LEGISLATIVE RECORD

OF THE

One Hundred and Sixth Legislature

OF THE

STATE OF MAINE

Volume III

June 6, 1973 to July 3, 1973

Index

KENNEBEC JOURNAL
AUGUSTA, MAINE

SENATE

Wednesday, June 20, 1973

Senate called to order by the President.

Prayer by the Rev. James A. Smith, Jr. of Hallowell.

Reading of the Journal of yesterday.

Communications

State of Maine
House of Representatives
Augusta, Maine 04330
June 19, 1973

Hon. Harry N. Starbranch
Secretary of the Senate
106th Legislature
Dear Mr. Secretary:

The Speaker of the House appointed the following conferees on the disagreeing action of the two branches of the Legislature on Bill "An Act to Insure Permanent Funding of Maine Law Enforcement and Criminal Justice Academy" (H. P. 1575) (L. D. 2004):

Mr. CAREY of Waterville
CARRIER of Westbrook
Mr. BIRT of East Millinocket

Respectfully,
E. LOUISE LINCOLN, Clerk
House of Representatives

Which was Read and Ordered Placed on File.

State of Maine
House of Representatives
Augusta, Maine 04330
June 19, 1973

Hon. Harry N. Starbranch
Secretary of the Senate
106th Legislature
Dear Mr. Secretary:

The Speaker of the House appointed the following conferees on the disagreeing action of the two branches of the Legislature on Bill "An Act to Amend the Land Use Regulation Commission Law" (H. P 627) (L. D. 851):

Mr. HERRICK of Harmony
Mr. FARNHAM of Hampden
Mrs. WHEELER of Portland

Respectfully,
E. LOUISE LINCOLN, Clerk
House of Representatives

Which was Read and Ordered Placed on File.

State of Maine
House of Rpresentatives
Augusta, Maine 04330
June 19, 1973

Hon. Harry N. Starbranch
Secretary of the Senate
106th Legislature
Dear Mr. Secretary:

The House voted to Insist and Join in a Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act Relating to the Maine Development Act" (S. P. 536) (L. D. 1756)

Respectfully,
E. LOUISE LINCOLN, Clerk
House of Representatives

Which was Read and Ordered Placed on File.

Orders

On motion by Mr. Danton of York,

ORDERED, the House concurring, that Bill, "An Act Providing for a State Lottery," House Paper 1507, Legislative Document 1938, be recalled from the legislative files to the Senate.

(S. P. 676)

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: I would rise in opposition to passage of this order. I know that we took a very substantial vote on this measure several weeks ago, and there was quite a lot of debate on it at that time. The other day an order was presented and was found to be out of order. So I think, in the conservation of time and the people's money, that we should let this thing lay for a little while and cut out this order now.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President and Members of the Senate: I am somewhat confused because I read all kinds of figures in the paper yesterday morning where there is $63 million in one pile and $13.9 million in another pile, and come to find out, we really and truly don't have any money at all.

I don't see anything wrong with this lottery. I know Maine people take and buy lottery tickets from New Hampshire and Massachusetts. Where we used to have

rum runners, we now have lottery ticket runners from those two states. They buy them for 50 cents in New Hampshire and Massachusetts, and they bring them and sell them to our Maine people for 75 cents. So I think this is one way we can generate revenue. There is no gun at anyone's head to buy these tickets, and I think it is a good way to raise some revenue when we take and consider that we have eight million tourists that come into our state every year. So I certainly hope you would support this order. Thank you.

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

Mr. SPEERS: Mr. President, I would support the remarks of the good Senator from York, Senator Danton. We, of course, heard this bill in the State Government Committee, and it was estimated by what all of us in the Committee took to be expert testimony that the revenue to the state could run between eight and ten million dollars a year from this lottery. That is after paying all of the expenses and after paying all of the prizes.

It was also indicated to us that one of the basic questions I had to a lottery — and that was whether or not it would play most heavily on the lower income individuals of the state — that was answered to my satisfaction when it was indicated to us that the average lottery purchaser is of around $10,000 of annual income.

I think we have seen that we are in desperate need, and certainly will be even more so in the next biennium, in desperate need of additional revenues for the state. I would support passage of this order. I think it is the intention of the individuals bringing this bill back to the legislature to amend it to have a referendum put on it to give the people of the state an opportunity to vote on whether or not they wish to raise this money by this method or whether or not they wish to reject this method. I think it is only fair that they have the opportunity to indicate their preference in this manner.

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

Mr. KATZ: Mr. President, there is something that makes my heart sing when we talk about the pure democracy of letting the people have a chance to vote on it, as legalized prostitution in Nevada perhaps, which I would suspect would be a pretty good revenue producer for the State of Maine.

On May 22nd we had a roll call vote on the lottery. Those who felt they did not want Maine to have a lottery were Senator Anderson, Senator Berry, Senator Brennan, Senator Conley, Senator Cox, Senator Fortier — Senator Greeley was absent — Senator Hichens, Senator Huber, Senator Joly, Senator Katz, Senator Minkowsky, Senator Morrell, Senator Olfene, Senator Peabody, Senator Roberts, Senator Schulten, Senator Shute, Senator Tanous, Senator Wyman, and Senator MacLeod. The final vote was 12 to 20 against the lottery. I hope this vote holds up today in opposition to recall.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, I am a little surprised at the good Senator from Kennebec, Senator Katz, who pushes hard for a bill under the title of tax reform which, in fact, takes away money from some of the communities, while at the same time he opposes a bill which would be found money and which would distribute money to the communities on a fair and equitable basis. It seems to me that if we are really interested in helping to relieve property taxes without increasing other taxes, then perhaps this is, of all the measures that have been before us. the one which we should support because it does exactly that: it helps to relieve property taxes and it does not impose any new taxes on the taxpayers of the State of Maine, only those who wish to buy lottery tickets.

I think the evidence has shown that if you don't have a state lottery then they buy them somewhere else and it goes into some other

pockets, often the underworld. I would very strongly support the order of the good Senator from York, Senator Danton.

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

Mr. BRENNAN: Mr. President, just to show my virtues of consistency, and with great trepidation — I hate to oppose my good friend, the Senator from York, Senator Danton — but again I think lotteries are gimmick financing. If we are going to do some financing of education, or if we are going to have tax reform or tax relief, I think we ought to be intellectually honest and meet the thing head on and try to base it on the ability to pay principle. This concept of gimmick financing has no appeal to me.

The PRESIDENT: The pending question before the Senate is the passage of Senate Paper 676.

The Chair recognizes the Senator from York, Senator Marcotte.

Mr. MARCOTTE: Mr. President and Members of the Senate: I am a little disturbed at my good friend, Senator Brennan from Cumberland, for making a statement on "gimmick financing". I think, frankly, it is irresponsible to allow this measure to go down the drain. I think we have all been guilty or have all attempted at one time or another to raid the treasury, and yet we never think of replenishing these funds without going back to the people.

I think we have the opportunity — and the estimate is around $10 million — to replenish this fund, and I don't think we should pass up the opportunity. This is a responsible way this morning to support the measure that will return to our people approximately $10 million. I hope you will support the motion of Senator Danton to bring back this lottery.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Schulten.

Mr. SCHULTEN: Mr. President and Members of the Senate: I would just like to offer a few ideas of my own here. I would like to say that I think a lottery to raise funds to operate a state is absolutely inexcusable. I am unalterably opposed to the concept of it, as I think it tears actually the very moral fibers of our government.

However, I don't feel that I am omniscient in a matter like this. There does seem to be a lot of hue and cry that the legislature be given another opportunity to reconsider the action it took last week. I am certain that there will be no further evidence produced that will cause me to change my mind, as I have studied this problem rather exhaustively. I feel that it is an actual weakening of our state government. I think it is completely irresponsible to look to gambling to support state expenditures. But because there is a slight chance — as I say, I am not omniscient and I can't always be right — I will go along this morning with the idea that we reconsider our action. This far I will go. Further than that, I cannot make a commitment other than to say that I am really unalterably opposed to this concept of lottery for state financing.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President, if this matter is so important, I think it demands a roll call. I therefore ask for a roll call.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, a parliamentary inquiry: Does this require a two-thirds vote to recall this?

The PRESIDENT: The Senator is correct.

Mr. KATZ: Mr. President, I would suggest to anyone who is unalterably opposed to a state lottery that strategically they would be better off voting against a recall, because a two-thirds vote is necessary to recall it rather than accommodating and then be faced with the necessity to have a majority vote.

The PRESIDENT: The pending question before the Senate is the passage of Joint Order, Senate Paper 676. A roll call has been requested. In order for the Chair to order a roll call, under the Constitution, it requires the affirmative vote of at least one-

fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending question before the Senate is the passage of Joint Order, Senate Paper 676, an order that Bill, "An Act Providing for a State Lottery", be recalled from the legislative files to the Senate. a "Yes" vote will be in favor of recalling this bill from the legislative files; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Berry, Cianchette, Clifford, Conley, Cox, Cummings, Cyr, Danton, Graffam, Huber, Marcotte, Minkowsky, Morrell, Peabody, Richardson, Roberts, Schulten, Sewall, Shute, Speers, Tanous, MacLeod.

NAYS: Senators Anderson, Brennan, Fortier, Greeley, Hichens, Joly, Katz, Kelley, Olfene, Wyman.

A roll call was had. 23 Senators having voted in the affirmative, and 10 Senators having voted in in the negative, the Joint Order received Passage.

Thereupon, under suspension of the rules, sent down forthwith for concurrence.

On motion by Mr. Tanous of Penobscot,

WHEREAS, the need to establish a workmen's compensation insurance fund as currently proposed to the Legislature should be assessed at greater length; and

WHEREAS, it is also desirable to weigh the duties of the Industrial Accident Commission to determine whether or not its members should serve on a full-time basis; and

WHEREAS, in addition to these matters there are other concerns within the Workmen's Compensation and Employment Security Law and related labor laws which could be better understood and resolved if studied during the interim; now, therefore, be it

ORDERED, the House concurring, that the Legislative Research Committee is directed to study the subject matter of the following bills: "An Act Relating to Salaries of Members of the Industrial Accident Commission," S. P. 406, L. D. 1208 and "An Act Providing for a Workmen's Compensation Insurance Fund," H. P. 1397, L. D. 1808, as introduced at the regular session of the 106th Legislature and such other matters relating to workmen's compensation, employment security or the general field of labor in order to determine to the extent possible, through consultation with interested parties and groups and such public hearings as it deems appropriate what changes in the law, if any, are necessary or desirable and would be in the best interests of the State; and be it further

ORDERED, that the Department of Labor and Industry and appropriate boards and commissions be directed to provide the Committee with such technical advice and assistance as the Committee feels necessary or appropriate to carry out the purposes of this Order; and be it further

ORDERED, that the Committee report its findings, together with any necessary recommendations or implementing legislation, at the next special or regular session of the Legislature; and be it further

ORDERED, upon passage of this Order, in concurrence, that each department, board and commission specified herein be notified accordingly of the pending study.

(S. P. 675)

Which was Read.

On motion by Mr. Berry of Cumberland, placed on the Special Legislative Research Table.

