

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Fifth
Legislature***

OF THE

STATE OF MAINE

Volume III

June 16, 1971 to June 24, 1971

Index

1st Special Session

January 24, 1972 to March 10, 1972

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**KENNEBEC JOURNAL
AUGUSTA, MAINE**

SENATE

Thursday, January 27, 1972

Senate called to order by the President.

Prayer by the Rev. Robert W. Gunn of Gardiner.

Reading of the Journal of Yesterday.

Communications

State of Maine
Office of the Governor
Augusta, Maine
04330

January 26, 1972

To the Honorable Members
of the Senate and
House of Representatives
of the 105th
Maine State Legislature

After careful consideration, and after thoroughly studying the majority and minority reports of my special study committee, I have decided to return Senate Paper 240, Legislative Document 701, AN ACT Relating to Powers and Duties of the Attorney General, to the Legislature without my signature.

This legislation confronted a very real problem - the need to improve our system of criminal prosecution. As the majority report of my special study committee points out, "the present system for prosecution of crimes is not working well." The majority report further emphasizes that "the election of parttime prosecutors on a county-wide basis is having several undesirable results," including the inability of prosecutors in the more populous counties to keep up with the heavy workload.

I agree with the majority members that our system of parttime prosecutors must be reformed, but both the majority and minority members of my study committee point out too many technical deficiencies in this bill for me to consider it the proper vehicle of reform.

Among the technical problems are these:

1. The legislation appears to end inadvertently the terms of the county attorneys and their assistants before the new system of appointed assistant attorneys

general could possibly be implemented;

2. There is confusion between the residency requirements of L. D. 701 for assistant attorneys general and the boundaries of court jurisdiction;

3. There is uncertainty about the disposition of the civil responsibilities of the present county attorneys and their assistants; and,

4. The bill does not explicitly indicate, though it appears to assume, that the assistant attorneys general are to hold full-time positions.

The minority notes that "the financing proposed for this massive change is totally inadequate to the achievement of its goals." According to figures provided by the Department of Finance and Administration, L. D. 701, properly implemented on a biennial basis, would cost, in a conservative estimate, approximately \$1,176,000. If one subtracts from this figure the current appropriation for county attorneys' salaries, \$432,000, the net estimated, biennial cost of the full-time prosecutor bill would be \$744,000 to start with. Experience indicates this cost could be expected to increase rapidly. L. D. 701 itself appropriates only an additional \$100,000 to carry out the purposes of the legislation. Even conceding that the legislation is operative only in the latter part of the second year of the biennium, the extent of underfunding is still quite large. It would be irresponsible to enact a new system into law with inadequate appropriations.

More fundamentally, I agree with the minority members of the study committee that the need for full-time prosecutors does not imply that we must abandon our present system of elective prosecutors in favor of an appointive system. Indeed, my decision to veto L. D. 701 issues basically from my conviction that there are values inherent in a system of elected prosecution which must be retained. In some instances prosecutors may be unduly sensitive to public criticism. But no system can eliminate public pressures, and those who argue that prosecutors must be institutionally

protected from them through an appointive system hold a view of the prosecution function which I feel is unrealistic and which invites a far greater danger - the unresponsive or arbitrary use of governmental power against the civil rights of citizens.

Criminal prosecution is not a precise science. It does not involve clear determinants which control obviously right decisions. It involves, instead, enormous discretion at all stages of the process - in the fundamental decision to prosecute, in the evidence to be presented, in the penalties sought. The factors which control this discretion can be as varied and subjective as the prosecutor chooses. They are not spread on any public record. Moreover, this discretion involves an exercise of power of the most basic kind - over the very freedom of individuals. Under these circumstances, where broad discretion and great power reside in a public official, I feel the check of direct, popular election is crucial.

I also feel it is important to understand, as the minority report emphasizes, that the prosecution of the accused is only one part of a total criminal justice system which includes law enforcement officials, judges, prosecutors, administrative personnel of the courts, correction officers, psychiatrists, and probation and parole officers. Except for the election of sheriffs, and except for the distant control exercised through the appropriation process, our only democratic check over this entire criminal justice system is the locally elected prosecutor.

Some statistics emphasize the importance of this point. In forty-five states, including Maine, local prosecutors are elected, whereas only five states have an appointive system. If the change contemplated in L. D. 701 were to become law, Maine would be one of the few states in the country where the prosecutors are appointed officials. While the experience of the other states is certainly not a decisive consideration in judging the merits of legislation, I think the prevalence of the election model for local

prosecutors in other states, is a factor to be considered.

The Advisory Commission on Intergovernmental Relations, in a recently released report entitled **Prosecution Reform**, has acknowledged the importance of responsiveness to local needs in prosecution. Commenting on the unified, statewide prosecution system found in only three states (Alaska, Delaware, and Rhode Island), which is the system basically involved in L. D. 701, the Commission states at page 3 that it "does not see this approach as generally applicable as it deems responsiveness to local needs an important factor in prosecution."

