

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.

the desk of the Sergeant at Arms.<sup>(6)</sup> The requests are normally granted by unanimous consent, although they may be refused.<sup>(7)</sup> Requests for leaves of absence may be challenged as not being on official business, although in current practice Members do not challenge the good faith of others in asking leave.<sup>(8)</sup>

As shown in the excerpt from the Record below, the reason for a leave of absence may be simply stated as “official business” or may be specified, as in the case of illness in the Member’s family:<sup>(9)</sup>

By unanimous consent, leave of absence was granted to:

Mr. Thompson of New Jersey (at the request of Mr. O’Hara) on account of family illness.

Mr. Blanton (at the request of Mr. Jones of Tennessee), for today, on account of official business.

Mr. Lowenstein (at the request of Mr. Albert), for today, on account of official business.

Mr. Price of Texas (at the request of Mr. Arends), on account of emergency appendectomy.

Mr. Baring (at the request of Mr. Burton of California), for today, on account of official business

The statutes authorize the Sergeant at Arms to levy pro rata de-

6. See 6 Cannon’s Precedents § 199.

7. See 2 Hinds’ Precedents §§ 1142–1145.

8. See §§ 5.5, 5.6, *infra*.

9. 116 CONG. REC. 36769, 91st Cong. 2d Sess., Oct. 14, 1970.

ductions on the salaries of Members or Delegates absent for other than their sickness or the sickness of family members.<sup>(10)</sup> In addition, the Sergeant at Arms may deduct an amount equal to allowable mileage from congressional salary, where the Member withdraws from his seat and does not return before the adjournment of Congress without obtaining leave.<sup>(11)</sup> Not since 1914, however, have those provisions been enforced.<sup>(12)</sup> Due to the number of Members, and to the proliferation of their official duties in Congress, committee field work, and in their home states, enforcement is no longer feasible

#### Cross References

Administration of oath to absentees, see Ch. 2, *supra*.

Salary deduction for unauthorized leave, § 4, *supra*.

Application of constitutional immunities while absent, §§ 15–18, *infra*.

Compelling attendance of Members upon the House, Ch. 20, *infra*.

10. 2 USC § 39, which has been construed as a congressional recognition that the money in the hands of the Sergeant at Arms is under his official control. *Crain v U.S.*, 25 Ct. Cl. 204 (1890).

11. 2 USC § 40.

12. See § 5.1, *infra*.

***Salary Deductions for Unauthorized Absence***

**§ 5.1** Since 1914, no deductions have been taken from Members' salaries for unauthorized leaves of absence.

The last docking of pay for unauthorized absences was accomplished by resolution on Aug. 25, 1914.<sup>(13)</sup>

***Statement of Voting Position***

**§ 5.2** After a Member has taken a leave of absence, he may by unanimous consent insert in the Record a statement on how he would have voted on matters considered during his absence.

On Dec. 21, 1970,<sup>(14)</sup> Mr. Harold R. Collier, of Illinois, was granted unanimous consent to insert in the Record the statement of the manner in which he would have voted during his leave of absence of the prior week, had he been present in the House. Mr. Collier then listed in the Record the roll calls that were voted on the prior week, the subject of each roll call, and the vote he would have made thereon.

<sup>13.</sup> 6 Cannon's Precedents §198.

<sup>14.</sup> 116 CONG. REC. 43136, 91st Cong. 2d Sess.

***Leave for Military Service***

**§ 5.3** At the beginning of World War II, the House granted leaves of absence to Members for training and service in the Armed Forces of the United States.

On June 10, 1941,<sup>(15)</sup> the House granted a leave of absence to a Member for three weeks, in order to attend military training as a lieutenant colonel in the Officers Reserve Corps:

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to Mr. Scrugham, for 3 weeks, on account of military training, Army antiaircraft artillery school.

On Oct. 23, 1941,<sup>(16)</sup> the House granted indefinite leaves of absence to a Member for duty as a military officer:

MR. [SCHUYLER OTIS] BLAND [of Virginia]: Mr. Speaker, our colleague from Virginia, Hon. Dave E. Satterfield, Jr., has long been a member of the Naval Reserve, and has been ordered to temporary duty. I ask unanimous consent that he be granted leave of absence indefinitely.

THE SPEAKER:<sup>(17)</sup> Is there objection to the request of the gentleman from Virginia?

