

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

1st Special Session

OF THE

*One Hundred and Sixth
Legislature*

OF THE

STATE OF MAINE

1974

Kennebec Journal
Augusta, Maine

SENATE

Monday, January 7, 1974

Senate called to order by the President.

Prayer by The Honorable Elden H. Shute, Jr. of Farmington.

Reading of the Journal of yesterday.

Papers from the House**Joint Order**

WHEREAS, rural crime has shown a marked increase nationally; and

WHEREAS, rural crime, especially breaking, entering and larceny has reached near epidemic proportions in certain outlying areas of Maine; and

WHEREAS, this represents a major threat to the safety of the homes, property and lives of Mainers; and

WHEREAS, this situation should be considered as an emergency so far as the State Legislature is concerned; now, therefore, be it

ORDERED, the Senate concurring, that the Legal Affairs Committee undertake a study of the problem of rural crime in Maine; and be it further

ORDERED, that the Legal Affairs Committee shall hold whatever meetings, hearings or studies it deems necessary to appraise the true extent of the problem in the State of Maine and further shall make recommendations as to:

1. What the public may do to combat this menace; and

2. The best long-range solutions to the problem.

The committee shall also assemble, with as much dispatch as practicable, a special report to the Legislature on practical ways that the public may best protect their homes, property and persons, and the Legislature shall take appropriate action to see that the information in this report is adequately disseminated to the public. (H. P. 1821)

Comes from the House Read and Passed.

Which was Read.

On motion by Mr. Berry of Cumberland, tabled and tomorrow assigned, pending Passage.

Senate Papers**Appropriations and Financial Affairs**

Mr. Speers of Kennebec presented,

Bill, "An Act Appropriating Funds to Provide for the Operation of the Maine Criminal Justice Academy." (S. P. 813)

Which was referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Sent down for concurrence.

Judiciary

Mr. Brennan of Cumberland presented, Bill, "An Act Relating to Supervised Practice by Third-year Law Students Pursuant to Court Rules." (S. P. 814)

Mr. Speers of Kennebec presented, Bill, "An Act Relating to Hospitalization of the Mentally Ill." (S. P. 815)

Which were referred to the Committee on Judiciary and Ordered Printed.

Sent down for concurrence.

Orders

On motion by Mr. Sewall of Penobscot,

ORDERED, the House concurring, that the Joint Standing Committee on Appropriations and Financial Affairs is directed to report out an emergency bill for appropriation to the Department of Health and Welfare for supplemental security income program. (S. P. 816)

Which was Read.

The PRESIDENT: The Senator has the floor.

Mr. SEWALL: Mr. President and Members of the Senate: This order before you would authorize the Appropriations Committee to report out a bill which would appropriate monies for the so-called supplemental security income program.

We would take the monies from the budget document, which has been presented to us in long form and has, as you know, many other items in it. We would take the monies requested in that document and put them in this special piece of legislation to carry through the state's obligation on this special supplemental security income program which covers the AABD program, so-called. I think the item in the budget is \$2.4 million, which would carry the state's share from January 1 to '74 through June 30, '74.

The PRESIDENT: Is it the pleasure of the Senate that this order receive passage and be sent down for concurrence?

Thereupon, the Order received Passage.

Sent down for concurrence.

Committee Reports House

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

Bill, "An Act Providing Additional Funding to Support the In-School Instructional Television Broadcasting Contract with WCBT-TV." (H. P. 1658) (L. D. 2051)

Bill, "An Act to Provide Funds to Replace Fire Protective Devices at the Maine State Pier." (H. P. 1685) (L. D. 2078)

Bill, "An Act to Provide Funds to Aid Construction of Kenduskeag Stream Park." (H. P. 1758) (L. D. 2226)

Bill, "An Act to Increase Salaries of Justices of the Supreme Judicial and Superior Court, District Court Judges and the Administrative Court Judge." (H. P. 1778) (L. D. 2250)

Leave to Withdraw

The Committee on Appropriations and Financial Affairs on, Bill, "An Act Providing Three Additional District Court Judges at large." (H. P. 1659) (L. D. 2052)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

Which report was Read.

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

Mr. SPEERS: Mr. President, merely as a matter of information, I wonder if some member of the Appropriations and Financial Affairs Committee could enlighten us as to whether or not there will be other legislation or whether this was simply withdrawn and there will be no further legislation on this matter.

The PRESIDENT: The Senator from Kennebec, Senator Speers, has posed a question through the Chair which any member of the Committee may answer, if he desires.