The Advisory Commission does acknowledge that: "The state attorney general can play a major role..., setting minimum prosecutorial standards, providing technical assistance and establishing statewide councils of prosecutors."

I have just signed into law legislation providing for a full-time Attorney General. This important reform, if now combined with legislation establishing a system of full-time, locally elected prosecutors, could provide the basis for the more coordinated and effective system of prosecution envisioned by the Advisory Commission on Intergovernmental relations, but one which does not sacrifice the values of democratic control and responsiveness inherent in the present system.

The issue, to be sure, is not a clear one. My own special study committee divided 8 to 7 in favor of signing L. D. 701. I am deeply grateful for the work they did in illuminating both sides of the issue. I also recognize the hard work done by many legislators at the end of the regular session of the 105th Legislature in securing passage of this legislation. They labored out of a strong desire to strengthen our criminal justice system. However, while sharing this fundamental commitment, I cannot accept the specific form it has taken in L. D. 701.

Respectfully
KENNETH M. CURTIS
Governor

Which was Read.

The PRESIDENT: The question now before the Senate is: Shall this bill become law notwithstanding the objections of the Governor? According to the Constitution, the vote will be taken by the Yeas and Nays.

The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS of Penobscot: Mr. President and Members of the Senate: I feel that perhaps an explanation is in order on this particular bill, since I was the sponsor of the bill.

As you will recall, in the waning days of the regular session of the 105th Legislature, Senator Harding from Aroostook, myself, Mr. Lund from the other body, and the Committee on State Government got together and finally came up with a compromise on a bill for full-time prosecutors in the State of Maine. Now, needless to say for those of you who have been here for many years, you know how difficult it has been to come up with a bill that would meet the approval of at least the majority of the members of both of these bodies. And finally, as I say, in the waning days of the regular session we came up with such a compromise. It met with high favor in both bodies and the bill, of course, was enacted and sent on to the Governor for his approval. The Governor saw fit not to approve it immediately, as he wanted more study done on the bill itself, and subsequently appointed a blue ribbon committee. I was indeed pleased to have been made a member of that committee, along with Senator Harding from Aroostook and thirteen other individuals in the State of Maine who are very familiar with the prosecution of criminals and the problems in our judicial system.

The blue ribbon committee went round and round with this particular bill and finally, upon completing our study, we recommended, eight to seven, to the Governor to approve the bill. Of course, you have before you this morning the veto.

If you will recall, after we adjourned last June, the editorials in most of our state papers came out commending this legislature for

having enacted such worth-while legislation, something that had been needed for years. The legislature had finally got together and came out with a bill which we had hoped would at least commence to answer the problems of criminal prosecution in the State of Maine. One of the newspapers referred to this bill as being the miracle bill of the 105th Legislature. I felt, as an attorney, as a citizen, and as a Senator, that finally these legislative bodies had decided to reform our judicial system and, it was certainly hoped, were for governmental reform and other reforms which we have long needed but, unfortunately, by the stroke of a pen we have permitted the prosecution of crime in Maine to remain both in an archaic and antiquated state. That same pen could well have signed the bill into law, and it would have proven to the State of Maine that the Legislature and the Executive were really interested in bringing to the people full-time prosecutors and judicial reform.

I bring to your attention the message of the Governor in his veto. He has cited four items which he felt were real problems with the bill. Mr. President and Members of the Senate, I say to you that the problems cited there are insignificant and, as Chairman of the Judiciary Committee, along with the support of the Senator from Aroostook, Senator Harding, there would have been no problem whatsoever in amending these very minor, technical problems in the omnibus bill. We could have done this with no problems whatsoever.

Now, maybe the money aspect of it was a problem, but he did present a message to the joint caucus and a budget, and had the Governor really been interested in judicial reform and in prosecution of criminals, then he might have included something in his budget request for the special session.

The other aspects of his message, well, I have seen platform committees of both the Republican and Democratic Parties that sounded similar to the remainder of the message: the flag waving bit, the apple pie and motherhood type of argument. It is indeed

unfortunate that this bill was not approved by the Governor.

We talk of governmental reform and we talk of judicial reform, and yet when we come to judicial reform for some reason or other we don't seem to agree. Now, recently the Governor in his message to the legislature - he said the bills for governmental reorganization aren't perfect. Well, there is no bill that is perfect, and I agree with him, but we must start somewhere, and this full-time prosecutor bill was a start in the right direction. Now, had he come back in his message and given us an alternative course to take, then maybe I could see the wisdom of having vetoed this bill, but no alternative course has been given to us. We are left right back where we have been for 150 years, in an archaic and antiquated state of prosecution for crimes in Maine.

Now, let me paraphrase some of his remarks to you about governmental reorganization. The Governor said "Governmental reorganization -" and I could interpret that as being judicial reform - "will not produce overnight miracles, but it is a start and a necessary step on the road to building greater public confidence in prosecution for crime in Maine." Through his entire message to us on governmental reform, if you would merely paraphrase it in those areas and replace the words "governmental reform" with the words "judicial reform", you will come up with a very logical and valid argument for not having vetoed this bill.

