative to the United Nations from receiving an expense allowance for duties connected with that office.<sup>(10)</sup>

### *Waiver of Salary*

#### **§ 4.8 When a Member was imprisoned for a criminal offense for a four-month period during a term of Congress, he instructed the Sergeant at**

8. See the House report on said amendment, H. REPT. No. 1383, 79th Cong. 1st Sess. By removing compensation for the position, if held by a Member, the amendment removed the office from the Supreme Court's definition of an incompatible office, a "term (which) embraces the ideas of tenure, duration, emoluments, and duties." *U.S. v Hartwell*, 73 U.S. 385, 393 (1868).
9. 91 CONG. REC. 12286, 79th Cong. 1st Sess.
10. 91 CONG. REC. 12281, 79th Cong. 1st Sess.

#### **Arms to return his salary to the Treasury during that four-month period.**

On May 3, 1956, Mr. Thomas A. Lane, of Massachusetts, requested by letter the Sergeant at Arms of the House to return his congressional salary covering the period from May 7, 1956, to Sept. 7, 1956, to the Treasury of the United States. During that four-month period, Mr. Lane served a criminal sentence for income tax evasion.<sup>(11)</sup>

#### **§ 4.9 A Senator-elect who continued to hold an incompatible office beyond the convening of Congress waived his congressional salary up to the time he resigned that office and took the oath.**

Jacob K. Javits, Senator-elect from New York, did not appear on Jan. 3, 1957, the opening day of the 85th Congress, to take the oath with the rest of the Senate, but was administered the oath on Jan. 9, 1957.<sup>(12)</sup> No objection was made to the administration of the oath to Mr. Javits, although he did not resign from his position as attorney general of the State of

11. See *U.S. v Lane*, United States District Court for Massachusetts, Criminal No. 56-51-W.
12. 103 CONG. REC. 340, 85th Cong. 1st Sess.

New York until the day he appeared to take the oath of office in the Senate.<sup>(13)</sup> Mr. Javits waived his congressional salary for the period prior to his taking of the oath.<sup>(14)</sup>

***Retirement, Health, and Insurance Benefits***

**§ 4.10 Members are eligible for Civil Service retirement, health, and insurance benefits.**

Members of Congress may elect to participate in a Civil Service Retirement System, initiated for them by the Legislative Reorganization Act of 1946.<sup>(15)</sup> To fund the optional program, deductions are made from the Member's con-

13. *Biographical Directory of the American Congress 1774-1971*, S. Doc. No. 92-8 pp. 1183, 1184, 92d Cong. 1st Sess. (1971).

14. *Senate Manual* § 863 (1971) (statistical section).

An early opinion of the Attorney General proposed that until taking the oath a Representative-elect could receive salary for both his congressional position and his incompatible office. 14 Op. Att'y Gen. 408 (1874), cited at 2 USCA § 25.

15. Pub. L. No. 79-601, 60 Stat. 850, Ch. 753, § 602, Aug. 2, 1946, codified in 5 USC § 8331(2). A Member or Delegate must give notice in writing to the official by whom paid in order to become subject to retirement.

gressional salary.<sup>(16)</sup> Members may also elect to receive life and health insurance.<sup>(17)</sup>

**§ 4.11 Where Members were shot by persons in the House Gallery, the House adopted a resolution paying from the contingent fund amounts to defray hospital, medical, and nursing expenses in the treatment of their injuries.**

On Mar. 4, 1954,<sup>(18)</sup> the House authorized by resolution that there be paid out of the contingent fund of the House necessary amounts to defray the medical expenses and the treatment of injuries of those Members of the House who were hit by bullets fired by several occupants of the House galleries on Mar. 1, 1954. Mr. Charles A. Halleck, of Indiana, delivered remarks in explanation of the resolution:

MR. HALLECK: Mr. Speaker, I ask unanimous consent for the immediate consideration of House Resolution 456.

16. 5 USC § 8334. As of 1973, the deduction was eight percent of salary. To be eligible for benefits, an ex-Member must be at least 62 years old and have completed at least five years civilian service or be at least 60 years old and have completed 10 years Member service. 5 USC § 8336(f).

There is no mandatory retirement age for Members of Congress. See 5 USC § 8335.

17. 5 USC § 8901-8905 (health); 5 USC §§ 8701, 8702 (life).

18. 100 CONG. REC. 2709, 83d Cong. 2d Sess.