<sup>15.</sup> 87 CONG. REC. 4991, 77th Cong. 1st Sess.

<sup>16.</sup> 87 CONG. REC. 8210, 77th Cong. 1st Sess.

<sup>17.</sup> Sam Rayburn (Tex.).

There was no objection.

Similar leaves of absence were granted on May 8, 1942.<sup>(18)</sup>

**§ 5.4 During World War II, Members absent from the House for military service returned to their congressional duties after the War and Navy Departments stated their opposition and after those Members ceased receiving congressional salary.**

Immediately prior to and during the first months of World War II, various Members took leaves of absence in order to serve in the military.<sup>(19)</sup> On June 1, 1942, however, there were inserted in the *Congressional Record* letters from the Secretary of War and Secretary of the Navy opposing the enlistment or commissioning of Members since they could render greater service by continuing to represent their constituents.<sup>(20)</sup> And in accordance with an opinion given him by the Comptroller General, the Sergeant at Arms of the House ceased paying congres-

18. 88 CONG. REC. 4028, 77th Cong. 2d Sess.

A number of other Members took leaves for military service. See H. REPT. NO. 2037, accompanying H. Res. 512, 79th Cong. 2d Sess.

19. See § 5.3, supra.

20. 88 CONG. REC. A-2015, 77th Cong. 2d Sess.

sional salary to those Members absent on military service.<sup>(1)</sup>

Most of those Members then resigned from the military and returned to attendance in the House.<sup>(2)</sup>

***Challenging Requests for Leave***

**§ 5.5 The good faith of a Member in requesting a leave of absence is not customarily questioned by other Members of the House.**

On Sept. 29, 1967,<sup>(3)</sup> when Mr. Charles A. Vanik, of Ohio, arose to reserve the right to object to requests presented for leaves of absence, the House Minority Leader, Gerald R. Ford, of Michigan, commented as follows on the reservation of objection:

MR. GERALD R. FORD: Mr. Speaker, I did not hear the full observation or comment of the gentleman from Ohio, but I would only say this: To my knowledge, in my 19 years here, I have never heard anybody on either side of the aisle challenge the good faith of a Member who was seeking leave of absence on account of official business.

1. See H. REPT. NO. 2037, accompanying H. Res. 512, 79th Cong. 2d Sess.

2. See § 14, infra, for more complete details on the military service of Members.

3. 113 CONG. REC. 27314, 27315, 90th Cong. 1st Sess.

Mr. Vanik withdrew his reservation of objection.

**§ 5.6 On one occasion a Member, proceeding under a reservation of objection to a request for leaves of absence for certain Members on “official business,” questioned whether their business was, in fact, “official” and then withdrew his reservation.**

On Sept. 29, 1967,<sup>(4)</sup> there were laid before the House requests of five Members for leaves on official business. Debate on the requests proceeded under a reservation of the right to object:

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Speaker, reserving the right to object, I would like to raise an issue, that two of the gentlemen that asked for official leave, to be absent from sessions from the House of Representatives, are among those who have been urging the Speaker to have sessions through Saturday, and to start sessions at 11 o'clock in the morning. I would like to know if this really is official business these two gentlemen are engaged upon, or is it some other kind of mission? . . .

. . . I was wondering if the distinguished minority leader might be able to clear up the question I raised about these gentlemen, who are among those who are very much responsible for our being here on a bill which we could

have finished yesterday. They asked for sessions on Friday and Saturday, and they are not here today, and now they have asked for official leave of absence. I think this is a perfectly bona fide request, and I would like to know, I would like to be assured they are truly involved in something that relates to the business of the House of Representatives.

MR. GERALD R. FORD: Mr. Speaker, let me repeat a little differently what I said a moment ago: We have never challenged the veracity of a Member who asked for a leave of absence or the basis on which a Member asked for leave of absence based on the signature of the leader. We do not intend to in the future. We have to do a great deal of business in this Chamber based on faith and trust in one another. I assume when a Member on this side of the aisle asks for a leave of absence on account of official business, that it is for a legitimate purpose. I do not know in this particular case the precise details, but I would suggest the gentleman make his inquiry to the Chair and not to me.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, will the gentleman yield?

MR. VANIK: I yield to the gentleman from Ohio.

MR. HAYS: Mr. Speaker, I think it would be fair to assume the two gentlemen in question are on official business and that the letter they sent was a little pleasant demagoguery which did not add too much to anything.