If you will recall, the vote in this body was 25 to 4 for passage. I hope this morning that you will override the barriers of our parties for the best interests of the people of Maine and join me in voting against the veto. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Violette.

Mr. VIOLETTE of Aroostook: Mr. President and Members of the Senate: I am very glad to see the students from Oakfield High School here. I suppose if they stay long enough they will perhaps eventually learn that neither side is always 100 per cent right or 100

per cent wrong on most of these questions.

This matter of full-time prosecution or improving our prosecution system in our state has certainly been with us for a long time, and since I have been a member of this body we have tried to make some improvements in it. I think it is, I must say, unfortunate that up until this date we have not been more successful.

I concur with many of the remarks made by my good friend from Penobscot, Senator Tanous, on the work which has been done in trying to improve this system. I have worked on it and others have worked on it. Unquestionably, the basic question here involved is really, as far as I am concerned, not whether or not we need a full-time prosecution system or whether we need a major improvement in it; certainly I agree with that 100 per cent. I think the question is about how our prosecution system is going to be selected, and this is the central reason involved in the Governor's veto.

The Governor raises several questions that undoubtedly could be agreed upon as far as remedying the bill is concerned, but the fundamental and the underlying reason raised by the Governor in his veto is his own conviction that we should not abandon the elective system of choosing our prosecutors or prosecution system in favor of an appointive system. I would say that I concur with the Governor on that basic principle.

On July 1, 1969, when this legislature had before it competing legislative measures on how we would go about selecting our prosecution system and improving our prosecution system, I raised the very point of whether it was in the best interest of our own people, our government and our people, to remove the prosecution system from the elective process. I said then that quite some years before I was all for removing many of the present elective offices to the appointive system, but I was increasingly becoming concerned that we were removing too many of our governmental functions from the elective processes of our people. I think I still

share those basic feelings, and as we have removed more and more of the elective offices from our people I think we tend to remove them more and more from active participation in their role, and tend to move more and more of the governmental process to the executive branch where they have less and less control of it.

Some people might say perhaps our people should have no control over the prosecuting system, but I tend to feel differently. I tend to feel that indeed, as the Governor notes in his veto, that it is the prosecution system now in our state, at least, as poor as it is - and I make no defense for it; it is not good, because of the lack of personnel to carry out the job properly - at least it is the only part of our judicial process which comes to the people at the elective level. We don't elect our judges, and I make no pitch for that now. We don't elect any of the people in our whole judicial system or our system of justice today, except the prosecutors, and I question whether or not we should remove that from the elective process of our people.

This is the Governor's major reason for vetoing this legislation. And I will stand here and say that I voted for the bill, which we now have before us with the veto, last June. I resisted it, and Senator Harding and Senator Tanous know how long they talked to me, with my expressing to them my concern about removing the prosecution system from the elective process of our people, but finally, I guess, I said O.K., I will go along with it. But that does not remove my major concern with removing that part of our system of justice from the elective process of our people. This is the fundamental basis on which the Governor has vetoed this bill, and I must concur with him. And I must say, in all fairness, that I was somewhat disappointed myself that in vetoing the bill not more was done by the Governor to come up with an alternative, and I have told him so. However, this does not change the central question which is now before us on this veto: whether or not we will elect or appoint our prosecutors.

Now, I mention this without intending or wanting to engage in personalities at all, but I think that the Attorney General in Augusta would make no better choice of prosecutors than the people can in their own respective areas of the state. They will be lawyers and, hopefully, they will be as qualified at either level.

We can at this session, and I certainly pledge my whole cooperation, evolve or work out a prosecution system which will work effectively, which will do the job, and I certainly concur with Senator Tanous, that ought to be done, but which can be done in retaining the elective process. I hope that this Senate will sustain the Governor's veto and that we can go on and work together collectively in evolving that kind of a process which will retain the elective process in our prosecution system.

The PRESIDENT: The chair recognizes the Senator from Somerset, Senator Johnson.

Mr. JOHNSON of Somerset: Mr. President and Members of the Senate: The State Government Committee spent about 400 collective hours on this particular bill, and it is probably one of the finest pieces of legislation that has ever evolved or come out of a committee that was made up of both parties.

As Senator Tanous has said, this has put us back 50 or 100 years, right back where we started, and we have no alternative. We have some problems here, and the bill that has been presented to us to take the place of this one, which we heard the other day, is a very poorly drawn bill; it doesn't do the job. I believe we had every lawyer in the other body and the Senate before our committee, plus many other people, and we spend many hours in compromise, fights, discussions, arguments, but when we finally did come up with this bill I think everybody - if you checked the vote, it was 25 to 4 here in the Senate, I think - so there were only three or four opposed to it.