The Chair recognizes the Senator from Penobscot, Senator Sewall.

Mr. SEWALL: Mr. President and Members of the Senate: As far as I know, there will be no additional legislation along this line. The sponsor requested this be granted leave to withdraw and, as far as we are concerned, this ends the matter.

The PRESIDENT: Is it now the pleasure of the Senate to accept the Leave to Withdraw Report of the Committee?

Thereupon, the Leave to Withdraw Report of the Committee was Accepted in concurrence.

Second Readers

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

Senate

Bill, "An Act Changing Name of Maine Tuberculosis and Health Association." (S. P. 716) (L. D. 2128)

Bill, "An Act Relating to Name of The Better Business Bureau of Maine, Inc." (S. P. 719) (L. D. 2131)

Bill, "An Act Relating to Change of Name of The Right to Life Committee." (S. P. 725) (L. D. 2137)

Bill, "An Act Relating to Breaking and Entering, and Larceny of, Trailers and Semitrailers." (S. P. 712) (L. D. 2124)

(On motion by Mr. Berry of Cumberland, tabled and tomorrow assigned, pending Passage to be Engrossed.)

Bill, "An Act Relating to Threatening Communications." (S. P. 779) (L. D. 2235)

Bill, "An Act Relating to Investment of State Funds and Revenue Sharing Funds in Interest Bearing Accounts." (S. P. 721) (L. D. 2133)

Bill, "An Act Relating to Guardianship of Incapacitated Adults in Need of Protective Service." (S. P. 773) (L. D. 2220)

Bill, "An Act to Require District Attorneys to Prosecute all Criminal Cases before the District Courts." (S. P. 711) (L. D. 2123)

(On motion by Mr. Speers of Kennebec, tabled until later in today's session, pending Passage to be Engrossed.)

Which were Read a Second Time and, except for the tabled matters, Passed to be Engrossed.

Sent down for concurrence.

Enactors

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

Emergency

Bill, "An Act Amending the Full-time District Attorneys Law." (S. P. 808) (L. D. 2280)

Comes from the House, Failed of Enactment.

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

Mr. CLIFFORD: Mr. President and Members of the Senate: This is a bill which is being sent through the legislature under the guise of errors and omissions. There are two changes in this bill to the district attorney bill which was passed in the regular session.

The issue, in my opinion, is not whether the district attorneys should be allowed some private practice, but the issue, it seems to me, goes to the power of the legislature: whether the office of the Attorney General on its own can take over the powers and the prerogatives of the legislature.

The bill was passed in the regular session providing for full-time or essentially full-time district attorneys, elected by the people, effective 1975. That bill had a full hearing, it went through the legislative process, and it passed both houses of this legislature. There was a mistake made in that bill in the engrossing stage in that the office of county attorney apparently was abolished a year too early, 1974 instead of 1975. The county attorneys are now acting as assistant attorneys general appointed by the respective courts when they are functioning.

There was plenty of publicity on the error and the inconsistency in the law and it was pretty unanimously agreed, I think, Mr. President, that the change should be made as an error and inconsistency, and in the first two readings in this body I assumed that that was the only change in the law. But that wasn't the case. The Attorney General's office prepared the bill and took it upon itself to make another change and put something in the bill which was not in the bill when it passed.

The second change is to completely outlaw any and all types of private prac-

tice for the district attorneys, and the bill is going through this legislature as an errors and omissions bill when in fact the second change, in my opinion, is clearly a substantive change in the law. So the bill is being passed as a bill to correct an error and inconsistency, an omission, with no hearing, when in fact it is a change in the substantive law and it has had no hearing. So I don't think the question here is whether or not the district attorney should be full-time. I think the question is the integrity of the legislative process.

I am not saying that the district attorney should not be full-time. What I am saying is that I think that question should at least get a public hearing. And the only change that should go through, in my opinion, as an error and omission is the date change which in fact is the only error and omission in this bill. So I think that the legislature, if it is going to retain its legislative prerogative, should insure that the second provision of this bill, that is, that provision pertaining to full-time, should get a hearing.

I have a strong feeling that if it does get a hearing that the legislature will require that the district attorneys be full-time and that they have no private practice, but I don't think that is the issue, and that is the point. The point is that this is supposed to be an errors and omissions bill. It has had no hearing, and I think that the second provision should get a hearing. I think we should vote against final enactment at this stage. Thank you, Mr. President.

