

The Commonwealth of Massachusetts

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REPORT OF THE HOUSE COMMITTEE ON ELECTIONS  
ON THE PETITION OF FRANK B. OLIVEIRA (See  
House, No. 2375).

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HOUSE OF REPRESENTATIVES.

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FRANK B. OLIVEIRA, et alii

*vs.*

MATTHEW J. KUSS, sitting member.

The Committee on Elections, to which was referred the petition of Frank B. Oliveira for a recount of the votes cast for Representative in the Tenth Bristol District and that said Oliveira be declared the duly elected Representative from said district, which comprises Wards 1, 2 and 3 of the city of Fall River, respectfully submits the following report:

The petition (House, No. 2375) is as follows:

"The undersigned, a citizen of Fall River, Massachusetts, respectfully represents that at the state election held November fourth, nineteen hundred and fifty-eight, the petitioner was one of the Democratic candidates for the office of Representative to the General Court from the Tenth Bristol District.

"That the first count of votes cast in said Representative contest gave the undersigned a majority of one hundred and eight votes over his opponent, Matthew J. Kuss of Fall River, Massachusetts.

"That upon a petition filed by said Matthew J. Kuss, a recount of votes cast was made and the result of said recount gave Matthew J. Kuss a majority of thirty-eight votes.

"That your petitioner believes that the recount made was erroneous and that another recount of the votes cast should be made in order that it may be definitely determined which of the tabulations made is correct.

"That it is a very peculiar coincidence that out of the twenty-three voting precincts in the district that there are eight precincts wherein there is a variance in the number of ballots counted originally and the number of ballots counted at the recount and the total variance comes to exactly thirty-eight votes or the very margin by which candidate Kuss, Republican, emerged from the recount.

"That your petitioner states that he was first informed by the recount authorities that ten counting tables were to be used at the recount; that later he was told that

fifteen tables would be used; that when he arrived at the recount chamber on the morning of the recount he found that there were eighteen tables set up for use; that he had no proper notice of such an unnecessary increase in the number of tables and that he was unprepared to properly protect himself by a staff of thirty-six observers and tally clerks.

"That such a larger number of counting tables created a situation wherein there was considerable confusion and inability to supervise and oversee the entire count and tabulations going on in so many places, together with the possibility of his losing votes cast for him during such a fast count of ballots.

"That your petitioner requested a list of all the applicants who applied for an absentee ballot and was given a list that contained only sixteen names. Your petitioner feels that there were many more absentee voters than appear on said list and that he has not been given the opportunity to pass upon the validity of the applications and envelopes of said absentee voters and desires that said applications and envelopes be made available so that their validity may be properly determined.

"That your petitioner protested forty-six ballots at the recount that were wrongly counted for his opponent or were counted as blanks.

"Wherefore, Your petitioner prays that such action, including a recount as above requested, be taken so it may be determined whether your petitioner was elected as Representative to the General Court from said Tenth Bristol District, and that if it be determined that he was so elected, he be seated as a Representative from said District.

"FRANK B. OLIVEIRA,  
217 Columbia Street, Fall River, Mass."

This district is entitled to two representatives. However, for purposes of the petition the only parties concerned in this matter are the sitting member, Matthew J. Kuss, and the chief petitioner, Frank B. Oliveira.

Each received, according to the returns certified to the Secretary of State, and after a recount had been held, the following vote:

Matthew J. Kuss . . . . .	8,375
Frank B. Oliveira . . . . .	8,337

Thereafter, the Secretary of State certified that Matthew J. Kuss had been elected by a majority vote, and accordingly, on the face of the returns, Kuss was declared duly elected and a certificate of election was issued to him.

Kuss, whose election is being contested, by petitioner, was apparently elected by 38 votes.

The Committee held public hearings on the petition on February 16, 24 and 25, 1959, at which the petitioner and the sitting member, or their legal counsel, were present and afforded an opportunity to be heard.



The Committee further finds, after careful consideration thereof, that the remaining allegations in the petition are without factual foundation, and should be dismissed as without merit.

In the course of its hearings and investigation, the Committee examined a great number of voting lists used in the precincts of the Tenth Bristol District, and discovered no trace of fraud, impropriety, or irregularity in the voting or tallying procedures.

Any discrepancies which have been disclosed appear to be attributable to blameless human error which would undoubtedly and normally occur in the casting and tabulation of approximately 16,700 ballots.

In all such errors brought to the attention of the Committee, it would be impossible to demonstrate whether their occurrence favored one or the other or neither of the candidates.

It has long been established that this type of error cannot operate to disfranchise the voter: *Cheney v. Coughlin*, 201 Mass. 204; *Cahill v. Morse*, Reports of Contested Election Cases in the Senate and House of Representatives of the Commonwealth of Massachusetts for the Years 1933-1942, page 30.

The Committee, therefore, finds that the voters of the Tenth Bristol District elected the sitting member, Matthew J. Kuss, and therefore recommends that the petitioner be given leave to withdraw.

By the House Committee on Elections:

ROGER A. SALA,

*Chairman.*

DANIEL M. O'SULLIVAN.

LAWRENCE P. SMITH.

LEO J. REYNOLDS.

THOMAS M. FLAHERTY.

CARLTON H. BLISS.

JOHN W. WHITTEMORE.