Now, this committee has been through these reorganization bills, and I think we have all learned one thing: that when you make

a start on some of this reform you have got to take the first step. Nothing is perfect to begin with, but as far as reorganization is concerned, I believe this was one of the finest bills that we ever put out, and it is a shame and it is too bad that perhaps politics has entered into it. I believe Senator Harding has said that this is an area that politics should be kept out of perhaps, and if anyone did read the bill, they realized that the appointment of these full-time prosecutors were by the Attorney General, with the approval of the Governor, so you can see that we have a check and balance here to a certain extent. And I think the judicial field, the prosecution field, should be kept out of politics.

We have another bill here now, as I said, that we are working on. I think we were pretty discouraged right from the beginning with it, but if we have got to do it all over again, I am sure we will. I hope somewhere along the line we can compromise and get this thing off the ground, and put the criminal prosecution back where it belongs. The dockets today are filled up and everybody needs help. There are attorneys today, that people couldn't afford and didn't have years ago, through the fundings of the counties and so forth, people that are indigent and can't afford lawyers, but now the counties and the state supply the attorneys for them. So these things are building up. We had the solution here, and it is a shame that the Governor felt, in his wisdom, that he had to veto probably one of the finest bills that I have ever seen come out of any committee.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Levine.

Mr. LEVINE of Kennebec: Mr. President and Members of the Senate: It is pretty hard for a layman to stand up and argue with attorneys because they are trained for it but, in my judgment, I think we should uphold the Governor on this bill for the following reasons:

I would go along with some of the attorneys here to override this veto if the Attorney General was elected by the people. I am not

casting any reflections on Attorney General Erwin; I feel he is a very capable man, but we have got to be honest with ourselves and admit that people who usually lose elections, or who are the party faithful, usually end up with the plum jobs, or whatever you call them, in the State of Maine. I don't think they should have the right to go and appoint afterwards prosecutors for the State of Maine.

The only thing we can do now is uphold the Governor on this, and the leadership should then put in a bill - and we should allow them to put it in unanimously - that the Attorney General should be elected, and then have the power to appoint the prosecutors. I think that would solve the problem and everybody would be satisfied.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Harding.

Mr. HARDING of Aroostook: Mr. President and Members of the Senate: This is one time that I wish I could take a walk, because whatever I do here I certainly cannot be a winner.

There is no man in public life that I have come to admire and like so much as I do the Governor of this State. There is no man to whom I owe so much, as far as my political well-being now and in the past is concerned, as my good friend, Senator Violette from Aroostook. We have been through many wars together. I have come this term to be very good friends with the Senator from Penobscot, Senator Tanous, and I want to commend him here. I think that in the some 200 bills which have come before the Judiciary Committee, in just two bills, which were obviously of a partisan nature, did we ever disagree as to concepts. On the others we viewed them strictly from the judicial standpoint as to what was best for the people of Maine.

You have heard me be distressed this term because of what I have suggested are people's rights being taken away from them, and I can't tell you of the distress which I have because of what is happening to our judicial system because of the discredit which it is receiving. It is not because the judges want,

for example, to be easy on defendants and give them probation or suspend their sentences. It is not that at all. It is merely because in most cases they simply don't have the manpower, they don't have the people, the prosecutors, to press these cases, and it is a question of bargaining in so many cases and people are going unprosecuted. I love the judicial system, and this is the thing which we have got to place in front of everything else, the well-being of it. I think it is in serious jeopardy now, it is in serious disrespect.

I agree with the Governor on what he suggested about having these people elected, and we tried as best we could to devise some way which would be reasonable under our present system to have them be elected. And I wasn't satisfied with this bill; there are some technicalities which are wrong in it, but those can be corrected in the errors and omissions law, as so often we do. I wasn't satisfied with this bill as presented. If I were to do it ideally, we certainly would have these people elected. But it is not a question sometimes of what you want as an ideal; it is what you can get. And as far as I am concerned, this is the best instrument that this legislature could devise to take care of the problems before us.

I cannot express my disappointment that if these people who were advising the Governor on this, and suggesting to him that he veto this bill, this minority member of this committee which worked on this, to me, it was the height of irresponsibility to say this is not the way, but then not come forward and say this is the way and it is the better way, and they have not done so.

I heard the testimony for the substitute bill which, supposedly, was drafted by one member of this committee that voted against this bill, and all of the people who testified before the State Government Committee agreed that the bill was inadequate, that it would not do the job, and this is all we have before us. So I do owe an explanation to all of the people here and to my constituents of my position

in it, because I have worked on this thing, and on the position which I shall take at this point. As much as I respect the Governor, and as much as I respect Senator Violette, I mean, my conscience will not let me vote against this bill. It is the toughest vote of my life, I assure you, but I cannot stand with the Governor in the position which he has taken on this at this time.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Levine.

Mr. LEVINE of Kennebec: Mr. President, could I ask a question of Senator Harding through the Chair?

The PRESIDENT: The Senator may state his question.