Committee Reports
House
Ought to Pass - As Amended

The Committee on Judiciary on, Bill, "An Act Providing for the Foreclosure of Real Property Mortgages." (H. P. 1526) (P. D. 1960)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (H-566).

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A", as Amended by House Amendment "A" Thereto (H-577),

and House Amendment "A" H-582).

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: This particular bill was entered as a later bill under the rules because there was some fear that a recent decision, or a decision of some time ago by the Supreme Court would affect our method of foreclosure of real estate mortgages.

Now, I find among the legal fraternity that there is some doubt whether this bill would serve the purpose. So, if there is some confusion, I would rather not add to the confusion which you already have and I would, therefore, move indefinite postponement.

The PRESIDENT: The Senator from Penobscot, Senator Tanous, now moves that Bill, "An Act Providing for the Foreclosure of Real Estate Mortgages", be indefinitely postponed. Is this the pleasure of the Senate?

The motion prevailed.

Thereupon, under suspension of the rules, sent down forthwith for concurrence.

Senate

Ought to Pass in New Draft

Mr. Huber for the Committee on Labor on, Bill, "An Act to Amend the Benefit Financing Provisions of the Employment Security Law." (S. P. 260) (L. D. 757)

Reported that the same Ought to Pass in New Draft under Same Title (S. P. 674) (L. D. 2041)

Mr. Morrell for the Committee on Appropriations and Financial Affairs on, Bill, "An Act Making Supplemental Appropriations from the General Fund for the Fiscal Years Ending June 30, 1974 and June 30, 1975." (S. P. 142) (L. D. 343)

Reported that the same Ought to Pass in New Draft under New Title: "An Act Making Supplemental Appropriations from the General Fund for the Fiscal Year Ending June 30, 1974" (S. P. 677) (L. D. 2042)

Which reports wre Read and Accepted and the Bills Read Once. Under suspension of the rules, the Bills were then given their Second Reading and Passed to be Engrossed.

Thereupon, under further suspension of the rules, sent down forthwith for concurrence.

Second Readers

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

House

Bill, "An Act Relating to Representation of Boards of School Directors." (H. P. 1617) (L. D. 2037)

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

Thereupon, under suspension of the rules, sent forthwith to the Engrossing Department.

Papers From the House

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

Communication

State of Maine
House of Representatives
Augusta, Maine 04330
June 19, 1973

Hon. Harry N. Starbranch
Secretary of the Senate
106th Legislature
Dear Mr. Secretary:

Today the House voted to adhere to its action of June 11 whereby it passed to be engrossed as amended by House Amendment "A" (H-533) Bill "An Act Clarifying Interest Charges on Personal Loans in Excess of $2,000." (S. P. 383) (L. D. 1129)

Respectfully,
E. LOUISE LINCOLN, Clerk
House of Representatives

Which was Read and Ordered Placed on File.

Enactors

The Committee on Engrossed Bills reports as truly and strictly engrossed the following:

An Act to Create the Department of Business Regulation. (S. P. 350) (L. D. 1102)

(On motion by Mr. Berry of Cumberland, tabled, pending Enactment.)

An Act Eliminating Admission to the Bar of the State of Maine by Motion. (H. P. 812) (L. D. 1057)

An Act Providing Full-time Prosecuting Attorneys and Public Defenders. (H. P. 1380) (L. D. 1861)

(On motion by Mr. Berry of Cumberland, tabled pending Enactment.)

An Act Providing Housing for Maine's Elderly. (H. P. 1609) (L. D. 2028)

(See Action later in today's session.)

An Act to Establish a State Housing Rehabilitation Program. (H. P. 1612) (L. D. 2029)

(See Action later in today's session.)

Which, except for the tabled matters, were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

Orders of the Day

The President laid before the Senate the first tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Marine Resources — Bill, "An Act to Change the Lobster License to the Boats, Increase License Fees and to Limit the Number of Licenses." (H. P. 1221) (L. D. 1578) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass in New Draft and New Title of: Bill, "An Act to Conserve, Manage and Regulate Lobster Fishery." (H. P. 1614) (L. D. 2031)

Tabled — June 19, 1973 by Senator Huber of Knox.

Pending —Acceptance of Either Report.

Thereupon, on motion by Mr. Huber of Knox, retabled and Tomorrow Assigned, pending Acceptance of Either Report.

The President laid before the Senate the second tabled and specially assigned matter:

An Act to Clarify and Simplify the Administration of the Mechanic's Lien Law (H. P. 1361) (L. D. 1817)

Tabled — June 19, 1973 by Senator Berry of Cumberland.

Pending — Enactment.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President, to clarify it for me, has this L.D. 1817 been amended?

The PRESIDENT: The Chair would answer in the affirmative, by House Amendment "A", Filing No. H-561.

Mr. CIANCHETTE: Mr. President, if it is proper now, I would move that House Amendment "A", Filing No. H-561, be indefinitely postponed.

The PRESIDENT: The Senator from Somerset, Senator Cianchette, moves that the rules be suspended and the Senate reconsider its action whereby this bill was passed to be engrossed. Is this the pleasure of the Senate?

The motion prevailed.

The PRESIDENT: The same Senator now moves that House Amendment "A" be indefinitely postponed in non-concurrence.

The Senator has the floor.

Mr. CIANCHETTE: Mr. President, I understand this L. D. allows the working man the same privileges for liens as the material suppliers or anyone else has under the state law. I believe this is a good bill. I believe we should adopt such a bill to give the working man the same privileges that other people have in the state.

This amendment says, among other things, that any building designed for occupancy by not more than four families in its appurtenances be exempted from this law. Well, I don't think it makes any difference if a man is working on a house that supports one family, four families, or a hotel; he has the same labor and should be entitled to the same methods of collecting his money. Therefore, I would ask your support to indefinitely postpone this amendment.

The PRESIDENT: Is it now the pleasure of the Senate to indefinitely postpone House Amendment "A"?

The motion prevailed.

Thereupon, the Bill was Passed to be Engrossed in non-concurrence and, under suspension of

the rules, sent down forthwith for concurrence.

The President laid before the Senate the third tabled and specially assigned matter:

An Act Relating to Service Retirement Benefits under State Retirement System (S. P. 184) (L. D. 492)

Tabled — June 19, 1973 by Senator Richardson of Cumberland.

Pending — Enactment.

On motion by Mr. Richardson of Cumberland, retabled until later in today's session, pending Enactment.

Reconsidered Matters

On motion by Mr. Sewall of Penobscot, the Senate voted to reconsider its prior action whereby it Passed to be Enacted the following:

An Act Providing Housing for Maine's Elderly. (H. P. 1609) (L. D. 2028)

An Act to Establish a State Housing Rehabilitation Program. (H. P. 1612) (L. D. 2029)

On further motion by the same Senator, placed on the Special Appropriations Table.

The President laid before the Senate the fourth tabled and specially assigned matter:

Bill, "An Act Relating to Service Retirement of State Mental Institution Employees." (H. P. 181) (L. D. 223)

Tabled — June 19, 1973 by Senator Richardson of Cumberland.

Pending — Passage to be Engrossed.

House Amendment "B" (H-567), as amended by House Amendment "A" (H-573) thereto and House Amendment "A" (H-522)

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: L. D. 223 has been kicking around the legislative halls for some time. It has been through the Veterans and Retirement Committee and a hearing, it came back and went in to the other body, and by some means found its way to another committee, and now appears before us pending passage to be engrossed.

This beauty is in the same context as L.D.'s 225, 374, and 479, all of which are other gems asking for special consideration under the Maine State Retirement System.

Now, in some of the presentations made before the Committee on Veterans and Retirement, at least, I would like to give you some of the thinking of a member of the Board of Trustees, who speaks in relationship with these several documents. He says the gist of each of these benefits is that the sponsoring groups are saying "You have done this for others, and now you should do the same for us." This is fine, but as you will recall, this legislature has already adopted a joint order, and it is on the table under Item No. 2, Page 8, relative to a Legislative Research Committee study of the Maine State Retirement System. It is proposed, if the reorganization of the legislature plan is adopted by this legislature, that this would be studied by the Veterans and Retirement Committee in relationship with all of the other documents.

Well, our job becomes one of trying to decide whether to draw the line at this point, or allow all of these bills on the grounds that to do otherwise would be an injustice. Obviously, that is a difficult decision to make, and our heart does bleed for these people who worked with patients at Pineland, Bangor Hospital and the Augusta Hospital, because it is a difficult job, and we would like to do special things for them, as we have done special things for the Sea and Shore wardens, the Fish and Game wardens and the state troopers. But you can see quite a difference, I am sure, between the dangers of being a trooper or warden as opposed to the problems of working with boys at South Windham. The people at South Windham asked for the same favors that the people who work with mental patients have asked for, and it would be great for us to say "Yes, let us grant all of these favors, all of these bills", but we have got to draw the line somewhere, and I think that this legislature is finally facing this problem. And because it has been referred to the Veterans and Retirement Committee, hope-

fully, through the Legislative Research, I would hope that you would go along with my motion, which is for indefinite postponement of this bill and all of its accompanying papers.

The PRESIDENT: The Senator from Franklin, Senator Shute, now moves that the bill and all accompanying papers be indefinitely postponed.

The Chair recognizes the Senator from Hancock, Senator Anderson.

Mr. ANDERSON: Mr. President and Members of the Senate: I rise in opposition to the motion and I will speak briefly to the bill.

As one of the members of the Bangor State Hospital Study Committee, I fully concur with L.D. 223, as early retirement was one of the major problems, and each time we met this was brought up. I might say that we met with employees in all categories of service, and the question that they asked was "What are you going to do to give us relief?"

Many of these workers deal directly with the patients, at times as little as two attendants taking care of 25 and 30 patients. These employees receive very little salary for the work they perform: as an example: of the 628 employees at Bangor State Hospital, 62 percent earn less than $114 a week. 18 percent earn less than $94 a week. The same percentages exist at Augusta State Hospital and Pineland; 94 percent earn less than $96 a week.

However, regardless of their small salary, these people we found to be courteous and pleasant to the patients. But because of the hazardous working conditions and small pay, turnover we found to be very high, and we thought perhaps early retirement could be a means to attract employees and reduce turnover.

Another point I would like to mention is that, in addition to the mentally ill, the courts at times send to the State Hospitals murderers, who have pleaded or been convicted because of insanity. Most of the people at these institutions are women, and they find this an additional threat to their safety. Just a short time ago, such a person was sent to the Augusta State Hospital. He injured several aides and nurses and escaped after he found out that he was adjudged sane. There was no doubt of his sanity, but the fact remains he was a murderer.

So when you vote on this bill today, I hope you will consider that retirement is something we all look forward to and are willing to work for. Since these people have made a commitment to the State of Maine and the mentally retarded and mentally disturbed, I think we should make a commitment to them and offer them a favorable retirement benefit.

Mr. President and Members of the Senate, I sincerely hope you will look upon this document favorably. Thank you.