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

Mr. SPEERS: Mr. President and Members of the Senate: I certainly hesitate to disagree with my very conscientious colleague on the Committee on State Government, but I don't think that there is any question on the part of anyone's mind in this body that the legislature fully intended last session to pass a full-time district attorney bill. I don't think there is any doubt in the part of any mind in this body as to what is meant by full-time district attorney. It can only mean that he shall be devoting his entire legal energies to prosecuting the cases; that he should not engage in

the practice of law outside of his official duties.

I differ with the good Senator from Androscoggin, Senator Clifford, when he states that the Attorney General's office took it upon itself to include something in this bill that perhaps was not in the newspapers and perhaps was not given as much publicity as the mistake in the date. The Attorney General's office does not sanction ideas for legislative introduction. It may have been, and I don't know, but it may have been the Attorney General's office that called attention to this problem, but it was most certainly the legislative leadership and the sponsor of this bill who are the ones who put their name to the particular bill and backed this particular bill, and bring it into the legislature for our consideration. It is not the Attorney General's office imposing itself upon the legislative will, by any means.

Now, we talk about errors and inconsistencies. When we heard this bill before the Committee on State Government, as when it was debated on the floor of both the House and the Senate, again there was no question in anyone's mind that we should have, and supposedly were creating with this particular bill, full-time prosecuting attorneys. It may not have been an error on the part of some individuals; but it was most certainly an error on the part of the legislature collectively when it did not specify that the full-time prosecuting attorneys should be just that, and that is full-time. It is entirely appropriate to correct that error and inconsistency in this particular vehicle, and that is precisely what the legislative leadership and, hopefully, the two branches of the legislature will be doing.

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

Mr. JOLY: Mr. President and Members of the Senate: I rise to agree with the good Senator from Androscoggin, Senator Clifford. Full-time, to me, is one thing and law practice is another. You can be a full-time attorney and practice five days a week, but you could be drawing wills and deeds on Saturday. I think there is a difference here. I think at first blush when you say full-time you think it is full-time, but you start thinking about

this, and I can remember the days when judges did do probate law, business, and a lot of other things. I think there is a question here, and we want to make sure we don't have a problem later on. We are starting on a new system of county attorneys, and I think we ought to start it right. Therefore, I do agree with this. Thank you.

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

Mr. RICHARDSON: Mr. President and Members of the Senate: As a member of this body who believes that we should in fact have full-time, not essentially full-time, almost full-time, not quite all the time full-time prosecutors, I would like to receive some assurances from the sponsor of this legislation and from others who are at least ostensibly committed to its passage that they will support what I thought I voted for as a member of this Legislature, and that was full-time county attorneys.

Senator Joly, my friend from Kennebec, points out correctly that there was a time when our judges practiced law on a part-time basis. There are still places in our judicial system, or there were until very recently, cases where judges did in fact have part-time practices, and that is still true in some areas.

Without that assurance, I can't understand why we are being asked to further delay, by denying the necessary votes to enact this change, why we are going to delay correcting the error that was made apparently, as the Senator from Androscoggin, Senator Clifford, says, at the engrossing stage, why we are going to delay taking the corrective action that I think is so obviously necessary. I have talked with many of you members of the Senate about this legislation, and I know that you feel, as I do, that you were voting for a full-time prosecuting system.

As far as the salary is concerned, I think that if you will check the legislation you will find that the salary is really quite adequate, having regard for the nature of the services performed and having regard for salaries that we pay judges of the superior and district court. I would urge you to vote for enactment of this legislation. When the vote is taken,

Mr. President, I would request a roll call.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: I think the debate shows that there is some difference of opinion as to whether or not county attorneys or the district attorneys should be full-time. I don't think that the purpose here really is to debate that now. I think that that should get a public hearing. I think the issue here is the legislative process. I think that this bill, on which there already has been indicated some difference of opinion, is clearly not an error and inconsistency; it is a substantive change in the law.

I suspect that the Legislature will require that the district attorneys be full-time, and that is fine, but I think it ought to have a public hearing and it ought to go through the legislative process in the regular normal way. So I think that what we are doing here is defending an abuse of the legislative process by voting against enactment at this stage.

The PRESIDENT: The Chair would ask the Sergeant-at-Arms to escort the Senator from Cumberland, Senator Berry, to the rostrum.

Thereupon, the Sergeant-at-Arms escorted Senator Berry to the rostrum where he assumed the duties of President pro tem, and President MacLeod was escorted by the Sergeant-at-Arms to the seat assigned Senator Berry on the floor of the Senate.

The PRESIDENT pro tem: The Chair recognizes the Senator from Penobscot, Senator MacLeod.