MR. VANIK: Mr. Speaker, I will withdraw my opposition, but I think the point has been made. I certainly appreciate the position of the majority leader and the minority leader when they

4. 113 CONG. REC. 27314, 27315, 90th Cong. 1st Sess.

submit these requests on behalf of Members. I think the 28 signers of the letter complaining about slowness of business in the House of Representatives have, in effect, questioned the actions of the entire House of Representatives. I think, insofar as they have done this, and tried to discipline the entire House, they themselves are subject to question in their motives and in their own attendance records in the House.

Mr. Speaker, I withdraw my reservation of objection.

The several personal requests were agreed to.

### ***Absences Not on Official Business***

#### **§ 5.7 A leave of absence from a date certain to the end of the session was granted a Member who listed as his reason a desire to be with his family in Europe during the Christmas season.**

On Dec. 20, 1969,<sup>(5)</sup> the House granted a leave of absence by unanimous consent to Mr. Wayne N. Aspinall, of Colorado, from Dec. 22, 1969, until the end of the first session, to enable him to spend Christmas with his family in Europe.

#### **§ 5.8 When a Member was imprisoned for a criminal offense for a four-month period**

5. 115 CONG. REC. 40491, 91st Cong. 1st Sess.

#### **during the term of Congress, he instructed the Sergeant at 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>(6)</sup>

#### **§ 5.9 A Member was granted a leave of absence for maternity reasons.**

On Nov. 1, 1973, a leave of absence was granted to Mrs. Yvonne B. Burke, of California. The Record noted:<sup>(7)</sup>

By unanimous consent leave of absence was granted to:

Mrs. Burke of California (at the request of Mr. Hawkins), on account of maternity leave.

#### **§ 5.10 The House granted a leave of absence to a Member, without pay, at his request, while he conducted a**

6. See *U.S. v Lane*, United States District Court for Massachusetts, Criminal No. 56-51-W.

7. 119 CONG. REC. 35653, 35662, 93d Cong. 1st Sess.

**campaign for another political office.**

On Sept. 20, 1971,<sup>(8)</sup> a leave of absence was granted without pay:

. . . Mr. Edwards of Louisiana, effective September 8, without pay, on account of the campaign for Governor of the State of Louisiana.

**§ 6. Travel**

There are three types of travel by individual Members for which they may receive allowances or reimbursement: travel to and from the home district; other domestic travel on official House business; and limited overseas travel on official House business. Allowances or reimbursement must be made pursuant to specific authorization, as the congressional compensation dictated by the Constitution<sup>(9)</sup> only extends to pay for official services, and not to reimbursement for expenses incurred through performance of such duties.<sup>(10)</sup>

**8.** 117 CONG. REC. 32430, 92d Cong. 1st Sess.

**9.** U.S. Const. art. I, §6, clause 1.

**10.** Allowances are reimbursement for actual or presumed expenses and are additional and separable from the legal rate of compensation. *Smith v U.S.*, 158 U.S. 346 (1895).

Where there has been no congressional appropriation for a travel al-

Each Member is entitled to a mileage allowance for travel to and from each regular session of Congress.<sup>(11)</sup> The rate of reimbursement for such travel has been maintained at 20 cents a mile if by automobile, and at the actual cost of transportation if travel is by common carrier. Payments are computed on a basis of actual automobile speedometer readings, limited by a standard mileage guide, and are credited to the individual Member's account by the Sergeant at Arms at the beginning of each session.<sup>(12)</sup>

Each Member may also be reimbursed, at 12 cents a mile, for a certain number of round trips to his home district during the session.<sup>(13)</sup> As alternate payment, a

allowance for an extra session of Congress, a Congressman cannot claim a constructive allowance as part of his compensation. *Wilson v U.S.*, 44 Ct. Cl. 428 (1909).

**11.** 2 USC §43. The provision applies to the Resident Commissioner from Puerto Rico and to the Delegates from Guam and the Virgin Islands (see 48 USC §1715).

**12.** Regulations of Travel Expenses, issued by the Committee on House Administration, Mar. 1, 1971, p. 20.

**13.** The number of round trips per session was formerly codified (see 2 USC §43b-1). In the 92d Congress, however, the Committee on House Administration became empowered by law to periodically review and ad-