The PRESIDENT: The Chair would interrupt debate to note the presence in the Senate Chamber this morning of a very distinguished guest, Miss Karlene Carter, who was the winner of the Miss Black Teenage Maine Pageant last Saturday night. She is a sixteen year old senior from Bangor High School. She is the daughter of Mr. and Mrs. Cyril Scott of Bangor and the niece of Representative Gerald Talbot. She will compete in the national Miss Black Teenage America contest in New York in July. The Chair would ask the Sergeant-at-Arms to escort Karlene to the rostrum for any remarks she may care to make.

Thereupon, the Sergeant-at-Arms escorted Miss Carter to the rostrum where she addressed the Senate as follows:

Miss CARTER: Mr. President and distinguished Members of the Senate: I had a speech all written out for the House and I didn't know I was going to speak here, so this is more or less my feeling right now: All I can say is that I am very happy and honored to be here, and I am going to do my best to bring that crown back to Maine. Thank you.

Thereupon, the Sergeant-at Arms escorted Miss Carter from the rostrum to the rear of the chamber, amid the applause of the Senate, the members rising.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cummings.

Mrs. CUMMINGS: Mr. President and Members of the Senate: I am very sympathetic with the idea of these bills all being given to the Research Committee, but I hate to see something like this with the line being drawn here. These people deserve this early retirement along with the Forest Rangers who have 20- year retirements, Fish and Game, Prison Guards, State Police, minimum retirement for certain teachers, and Liquor Inspectors, who I really don't think have a very dangerous job.

According to what I get from the Retirement Committee, there will be no money needed. As I understand it, these employees are paying for their early retirement; they can either take it or not, as they desire, so it is a question if you want to buy a Ford you pay for it, or if you want to buy a Cadillac you pay for it, if this is what they want. I would certainly like to see it go through. I worked with Senator Anderson and the rest of the committee on this and I didn't feel that their request was out of bounds. I would hope that the study committee would come up with some kind of recommendations that would affect every employee but, in the meantime, I would hope that these employees would be considered for this favor.

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

Mr. RICHARDSON: Mr. President and Members of the Senate: I thought a great deal about this and attempted to prepare something for you, but I don't have an administrative aide and I don't have a paid lobbyist to write material for me, so you will forgive me I am sure if I simply attempt to wing it on my own.

You have before you today, members of the Senate, L.D. 492, which I earlier requested be set aside until later in today's session. L. D. 492 is the bill concerning which you have received, I am willing to bet, hundreds of letters. L.D. 492 is based on the proposition that if we are going to liberalize retirement benefits we ought to treat all state employees equally and evenhandedly. L.D. 492, members of the Senate, represents a 20 percent across the board increase in retirement benefits to all state employees. L. D. 492 reduces the years of service necessary to retire to 25 years. L.D. 492 provides substantial liberalization of benefits and, contrary to statements that have been made about 492, there is a very substantial cost to L.D. 492. These retirement bills that Senator Shute, the Senator from Franklin, alluded to, that we have heard, the special group coming in asking for some special treatment, lead inevitably to another group which says that "We are not really any different than they are, and they come in and ask for special treatment." And the present Maine State Retirement System is shot through with inconsistency, unfairness, and inequity of treatment.

The best kind of retirement bill, in my judgment, members of the Senate, is a bill like 492, which treats everyone equally and doesn't set up the special classes of persons. As I have told you before, the widow of a Sea and Shore Fisheries warden gets a special death benefit; the widow of an Inland Fisheries and Game warden does not.

If you pass this bill, L.D. 223, you are not talking about 20- year retirement, members of the Senate, you are talking about 16-year retirement. Why? Because these people would be able to purchase military time. I have a memorandum here from the Retirement System that indicates that the Attorney General ruled in an opinion dated July 20, 1966, that special groups, such as police, wardens, etc. some of whom now have 20-year retirement, could purchase military time. We subsequently changed that by statute to prohibit State Police, Sea and Shore Fisheries and Fish and Game wardens enjoying 20- year retirements to purchase military time. If you open the door with 223, every one of these groups is going to be back in here asking for the same benefits, and in good conscience you cannot turn them away.

Now what happens? The retirement system becomes subject to a series of hodge-podge amendments that demoralize state employees, and I know that from having served on the committee, as a freshman member admittedly, but for six months. State employees have been whipsawed by special interest groups coming in and getting special retirement benefits, and then wondering what happened to those who did not.

In short, the solution is for the members of this legislature and employee representative organizations to work together to try to restore order and consistency to this system. If you are going to give 20-year retirement to wardens at Thomaston, you should give it to those at Windham. That is the bill which I introduced, which I moved Rule 17-A on because I believe that it is totally irresponsible to constantly work these special interest exceptions into the law and not treat everyone equally and fairly.

Our plea to you is that you grant this committee the opportunity to go through this entire system, with professional assistance, and classify those who should receive 20- year retirements and under what basis. I feel very strongly about this, and my seatmate, the Senior Senator from Cumberland, Senator Conley, tells me that politically this is a very dangerous thing to do. We all have certain core values, and one of mine is that I really cannot understand why the legislature allows itself to be snookered into these special retirement provisions, leaving the other people out, and then when they come in we say "I am sorry, it is going to cost money."

223 does nothing for these employees. They are being required under this amendment to contribute 7½ percent. And I am not sure that they realize it, but that 7½ percent, that additional 1 percent that they are being required to pay over 492, if it passes, gets them absolutely nothing. This bill is poorly drafted, poorly conceived, does not benefit the people that it is designed to help, and I would urge yyou to vote for the motion of Senator Shute of Franklin to indefinitely postpone it. Mr. President, I request that the vote be taken by the yeas and nays.

The PRESIDENT: A roll call has been requested. Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I too don't have an administrative aide to prepare my speeches or to decide what I am going to say to you on a particular subject, but I served with Senator Cummings from Penobscot and Senator Anderson from Hancock on this particular committee, the study commission that was established as a result of the special session.

Now, I know that the philosophy of the Senator from Cumberland, Senator Richardson, is different from ours perhaps on retirement, but you heard the facts given to you by Senator Anderson relative to the salary scale that they receive at these hospitals. You received the facts and the information relative to the type of work that these people are involved in. The vast majority of these people are dedicated; they are dedicated individuals. They work for a small salary and they like the work that they are doing. I feel that we can be very responsive to these employees for the task that they are performing for the State of Maine by voting for this bill.

This is a bill that came out of the study committee, and I certainly support it and hope that you will vote against the motion for indefinite postponement and will subsequently pass the bill. Thank you.

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

Mr. BRENNAN: Mr. President and Members of the Senate: I have an administrative aide, but I have no district office back in my district. And as a result of 492, I did get hundreds of letters, but I understand the good Senator, Senator Richardson, sent out thousands of letters that may have precipitated those hundreds. I wonder if the good Senator would tell us how

many he sent out and how much it cost him personally, just for a matter of curiosity. I am sure those letters somewhat stimulated the letters I received and added to my mail.

As far as the bill itself is concerned, I think most of us can agree that people who work in these hospitals like that do have very difficult jobs. They are out of the ordinary course; they are not just typists or file clerks, or something of that sort. I think it is very difficult to work in a hospital like that; it takes a little bit extra, and I think we ought to give them a little bit extra.

So, for those reasons, I would oppose the indefinite postponement.

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

Mr. RICHARDSON: Mr. President, in cooperation with the Maine Teachers Association and the Maine State Employees Association, and entirely at my expense, with no expense to the state, I sent a letter, together with a descriptive brochure that was prepared by these respective associations, out to their membership. 492 has the support of the people in the areas of state employment because it does treat them fairly.

If the good Senator from Cumberland, Senator Brennan, wants to vote for a 16-year retirement bill, I am sure that he will be joined by many others in rueing the day because every other 20-year retiree benefit group, including the Maine State Police and everybody else, is going to be right back in here.

Again, I would urge the members of the Senate to look at L. D. 223 in its amended form, and I would challenge any of them to tell me what that additional 1 percent contribution by these people at Bangor is going to get them. It is going to get them absolutely nothing because they are taking an actuarial reduction.

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

Mr. CONLEY: Mr. President and Members of the Senate: Before the two unannounced gubernatorial candidates get into another clash, I think I would just like to relate my feelings on the bill.

I think that Senator Anderson spelled out very clearly that the Fish and Game wardens and such, and the State Police, do have the 20-year retirement. Personally, I feel that the people who are working in the state hospitals are under far much more duress than any of the individuals we have already granted the 20-year retirement to.

If Senator Richardson holds such reservations on the 16-year retirement, then I would suggest that the Judiciary Committee, in a wrap-up of the omnibus bill, could very easily clarify this present bill. And I would urge the members of the Senate to vote for it.

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

Mr. BRENNAN: Mr. President and Members of the Senate: Just very briefly, again I have a great deal of sympathy for the good Senator from Cumberland because he doesn't have that administrative aide. I wonder if he would tell us though, just for curiosity, how much it does cost to send a letter, you know, personally, to every state employee and every state retiree.

The PRESIDENT: For what purpose does the Senator rise?

Mr. TANOUS: Mr. President, I would ask the Chair to rule on the validity of this question to the subject.

The PRESIDENT: Would the Senator from Cumberland, Senator Brennan, repeat his question please?

Mr. BRENNAN: Yes, Mr. President, I would be glad to. In the course of this debate there has been some discussion with reference to sending out letters and receiving letters, and of course, I received many letters on 492. Also in the course of the debate there was some discussion regarding Senator Richardson sending letters to all state employees and state retirees. In order to get the full picture of this bill, I am inquiring of the good Senator from Cumberland, if he would care to answer, just how much it costs per-

sonally to send a letter to all these people dealing with this bill.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: I have a strong feeling that L. D. 223 is taking us down the route of another Millimigassett Lake, and I would hope that when you vote you don't vote because you are voting against Senator Richardson just because he happened to send some letters out. I can promise you this: that if you vote to retain L. D. 223, and eventually pass it, that you will have lost your credibility as a legislator for an awful lot of state employees.

I promise you this too: that I will do what Senator Danton has already done this morning, hopefully with a two-thirds vote, and recall L. D.'s 225, 374, 489, just among some of them, so that all of these other state employees receive equal consideration. This is what we are talking about here today. L. D. 223 was lobbied heavier than these other L. D.'s, and this is what we are talking about. Let's treat all of the state employees similarly. Let's not take state employees because they happen to be with menal patients and give them the world on a silver platter and destroy your credibility. Now, let's vote sensibly about this thing, and let's vote to indefinitely postpone it.

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

Mr. RICHARDSON: Mr. President, I have no reluctance at all to answer Senator Brennan's question, and I hope that, if he would like to get into the area of disclosure of his activities as far as the spending on his plans and what his administrative aide does, I will join everyone else in applauding him for his conduct. The cost of a direct mail, in cooperation with the two organizations which were most directly concerned with L. D. 492, is something in the order of 3.7 cents per letter. I think the total cost to me was approximately $380. I will be pleased to provide Senator Brennan or any of the rest of you who are curious about it with information about that.

The point that I insist you must recall is that the statements of Senator Shute are absolutely right. If you are going to do this, you are going to grant 16-year retirement to one class of state employees and, members of the Senate, you cannot in good conscience refuse to give it to all the other people. There may be justification for extending 20-year retirement; very possibly that is so, and I would be the first to vote for it if you would do it on an open, even-handed basis. This business of doing if for one specific group as opposed to another is nonsense.

