

Legislative Session #43, 1883-1884

Session convened 1 January 1883

Roll call:	Fayette County	D. F. Rivers
	Haywood County	Samuel McElwee
	Shelby County	Josiah Patterson, E. J. Wendell, Morgan J. Kelley, H. B. Ramsey, Leon Howard

John W. Boyd was not seated on the first day of session and was listed as absent on Tuesday, January 2. About mid-morning on Tuesday, in the middle of the voting for the post of Sergeant-at-arms, **Boyd** arrived, and this entry follows:

“Hon. J. W. Boyd, Representative elect from the counties of Haywood and Tipton, presented his credentials and was qualified by the Speaker.”

Washington Lafayette Ledgerwood, Democrat from Knox county, was elected Speaker of the House on the seventh ballot.

Committee assignments:

- **John W. Boyd**
 - Federal Relations
- **Leon Howard**
 - Military Affairs
- **Samuel McElwee**
 - Military Affairs
 - Public Printing
- **D. F. Rivers**
 - Education and Common Schools
 - Federal Relations
 - Public Printing

Bills introduced by **John W. Boyd**:

- 12 February: “**Mr. Boyd** introduced **House Joint Resolution No. 92**, Authorizing the Governor to offer a reward for the arrest of the murderers of Ephraim Grundy. – Taken up under a suspension of the rules, and adopted.”
- 27 February: “**Mr. Boyd** introduced **House Bill No. 663**, To prevent discrimination by railroad companies in passenger rates paying first-class fare. – Passed first reading.”
- 1 March: “**House Bill No. 663** . . . Passed second reading and referred to Judiciary [*sic*] Committee.”
- 2 March: “**Mr. Boyd** introduced **House Joint Resolution No. 126**, In regard to the management of the penitentiary. – Lies over under the rules.”
- 24 March: “**House Bill No. 663**, To prevent discrimination by railroad companies among passengers who are charged with and pay first-class passage, and fixing penalty for violation of the same. – Mr. Milliken offered an amendment, which

required railroad companies to provide separate cars for different passengers. – Adopted. – And the bill as amended passed by [a vote of 56-19 – Rivers voted aye, Boyd voted no, McElwee and Howard did not vote, although both were present during that session.]

Other legislative activity involved **John W. Boyd**:

Bills introduced by **Leon Howard**:

- 5 January: “**Mr. Howard** introduced **House Bill No. 34**, To repeal Chapter 130 of the Acts of 1875. — Passed first reading, and referred to the Judiciary Committee.” Additional reference is incorrect and refers to a different bill. No further references.
- 10 January: “**Mr. Howard** introduced **House Bill No. 129**, To repeal sections 2437a and 2437b of the Code, in regard to illicit intercourse. – Passed first reading, and referred to Judiciary Committee.” No further references.
- 15 February: “**Mr. Howard** introduced **House Bill No. 493**, Providing for the appointment of an Assistant Superintendent of Public Schools. – Passed first reading.”
- 19 February: “**Mr. Howard** introduced **House Resolution No. 105**, To change rules of House. – Lies over.”
- 20 February: “**Mr. Howard** introduced **House Bill No. 556**, To repeal part of the Act relating to inn-keepers, common carriers, etc. – Passed first reading.
- 21 February: “**House Bill No. 493** . . . Passed second reading, and referred to Committee on Education and Common Schools.” No further references.
- 21 February: “**House Bill No. 556** . . . Passed second reading, and referred to Judiciary Committee.” No further references.
- 28 February: “**Mr. Howard** introduced **House Bill No. 666**, To regulate the attendance of children to public schools in taxing districts. – Passed first reading.”
- 1 March: “**House Bill No. 666** . . . passed [second] reading, and referred to the Committee on Education and Common Schools.”

Other legislative activity involving **Leon Howard**:

- The House spent hours trying to pass a railroad bill. On 21 March, “**Mr. Howard** offered the following amendment: *Be it further enacted*, That all persons paying first-class passenger rates of fare shall be entitled to first-class cars, and the said commission are empowered to proceed to have discriminations in this respect corrected in such manner as may seem to them proper, and upon failure or refusal of any railroad company operated in this State to comply with the provisions of this section, they shall forfeit and pay to the party aggrieved the sum of three hundred dollars, and the costs incident to the collection of the same, to be recovered in any of the courts having jurisdiction. – Mr. Manson called the previous question on the passage of the bill. – Not sustained. – The question recurring on the amendment, Mr. Manson moved to lay it on the table. – Carried by the following vote: Ayes 64, Noes 27.”