Mr. MacLEOD: Mr. President and Members of the Senate: I am sorry that I didn't see the Senator from Cumberland, Senator Brennan, rise from his chair before I asked the Sergeant-at-Arms to escort the Senator from Cumberland, Senator Berry, to the rostrum because this is the reason why I left the rostrum, because there was a strange silence from the junior Senator from Cumberland, Senator Brennan. He was the sponsor of this original bill. The title read, "An Act to Provide for Full-time District Attorneys".

The Senator from Androscoggin,

Senator Clifford, says this is a substantive change in the law to make full-time mean full-time. I don't agree with him. I think there was an error of omission committed here last summer in both branches of the legislature.

When the Senator from Cumberland, Senator Brennan, informed me last week that he knew the language was in there that it was not full-time, he said David Cox up in Penobscot County knew it. Well, David Cox is a Democratic county attorney who is obviously going to run for one of these part-time full-time district attorney jobs.

What does full-time mean under the present law? It means that he can go into probate court. First, he can draw up an inter vivos trust with a pour-over will, and when his rich client dies he can take that into the probate court and get his fat fee for probating the estate. He can draw buy and sell agreements, stock retirement agreements. He can draft deeds. He can do all kinds of things. I know of many very successful attorneys in Bangor who never go into a courtroom, but they make all kinds of dough, believe me. They don't like to go into court. Some of them are scared to go to court. They don't feel right in front of a judge. They make all their money outside of the courtroom on wills, trusts, agreements and deeds.

I think that every man in this Senate, every Senator here, thought last June that they were voting for a full-time district attorney bill to give this state, as the arguments went on the floor, for the first time full-time professional prosecution, and we are going to pay him \$23,500 a year, which is more than the district judges get. And the district judges are full-time; they don't practice law on the outside.

I am hopeful, since the Senator from Cumberland, Senator Brennan, was rising to his feet before I left the rostrum, that perhaps he will explain what he means by full-time. I am surprised that one of the leading apostles of openness and candor in government, which the Senator from Cumberland, Senator Brennan, certainly has been, saw fit not to inform this body last summer that full-time really didn't mean full-time, but it meant you could carry on a practice outside. It meant that a probate

judge who now can go to criminal court on a criminal case can see his full-time district attorney there, and then the next week the full-time district attorney can be before the probate judge probating an estate. This goes on within the State of Maine right now, and not to the advantage of criminal prosecution and also sometimes not to the advantage of decedents in an estate. That is why I was in favor of this bill, and that is why, when the Senator from Cumberland, Senator Brennan, expressed surprise to me last year that I was supporting a Democrat's full-time prosecuting bill, I said "Well, we were warned by the Democratic leadership that if we passed the appointive district attorney bill, which we passed in the 105th, that the Governor would veto it again." So I said "I was interested in getting a full-time prosecuting system and that is why I voted for your bill, and that is why I think we are going to fund it."

I am sorry — maybe we all should read these bills more carefully, but sometimes you go on the faith and trust implicit in the process, so that when you read something in the title that says "full-time" then that is what it means.

All this bill is going to do is correct an error in the date and correct an error of omission in the bill itself so that full-time means full-time, and it doesn't need a public hearing to do that. Thank you very much.

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

Mr. BRENNAN: Mr. President and Members of the Senate: First, I am honored that the distinguished President would come down from the rostrum to make some remarks on this matter. I hope that this isn't just a shabby attempt to discredit my candidacy for the governorship.

In regard to full-time, I want to make it perfectly clear, as that inimitable person in Washington might say, I support prosecutors being full-time, but I support the integrity of the legislative process.

As I recall, I had a conversation with the good Senator from Penobscot, Senator MacLeod, last week. I think he agreed that this was a change of substance and that it should go through the

legislative process. Maybe we ought to introduce a rule that would require public hearings for changes in substance in the legislative process. That is what I support.

I believe at \$23,500 it should be a full-time job and there should be no question about it, but I think we can put it through the process. I think if the attorneys general want to be senators they ought to run for the Senate and introduce bills here, but they shouldn't try to run the Maine Senate, as far as I am concerned.

So as to where I stand on full-time, I am absolutely in support of it being full-time, with no question whatsoever. I think it should be drafted in such a fashion that it would be stated that the attorney could not do any other legal work for remuneration. And I want you to know I worked as a county attorney. In regard to probate practice, I haven't made a hundred dollars in ten years out of probate practice. I am not interested in it. And I am absolutely clear as to how I want to be, but I am also concerned with the integrity of the legislative process.