Finally, I would say that I am not interested in the fact that this is being used as a labor recruitment device by one group of organized state employees against the other. That is of no concern to me whatever. This is a labor dispute between these two organizations, both of whom are vying for representation of state employees. That is all it really amounts to. Now, this same group, that is represented here very effectively by a man who is dedicated to the interest of state employees, this same group came before us this session with a bill asking for 20-year retirement, special retirement benefits, for maintenance workers on state highways. There is a good argument, it seems to me, for extension of these benefits to those people. But he would be the first to say, I am sure, under different circumstances, yes, if you are going to do 20-year retirement, do it logically, do it fairly, and do it for everybody who is similarly situated. Otherwise you make a mockery out of the process of representative government.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion of the Senator from Franklin, Senator Shute, that Bill, "An Act Relating to Service Retirement of State Mental Institution Employees", be indefinitely postponed. A roll call has been requested. Under the Constitution, in order for the Chair to order a roll

call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Franklin, Senator Shute, that Bill, "An Act Relating to Service Retirement of State Mental Institution Employees", be indefinitely postponed. A "Yes" vote will be in favor of indefinite postponement; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Berry, Cianchette, Clifford, Cyr, Danton, Fortier, Graffam, Greeley, Hichens, Huber, Joly, Morrell, Olfene, Peabody, Richardson, Roberts, Schulten, Sewall, Shute, MacLeod.

NAYS: Senators Anderson, Brennan, Conley, Cox, Cummings, Katz, Kelley, Marcotte, Minkowsky, Speers, Tanous, Wyman.

A roll call was had. 21 Senators having voted in the affirmative, and 12 Senators having voted in the negative, the motion prevailed.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President, having voted on the prevailing side, I now move for reconsideration and ask you to vote against me.

The PRESIDENT: The Senator from Franklin, Senator Shute, now moves that the Senate reconsider its action whereby this bill was indefinitely postponed. As many Senators as are in favor of reconsideration will please say "Yes"; those opposed "No".

A viva voce vote being taken, the motion did not prevail.

Thereupon, under suspension of the rules, sent down forthwith for concurrence.

The President laid before the Senate the fifth tabled and specially assigned matter:

An Act to Reform the Methods of Computing Benefit Payments under Workmen's Compensation Act (S. P. 427) (L. D. 1287)

Tabled — June 19, 1973 by Senator Berry of Cumberland.

Pending — Enactment.

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

Mr. RICHARDSON: Mr. President and Members of the Senate: This bill would reform our present method of computing workmen's compensation benefits to place as a ceiling, rather than two-thirds of the average weekly compensation in Maine, the average weekly compensation will be recomputed, and it again will provide a ceiling on the workmen's compensation benefits that an employee who is injured during the course and scope of his employment can receive.

Many of you have been concerned with the cost impact of passage of this legislation. I undertook to check with the National Council of Compensation Underwriters, and the best figure I can give you is it will be determined July 1 of this year, will be a premium increase across the board of 8.2 percent.

I attempted to determine, by resort to computer analysis of high risk retrospectively rated industries, the cost of this bill, but it is impossible, members of the Senate, to make such a determination. Many of you would say, I am sure, that 8.2 percent is a very, very substantial premium increase in order to provide these benefits, and I certainly agree, but more important, much more important, is the fact that you are now going to recognize the realities of the situation where a man who has a family of four or five children is living on $200 or $250 a week, or whatever his salary might be, if he receives an injury during the course of his employment, now he is limited to two-thirds the average weekly wage, which is something in the area of $81. To say the best for it, it is totally unfair.

Another thing, I think that the Senate, I hope, would adopt as a statement of the Senate's intent: in the case of Reggep versus Lunder Shoe Products Company, decided by the Supreme Judicial Court of Maine in May of 1968, the court, speaking through Mr. Just-

ice Randolph Weatherbee, indicated that the claimant's right to compensation, that is, the injured employee's right to compensation, becomes vested on the date of the injury and could not be reduced or enlarged by legislation enacted subsequent to the date of that injury. I would ask you to adopt as a statement of intent, members of the Senate, that this act, this particular bill, which again bears Legislative Document Number 1287, be not applied to any accident occurring prior to the effective date of the act. Otherwise, you will throw the entire premium and rating process into a state of chaos. This bill should not apply to any accident arising out of and during the scope of employment, any accident occurring prior to the effective date of this act.

Finally, I would say that some years ago we abolished the wrongful death limit, which was then $30,000, which represented a n arbitrary, capricious and unreasonable limitation on the value of a man's life. I don't think that a man's ability to work and to produce is any less sacred or any less deserving of our protection, and that is the reason why I am delighted to support this bill, which was in large part brought to us through the efforts of the Senator from Penobscot, Senator Tanous.

The PRESIDENT: Is the Senate ready for the question?

Thereupon, the Bill was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the sixth tabled a n d specially assigned matter:

HOUSE REPORTS — from the Committee on Taxation — Bill, "An Act Exempting "Trade-in" Property from the Stock in Trade Tax." (H. P. 679) (L. D. 886) Majority Report — Ought to Pass; Minority Report — Ought Not to Pass.

Tabled — June 19, 1973 by Senator Berry of Cumberland.

Pending — Motion of Senator Fortier of Oxford to accept the Minority Report.

On motion by Mr. Berry of Cumberland, retabled, pending the motion by Mr. Fortier of Oxford to accept the Minority Ought Not to Pass Report of the Committee.

The President laid before the Senate the seventh tabled and specially assigned matter:

"An Act Relating to Mobile Home Parks. (S. P. 630) (L. D. 1956)

Tabled — June 19, 1973 by Senator Richardson of Cumberland.

Pending — Enactment.

Which was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the eighth tabled and specially assigned matter:

An Act Relating to the Certification and Regulation of Geologists and Soil Scientists. (H. P. 1570) (L. D. 2000)

Tabled — June 19, 1973 by Senator Sewall of Penobscot.

Pending — Enactment.

Which was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the matter tabled earlier in today's session by Mr. Richardson of Cumberland:

Bill, "An Act Relating to Service Retirement Benefits under State Retirement System." (S. P. 184) (L. D. 492)

Pending — Enactment.

The PRESIDENT: The Senator has the floor.

Mr. RICHARDSON: Mr. President and Members of the Senate: L. D. 492 is the bill which we debated or discussed earlier, and we also discussed some considerations about the legislation which, to say the best, was totally irrelevant. I do want to point out that L.D. 492 is the kind of legislation that the vast majority of state employees and members of the teaching profession want. It provides very substantial, in fact, a 20 percent increase in retirement benefits. It permits retirement after 25 years.

It insures one thing I think this Senate should be aware of, and that is this: Retirement bills have been passed through this legislature time after time with statements that there is no cost to this bill, and it is like the cartoon of the one-shot deal, that shows the man with the pistol on the side of his head. There is a cost to L.D. 492, as there is to practically every retirement bill that we put through here. For example, in a recent session of the legislature we increased the state employee contribution to the retirement system from 5 to 5.7 percent. The Retirement System Board of Trustees, exercising a discretion which they thought they had, and which the legislature had not expressly ruled out, decided that it wasn't necessary to have that 5.7 participation through employee contribution. L.D. 492 specifically spells out in the legislation that employee contribution to the retirement fund shall be at a rate of 6.5 percent, and it will not be reduced by the Retirement System Board of Trustees. In other words, the legislature is saying, "We will decide whether or not and when there should be any reduction from that 6.5 percent."

As to the cost of 492, at the time the retirement system was formed, because you take people into the system who have not been in the system throughout its life, you create what is called an unfunded liability. If 492 were not passed, and present actuarial and yield assumptions were correct, at the end of fifteen years the state's participation would drop from a level of about 9 percent to about 3.6 percent. By the passage of L.D. 492, you are extending the period of unfunded liability from the 15th to the 20th or the 21st year. If that is unintelligible, I am sorry; it is the best I can do. L.D. 492 extends the period within which the state must pay the unfunded liability under our law.

The State of Maine does make a substantial contribution to the retirement system. That fact is not understood by many people, that we contribute several million dollars annually to the retirement system.

It is the hope of the Committee on Veterans and Retirement that we are going to do some restructuring of the Retirement System Board of Trustees to insure that the state has a more equal say in the management of the retirement system.

With those explanatory remarks, Mr. President, and indicating willingness to answer any questions, should there be any from the members of the Senate, I would move the pending question.

The PRESIDENT: Is the Senate ready for the question?

Thereupon, the Bill was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

(Off Record Remarks)

On motion by Mr. Berry of Cumberland,

Recessed until 2:00 o'clock this afternoon.

(After Recess)

Called to order by the President.

Papers from the House

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

Non-concurrent Matter

Joint Order (S. P. 672) relative to amending Joint Rule 4.

In the Senate June 19, 1973, Read and Passed.

Comes from the House, Indefinitely Postponed, in non-concurrence.

Mr. Richardson of Cumberland then moved that the Senate Insist and ask for a Committee of Conference.

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

Mr. BERRY: Mr. President, I have not many virtues, but consistency is one. I move the Senate recede and concur.

The PRESIDENT: The Senator from Cumberland, Senator Berry, now moves that the Senate recede and concur with the House. Is this the pleasure of the Senate?

The Chair recognizes the Senator from Cumberland, Senator Richardson.

Thereupon, on motion by Mr. Richardson of Cumberland, a division was had. 16 Senators having voted in the affirmative, and nine Senators having voted in the negative, the motion prevailed.

Non-concurrent Matter

Bill, "An Act Equalizing the Financial Support of School Units." (H. P. 1561) (L. D. 1994)

In the Senate June 13, 1973, Passed to be Engrossed as Amended by Senate Amendment "A" (S-227).

Comes from the House, Passed to be Engrossed as Amended by Senate Amendment "A" (S-227), House Amendment "A" (H-579), and House Amendment "B" (H-586), in non-concurrence.

Mr. Katz of Kennebec moved that the Senate Recede and Concur.

Mr. Clifford of Androscoggin then moved that the matter be tabled and Tomorrow Assigned, pending the motion by Mr. Katz of Kennebec to Recede and Concur.

On motion by Mr. Katz of Kennebec, a division was had. Nine Senators having voted in the affirmative, and 16 Senators having voted in the negative, the motion did not prevail.

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

Mr. JOLY: Mr. President and Members of the Senate: During the past few months we have seen editorials in Maine papers demanding tax reform — editorials calling for Maine citizens to communicate with their legislators demanding tax reform.

Last Saturday in the Bangor News, John Day said "to date there's been virtually no public outcry, except in newspaper editorials, for major tax reform."

I have had 341 letters during the session from Maine voters and citizens regarding such subjects as vivisection, plumbing, Frye Island, boarding homes and regional libraries. I have had 97 letters dealing with non-returnable bottles and 60 concerned with chiropractors. I have 13 letters dealing with inventory and sales and gasoline taxes, but not one in reference with local property taxes.