Mr. LEVINE: I would like to ask Senator Harding if he wouldn't agree that if we elected the Attorney General, and then have him appoint the prosecutors, if that wouldn't be the best way?

The PRESIDENT: The Senator from Kennebec, Senator Levine, has posed a question through the Chair to the Senator from Aroostook, Senator Harding, which the Senator may answer if he desires.

The Chair recognizes the Senator from Aroostook, Senator Harding.

Mr. HARDING of Aroostook: Mr. President, I certainly would agree that that would be the better way and, if this bill becomes the law, it still could be the way. I mean, the Constitution could be amended and you could elect the Attorney General, and then I assume that all of these objections could be taken care of. But that is not before us; that is not the issue.

The issue is what you are going to do with the problem facing us. We really don't have a viable alternative, and this grieves me greatly.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: I think the gravity of the problem has been underscored by the good Senator from Aroostook, Senator Harding, in his recent remarks. I think also the seriousness of the situation is rather dramatically put again by the vote

of the Governor's Committee. I think we must realize that the Governor is very concerned and would appoint to a committee the best people that he possibly could, and when a group like this is practically split across the line, then obviously we have a real serious problem here. Most appointing authorities of a committee get somewhat of a viewpoint of their own that emanates from such a committee, but we didn't see that here.

Now, as has been very well and more ably pointed out by previous speakers, the nub of the problem is the method of the selection of the county attorneys, district attorneys, call it what you will, and I think that Senator Harding's comment that this was the best available compromise is very, very true.

To get back to the so-called big problem, the election, granted, we may now elect county attorneys, but we very well know this hasn't worked out. We have the evidence right in front of us: the election of county attorneys does not work out, and this is what we are trying to solve. So the continued election, to hold this up as the obstacle for approval, it seems to me that we are avoiding the real, real issue here, and we are saying it is the issue but I don't approve of it.

I think that in the old days maybe a county attorney probably should have been elected but, along with many other things, times have changed and we now find ourselves in a homogenous state where the people from Fort Kent, the people from Kittery, Calais and Bethel all have a community of interest in intermingling, and our judicial system at the higher levels takes cognizance of it as to their course.

Now, the main problem with an elected county attorney is the inflexibility of the system. And when we are talking about inflexibility in the judicial system we are talking about ineffectiveness, we are talking about lack of effective prosecution, and this is the problem. And if we continue to elect our county attorneys, or if we call them district attorneys and elect them from a specific district, then we are hog-tying the adminis-

tration of justice at the judicial level, and this is exactly what we are trying to avoid. There should be built in, and there generally in all these propositions is built in, flexibility so that the chief judge can assign these judges in districts and then come and go as we do in the district court set-up. This has worked out very well. We have the results of this in front of us. And the problem, except in magnitude perhaps, is exactly the same.

I am very heartened by the tone that I have heard this morning, and that I read in the Governor's message. His very last words are: "However, while sharing this fundamental commitment, I cannot accept the specific form it has taken in this L. D." To my mind, this indicates that the Governor is very anxious to do what he can, and we have heard from members of both parties that they are anxious to do it. We do have an L. D. that is the vehicle to do it so that the outcome today will not preclude this special session, if it should fall that way, from acting on it. And I would hope that in that spirit perhaps we could vote to override the veto and that, if we can't, that everybody, the Executive and the Legislative Branch, can work out a successful compromise, and this would be one of the outstanding things I know we all agree that this special session could accomplish.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Kellam.

Mr. KELLAM of Cumberland: Mr. President and Members of the Senate: I think the record should show today that the vote to be taken does not reflect a vote that is necessarily for or against a full-time prosecuting system.

It always seems to me that the committee particularly, but the legislature as a whole, or those members at least who so fervently espouse the need for full-time prosecutors, just refuse to take a realistic attitude toward providing a solution for the problem. In the regular session of this legislature and the session two years ago I submitted a bill for full-time prosecutors in our court system, and this bill is summarily dis-

missed each time and we get the same old chestnut coming forward that we have before us today.

It appears to me that full-time prosecution doesn't mean that we have various people who come and go in a particular capacity working full-time at a job. Full-time prosecution would mean that we have full-time prosecution by the same people, that we have people selected for their particular abilities in the field of criminal law who are given some type of tenure in this particular position to enforce the law.

Now, a dozen years ago, and I was a member of the legislature at that time, we passed a district court system, and that district court system has worked out very well. It has replaced the parlor judges we used to have in the traffic court situation which was somewhat akin to what you would expect in some remote area of the world. The district courts have done a good job, and they have done it by virtue of the people that they can attract to that position. These people are appointed by the Governor, with the consent of the Council, and are given a tenure in that position, a tenure of seven years. They are giving up something when they take that position, and they are entitled to have some recognition that they are going to be able to keep their job. Now this particular bill, of course, does not do any of that.