The PRESIDENT pro tem: The Chair recognizes the Senator from Penobscot, Senator MacLeod.

Mr. MACLEOD: Mr. President and Members of the Senate: I will promise you one thing, that this is kind of my swan song at this special session as far as presiding over this body is concerned, and I won't avail myself of the liberty of coming down from the rostrum but maybe only one more time, but I couldn't resist it today and I hope you will forgive me.

I would like to assure the junior Senator from Cumberland, Senator Brennan, that my coming down from the rostrum is not a shabby attempt to discredit his candidacy for Governor of the State of Maine. I did come down because, as I said, I was mystified and couldn't understand it. When the Senator himself just said a few minutes ago that he is in favor of full-time district attorneys, he is in favor of full-time prosecution, he doesn't think they should be earning money outside doing probate work and deeds, and so forth, I am still very mystified and would like to ask the Senator from Cumberland, Senator Brennan, that when he admitted to me

last week that he knew this language was in there, that full-time really wasn't full-time, why he didn't convey that to the members of this body while this bill was going on to the enactment stage during the regular session. And if the Senator from Cumberland, Senator Brennan, is indeed in favor of full-time district attorneys, as the sponsor of the original legislation, and neglected to inform the Senate last summer that it wasn't really full-time, I don't understand and has objections now.

We all understand it here in the Senate. We don't need a public hearing on this bill. We know what full-time means now, I think. We know the purpose of this legislation is to make sure that the people in the state understand what full-time is and the people that are going to run for these offices. And I still don't understand why this information that the Senator said he had in his possession was not conveyed to us last summer in our last week when we were passing this bill to be engrossed. The bill we passed last summer for full-time district attorneys was not in fact fulltime, but allowed them to practice probate work, do wills, trusts, buy and sell agreements, and so forth, which comprises in some cases 75 to 80 per cent of a practicing attorney's income.

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

Mr. BRENNAN: Mr. President and Members of the Senate: I will reiterate that I am prepared to sponsor legislation to clarify this. I am concerned about the integrity of the legislative process.

In reference to full-time, the good Senator from Kennebec, Senator Joly, I think, spoke about what full-time has meant in this society. Most of our school teachers are full-time school teachers, but they work evenings. Many of the people who work in factories are full-time factory workers, but they work evenings. I feel strongly it should be clarified, but I don't think we should by-pass the usual process because somebody down in the Attorney General's office happens to have a good relationship with somebody in the legislature. I think we ought to have a public hearing on that, and I personally would support it. I have told many

Senators in this body and many Representatives in the other body that I would support any measure to clarify that and make this clearly full-time. And again, I am honored that the good Senator came down from the rostrum.

The PRESIDENT pro tem: Is the Senate ready for the question? The question before the Senate is enactment of this bill. A roll call has been requested. This being an emergency measure, for its enactment it requires the affirmative vote of two-thirds of the entire elected membership of the Senate. All those members of the Senate in favor of a roll call will please rise and remain standing until counted.

Obviously more than 20 per cent having arisen, a roll call is ordered.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate: My vote will speak for myself but it won't speak in detail as to what I feel. I guess I am one of those who have had this question of full-time prosecutors before me for many sessions of the legislature, and I too felt the last time when I voted that I was voting for something very specific. I find out now that it was not the intent of the bill necessarily to convey that impression.

Sometimes I get a little concerned at the splitting of hairs by the legal fraternity and, Mr. President and Members of the Senate, I want you to know that the debate here today does little to establish my confidence, not in the basic integrity of the legislative process, which I feel is intact, but it does an awful lot to disturb my confidence in the presentations that were made to me last session. I think that this debate here today is sham and sheer folly, and I really don't understand what the problem is. Within me, I just cry out "What is the problem?"

We all want full-time prosecutors. Apparently all of us here want full-time prosecutors who don't earn a living, and sometimes a conflict of interest, in some other facet of the legal profession. For heaven's name, where is the process? And don't talk to me about maintaining the integrity of the legislative process. We had that, and we had it up to here during the regular session when we had public hearings and when we debated

this. I say that this whole sham is an indictment of the legislature process rather than a restoration of whatever lack of integrity it might have had.

The PRESIDENT pro tem: The Chair will ask the Sergeant-at-Arms to escort the President to the rostrum.

At this point the Sergeant-at-Arms escorted the President to the rostrum where he assumed his duties as President of the Senate, and the Sergeant-at-Arms then escorted Senator Berry to his assigned seat on the floor of the Senate.