As a legislator, I believe, I should take part in enacting good, sound, progressive legislation, and not to enact legislation solely on the demand of any small group.

An editorial in the Kennebec Journal states that the new proposal must be good news to the low income, elderly and those on fixed incomes, and citizens interested is fair equitable taxation.

Let's examine this statement. Good news for the poor. Our low income citizens live for the most part in apartments. Should this grandiose scheme take place, do you think for a moment that apartment house owners, even though they may get lower tax bills for their apartment buildings, will lower the rents with their personal income tax bill — which word has it may go up 35 per cent — is hiked, or will they maintain or even raise the rents in order to end up with their same net income? And if we must have rent controls to insure the workability of this scheme, I honestly believe we are then asking for more and more government controls which have failed to work in the past and cannot work now.

As for being good news for the elderly and those on fixed incomes — which I take to mean for the most part the retired, I believe we can enact legislation to aid them without changing the entire philosophy of our tax program.

Finally, the editorial states that this is good news for those citizens interested in fair and equitable taxation. I question this statement. All taxes — sales, income, corporation and property—are fair in that they rise steadily, some proportionally and some graduated.

The big point — the only point really — is which tax is the one that can get away from us into the hands of the big spenders, and I refer to those who would have us spend and spend and spend, and my answer is all of them are to some degree. But the property tax, under the control of local taxpayers, is the one tax the big spenders cannot control. For this reason, plus others that I shall refer to, I am unalterably opposed to this entire plan of changing our philosophy of taxation.

For some time now we have been hearing about property tax reform. Webster's dictionary says that reform means to change into a new and improved reform or condition; it goes on to say that reform means to rectify or to better; it also says that reform is to bring from bad to good.

I seriously question that reform is the proper term to use when we are talking about property tax and the means of financing education costs.

What we should be discussing is philosophy.

The Maine Education Council has recommended that the state fund the full cost of local education and that the state impose a statewide property tax.

The majority of the Special Joint Interim Committee formed to study the tax structure of the State of Maine recommends the State assume 60 per cent of the total cost of public education and also recommends the institution of a uniform statewide property tax.

Both of these groups anticipated that the United States Supreme Court would rule that present financing of schools was unconstitutional. The court failed to do so.

To judge from the continual cries of recent years, one would be led to believe that the property tax is the most oppressive levy Americans have to bear, and that it is increasing at a rate above and beyond that reached by other taxes. The truth, however, is exactly the opposite.

While there are legitimate criticisms to be made of the system of property levies — untrained assessors and discrimination among property owners — and of the present state education subsidy formula, the simple fact is that the aggregate burden of the property tax is considerably less than the burden of other taxes.

The Brookings Institution notes that in 1927 property taxes accounted for 4.9 per cent of the gross national product, and fell as a percentage until 1956 when they stood at only 2.6. Then it rose to 3.4 per cent in 1971. This rise from 1956 to 1971 reflects in considerable measure an almost incredible binge of spending for public education. Since 1957-58 United States spending on public schools has tripled, to a level of $46 billion a year, or an increase from $335 per pupil in 1957-59 to $867 per pupil in 1970-71. Brookings goes on to say that almost two-thirds of the increase per pupil outlays was related to increases in the amount spent for teachers and other instructional personnel such as librarians and guidance counselors. While the average wage for full-time employees in all industries was rising by 74 per cent, teachers salaries went up by 90 per cent, and the salaries of other instructional personnel grew by more than 100 per cent.

Property taxes have doubled from 19 billion in 1962 to more than 38 billion in 1971. But, during this same period, other state and local taxes zoomed from 22.5 billion to more than 56 billion.

Why then the specific outcry over property taxes?

The answer is simple — proper taxes are visible, they are painful and they are locally imposed. The public is more conscious of property taxes and there is, therefore, a limit of the spending that can be financed from such taxation.

So the educationalists and other political spenders realize that property taxes have reached their limit as a funding source. These spenders have thousands of exciting ideas of what they want to do with our money, if only the property tax with its built-in limits weren't standing in their path.

So, reasons for getting away from the property tax at the local level are being put forth — inequality being the most current and popular reason now being used.

Some years ago a pamphlet from the National Education Association frankly stated, "Once public education has been made as much a federal responsibility as national defense or national highways, more money than was ever dreamed of will be spent on it." And, to transfer the funding from local to state is a step to eventual transfer to the federal government.

Let me direct my remarks towards this current argument of inequality between our schools.

First of all, there appears to be no constitutional requirement that we are all entitled to an equal education. Secondly, if all children of one state are to obtain the same education, why stop at state borders — and the moment you go beyond the state borders, you make a case for having complete federal control of the matter, which is what the NEA wants most desperately in order to pursue their dream as stated in their pamphlet.

Let's go a bit deeper — inequality of local schools is based on the levels of spending for education in different communities. Yet, spending money doesn't always help education.

In 1960 New York City spent 540 million on its schools, and by 1971 it was spending more than 2 billion, nearly four times as much, with only a slight increase in enrollment. Yet during those same years, the percentage of pupils reading below normal rose from 54 percent to 66 percent. Moreover, in New York City, where reading achievement in its schools is below the national norm, there is one teacher for every 26 pupils.

If we buy the idea that every student is entitled to have spent upon him the same amount throughout the state, why cannot every citizen demand that he have the same fire and police protection as his fellow residents in other communities in the state?

In summary, now that the Supreme Court has brought us all down to reality again, let us look over this entire matter without listening solely to the cries of the educators and the spenders.

Let us examine the state's formula for the present subsidy system and see if changes could be made to make the formula a better one.

Let us follow attentively the results of the new legislation we have passed creating assessment districts throughout the state and continue to encourage communities to have tax maps made.

Let us consider property tax breaks for retired citizens.

Let us seek ways to encourage our communities to allow their property taxpayers to pay their property taxes in installments, as we now pay income, corporate and other taxes, thus softening the blow that one gets now upon receipt of one's local property tax bill.

Let us encourage our local school boards and public- minded citizens to take a more active part in local education policies. National studies have shown that small classes do not necessarily mean better education and that greater expenditures of money does not guarantee better scholars.

Let us study the report of the Maine Management and Cost Survey Committee that is presently working diligently assessing our mode of operations at all levels of state government.

We all want the children of our state to have good education and good schools, but it is time that we as citizens stop allowing the big spenders to scare us into taking steps that will not bring the results they promise will follow.

In conclusion, let us not forget we are talking not about tax reform but philosophy. If you agree with the philosophy of letting control of spending be shifted from local school boards and local government to state, and eventually federal government, then this is your kind of change. If, on the other hand, you believe that such a change in phliosophy after over a century is not in the best of interest for all concerned, you will not buy this shifting of responsibilities and will instead do all possible to perfect and improve the present system by some of the actions I have referred to.

Let us move cautiously in this field. Let us not be diverted by the outcry of those that would have us change, with no guaranty that such change will actually better our system. Thank you.

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

Mr. KATZ: Mr. President, I would like to state for the record that in general I would rather have my colleague, the Senator from Kennebec, Senator Joly, on my team supporting my legislation

than opposing it, because when he opposes he does an extraordinarily good job.

I was aware of the fact that Senator Joly had some remarks prepared which would not enhance the progress of the legislation I was supporting, and I had some fears about its existence. Now my fears have been realized.

Actually, what Senator Joly did was to express a basic philosophy that he holds near and dear to his heart, and on that he is extremely consistent. If I were to criticize the unfolding of his philosophy in any extent, I would say that he reads into this legislation shadows that do not exist. There is nothing new about the state assuming a portion of the cost of education. Presently it is at the level of 33 percent. I know of no one in this State House, no one in this State House, certainly not in this chamber, who feels that the full cost of funding education should be on the state's shoulders, and I certainly would resist that with all the enthusiastic being that I have.

I think it is wrong to say that because you increase the level of the sharing of costs that you are moving the control of the spending from the local community to the state. And I think it is particularly wrong then to say "And it is just one more step to national control."

Control of education in the state is spelled out specifically in Title 20 of our revised statutes, and no one is going to take away the control of our educational system without some future legislature, elected by the people, moving in that direction.

One thing I haven't heard very much is the fears of local control. And if you were here at the briefing immediately after the session, you will find that there is no interference with local control in spending for other than education needs.

I guess that I should say that the Education Committee agreed completely with the Senator from Kennebec, Senator Joly, that the important thing is the philosophy of the change. And consequently, although it was very hard, we prohibited the reproduction of any computer printouts until after we had decided on the philosophy of the bill and after we had agreed on the direction that we were going, so none of us would be influenced by what specifically happened in the communities that we represent, and we were extremely rigid in that attitude.

I guess I would say that I do not claim that money makes a difference. At least, it is not demonstrable. But when I say that it is going to cost $211 million to fund the cost of education in the next year, and I think that is the correct figure, it is going to cost $211 million anyway; it is just a question of who pays the bill.

I find it difficult to find very many people, either in the State of Maine or amongst any students of taxation, who claim that the local property tax, which in revolutionary times and prerevolutionary times was an adequate measurement of a person's wealth, is in any way qualified to sustain the burden that we have placed on it in recent years. I just don't find people who feel that way. And every legislative session that I have been a part of, every Governor that I have served under, every legislature that I have served with, has talked longingly about the need to remove the burden of the local property tax, and I think this is our opportunity here today. I think it is a responsible bill, and I hope the Senate supports the motion to recede and concur.

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

Mr. SPEERS: Mr. President, I think every member of this body has discussed property tax reform — if not in the campaign last fall, then certainly in the halls of the legislature during this winter and spring, and now on into the summer. I don't feel that when we talk about property tax reform that we are responsibly talking about it if we have in mind that this is going to mean solely a reduction in property taxes and nothing else. I certainly haven't approached it from this aspect, and I don't think any of us have approached it from this aspect.

When we talk about property tax reform, we are talking about shifting the burden of taxes from what

most of us consider to be an inequitable, inefficient, poorly administered tax base to a more equitable, more efficient and better administered tax base. I think that is what we mean by property tax reform. And I don't think that we are attempting to kid anyone by indicating that it will be simply a reduction of taxes and that the resulting loss in revenue would not have to be made up in some other manner.

The good Senator from Kennebec, Senator Joly, mentioned that he did not feel the property tax was a regressive tax. I hope I am quoting him correctly, and if I am not I hope that he will correct me. I think I heard him say that he did not feel that the property tax was a regressive tax.

Senator Katz did mentioned that the problem with the property tax at the present time is that it is not a measure of an individual's wealth. In days long gone by, the property that an individual owned could be considered to be a measure of the individual's wealth. That is certainly no longer the case at the present time. And if we agree that the taxes should be paid on the basis of the ability to pay, then I think we must conclude that the property tax at the present time would be an inequitable and regressive tax.

I would support the motion of the good Senator from Kennebec, Senator Katz, to recede and concur on this bill. I feel that we are going a long way toward fulfilling the campaign pledges that many of us made last fall in bringing about significant property tax reform for the State of Maine.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, there is no other issue before this legislature concerning which I have had stronger feelings. It is very emotional and it is intertwined in politics, and I think to call it tax relief is a misnomer. What it is, at best, in my opinion, is tax transfer; transfer from the property tax to the income tax of some of the burden which our taxpayers have to pay.