The bill that I have submitted, 1407, I believe the number is this time - and I don't know what the number will be next session, but you can rest assured it will be here - sets up a district prosecuting system along the same lines. It has the appointment by the Governor, with the confirmation of the Council. I have the feeling myself that if these people have the capacity of selecting our Supreme Court judges, they also have the capacity of selecting our prosecuting attorneys. This system would allow for full-time prosecution by the same people; not by the person who was a bright student in law school and ought to be given a chance to see what he can do in this field, or the person who has retired from corporate practice and wants to

take a crack at criminal law. These people would be people who have a particular expertise in this field, and they would have to satisfy the Governor and Council that they do have that expertise before they would be appointed.

Now, I have pushed for this bill at each session, and it just seems to me that when this other bill that we have before us today keeps popping up it seems to indicate the desire by some people who feel that they want to be moving, and they aren't going to be worrying too much about whether they are moving forward or backward but they are changing the system. But once you change the system to what this bill would provide for, there isn't going to be as much opportunity for an improvement as there is now. The present system does not really work out all that bad, and I am in favor of retaining what we have until we have something better. So, with that in mind, it is something of a delight to me to be able to vote to sustain the Governor's veto on this particular bill and, if he gets something back before him of the same type, I certainly hope he will veto it again.

THE PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is: Shall the bill, An Act Relating to Powers and Duties of the Attorney General, become a law notwithstanding the objections of the Governor? According to the Constitution, the vote will be taken by the Yeas and Nays. A vote of yes will be in favor of the bill; a vote of No will be in favor of sustaining the veto of the Governor.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Anderson, Berry, Chick, Dunn, Greeley, Harding, Hichens, Hoffses, Johnson, Katz, Moore, Peabody, Quinn, Schulten, Sewall, Shute, Tanous, Wyman, and President MacLeod.

NAYS: Senators: Bernard, Carswell, Clifford, Conley, Danton, Fortier, Graham, Kellam, Levine, Marcotte, Martin, Minkowsky and Violette.

A roll call was had. Nineteen Senators having voted in the

affirmative, and thirteen Senators having voted in the negative, with nineteen being less than two-thirds of the members present and voting, the veto was sustained.

Thereupon, the Communication was Placed on File.

State of Maine
Office of the Governor
Augusta, Maine
04330

January 26, 1972

To the Honorable Members
of the Senate and House
of Representatives of the 105th
Maine State Legislature:

I am returning without my signature of approval Legislative Document 1862, Senate Paper 678, A RESOLVE, Dividing the State into 31 Districts for the Choice of Senators.

L. D. 1862 narrowly passed the Senate and House of Representatives on June 24, 1971, the last day of the regular session. The Resolve would have established a thirty-one member Senate to be elected in November of this year. As a number of questions were raised concerning the proposed plan I withheld my signature so that the important matter of reapportionment could be given further study.

Subsequently, in August I appointed an essentially non-partisan committee under the Chairmanship of President Bernard P. Currier of St. Joseph's College to review L. D. 1862. The review by this Senate Reapportionment Study Committee resulted in a unanimous recommendation opposing L. D. 1862 because certain districts lacked compactness and reasonable contiguity. Also, a number of factual errors were detected which would have required corrective legislation even if the basic reapportionment plan of L. D. 1862 was acceptable. The Committee then developed and reported a new plan based on thirty-three Senate districts.

Meanwhile on November 3, 1971 the Maine Supreme Judicial Court answered certain questions posed to them, and advised that the Legislature had only until December 31, 1971 to enact a

revised plan. This time stipulation would have required an emergency preamble making it necessary for a two-thirds vote of the members of both Houses of Legislature to pass a new plan. Faced with this emergency procedure and the lack of a mutually acceptable plan, Legislative leaders and I agreed that a special December session to consider Senate reapportionment would be barren of results. All agreed to allow the Maine Supreme Court to adopt a reapportionment plan in the manner provided for by the Maine Constitution.

Since that time the Supreme Judicial Court has solicited and received ten redistricting plans for the Senate. The Attorney General has prepared memoranda of law concerning all the plans, including L. D. 1862 which is now before you.

It has been determined that the Maine Supreme Judicial Court should now reapportion the Senate and that Court's review is nearly accomplished. To properly dispose of this bill I request my action to prevent L. D. 1862 from becoming a law be approved by the Legislature.

Respectfully,
KENNETH M. CURTIS
Governor

Which was Read.

The PRESIDENT: The question now before the Senate is: Shall this bill become law notwithstanding the objections of the Governor? According to the Constitution, the vote will be taken by the Yeas and Nays. A vote Yes will be in favor of the bill; a vote of No will be in favor of sustaining the veto of the Governor. Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: I was a little reluctant to stand here because, like all politicians, I like to play to a full house and an appreciative gallery, and I had felt the heat behind me this morning from the greatest concentration of brains, beauty, and intellectual acumen that the

Democratic Party can present. We had the privilege of having the present State Chairman of the Democratic Party, the honorable Severin Beliveau, my esteemed jousting partner, we had both leaders of the other honorable body here, and several of the so-called younger luminaries on which the future of the Democratic Party rests. However in their innocence the younger people have stayed and the more experienced ones, knowing me, have left.