Bills introduced by **Samuel McElwee**:

- 3 January: “**Mr. McElwee** offered **House Resolution No. 9**, To compensate the temporary Clerks and Sergeant-at-Arms and Porters of the House. — Lies over.”
- 5 January: “**Mr. McElwee** introduced **House Bill No. 12**, To amend the law establishing a State Normal School. — Passed first reading, and referred to Committee on Education and Common Schools.”
- 16 January: “On motion of **Mr. McElwee**, the rules were suspended, and **Mr. McElwee** offered **House Joint Resolution No. 59**. Instructing Senators and requesting Representatives in Congress in regard to National aid for educational purposes. Which was taken up under a suspension of the rules. — Mr. Ramsey moved to amend by striking out the preamble. — Carried. — And the resolution as amended was adopted.”
- 16 January: “**House Bill No. 12**, To amend an Act establishing a State Normal School. — Passed second reading, and made special order for January 23d, 11 o’clock a.m.”
- 22 January: “**Mr. McElwee** introduced **House Bill No. 298**, To amend the law of 1875, in regard to the organization of corporations. — Passed first reading, and referred to Committee on Incorporations.”
- 23 January: “**House Bill No. 12**, made special order for February 13, at 11 o’clock a.m.”
- 7 February: “**Mr. McElwee** introduced **House Bill No. 341**, To regulate and fix the fees of Sheriffs and other collecting officers. — Passed first reading, and referred to the Judiciary Committee.” No further references.
- 13 February: “**House Bill No. 12**, To amend the Normal School law, being the special order for this house, was taken up. — Made the special order for Thursday at 11 a.m.”
- 15 February: “The hour having arrived for the special order—**House Bill No. 12**—it was taken up. — **Mr. McElwee** moved to amend by striking out \$15,000 and inserting \$13,300 in the first section; strike out \$5,000 and insert \$3,300 in the second section. — Mr. Berry moved to lay the bill and amendment on the table. — Upon which motion the ayes and noes were called, and it prevailed by the following vote: Ayes 50, Noes 38. — Explanation. — Mr. Haynes desired the following explanation entered upon the Journal: MR. SPEAKER—I vote to lay the bill on the table in order alone to reach the committee’s bill on the same subject, with the declaration that I will favor the appropriation of \$3,300 to the education of persons of African descent, and \$10,000 to the Normal College, when the committee’s bill on the subject shall be reached. R. W. Haynes.”
- 19 February: “**Mr. McElwee** introduced **House Bill No. 526**, To amend section 4000 of the Code, in regard to selecting jurors. — Passed first reading.”
- 20 February: **House Bill No. 298**, listed on page 439, is omitted from that page, but it apparently passed the second reading and was passed on to the Committee on Incorporations. See 28 February.
- 21 February: “**House Bill No. 526** . . . Passed second reading, and referred to Judiciary Committee.” No further references.
- 28 February: “Mr. Berry, Chairman of the Committee on Incorporations, made the following report: MR. SPEAKER—The Committee on Incorporations beg leave to report that they have had under consideration the following bills and recommend

action thereon as stated below: . . . **House Bill No. 298**, To amend the Act to provide for the organization of corporations, so as to authorize boards of directors to increase their number to fifteen or eighteen, is recommended to be laid on the table.”

- 15 March: “**Mr. McElwee**, by unanimous consent, called up **House Bill No. 298**, An Act to provide for the organization of corporations. – Passed third reading by the following vote: Ayes 79, Noes 0. – A motion to reconsider was laid on the table.”

No other legislative activity involving **Samuel McElwee**:

Bills introduced by **David F. Rivers**:

- None

Other legislative activity involving **David F. Rivers**:

- 18 January: “**Mr. Rivers**, a memorial in regard to compensation of Justices of the Peace. – Referred to Committee on Finance, Ways and means.

In February Rivers faced a challenge by E. A. Steger concerning his right to serve in the Legislature. The matter was referred to the Committee on Elections, who produced both Majority and Minority Reports:

14 February: Report – “Pending consideration of House Bills on second reading, Mr. Pillow, Chairman of Committee on Elections, by unanimous consent, made the following report:

“MR. SPEAKER—Your Committee on Elections, to which was referred the contested election case of Steger *vs.* Rivers, have had the same under consideration, and, after a careful investigation of all the proof and law pertaining thereto, I am instructed by said committee to make the following report:

“That the said D. F. Rivers is not entitled to the seat he now holds as Representative from Fayette county. They further report E.A. Steger is justly, under the law and facts Representative of said county in the 43d General Assembly. The majority find that the said D. F. Rivers was not, as is required by the Constitution, a resident of Fayette county for one year immediately preceding the election, by virtue of which he claims to be entitled to a seat in this body. They find from the testimony that D. F. Rivers was absent from Fayette county attending school in Nashville during the latter part of the year 1879; that in 1880 he left Nashville and engaged in the business of school teaching in the county of Fayette; that upon the close of his school he returned to Nashville; that in 1881 he [*sic*] from Nashville to Mississippi, where he taught school from 5 to 7 months; that from Mississippi he returned to Nashville, stooping [*sic*] only a few weeks in Fayette county; that in the spring of 1882 he applied for a school at Goodlettsville in Davidson county, and, failing to secure the situation sought, applied for and secured a school in Somerville, Fayette county, and removed thence May 19, 1882. The proof in aggregate clearly shows that the said D. F. Rivers has had no fixed habitation from 1879

to the present time entitling him to citizenship. A majority of the committee are decidedly of the opinion that the proof is conclusive; that E. A. Steger was, at the time of the November election last, a citizen of Fayette county; that he received at said election the greatest number of votes cast for any citizen of said county, as a candidate to represent the same in the 43rd General Assembly.

“The evidence also tends to establish that a large number of colored voters of Fayette county were desirous of voting for the contestant, and other Democratic candidates, but that they were deterred and prevented from doing so by a deliberate and organized system of intimidation, social ostracism and threats of violence on the part of the Republicans of Fayette county, and their friends in the adjoining county of Shelby.

“The testimony developed the fact that a supervisor, pretending to officiate under a Federal statute was present at the voting place of the 13th civil district in Fayette county, at LaGrange, and that he sat by the ballot box during the election. It also shows that just so soon as the polls were closed, this pretended officer took possession of the ballot box, and poured out its contents, and, without pursuing the State statute, separated the ballots into two piles, one of which he said were Republican votes and the other Democratic votes. He did not call the names of persons voted for on each ticket, as the law requires, but simply assorted them by their size. I am therefore directed by a majority of the committee, after having considered all the facts, to report that the said E.D. Steger is entitled to a seat in the 43d General Assembly as Representative from Fayette county. The committee therefore recommend that he be accordingly sworn in.

ERNEST PILLOW, *Chairman*.

“Mr. Jarvis made the following minority report:

“MR. SPEAKER—The undersigned members of the Committee on Elections beg leave to submit the following minority report in the contest of Steger vs. Rivers:

“It appears that D.F. Rivers attended college at Nashville, Tenn., during the session of 1881 and 1882, and returned to his native county, Fayette, in May, 1882, where he began a public school, and, while thus engaged, became a candidate for the Legislature, and was elected to that place on the 7th of November, 1882. It is insisted by a majority of your committee that his absence from his home, in Fayette county, while attending school, as above mentioned, rendered him inelligible [*sic*] to hold the office to which he was duly elected, and recommend that Ed. Steger be declared the legal Representative of said county, having received the next highest number of votes to Mr. Rivers of all the candidates for same office.

“Sec. 9 of Article 2, of the Constitution of Tennessee, recites that ‘no person shall be a Representative unless he shall be a citizen of the United States, of the age of twenty-one years, and shall have been a citizen of this State three years, and resident in the county he represents one year immediately preceding the election.’

“Cooley’s Constitutional Limitations, page 755, among other things, says: ‘Every person at all times must be considered as having a domicil [*sic*] somewhere, and that which he has acquired at one place is considered as continuing until another is acquired at a different place.’ It nowhere appears from the record before the committee that Mr. Rivers had at any time an intention of changing his legal residence. It does appear that he made an application for a school in some other portion of the State, but was not employed

to teach the same. It further appears that Mr. Rivers is a young man and had been teaching for the purpose of enabling him to attend school.

“Cooley’s Constitutional Limitations, page 755-6, further says: ‘Temporary absence from one’s home, with continuous intention to return, will not deprive one of his residence, even though it extend through a series of years.’

“In Fry’s Election Case, 71 Penn., page 302, the grounds of contest being that the students of Allentown College had voted in the election. The students were divided into two classes: 1st, Those who support themselves, or are assisted by persons other than their parents, are emancipated from their fathers’ families, have left the home of their parents and never intend to return and make it permanent abode. In regard to this class, the court held: ‘Having, as the case states, come to Allentown for no other purpose than to receive a collegiate education, and intending to leave after graduating, they have not lost their home domicil [*sic*], and could vote there on returning to it, though they should not re-enter their father’s house.’ This holding of the court is based upon the well defined principle, as stated above, that the domicile which a person acquires at one place is considered as continuing until another is acquired at a different place. It is in proof that Mr. Rivers applied for a school at Goodlettsvill [*sic*], Tenn., his home in case he had succeeded: Had such been his intention, however, still the undersigned members of your committee are clearly of opinion that this intention would not cause him to lose his citizenship in Fayette county, for the reason that an actual removal never occurred.