The Clerk read as follows:

*Resolved*, That there shall be paid out of the contingent fund of the House such amounts as may be necessary to defray hospital, medical, and nursing expenses in the treatment of injuries incurred in the House of Representatives by its Members during the session of the House on March 1, 1954.

THE SPEAKER:<sup>(19)</sup> Is there objection to the present consideration of the resolution?

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, reserving the right to object, and of course I am not going to, will the gentleman from Indiana explain the resolution?

MR. HALLECK: Mr. Speaker, this resolution was introduced by our colleague from Michigan [Mr. Cederberg], a very close friend of one of our colleagues who was injured the other day.

The purpose of the resolution is to provide for payment out of the contingent fund of the House of the necessary medical and hospital expenses for our five colleagues who were so tragically wounded on the House floor the other day. They were here on duty in the House of Representatives. It seems to me and to everyone with whom I have discussed this matter it is only fair and right that the hospital and medical expenses which they are incurring in the treatment of their wounds be borne out of the contingent fund of the House of Representatives.

MR. RAYBURN: Mr. Speaker, I withdraw my reservation.

THE SPEAKER: Is there objection to the request of the gentleman from Indiana [Mr. Halleck]?

There was no objection.

### ***Salary of Deceased Member***

**§ 4.12 The Committee on the Judiciary and not on House Administration has jurisdiction of resolutions providing that the Comptroller General approve payment of the claim of the estate of a former Member for salary due to such former Member.**

On Aug. 5, 1954,<sup>(20)</sup> Mr. Carl M. LeCompte, of Iowa, asked unanimous consent that House Resolution 301 (below) be rereferred from the Committee on House Administration to the Committee on the Judiciary, since the resolution had the elements of a claim. There was no objection.

House Resolution 301 reads as follows:

*Resolved*, That in order to enable the Comptroller General to certify for payment, under the provisions of 31 USC §712b, the claim of the estate of the late James M. Hazlett, a Member of the Seventieth Congress, who took office on March 4, 1927, and who resigned therefrom effective October 20, 1927, for the sum of \$6,305.42, which sum represents the salary due and unpaid Mr. Hazlett for such period of service, the Speaker is hereby authorized, in pursuance of the provisions of 2 USC §48, to certify the proper salary

19. Joseph W. Martin, Jr. (Mass.).

20. 100 CONG. REC. 13469, 83d Cong. 2d Sess.

certificates covering such period of congressional service.

In the next Congress, on June 20, 1955,<sup>(1)</sup> unanimous consent was granted that House Resolution 269, authorizing payment of the salary due to Mr. Hazlett, deceased, be referred to the Committee on the Judiciary.

**§ 4.13 On one occasion, the House paid to the widow of an ex-Member the difference between his past due congressional pay and his military pay, where he had obtained a leave of absence to enter the military and later resigned his House seat to remain in the service.**

On May 14, 1946,<sup>(2)</sup> the House adopted the following resolution:

*Resolved*, That the Sergeant at Arms of the House of Representatives is hereby authorized and directed to pay to Catherine L. Harrington the sum of \$2,448.76, which sum represents a difference between the congressional pay and military pay of her late husband, Vincent F. Harrington, a member of the Seventy-seventh Congress, who obtained a leave of absence therefrom, effective May 8, 1942, to enter the military service, and who resigned his congressional office on September 4, 1942.

In House Report No. 2307, accompanying the resolution, it was

1. 101 CONG. REC. 8757, 84th Cong. 1st Sess.
2. 92 CONG. REC. 4998, 79th Cong. 2d Sess.

indicated that the resolution was drafted to comply with the practice of the Sergeant at Arms of the House during World War II of not disbursing congressional salary to those Members who took leaves of absence to serve in the military.<sup>(3)</sup>

**§ 5. Leaves of Absence**

While the House is in session, every Member must be present, unless excused or necessarily prevented from attendance.<sup>(4)</sup> There are two types of authorized absences, excused absences and leaves of absence. The former are temporary in nature and are granted during the call of the roll. This section discusses leaves of absence granted by the House, which are more permanent in nature, lasting at least one day's leave.

A request for leave of absence for a Member is usually presented by another Member following the legislative program for the day.<sup>(5)</sup> Although requests for leaves may be presented orally from the floor, they are properly presented by filing with the Clerk the printed form which is made available at

3. See § 4.6, *supra*.
4. Rule VIII clause 1, *House Rules and Manual* § 656 (1973).
5. See 4 Hinds' Precedents § 3151.