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

Mr. BERRY: Mr. President and Members of the Senate: I would hope that it would be my opportunity to add a few facts to the information that has already been given to this body on the matter.

I would first point out to you that L. D. 1569 was signed by the Governor of the State on June 29, 1973. This was just a few days before our final adjournment of the regular session. I am sure that we all recall the busy, rather hectic times attendant upon the bills that passed at that time, and the statements that have been made that we relied on the statements of the people involved as to what the bill contained, while it may be true, I think that we relied a great deal upon the written language and certainly the layman's interpretation of the written language. I am going to quote you from L. D. 1569. This is the law of the land now: "All district attorneys and assistant district attorneys designated as full-time attorneys and assistant district attorneys designated as full-time assistants shall be full-time officers of the State." Now, to those of us in the body who have no formal legal qualifications to practice, no one can quibble with that language. Full-time, in anybody's understanding, is 24 hours a day, and to my fellow laymen in the Senate situations such as this might occur: a murder at two o'clock in the morning, and the district attorney is dragged out of bed to investigate. At any time during the day that the district attorney has to discharge the duties of his office he is on call, and that is what is meant by full-time to people like you and to me.

Now, this I think answers the statements and the positions of Senator Clif-

ford and Senator Brennan that this was not the intent of the law as it was passed, that they should be 24 hours a day non-practicing.

I would like to, with your indulgence, quote from a few other legislative documents that we have had here before us. I had the distinction in the 104th Legislature of presenting the first bill in the history of the State of Maine that never got a hearing and got turned out of office — the bill, not me. This was quite a distinction, and the title of the bill was, "An Act Relating to Full-time States Attorneys", my bill. Now, you who have seen me sit here all through this debate and I never once yet said I had put this bill in. I was quite content to let some other people sit in the glory of their bills. But I put the first bill in the State of Maine for full-time district or state attorneys, and I want to read you from the language of this bill. This is comparable language to that of 1569 I just read: "Only attorneys at law admitted to the practice of law in this state shall be so appointed. They shall devote full-time to their duties and shall not engage in the private practice of law." Isn't it odd that the language we are trying to get in this bill, that is in this bill and that our friends are trying to get out, are the words that I accented reading to you. That was quite a combination, incidentally, that kept that bill out of the legislative process. That in itself is a good story.

Now, I will read you from L. D. 1321, introduced in the 104th Legislature by then Representative Charles Moreshead of Augusta, entitled, "An Act to Provide Full-time County Attorneys". The same language: "A county attorney designated a full-time county attorney in section 2 shall devote full-time to the duties of his office of county attorney and shall not conduct a private practice of law." Now we come to the 104th Legislature, L. D. 1291, introduced by Senator Kellam of Cumberland, not unacquainted with some of the people who have been debating this issue here today. Now I will quote from the comparable language of Senator Kellam's bill, who I might point out was an arch enemy of my legislation. Incidentally, in going through, I would just point out that we had that same language for the full-time attorney general too, "he shall not engage in the

private practice of law", and that is the law of the land now. "Only attorneys-at-law admitted to the practice of law in this state shall be so appointed. They shall devote full time to their duties and shall not engage in the private practice of law." That is Senator Kellam's bill.

In the 105th Legislature, we are now two years back, Senator Kellam presented L.D. 1407, "An Act Providing for Full-time District Attorneys": "Only attorneys-at-law admitted to practice of law in this State shall be so appointed. They shall devote full time to their duties and shall not engage in the private practice of law." And we have a new draft of L.D. 701 in the 105th, L.D. 1845: "An Act to Provide for Full-time County Attorneys in Certain Counties and Four-Year Terms for all County Attorneys", and the comparable language again: "A county attorney designated a full-time county attorney in section 2 shall devote full time to the duties of his office as county attorney and shall not conduct a private practice of law."

Now I have been monotonous, tedious, boring and long-winded, but I think you might get the point. Let's get a little more mundane. At present our district court judges, right this minute, our district court judges get \$22,000 a year. I don't know how you define full-time, but boy they are full-time. They are not drawing wills at home and they are not making a little money on the side. In our wisdom, we one year from now are going to put them up to \$23,000. I recall to your minds, Members of the Senate, that our full-time district attorneys are being paid \$23,500 initially. Now, as I say, on a rather mundane level this isn't peanuts. That is more than we are going to pay our district court judges. So we are not asking these people to wear sackcloth and ashes and not know where their next meal is coming from. We are paying them what I would consider not an overly adequate salary but certainly, in comparison with the judges, they are being paid more than the judges are.