Unlike the Senator from Kennebec, Senator Joly, I support that concept of the transfer from the property tax to the income tax. I served as mayor of Lewiston, and two years ago I was active lobbying in this legislature for the revenue sharing bill which the 105th Legislature passed. The property tax is, in my opinion, regressive and not broad-based, and the income tax is, in my opinion, more broad-based and more reflective of an ability to pay. So I support the concept of transferring some of the burden from the property tax to the income tax.

It seems to me that if we are going to take a major step to do that, that we ought to do our utmost to make sure that what we do is fair and equitable. And the reason I oppose this bill is, in my opinion, that it is not fair and not equitable. By voting for this bill — and no one can be kidded on this — we are taking the step to raise the income taxes. There is no question about that; we are going to go on record as taking the steps that are going to insure the necessity of an income tax increase. But the bill before us today is here for a peculiar and a particular reason. The bill is here before us because of a Supreme Court case, Serrano versus Priest and the Rodriguez case, which was pending when positions became locked in an organization such as the Maine Municipal Association. The principle involved in that case, Mr. President and Members of the Senate, was whether or not the financing of education from the property tax, be it unequal from town to town, violated the equal protection clause of the United States Constitution. The Supreme Court, in its wisdom, said that it did not. That theory, advanced by the proponents of the Rodriguez and Serrano case, I think had a fatal defect, as pointed out possibly by the good Senator from Kennebec, Senator Joly, because if in fact it was unequal in the area of education; if the children in City A did not get as much money spent on them for education as the children in City B, then why isn't it just as violative of the equal

protection clause if the senior citizens in City A don't get as much money spent on them, either in housing or in recreation, as the senior citizens in City B? And if it is violative of the equal protection clause between City A and City B, why is it not equally as violative of the equal protection clause for the children in Mississippi and California? The children in Mississippi apparently don't have as much money spent on them in education as the children in California. I think the Supreme Court in its wisdom, saw the fatal defect in that theory, and rejected both the Rodriguez and the Serrano cases.

So we now are not faced with any judicial mandate to force us to pass this bill, 1994. And it seems to me that if we are going to take the steps which are going to lead us inevitably to an income tax increase — and I am not against that — that we ought to make sure that the money which is going back to the communities is distributed fairly. We shouldn't distribute it, in my opinion, according to a court decision which, in fact, did not come about.

I am against this, not so much because it puts the money all in education, although I do have reservations about this because it seems to me that a good deal of the local discretion is taken away from the municipality and the people in education do not have to compete at the same level as the people in public works, police protection and fire protection for the local tax dollar, and I am not so sure they shouldn't have to compete as the others do for the local tax dollar. I am against it essentially, Mr. President, because the formula which is used, in my opinion, is unfair. One of the reasons it is unfair is that in part, at least, it is based on the valuation of a community divided by the number of public school enrollees to get the value of the community per public school enrollee. If you have a fairly high valuation and a low number of public school enrollees, then you come out on the formula looking like a rich town, whereas the true facts of the case oftentimes are just the opposite.

It is unfair to cities with low per capita income, those cities with less ability to pay. It is unfair to those communities which have parochial schools, those parochial schools paid for by the taxpaying citizens of the community. The citizen effort in the whole non- school area; all the non- school tax effort is not computed in this formula. The citizen effort in paying for their children to attend parochial schools is not computed in these formulas. And it seems to me that if we are talking about transferring that burden from the property tax because it no longer reflects a person's wealth to the income tax, then we ought to go a step further and make sure that the income which is going to be distributed to the communities under this formula takes into account that income of those people in those communities.

My community, the City of Lewiston, has a particular situation, but I think it is not untypical. It is a mill town. It is very near the bottom as far as per capita income. Under the 50 percent funding which this bill now has — this bill does not now in its present form go to 60 percent — under the 50 percent income formula, comparing the anticipated aid for 1974-1975 to the aid under this bill, under the printout, there is a loss of $70,000.

Now, if the City of Lewiston were a tax haven, if the City of Lewiston had an abundance of wealthy citizens, if the City of Lewiston had a $250 million power plant, then I wouldn't be up here speaking on this bill; I would be voting for this bill probably. But that is not the case. Lewiston is not a tax haven, Lewiston citizens do not have high per capita incomes; they are poor people who happen to believe, some of them, that their children can best be educated, 1,500 of them, in parochial schools. We lose $70,000, and we lose it under the title of tax relief. Mr. President and Members of the Senate, this doesn't make sense to me. This doesn't seem to me to be fair nor equitable.

I ask you and I plead with you — I am not against a plan to transfer the burden of the property tax to the income — but please let's be fair, and let's not crucify my community on the cross of tax relief. Thank you, Mr. President.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Sentor Richardson.

Mr. RICHARDSON: Mr. President and Members of the Senate: This seems to be the session in which the strategically timed tabling motion which fails somehow sets the course of conduct of the legislative deliberations. Myself and the Senator from Androscoggin, Senator Clifford, and others wanted an opportunity to review this bill in its present form, which now has House Amendment "B" on it, under Filing Number H-586. This is a very complex amendment, which may have significant importance to the final outcome of this legislation.

Simply because I believe that although there may not be, as the Senator from Kennebec, Senator Joly, says, any constitutional right to educational opportunity, I believe that we have a moral obligation to provide equal educational opportunity to Maine young people without reference to the fortuitous circumstance of where they happen to live or whether their parents happen to be wealthy or poor. For that reason I support, as I know a great majority of you do, reallocation of responsibility for public education, with the state assuming a greater share of the burden of doing so.

This bill is not really tax reform. It is instead realignment of the responsibility for educational funding. This bill is not a new idea. It is a restatement of an idea that has been considered by previous sessions. The only limitation which I oppose as a member of this Senate is the responsibility to responsibly finance any bill that we pass of this magnitude. My quarrel with 1994 in its original state was that it constituted, in my opinion, funny money financing; that we are going to pass the program now and look to 1976 or 1975, the legislators of that era, to have the courage to increase the income tax by 40 percent.

I have received assurances that this bill in its present form can be funded for the second year of the next biennium and successive bienniums on the basis of revenue estimates or revenues in keeping with estimates that have been arrived at and offered by the Governor's office. If that is true, and I can't decide that yet and I don't see how anyone else can, if that is true, then I shall vote for 1994 in its present form. If it is not true, I would insist, and I hope you members of the Senate would too, that instead of taking the politically easy way out, the fly now pay later business, that we not pass a program in this session unless we have the courage to responsibly finance it. I don't know whether this program is now being offered to meet that test or not, but certainly as a preliminary matter I think we should recede and concur now, and then make the hard decision as to whether or not this bill is in fact responsibly financed.

Mr. President and Members of the Senate: If it is not, I will not vote for it, threats of full-page newspaper ads to the contrary notwithstanding; if it is, I hope that every one of you will see your way clear to vote for it.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. Danton of York then moved that the Bill be tabled and Tomorrow Assigned, pending the motion of Mr. Katz of Kennebec to Recede and Concur.

On motion by Mr. Katz of Kennebec, a division was had. 14 Senators having voted in the affirmative, and 15 Senators having voted in the negative, the motion to table did not prevail.

The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Cianchette.

Mr. CIANCHETTE: Mr. President and Members of the Senate: I would urge you to support the motion to recede and concur. I understand the concern of Senator Clifford from Androscoggin about this bill. I can't help but

believe he has overstated it a little bit when he said "Please don't crucify my city in the name of tax relief." I believe that is an overstatement.

Frankly, I have sympathy that perhaps the bill doesn't do all for Lewiston than it might for some other towns. But if we look at the state as a broad state, and I believe we have to base our decision on this, I don't think there is any question in anybody's mind that the majority of Maine people will benefit from this bill, 1994. Rather than get hung up in looking for that perfect bill that I feel we will never find, let's take the step now. It is a small step, but it is in the right direction. I am sure in my own opinion that Lewiston certainly will not be crucified. Again, I urge you to support the motion.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Sentor Katz.

Mr. KATZ: Mr. President and Members of the Senate: In a conciliatory manner, I don't want the people of Lewiston to feel that they are going to lose $75,000. I don't have my figures in front of me but I am absolutely confident that the Senator from Androscoggin, Senator Clifford, if he is quoting from column one, is overlooking a very substantial return to the people of Lewiston because of the capital construction and debt services for a regional vocational center and high school in excess of $7 million. I think inclusion of those figures will show that the cash flow to Lewiston will be substantially improved.

The PRESIDENT: The pending motion before the Senate is the motion of the Senator from Kennebec, Senator Katz, that the Senate recede and concur with the House.

The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I would like to ask a question through the Chair of Senator Katz. I understand that this particular bill has a governor on it as to the amount the municipality may raise in real estate taxes relative to educational purposes. I wonder if this governor, so- called, contained in this bill would apply to the whole spectrum of raising money at the local level from real estate taxes.

The PRESIDENT: The Senator from Penobscot, Senator Tanous, has posed a question through the Chair which the Senator from Kennebec, Senator Katz, may answer if he desires.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate: The answer is no, this bill does nothing to non-educational costs. It was the feeling of the committee, the unanimous feeling, that it would be completely inappropriate for bureaucrats and legislators sitting in Augusta to try to attempt to tell towns and cities whether they need new fire stations. Consequently, the full right to control their non-educational expenditures rests where it properly should be, with the people.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: I am going to vote for this bill today; I don't want you to get the impression that I am locking myself in with my vote. This area bothers me considerably when you grant tax relief to municipalities. In one particular area you dedicate the funds strictly for education so, in essence, you are dedicating funds for one purpose. This bothers me, dedication of funds, number one. I think it should bother all of us because I have heard much debate on dedication of funds.

The other area that bothers me is that we are trying to give municipalities real estate tax relief, and yet we are not placing any control on what a town can do as far as raising taxes are concerned. What assurance have we got, and I am sure we have none, that three years from now, if not sooner, or four years from now, that the municipalities are not going to be in the same position that they are now in. They feel the weight of their local real estate taxes, but yet they have been the municipalities or autonomists, they have

their own government, and they can raise their own taxes. This is a right that the legislature has given them by statute. But now they find themselves in a bind, they need relief, and I grant you we should give them relief. Because of the great area of expansion in education, we feel that we should give them the relief in one single area.

Personally I would like to see the money sent to a municipality on a broad basis, without dedicating the funds to one area of expenditure. I think it ought to be a revenue sharing type of deal so that one spectrum of local expense will not feel that they have all of this money available to them to use, and this is what is apt to happen. Human nature as it is, and I am sure you are familiar with it, you are going to dedicate the funds for one area, and these towns certainly are going to spend every bit of this money, and perhaps more, and three or four years from now their real estate tax problem is going to be exactly where it is today, crying need for relief, and what will happen then? Do the municipalities come back again and cry for tax relief, and come to the legislature for a bigger chunk? These are things that bother me. I agree with the concept. I think it is something we should give some consideration to.