“In Fry’s Election Case, 71 Penn., 309, it is laid down as a correct principle, that ‘a mere intention to remove, not consummated, can neither forfeit the party’s old domicil [*sic*], nor enable him to acquire a new one. Removal out the state, without an intention permanently to reside elsewhere [*sic*], will not lose residence, nor will an intention to remove permanently, not followed by actual removal, acquire it.

“It nowhere appears, from the evidence submitted to the committee, that the contestee either intended or desired to change his residence, and that he was all the time in his native county, during the period from his childhood to the present, except six months in the State of Mississippi in the year 1881, returning to his home in October, 1881, in Fayette county, being engaged there in teaching school during said period of six months, and the time he has spent in college at Nashville, Tenn., remaining in Nashville during the period of school year, and returning home thereafter. It would be impossible for any one to lose their domicil [*sic*] or legal residence, without acquiring a new one; and, without the proof of the acquisition of a new domicil [*sic*], it is impossible to show that the old one has been abandoned. It is nowhere attempted [*sic*] io [*sic*] be shown that Mr. Rivers had acquired a new domicil [*sic*].

“In regard to that portion of the report of the majority of the committee, which recommends the seating of Mr. Steger, it is here insisted that the same is neither based upon law, precedent or justice. The idea of a minority speaking for the majority, is repugnant to every principle of fairness, and destructive of the very letter and spirit of our political institutions. Mr. Cooley on Constitutional Limitations, in support of the principle laid down, page 781, ‘That if the person receiving the highest number of votes was inelligible [*sic*], the votes cast for him will still be effectual, so far as to prevent the opposing candidate being chosen, and the election must be considered as having failed,’ refers to the decision of the Supreme Courts of twelve of the States of this Union.

Among others, the following are referred to in support of the recommendations to be hereinafter made.

“In 14 Wisconsin Reports, pages 498-9, the holding in a former case is adopted in the case there considered, and the questions declared settled, ‘That the mere inelligibility [*sic*] of a candidate does not render void the votes cast for him; that such votes should not be rejected, but should be counted by the canvassers; and that in the event of such inelligible [*sic*] person having the highest number of votes, the person having the next highest number would not be thereby elected.’ In 47 Miss., page 267, the opinion of the court is entirely in accord with the above. In 23 Much. Reports, page 341, the language of the opinion is, ‘no one is elected at a popular election unless there are more ballots cast for him than for any other person, whether there is or not, in fact, any such person in existence who can take the office. A minority candidate can never be allowed to maintain his title,’

“Sec. 912 of Thompson and Steger’s Code of Tennessee, provides that, ‘When the person whose election is contested, is found to have received the highest number of legal votes, but the election is declared null by reason of constitutional disqualification on his part, or for other causes, the person receiving the next highest number of votes cannot be declared elected, but the election shall be declared void, and so certified to the power authorized to fill the vacancy or order a new election.’

“That D. F. Rivers was, at the time of his election, a legal resident of Fayette county, Tenn., and had been for a period of more than twelve months prior thereto, is sustained by all the facts appearing beyond question, and that Ed. Steger was not elected, and is not entitled to a seat as a member of this body, there is and can be no doubt in the judgment of the undersigned committee, and it is therefore recommended that Mr. Rivers retain his seat as a member of the House, and that the committee on election be released from the further consideration of the matters embraced in this contest.

Respectfully submitted,

H. C. JARVIS, *for the minority.*

Both reports were made the special order for to-morrow at 2:30 o’clock p.m.”

15 February: “The contested election case of Steger v. Rivers, being the special order for this hour, was taken up.

“The reports of the majority and minority of the Committee on Elections were read by the Clerk.

“Mr. Pillow moved to adopt the majority report.

“Mr. Jarvis moved to adopt the minority report.

“The Clerk was directed to read the evidence taken before the Committee on Elections. . . Pending consideration of the contested election, the House adjourned until 10 a.m. to-morrow.”

16 February: “The contested election case of Steger v. Rivers, being the unfinished business, was taken up. . . .

“Pending consideration of the contested election case, the House adjourned until 2 p.m.”

AFTERNOON SESSION

“Pending consideration of the contested election case, the House adjourned until 10 a.m. to-morrow.”