Now, it seems to me that, if we are really openly honest about this, how can you quibble about putting in the law what we all thought was in the law last June, what we know should be in the law right now? I think that the facts for us laymen speak pretty well.

We have had several proposals from the antagonists to this bill saying, "Let's put in another L.D.". I want to refresh your memory of what can happen in the legislative process that we are fighting to keep. I have seen in the past effective political action negating the will of the legislature in items like this, and I say to you that if we include in here the stipulation that district attorneys shall not engage in the practice of law outside of their official duties, that there it is in the law, it is going to be signed by the Governor, and it is going to be the law of the land. But we are going to be taking an awful chance if we were to play and let this thing fly it in itself in the political winds. I only need to ask you to go back with me to the 104th Legislature when what happened to my bill happened to it. So I think that the language is there, we thought it was there, we know it should be there, and it ought to be there, and I hope that you will vote for its enactment. Thank you.

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

Mr. CLIFFORD: Mr. President and Members of the Senate: I think there are a couple of points that should be made. One is that the difference between a judge and a prosecuting attorney is fairly substantial since a judge is appointed, he is appointed to a seven-year term, and essentially he is appointed for life. A prosecutor is an elected office, he has to campaign for the office, it is only a four-year term, and there is absolutely no guarantee of being re-elected by the people. So there is a difference between the two positions.

I think the main point is that if the proponents of this substantive change, being snuck through as an error or an omission, if they feel so strongly that the district attorney should be full-time, then I say let them attend the public hearing and make the point. But perhaps some of the county attorneys might be able to shed some light on the issue too, and that is all I am saying, that a public hearing should be held on this portion of the bill which was heard by the State Government Committee and reported out unchanged. The full-time element was approached on the basis of prohibiting practice in certain courts. That is the

approach that was taken. There was no attempt, in my opinion, to pull the wool over anyone's eyes. I just think that the county attorneys would be interested in testifying at a public hearing in the legislative process, and the bill could go through and be fully debated in both houses, whereas the error or omission could be approached on a separate basis. I think that the issue is the integrity of the legislative process and whether or not legislators write bills or the Attorney General's office writes bills. Thank you, Mr. President.

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

Mr. SPEERS: Mr. President and Members of the Senate: I certainly wouldn't want the impression to go unchallenged that the State Government Committee reported out a bill allowing the so-called full-time district attorneys to practice law on the side. As far as my recollection of the hearing is concerned, and I feel that as far as the intention of the members of the Committee on State Government was concerned, that the district attorneys who would be elected as a result of this bill would devote their entire energies in official duties to prosecuting the cases in the criminal court.

I might add to what the good Senator from Cumberland, Senator Berry, has mentioned about our district court judges. I might point out as well that our Attorney General of the State, I believe, is accorded a salary of \$23,500, and it is very specifically stated in the law creating that as a full-time position that he shall not engage in the private practice of law.

I don't think that there will be any problems finding the individuals to run for these positions, very competent individuals, and if they do a good job they will be re-elected. I don't feel that they need to be allowed the private practice of law outside of the duties that they will have as a result of this bill.

I think that this matter did receive a public hearing. I think this matter was considered both in committee and before both branches of the legislature, considered very well towards the end of the last session, and I just simply reiterate that I don't feel there was any doubt in anyone's mind in voting on this bill but that it was to be a full-time

prosecutorial position.

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

Mr. CONLEY: Mr. President and Members of the Senate: I would certainly stand here to defend the integrity of the Minority Floor Leader. I think he has certainly expressed his will regarding a full-time prosecuting system. I think what he stated though was that he had certain hang-ups as to the way the bill had been amended through the Attorney General's Office, and whether or not that is proper is not meaningful to me at this particular time because I have been a member of this body now for a few years and I have seen these bills come before us on many occasions, and I have seen them fought down to the wire on a partisan basis between the Attorney General appointing full-time prosecutors and between the elective process of full-time prosecutors.

The good Senator, the Majority Floor Leader, mentioned a commission that was established by the Governor at one time to debate as to which would be the best solution to setting up a full-time prosecuting attorneys office. I know that the Minority Floor Leader at this time was in full support of electing the district attorneys on a full-time basis. He has expressed that here this afternoon, that he himself supports restricted full-time prosecuting attorneys. I think what we are doing right now is playing on semantics, and I don't think that that is what should be done in this legislative hall.