I have been here for three sessions, and I know how Augusta works. When I was in East Millinocket and I went to town meetings, I was convinced that the people in the community knew better how to handle their own affairs. I am still convinced of this. But I notice that after three sessions here in Augusta, in our discussions among Senators and members of the other body, all of a sudden we seem to think that all of the answers can be solved here in Augusta, that towns no longer have the answers to the problems. I am leading up to something when I argue this, because I am convinced that when the towns commence to increase their expenditures to a point where they are going to need further tax relief at the local level, to the point where they need further money from the state, that Augusta and the members of the legislature will suddenly realize that we have no control whatsoever on what the towns can do, and yet we are funding this to an area of 60 to 70 percent. Lo and behold, the impossible that everybody says can't happen, is that the state takes control of education, and this is what you have to consider. This is my opinion of what eventually will probably happen if we fund local educational programs to a greater degree than the local towns do. The state will want to have some method of control. And the only way the state will control local educational will be by taking control of it, and you are going to take education away from the hands of the local people.

Some people have a name for this form of government, and this worries me, this bothers me, because then you have one body, one legislature, that controls the minds of your children. I know it sounds silly, Senator Katz; you may seem to think it sounds silly, and this bothers me. Maybe it bothers others of you, and it could well transpire. These are the things I think of when I think of voting for tax reform. I frankly would like to see a bill or an amendment that would give the money to the communities on a revenue sharing basis rather than dedicating the funds to one area. I say this because I think then we would perhaps avoid the inevitable, that one day the state would have to take control of education.

The PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Shute.

Mr. SHUTE: Mr. President and Members of the Senate: I am impressed by the words of the Senator from Penobscot, Senator Tanous, and it brings back memories of about forty years ago when one of the questions used in high school debate was: "Shall the state make use of federal aid to education," and one could assume either side, as you did in those days, in the process of debate. One week you might be on an affirmative team and the next week you might be on

the negative team. One of the main arguments was used precisely as Senator Tanous has used it, that federal funding of education to the states would amount to federal control. We all know that in the intervening years this has not transpired, and I don't believe it will transpire in the case of enactment of 1994. Mr. President, when the vote is taked, I move it be taken by the yeas and nays.

The PRESIDENT: A roll call has been requested. The pending question before the Senate is the motion of the Senator from Kennebec, Senator Katz, that the Senate recede and concur with the House on Bill, "An Act Equalizing the Financial Support of School Units." A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending question before the Senate is the motion of the Senator from Kennebec, Senator Katz, that the Senate recede and concur with the House on Bill, "An Act Equalizing the Financial Support of School Units." A "Yes" vote will be in favor of the motion to recede and concur; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Aldrich, Brennan, Cianchette, Conley, Cox, Cummings, Cyr, Danton, Fortier, Graffam, Greeley, Katz, Kelley, Morrell, Olfene, Peabody, Richardson, Roberts, Shute, Speers, Tanous, MacLeod.

NAYS: Senators Anderson, Berry, Clifford, Huber, Joly, Marcotte, Sewall, Wyman.

ABSENT: Senators Hichens, Minkowsky, Schulten.

A roll call was had. 22 Senators having voted in the affirmative, and eight Senators having voted in the negative, with three Senators being absent, the motion prevailed.

Thereupon, on motion by Mr. Berry of Cumberland, and under suspension of the rules, the Bill was sent forthwith to the Engrossing Department.

Joint Order

Whereas, Miss Karlene Carter of Bangor, a senior at Bangor High School has been named Miss Black Teenage Maine for 1973; and

Whereas, Miss Carter at sixteen years of age received this honor and distinction at the second statewide Miss Black Teenage pageant held at Portland on June 16th; and

Whereas, the charming and accomplished Miss Carter has brought credit to herself and the State and may now represent the State in the forthcoming national pageant at New York City next month; now, therefore, be it

Ordered, the Senate concurring, that we the Members of the 106th Legislature of the State of Maine, now assembled in regular session, pause to extend to Miss Carter our congratulations on her outstanding achievement and offer our warmest wishes for her future happiness and success; and be it further

Ordered, that suitable copies of this Joint Order be immediately transmitted to Miss Carter and her proud parents in honor of the occasion.

Comes from the House, Read and Passed.

Which was Read and Passed in concurrence.

Joint Order

Whereas, promotion of the State's vacation and travel programs by means of information centers, mail inquiry services, literature, production and recreational advertising is considered essential for development of the industry; and

Whereas, at present such efforts are being performed by both the Departmenet of Commerce and Industry and the Maine Publicity Bureau; and

Whereas, legislation has been proposed to eliminate this needless duplication of effort as well as terminate town assessments and the practice of transferring promotional efforts at various issues; and

Whereas, information is not sufficient to adequately evaluate the proposal should such responsibil-

ities be excusively placed in the hands of the Maine Publicity Bureau; now therefore, be it

Ordered, the Senate concurring, that the Legislative Research Committee is authorized and directed to study the bill "An Act to Designate the Maine Publicity Bureau as the State's Agent in Certain Matters Pertaining to the Promotion of Vacation and Travel" House Paper No. 1377, Legislative Document No. 1833 as introduced at the regular session of the 106th Legislature to determine whether or not the best interests of the State would be served by enactment of such legislation; and be it further

Ordered, that the State Department of Commerce and Industry and Maine Publicity Bureau be respectively requested to provide the committee with such technical advice and other assistance as the committee deems necessary and desirable; and be it further

Ordered, that the committee report the results of its findings, together with its recommendations and implementing legislation at the next special or regular session of the Legislature; and be in further

Ordered, that said agencies specified herein be notified accordingly upon passage of this directive.

Comes from the House, Read and Passed.

Which was Read.

On motion by Mr. Berry of Cumberland, placed on the Special Legislative Research Table.

Communications
Answers of the Justices
(Page 1)

To the Honorable Senate of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we the undersigned Justices of the Supreme Judicial Court, have the honor to submit answers to the questions propounded on May 25, 1973.

The origins, and continuing creation, of the "public lots" in Maine stem fundamentally, as disclosed by the Statement of Facts, from provisions of Item Seventh of the Articles of Separation operative in two respects: (1) to "continue in full force, after the . . . District (of Maine) shall become a separate State" the status of land titles created by Massachusetts by virtue of "all grants of land . . ., and all contracts for, or grants of land not yet located which have been or may be made by the . . . Commonwealth, (of Massachusetts) before the separation . . . shall take place, . . ."

and (2) directing that

". . . in all grants hereafter to be made by either state of unlocated land within . . . (Maine after the separation), the same reservations shall be made for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by . . (the) Commonwealth (of Massachusetts)."

Thus, the Articles of Separation are the logical starting point of analysis. Although we have been asked to provide answers to several questions propounded in seriatim sequence, we think it appropriate to present, preliminarily, a unified exposition of the meaning, and legal consequences, of the concepts of Items Seventh of the "Articles" which have material bearing upon the "public lots."

The Statement of Facts recognizes that the "Articles" are not only "terms and conditions" fixed by the Commonwealth of Massachusetts and "agreed and consented" to by Maine in becoming

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a separate State but also, as here relevant, have become incorporated as provision of Maine's Constitution. As a part of the Constitution of this State, identified as Article X thereof, Item Seventh of the "Articles" is the delineation of long range controls which the people of Maine have themselves imposed upon all of the State's branches of government, including the legislative, through which the sovereign power of the people will be exercised.

The initial issue for analysis, therefore, becomes the nature of the limitations contemplated by Article X of the Constitution of Maine insofar as the "public lots" have been created by "reservations" constitutionally acknowl-

edged effective as they had been made by Massachusetts prior to separation and constitutionally directed to be brought into existence by Maine (or Maine and Massachusetts acting jointly) after separation.[1]

The core subsidiary question, here, is the meaning imported by the constitutional concept of a "reservation" — in particular, the legal consequences produced by it once it has been effected.

One year after Maine had become a State, the Supreme Judicial Court of the new State in **Shapleigh v. Pilsbury,** 1 Me. 271 (1821) directed its attention to this subject. After a careful review of approaches taken by the Massachusetts Court in the case of **Rice v. Osgood,** 9 Mass. 38 (1812) and **Brown v. Porter,** 10 Mass. 93 (1813), in conjunction with the attitude expressed by Mr. Justice Storey on behalf of the Supreme Court of the United States in **Pawlet v. Clark,** 9 Cranch (13 U.S.) 292 (1815), the Maine Court strongly indicated the view that the "reservation" process produces

1. By thus concentrating attention upon the Articles of Separation in this aspect as a part of the Constitution of Maine, we intend no suggestion that the "Articles" are without independent legal effectiveness as limitations upon the sovereignty of the State of Maine imposed by the Commonwealth of Massachusetts. Cf. **Green v. Biddle,** 8 Wheat. (21 U.S.) 1 (1823). As the ensuing discussion will disclose, our undertaking to answer the questions propounded need not involve an investigation of this facet of the Articles of Separation.

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the legal consequence that the sovereign, as a grantor "reserving" lands for designated beneficial purposes and as to which specific beneficiaries to take the legal title are not in existence, has created no vested rights in private persons but has effectively subjected itself to a legal restriction; it has removed the "public lots" from its dominion as an absolute proprietor and has denied itself

". . . an authority to convey the premises to any other person or corporation, or for any other uses, ... " **(Shapleigh,** supra, pp. 288, 289)

Further, it may fairly be concluded that such doctrine was given continuing approval in the subsequent cases of **State v. Cutler,** 16 Me. 349 (1839); **Dillingham v. Smith,** 30 Me. 14 (1852); **Mace** v. Greene, 35 Me. 14 (1852); **Mace v. Land & Lumber Company,** 112 Me. 420, 92 A. 486 (1914); and **Flye v. First Congregational Parish,** 114 Me. 158, 95 A. 783 (1915).

The case of **Union Parish Society v. Upton,** 74 Me. 545 (1883) is not to the contrary. Its discussion, by way of dictum, conceding that the effect of a "reservation" is to impose "great moral and political" strictures does not exclude the existence of legal obligations.

In **State v. Mullen,** 97 Me. 94 A. 841 (1903) this Court characterized the "reservation" process and its consequences as follows:

"Prior to the separation of Maine from Massachusetts, the latter State, in making grants or sales . . ., had generally pursued the policy of making reservations of lands for public uses from the lands granted. The beneficiaries of these public uses were not ordinarily in esse at the time of the grant. **Massachusetts retained the legal title for the use of the beneficiaries when they should come into existence.** After the separation, as held in **State v. Cutler,** 16 Maine, 349, this State by virtue of its sovereignty became entitled to the care and possession of these reserved lands (in the place of Massachusetts) . . the State (of Maine) became trustee . . . ." (p. 335) (emphasis supplied)

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The accumulated past expressions of this Court lead us, therefore, to the conclusion that the meaning and legal effect of a "reservation", as contemplated by Article X of the Constitution of Maine, is that thereby the sovereign removes the lands "reserved" from the public domain and must

continue to hold and preserve them for the "beneficial uses" intended.