17 February: “Mr. Patterson moved that the motion of Mr. Jarvis to substitute the minority report for the majority report be laid on the table.

“Which motion failed by the following vote: Ayes 38, Noes 49. [*List of names, omitted.*]

“Mr. Looney announced that he had paired with D. B. Thomas.

“Mr. Pillow announced that he had paired with R. R. Butler.

“Mr. Head offered the following amendment to the minority report, which was accepted by Mr. Jarvis:

“Amend the minority report by striking all of it down to the words: ‘That D. F. Rivers was, at the time of his election, a legal resident of Fayette county.’

“The question recurring on the minority report, as amended,

“The ayes and noes were demanded, and the minority report, as amended, was adopted by the following vote: Ayes 55, Noes 34. [*List of names, omitted.*]

“Mr. Wendell gave the following explanation of his vote: MR. SPEAKER—In explaining my vote upon this questions, I would day that whilst it is unpleasant to be called upon to vote upon questions where party ties demand that I should vote with the Democrats, yet I am free to say that my oath of office is paramount to every other consideration. From the evidence in this case, I am fully convinced that Mr. Rivers, at the time of his election to the House, and one year previous thereto, had his domicile, home and residence in the county of Fayette, and at the election held November 7, 1882, received a majority of the legal votes of said county over his opponent, Mr. Steger; therefore I believe Mr. Rivers is entitles to his seat. The rule of 8 to 7 is obnoxious to me both in law and in politics.

“In my place here to-day, rising above party considerations and social surroundings, I expect to case my vote as I believe—the side of law and justice, though the heavens fall—in favor of Mr. Rivers, when my name shall be called. E. J. WENDELL.

“Mr. Kelly offered the following explanation of his vote: MR. SPEAKER—In casting my vote in the contest, I desire to do so from my own honest convictions and pure motives, and from the light before me in this case, I believe Mr. Rivers has been honestly elected, and is justly entitled to his seat in this house. KELLY.

“Mr. Blackburn offered the following explanation of his vote: MR. SPEAKER—Inasmuch as I think that Mr. Rivers was ineligible to a seat in this House, by reason of his being a non-resident of Fayette county for a requisite time next preceeding [*sic*] the election, therefore I vote no. BLACKBURN.

“Mr. Parks offered the following explanation of his vote: MR. SPEAKER—After carefully examining the resolution and attentively listening to the various able and ingenious arguments of the gentlemen who saw proper to do so, and according to my view of the law and facts, and seeing no other way that I can consistently act than that which is the nearest approximating to exact justice, and believing that neither Rivers, the contestee, or Steger, the contestant, are, so far as the proof in this case shows, legally and constitutionally entitled to the seat. I therefore vote no. R. A. SPARKS.

“Mr. Stephens offered the following explanation of his vote: MR. SPEAKER—I do not believe that the contestee, Rivers, is eligible to a seat in this body under the Constitution of Tennessee, nor do I believe that the contestant, Steger, is entitled to the seat under the law, I think the seat should be declared vacant. I therefore vote no. W. B. STEPHENS.

“Mr. Dow offered the following explanation of his vote: MR. SPEAKER—I have endeavored to arrive at a just conclusion in regard to this case, and I thought the best way to do so was to place Mr. Steger in Mr. Rivers’ place and then consider as to whether I would vote to unseat Mr. Steger under the same circumstances, and cannot find it in my heart to say that I would. Therefore, having taken an oath not to be controlled in my vote by favor, affection, partiality or prejudice, I am compelled (though reluctantly) to vote for the adoption of the minority report. I therefore vote [aye]. D. L. DOW.

“Mr. Wallace entered the following explanation of his vote: MR. SPEAKER—In explaining my vote allow me to say that I am not influenced by party considerations. Being a democrat to the manner born, and one of the straightest sect, should I allow my feelings and prejudices to control my action, my vote would be cast otherwise, and were I making my own choice I might act differently, but the qualified voters of Fayette county (as I believe they have), have spoken through the ballot-box, and I shall recognize their act and respect their choice. As a democrat I am unwilling to lay myself open to the charge of being influenced in my vote from purely political prejudices. It is true we have abundant precedent set us for this kind of legislation by our political opponents, and which Mr. Rivers, as I understand, belongs to the political party which has set us this very reprehensible precedent, as a democrat I must be allowed to dissent to the practice inaugurated by them whenever opportunity offered a political advantage by its exercise, and record my vote in favor of sustaining the minority report, because I believe it to be right, and as a democrat I dare do what I believe the right. D. F. WALLACE.”