This issue that we are now debating has several interesting ramifications. I, for one, as a man from Maine am also interested in truth, sincerity, honesty, and if I didn't have red hair I would try to look more like Abe Lincoln than I do. But in this vein in truth, honesty and sincerity you have all probably forgotten the details so I will refresh your memories briefly: 47,000 Maine voters acting under the Constitution of the State of Maine presented a petition, and under the Constitution we were the recipients of the petition. And quite properly we, the legislators, did not presume to put our judgment in place of the voters of the State of Maine. We said, No, let the voters of the State of Maine exercise their right." Then in the due process, we turned down the question that the petition raised, the matter went through us and to the Governor. The Governor's only job, his sole responsibility, under the Constitution, was to set a date. Well, he hasn't done it.

I know I also don't need to draw your attention to another initiative petition that was presented, but in case the details might escape you, this other petition, which dealt with the income tax, received rather prompt attention in the discharge by the Executive of his constitutional obligation. Well, you can apply any number of words to these two situations. The mildest I could think of, without having our presiding officer rule me out of order, the mildest I could think of, that this is about the rottenest form of politics that I have seen since I have been here. It is nothing but politics. How anybody, and I am speaking of Governor Curtis, not Kenneth Curtis the man that

we all know and like as a friend, I can't see any Governor trampling the rights of the people of the State of Maine for pure, ordinary, gutter politics, and that is what we are looking at and that is what we are smelling.

Now, we have in our body here as the spokesman from the Governor's party an esteemed colleague, Senator Violette, and I look on Senator Violette as just that. In the previous debate you have heard some rather lofty expressions politely saying there were minor differences of opinion. I await with a great deal of interest Senator Violette's response to these remarks of mine, because I say that unless he can properly divest himself of the responsibility for this transgression of the constitutional rights of the people of the State of Maine, he stands just as much condemned as the Chief Executive of the State does.

Now, the Chief Executive said and wrote that he would set a date of June 19 for the referendum on this question of ballot reform, wrote it in December. Now, for some good reason he separated the income tax from ballot reform, but why would he find it so necessary to go back on his written word and not set the date of June 19 for a referendum for the voters of the State of Maine. Senator Violette is engaging now in a crusade where I think honesty and integrity are demanded and called for in an elected official from this state, along with another distinguished colleague:

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Violette.

Mr. VIOLETTE of Aroostook: Mr. President, I call for a point of order.

The PRESIDENT: The Senator may state his point of order.

Mr. VIOLETTE: What are we debating? Is this on the calendar? I seriously object to the remarks made by the Senator from Cumberland, Senator Berry. How do his remarks have anything to do with what we have on this calendar here? What are we taking up at this point?

The PRESIDENT: The Chair will state what the Chair has heard so

far. The question before the Senate is the veto by the Governor of Legislative Document 1862, which deals with Senate reapportionment. I think the Senator is right that the Senator from Cumberland has taken some liberty with the veto message, but the Senate has always been very broad in debate in allowing its members to digress from the main subject matter and no one has ever been called out of order before. And as long as the remarks from the Senator from Cumberland, Senator Berry, are not personal to any member of this body, he should be allowed to proceed.

Mr. BERRY: So to sum up my comments, I would urge you to vote yes to override the veto, and I would ask Senator Violette in his, I hope, response to my comments, to shed any responsibility for what has been going on and to use his good offices as the top ranking member of the Democratic Party in the legislature to convince the Chief Executive that he should discharge his constitutional duties.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Aroostook, Senator Violette.

Mr. VIOLETTE of Aroostook: Mr. President and Members of the Senate: I must say that I just don't know how to take the remarks made by the Senator from Cumberland, Senator Berry, I just don't know how to take his remarks. Let me just say I am not the Governor of the State of Maine. I am not aware as of this date that any people's constitutional rights have been violated by the Governor. I have had no part violating people's constitutional rights with regard to initiative referendums which ought to be placed to them or should be placed to them by initiating them through this legislature, and until such a time as there is a decision made by a responsible body, if the Governor has violated the constitutional rights of the people of the State of Maine in submitting initiative referendums to them, I feel that I have no obligation to speak for him. And were the Governor to violate a constitutional or legal right of the people to have

an initiative referendum submitted to them within the constitutional framework, and within the time that he has to, then I would say that he would be wrong.

I see nothing here in this statement made by my colleague, Senator Berry from Cumberland, except a big grandstand play on a purely political issue, and I object to his remarks and directing them at me. When responsibilities are directed to me as a Senator, and they become my responsibility to be fulfilled, I will stand responsible for them. But those are not my responsibilities, and I see no people's rights, at least no one has ruled yet that people's rights have been violated. I object to those remarks. I think they are improper and I think they are a grandstand political play, and I will repeat it again.