Insofar as Article X embodies the "reservation" process and consequences thereof in the specific context of (1) rendering Maine bound by such "reservations" as Massachusetts had made prior to separation and (2) specifies for the future, after separation, that if Maine makes grants of land from its public domain "reservations" shall be effectuated in such grants for beneficial purposes according to usages which had prevailed in the Commonwealth of Massachusetts prior to separation, the Maine Constitution subjects the Legislature of Maine to the limitation that it treat all "public lots" — i.e., those already, or to be, created by "reservations" — on the principle that the Constitution requires the "public lots" to be held and preserved for the beneficial uses intended.

Pursuant to this approach, the additional issue arises concerning the nature of the beneficial uses constitutionally tolerable under the language of Article X of the Maine Constitution.

As to the direction that "reservations" in future grants after separation

"shall be . . . for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by . . . (the) Commonwealth (of Massachusetts)",

the specific inquiry is; are the two beneficial uses particularly designated, i. e., "Schools" and "Ministry" intended to be exclusive limitations or merely illustrative of a more comprehensive assemblage of beneficial purposes "usual" in "reservations" made by Massachusetts prior to separation?

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We believe the latter is the correct interpretation of the constitutional language.

The Colony of Massachusetts Bay, and later the Commonwealth of Massachusetts, maintained a policy of reserving, from grants of public land, certain lots for named public uses. While the local ministry and local schools were named as public uses, lots were also reserved for, **inter alia,** Harvard College,2 the "benefit of public education in general, as the General Court shall hereafter direct" (**State v. Cutler,** 16 Me. 349, 352 (1839)), and the further appropriation of the General Court.3 The lands reserved by Massachusetts under its policy were not, therefore, restricted only to use for the ministry and for schools.

The Maine Legislature itself, shortly after separation, responded to the constitutional requirement of Article X by enacting P. L. 1824, Chapter 280, providing that 1,000 acres be reserved from each township or six-mile tract for "such public uses . . . as the Legislature may hereafter direct." The statute, enacted so soon after the adoption of the Constitution, indicates that when the adoption of the Constitution was a fresh memory, the reservation clause was not construed as restricting uses to schools and the ministry. Additional evidence that the statute of 1824 was viewed as consistent with the Constitution is the fact that no effort was made to procure parallel legislation in Massachusetts.4 The statute of 1824 was viewed as working no change upon constitutional requirements for the use of public lots.

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2 Resolve of May 1, 1776, Chapter 12 (1776-77) 5 Acts & Resolves of the Province of Massachusetts Bay 666.

3 Resolve of March 26, 1788, Chapter 80 (1787-88) Mass. Resolves 123; Resolve of February 4, 1790, Chapter 68 (1789-90) Mass. Resolves 58. In addition to its policy of reserving lands, Massachusetts sought to afford public benefits through a policy of direct grants. The public benefits advanced by these grants include both the ministry and education and also such uses as the protection of beaches and harbors. O. Handlin & M. Handlain, Commonwealth: A study of the Role of Government in the American Economy (Massachusetts, 1774-1861) 80 (Rev. ed. 1969).

4 Article X, Section 5, Paragraph Ninth provides that modification of any of the terms of Article X, Section 5, may be made only with

the consent of the Massachusetts General Court.

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Grants of public land by the State of Maine under the 1824 statute contained a reservation for "public uses." It is significant that grants of townships by Maine and Massachusetts acting jointly also contained reservations for "public uses" rather than reservations restricted for use of schools and the ministry.5 This indicates that both states viewed the reservation for "public uses" to be consistent with the usual reservations made by Massachusetts prior to Maine statehood.

In light of the practice of Massachusetts prior to Maine statehood, the legislative response of Maine soon after statehood, and the joint action of the two States, it is evident that the uses mentioned, i.e., schools and the ministry, concerning reservations to be made after separation are illustrative, and not an exclusively exhaustive listing, of the "public uses" for which "reservations" are to be made.

We regard this principle as controlling, also, concerning "reservations" made prior to separation and in which, since the contemplated beneficiary had not come into existence, the "reserved" lands had not become appropriated to any particular uses designated. In such posture, the only obligation upon the sovereign is to hold and preserve the lands "reserved" for those "public uses" generally reflected by the usage of Massachusetts and of which any particularly designed use provides only an example. See: **Union Parish Society v. Upton,** 74 Me. 545, 546-548 (1883).

The foregoing general analysis provides the foundation for answers to the specific questions propounded as follows.

5 E. g, Deed from Maine and Massachusetts conveying T8R13 to Samuel Smith, July 16, 1844. 2 Deeds - Maine and Massachusetts at 47. (State Archives, Augusta, Maine)

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QUESTION NO. I: Do the provisions of Section 5 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

QUESTION NO. II: If the answer to the preceding question is that any of the provisions of Section of the Act violate the II Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. I is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. III: Do the provisions of Section 7 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

In providing this answer, however, we emphasize that we are interpreting the provisions regarding the State's title to the public lots, ownership of future earnings attributable thereto and its management and preservation of them as "State assets" — all as appearing in Section 7, — to contemplate recognition of the principle enunciated in the preliminary general discussion that the "public lots" are not part of the public domain over which Maine has absolute proprietorship but must be held and preserved for the generalized "public uses" contemplated by the Articles of Separation.

QUESTION NO. IV: If the answer to the preceding question is that any of the provisions of Section 7 of the Act violate the Artic-

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les of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. III is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. V: Do the provisions of Section 14 of the Act violate the Articles of Separation,

the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

Our answer that neither the Articles of Separation nor the Distribution of Power provisions of the Federal or State Constitutions are violated is amply clarified by the preliminary exposition we have presented.

Our answer that the Due Process Clauses of the Federal and State Constitutions are not violated requires further discussion.

Partition, or location, of "public lots" hitherto unlocated in lands which have become p r i v a t e l y owned can precipitate questions of constitutional "due process" insofar as rights already vested in private persons may be affected by the criteria and methods utilized to accomplish the partition, or location — in particular, if the Legislature has seen fit to alter the prior law governing at the time private ownership was acquired.

Section 14 retains the foundational criterion for the partition and location of "public lots" first promulgated in 1824 that, as partitioned or located, the "public lots" shall be ". . .average in quality and situation with other land. . ." Section 14 further specifies, however, that over and above one subsidiary aspect of "average in quality and situation" previously specified — i.e., "value as to timber and minerals" — other factors

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shall hereafter be taken into account. We cannot project that such requirement will, or must, per se cause a landowner to lose property on a basis sufficiently different from what would arise by the applicability of such law as governed when ownerhsip rights were acquired to constitute it a retrospective impairment of vested private rights in violation of "due process of law." For this reason, Section 14, taken on its face, is consistent with the Due Process Clauses of the Federal and State Constitutions.

In the context of an advisory opinion we are able to evaluate Section 14, relative to the question propounded, only by considering the language of Section 14 on its face and not with the assistance of particular factual contexts in which it might be applied. Hence, we answer that Section 14 does not violate the Due Process Clauses of the Federal or State Constitutions.

QUESTION NO. VI: If the answer to the preceding question is that any of the provisions of Section 14 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. V is that the Articles of Separation are not violated, this question is rendered inapplicable.

QUESTION NO. VII: Do the provisions of Section 15 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

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ANSWER: We answer in the negative.

As the preliminary exposition has disclosed, the "reservations" by which the "public lots" come into being, and as conceived by Article X of the Maine Constitution, establish a limitation only that the State hold and preserve "public lots" for the general class of public uses derived from the usage of Massachusetts. Thus, no private rights being involved, and the purposes for which the "public lots" are held and preserved being a collective grouping of public uses, the "public lots" themselves may likewise be treated collectively if thereby the general category of public uses may be furthered. Hence, sales, purchases and exchanges of "public lots", without retention of a "public lot" in each unincorporated township or tract and in order to assemble larger contiguous quantities of land, is permissible — provided that it is done to promote the beneficial public uses and purposes for which the "public lots" must be held and preserved.

Insofar as Section 15 confers power upon the Forest Com-

missioner to "relocate" any "public lots", including "both located and unlocated", we answer here as we answered Question No. 5. We cannot say that such authority to "relocate", taken on its face and per se, entails, necessarily, such interference with vested private rights of property as would amount to a retrospective governmental impairment in violation of the Due Process Clauses of the Federal or State Constitutions.

QUESTION NO. VIII: If the answer to the preceding question is that any of the provisions of Section 15 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No. VII is that the Articles of Separation are not violated, this question is rendered inapplicable.

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QUESTION NO. IX: Do the provisions of Section 16 of the Act violate the Articles of Separation, the Distribution of Power provisions or the Due Process Clauses of the Federal or State Constitutions?

ANSWER: We answer in the negative.

The proposed use of the income from the "public lots" is consistent with (1) the concept that the "public lots" be held and preserved for an aggregate of public uses according to the usage of Massachusetts, as described in the answer to Question No. 3 and (2) the authority of the State of Maine to treat its "public lots" as a collective group for the furtherance of such generalized public uses, as explained in our answer to Question No. 7.

QUESTION NO. X: If the answer to the preceding question is that any of the provisions of Section 16 of the Act violate the Articles of Separation, would such provisions be constitutional upon consent to such provisions by the Legislature of Massachusetts?

ANSWER: Since the answer to Question No IX is that the Articles of Separation are not violated, this question is rendered inapplicable.

Dated at Portland, Maine, this nineteenth day of June, 1973.

Respectfully submitted:
Armand A. Dufresne, Jr.
Donald W. Webber
Randolph A. Weatherbee
Charles A. Pomeroy
Sidney W. Wernick
James P. Archibald

Which was Read and Ordered Placed on File.

Committee Reports
Ought to Pass - As Amended

The Committee on Labor on, Bill, "An Act to Increase Benefits and Reduce the Waiting Period Under Workmen's Compensation." (H. P. 618) (L. D. 816)

Reports that the same Ought to Pass as Amended by Committee Amendment "A" (H-463).

Comes from the House, Passed to be Engrossed as Amended by Committee "A".

Which was Read, the Ought to Pass as Amended Report of the Committee Accepted in concurrence and the Bill Read Once Committee Amendment "A" was Read and Adopted in concurrence. Under suspension of the rules the Bill was Read a Second Time and Passed to be Engrossed.

Thereupon, under further suspension of the rules, sent forthwith to the Engrossing Department.

Enactors

The Committee on Engrossed Bills reports as truly and strictly engrossed the following:

An Act Authorizing the State Housing Authority to Establish Capital Reserve Funds. (H. P. 1596) (L. D. 2022)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act Increasing the Gasoline Tax. (H. P. 647) (L. D. 863)

Comes from the House, Fails of Enactment.

On motion by Mr. Berry of Cumberland, tabled, pending Enactment.

On motion by Mr. Sewall of Penobscot, the Senate voted to take from the Special Appropriations Table, An Act Relating to Family

Planning Services. (H. P. 1367) (L. D. 1823)

On further motion by the same Senator, and under suspension of the rules, the Senate voted to reconsider its action whereby the Bill was Passed to be Engrossed.

The same Senator then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-249, was Read and Adopted and the Bill, as Amended, Passed to be Engrossed in non-concurrence.

Thereupon, under suspension of the rules, sent down forthwith for concurrence.

On motion by Mr. Sewall of Penobscot,

Adjourned until 10:00 o'clock tomorrow morning.