

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 631

S. P. 257

In Senate, January 24, 1963

Referred to Committee on Constitutional Amendments and Legislative Reapportionment in concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Communication from Fred Scribner, Jr., President.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

Second Report of Maine Constitutional Commission.

Maine Constitutional Commission

January 23, 1963

To the Honorable House and Senate
of the 101st Legislature
State House, Augusta, Maine

Members:

I have the honor to transmit to you herewith the Second Report of the Maine Constitutional Commission.

Very truly yours,
Fred C. Scribner Jr.
President

TO THE LEGISLATURE OF THE STATE OF MAINE:

SECOND REPORT OF MAINE CONSTITUTIONAL COMMISSION

The Constitutional provisions covering judicial power and appearing as ARTICLE VI of the Constitution have been carefully studied and reviewed by the Commission and discussed and considered with Maine students of the judicial system. Except to provide for the appointment of Judges of Probate, no major amendment appears to the Commission to be required in ARTICLE VI.

The Commission is unanimous in its opinion that the existing practice of electing Judges of Probate should be changed. These Judges, with the complexity of their work constantly increasing and with the office of judge of probate becoming more and more important in the Maine judicial system, should now be appointed by the Governor as are the judges of the supreme judicial, superior and district courts. The Commission makes such a recommendation.

The members of the Commission do not at this time recommend the appointment of registers of probate. Registers should continue to be elected in the same manner as clerks of court and registers of deeds. However, a register of probate is not a judge and there is no necessity for providing for the election of such officials in the Constitution. Legislation should be adopted at this session of the Legislature providing for the election of registers of probate.

Other changes recommended by the Commission in ARTICLE VI, are :

1. Providing in Section 2. of the Article that the pay of all judges in the Maine court system shall be protected against diminution during a judge's continuance in office.

2. An amendment to Section 3. to remove the Council as one of the entities which may seek opinions on important questions of law from the justices of the supreme judicial court.

3. The elimination of Section 5. of ARTICLE VI. which authorizes the appointment of justices of the peace and notaries public. The importance of these offices has greatly diminished over the years and provisions for appointment of justices of the peace and notaries public should now be covered by statute and not continued in the judicial section of our Constitution. In addition, the authority for appointment of notaries public is carried in Section 8. of ARTICLE V, Part First, of the Constitution.

4. The Constitution as presently drawn forbids justices of the supreme judicial court to hold any other office under the State of Maine. It seems advisable to the Commission to make this restriction applicable to judges of the superior and district courts. However, some judges now serve as members of the judicial council charged with studying and reporting on the judicial system of the State of Maine. All judges should be available for service on such council if appointment is offered to them. Therefore, what is now Section 6. of ARTICLE VI. has been amended to make it applicable to all judges with a proviso permitting any judge who may be asked to serve, to become a member of the judicial council.

5. From time to time, complaints have been received concerning the activities of individuals holding appointment as justices of the peace. Under the present Constitutional provisions, since such justices are considered to hold a judicial office, they can only be removed by impeachment or by address of both branches of the Legislature. This is an unduly cumbersome method of terminating the right of an individual to hold a relatively minor office. It is believed that the Constitution should permit the Legislature to provide additional methods by which individuals holding the office of justice of the peace may for cause be removed from such office. An amendment which would grant this right has been made to the proposed Section 4. of the redrafted Article on judicial power.

The necessary Resolve to accomplish the changes recommended by the Commission is attached hereto and made a part of this report.

Emery O. Beane, Jr.
John P. Carey

Carleton E. Edwards
 Robert A. Marden
 Edwin R. Smith
 Stanley G. Snow
 George D. Varney
 John F. Ward
 Robert M. York
 Fred C. Scribner, Jr., President

January 23, 1963

RESOLVE, Proposing an Amendment to the Constitution to Revise Article VI Thereof relating to Judicial Power.

Constitutional amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article VI, amended. Article VI of the Constitution is amended by substituting in place and in stead of the present Article VI the following:

ARTICLE VI.

Judicial Power.

SECTION 1. The judicial power of the State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

SECTION 2. The Justices of the Supreme Judicial Court and the judges of other courts shall, at stated times receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward for their services as justices or judges.

SECTION 3. The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives.

SECTION 4. All judicial officers shall hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the Legislature to the executive, provided further that justices of the peace may be removed from office in such manner as the Legislature may provide) and no longer, unless reappointed thereto.

'SECTION 5. No Justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state, nor under this State, except as justice of the peace or as member of the Judicial Council.'

SECTION 6. A judge of probate holding office on the date this amendment becomes effective shall continue to hold such office until the term for which he has been elected shall expire or he otherwise ceases to serve. Vacancies in the office of judge of probate occurring subsequent to such effective date whether

by expiration of the term to which a judge has been elected or otherwise shall be filled by appointment by the Governor with the advice and consent of the Council. This Section 6 of this Article VI need not be printed as part of the Constitution, and this Section 6 of this Article VI of the Constitution shall hereafter be omitted in any printed copy of the Constitution or amendments thereto.