I intend to vote for the enactment of this bill. I think that is what everybody here wants, and I think that is what the citizens of this state have long awaited for. And at this late hour to start just toying around over a little thing that doesn't mean anything at all, I think it is time we enacted it and get this thing on the road.

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

Mr. KATZ: Mr. President and Members of the Senate: I noticed that this bill has failed of enactment in the other body. If it fails of enactment in this body today it will be dead. I would imagine that there will be those who will attempt to reconsider and hold it pending an op-

portunity to do something with it. I intend to vote for enactment, and I will not vote for reconsideration and I hope other members of the Senate do not vote for reconsideration. If those who wish to kill it here today want to go ahead and kill it, so that the bill is completely dead, let it be up to them to explain to the people of the state the little nuances of their thinking, the nice little nifty loopholes they are talking about. Let them try to explain the integrity of the legislative process to the people of the state as to why we don't have a full-time district attorney bill that we have been wanting for so many years.

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

Mr. TANOUS: Mr. President and Members of the Senate: Since I sponsored this bill, perhaps I ought to say a word or two about the intent of the legislation. What happened apparently is that because of an error in the original full-time district attorney law the repealing date was erroneously prepared on the bill. So, in effect, what happened is that as of December 31, 1973 we were left without county attorneys. The county attorneys presently do not have any authority whatsoever to act as a county attorney. Granted, the Attorney General's Office has appointed all of the county attorneys as assistant attorneys general so that they are able to prosecute for crimes in Maine. By statute, it is incumbent upon the county attorney to prosecute for crimes, but there are many other responsibilities that a county attorney has. It is very important that we do enact this legislation by a two-thirds vote, with an emergency on it as it calls for, to reinstate the county attorneys until the district attorneys take over next year. As I mentioned, there are many, many duties other than prosecuting for crimes that county attorneys have a responsibility of, and they should be reinstated as soon as possible. I say that this legislature will be remiss in its obligation to the public if we fail to pass this bill as an emergency measure. Thank you.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the enactment of Bill, "An Act Amending the Full-time

District Attorneys Law." A roll call has been ordered. A "Yes" vote will be in favor of enactment; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators, Anderson, Berry, Conley, Cox, Cummings, Cyr, Fortier, Graffam, Greeley, Henley, Hichens, Huber, Joly, Katz, Kelley, Minkowsky, Morrell, Olfene, Richardson, Roberts, Sewall, Shute, Speers, Tanous, MacLeod.

NAYS: Senators, Brennan, Cianchette, Clifford, Marcotte.

ABSENT: Senators, Danton, Schulten, Wyman.

A roll call was had. 25 Senators having voted in the affirmative, and four Senators having voted in the negative, with three Senators being absent, and 25 being more than two-thirds of the entire elected membership of the Senate, the Bill was Passed to be Enacted in non-concurrence.

Sent down for concurrence.

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

Bill, "An Act to Require District Attorneys to Prosecute all Criminal Cases before the District Courts." (S. P. 711) (L. D. 2123)

Pending — Passage to be Engrossed.

Mr. Speers of Kennebec then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-308, was Read.

The PRESIDENT: The Chair recognizes the same Senator.

Mr. SPEERS: Mr. President and Members of the Senate: This is the amendment that I suggested was needed to this particular bill to clarify certain matters of concern to those who were opposing the bill the other day. We have added the word "municipality" to go along with "state or county" to make sure that the prosecutors prosecute all of the violation of laws, wherever they may occur, or whichever may occur, either laws of the state, of the counties, or the municipalities.

We have also added the words "which come to trial" to make sure that the prosecutors need only prosecute those cases

which actually come to trial, to make it clear that they need not be in the district court all of the time at every stage of the proceedings.

Lastly, we have added the words "when requested by the presiding judge" to make it clear that in those few instances where the county attorneys or the district attorneys do not agree to prosecute a case in the district court that the district judge may have the power to so request him.

Now, by introducing this amendment, I want to make it clear and have the legislative intent so reflect, that in no way do I intend to inhibit any of the district attorneys from prosecuting cases in the district courts on their own, even when the judges don't specifically request them to do so, as is now the case 99

percent of the time. But in those few instances where the district attorneys may not wish to prosecute a case in the district court, even when the presiding judge may request him to do so, this amendment will alleviate that situation and require the district attorney to so prosecute the case.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

Senate Amendment "A" was Adopted and the Bill, as Amended, Passed to be Engrossed.

Sent down for concurrence.

On motion by Mr. Sewall of Penobscot,
Adjourned until 10 o'clock tomorrow morning.