When I see one of the other party's candidates announcing their candidacy for major office and spending half of his announcement for office talking about repeal of the big box, well, I know what that means, and I know what they think it means to their future successes politically, and nobody here ought to be deceived otherwise. I think this ought to be made clear.

I voice no opinions when some meaningful legislation in the Congress of the United States, with regards to how to raise money for presidential election campaigns, could best be made in order to facilitate the burdens of people running for major office, having become passed by the Senate and then becoming vetoed by the President, when they knew he had a financial advantage over any of the candidates of my party. And this was considered by people to be a political veto, I looked at it as such, and that is the way it falls. But when somebody will place on me in this chamber the responsibility which is not mine, and categorically state that it is my responsibility to see what he would like to see done, then I object and I reject that, and I take no responsibility for it. I again say that I look at it as a political grandstand play.

Now, with regards to this veto, I think it has become an academic

question. It is now before the court, and I think the court will dispose of it and this will clear up the calendar. I hope that the Governor's veto will be sustained.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is: Shall Resolve, Dividing the State into 31 Districts for the Choice of Senators, become a law not withstanding the objections of the Governor?

According to the Constitution, the vote will be taken by the Yeas and Nays. A vote of "Yes" will be in favor of the Resolve, a vote of "No" will be in favor of sustaining the veto of the Governor.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Anderson, Berry, Chick, Dunn, Greeley, Hichens, Hoffses, Johnson, Katz, Moore, Peabody, Quinn, Schulten, Sewall, Tanous, Wyman, and President MacLeod.

NAYS: Senators Bernard, Carswell, Clifford, Conley, Danton, Fortier, Graham, Harding, Kellam, Levine, Marcotte, Martin, Minkowsky, Shute and Violette.

A roll call was had. Seventeen Senators having voted in the affirmative, and fifteen Senators having voted in the negative, seventeen being less than two-thirds of the members present and voting, the veto was sustained.

Thereupon the Communication was Placed on File.

Committee Reports Senate

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 17-A of the Joint Rules:

Bill, "An Act Relating to Municipal Regulation of Snowmobiles." (S. P. 698) (L. D. 1879)

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Berry.

Mr. BERRY of Cumberland: Mr. President, I would make a parliamentary inquiry, if I may?

The PRESIDENT: The Senator may state his inquiry.

Mr. BERRY: Mr. President, under Rule 17-A, these bills must

be unanimously reported out by the committee involved, and I would pose a question to the Chairman of the Legal Affairs Committee, Senator Quinn from Penobscot: Did all twelve members of the committee vote on this bill?

The PRESIDENT: The Senator from Cumberland, Senator Berry, has posed a parliamentary question through the Chair to the Senator from Penobscot, Senator Quinn. The Senator may answer if he desires.

The Chair recognizes the Senator from Penobscot, Senator Quinn.

Mr. QUINN of Penobscot: Mr. President and Members of the Senate: Of the thirteen members of the committee, they all voted unanimously against the bill except two. There were two absent.

The PRESIDENT: The Chair would inform the Senator that Rule 17-A requires the unanimous vote of the entire committee in order to be classified under 17-A. The Chair would rule that this bill be recommitted to the Committee on Legal Affairs.

Ought to Pass

Mr. Quinn for the Committee on Legal Affairs on, Bill, "An Act Relating to the Change of Name of Junior Achievement of Greater Portland, Inc." (S. P. 699) (L. D. 1880)

Reported that the same Ought to Pass.

Mr. Greeley for the Committee on Transportation on, Bill, "An Act to Make Additional Allocations from the General Highway Fund for the Fiscal Year Ending June 30, 1973." (S. P. 708) (L. D. 1889)

Reported that the same Ought to Pass.

Mr. Johnson for the Committee on Transportation on, Bill, "An Act Relating to Traffic-control Signals." (S. P. 722) (L. D. 1994)

Reported that the same Ought to Pass.

Which reports were Read and Accepted, the Bills Read Once and Tomorrow Assigned for Second Reading.

Ought to Pass - As Amended

Mr. Quinn for the Committee on Legal Affairs on, Bill, "An Act Relating to the Regulation of Pri-

vate Dectives." (S. P. 702) (L. D. 1883)

Reported that the same Ought to Pass as Amended by Committee Amendment "A". (S- 319).

Which report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

Second Readers

The Committee on Bills in the Second Reading reported the following:

Senate

Bill, "An Act Relating to Property of the Seed Potato Board." (S. P. 719) (L. D. 1992)

Which was Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Papers from the House

Out of order and under suspension of the rules, the Senate voted to take up the following:

House Paper

Bill, "An Act Relating to Relocation Assistance and Land Acquisition in State Projects." (H. P. 1554) (L. D. 2015)

Comes from the House referred to the Committee on State Government and Ordered Printed.

Which was referred to the Committee on State Government and Ordered Printed in concurrence.

On motion by Mr. Hoffses of Knox,

Adjourned until 10 o'clock tomorrow morning.