

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

KJ PRINTING
AUGUSTA, MAINE

HOUSE

Thursday, February 3, 1977

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Reginald L. Couture of the Union Congregational Church, Ellsworth Falls.

The Journal of the previous session was read and approved.

Papers from the Senate

From the Senate:

Bill "An Act to Remove Limitations on the Amount of Group Life Insurance Which May be Issued" (S. P. 91) (L. D. 215)

Bill "An Act Relating to the Purchase of Insurance by the Maine Insurance Advisory Board" (S. P. 89) (L. D. 213)

Came from the Senate referred to the Committee on Business Legislation and ordered printed.

In the House, referred to the Committee on Business Legislation in concurrence.

Bill "An Act to Reorganize the System of Public Post-secondary Education in Maine" (S. P. 95) (L. D. 219)

Came from the Senate referred to the Committee on Education and ordered printed.

In the House, referred to the Committee on Education in concurrence.

Bill "An Act Relating to Employee Workmen's Compensation Law" (S. P. 94) (L. D. 218)

Came from the Senate referred to the Committee on Labor and ordered printed.

In the House, referred to the Committee on Labor in concurrence.

Bill "An Act to Authorize the Transfer of all Assets and Liabilities of the Newport Water District to the Town of Newport and the Dissolution of the Newport Water District" (S. P. 96) (L. D. 220)

Came from the Senate referred to the Committee on Public Utilities and ordered printed.

In the House, referred to the Committee on Public Utilities in concurrence.

Bill "An Act Relating to Motor Vehicle Fees Collected by the Public Utilities Commission" (S. P. 92) (L. D. 216)

Bill "An Act Relating to Vehicle Sizes and Weights" (Emergency) (S. P. 90) (L. D. 214)

Bill "An Act to Provide Protection for Children Transported by Bus by Religious Organizations" (S. P. 93) (L. D. 217)

Came from the Senate referred to the Committee on Transportation and ordered printed.

In the House, referred to the Committee on Transportation in concurrence.

Non-Concurrent Matter

Joint Order Relative to Laying of County Taxes for 1977 and 1978 (H. P. 138) which was read and passed in the House on January 26, 1977.

Came from the Senate read and passed as amended by Senate Amendment "A" (S-5) in non-concurrence.

In the House: The House voted to recede and concur.

Messages and Documents

The following Communication:
STATE OF MAINE
SUPREME JUDICIAL COURT
AUBURN, MAINE

February 1, 1977

Honorable John L. Martin
Speaker of the House
House of Representatives
State House

Augusta, Maine 04333

Dear Speaker Martin:

I have the honor to transmit herewith answers of the Justices of the Supreme Judicial Court given pursuant to your request for an advisory opinion of the Justice dated January 13, 1977, together with the envelopes containing the ballots involved in the questions submitted to the Justices.

Yours ever truly,

Signed:

ARMAND A. DUFRESNE JR.
Chief Justice

OPINION

Of the Justices of the Supreme Judicial Court Given Under the Provisions of Section 3 of Article VI of the Constitution

QUESTIONS PROPOUNDED BY THE
HOUSE IN AN ORDER
DATED JANUARY 13, 1977
ANSWERED FEBRUARY 1, 1977
ANSWERS OF THE JUSTICES

To the Honorable House of Representatives 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 the following answers to the questions propounded on January 13, 1977.

QUESTION I: In the factual situation described, are the provisions of the Maine Revised Statutes Annotated, Title 21, section 862, to be interpreted as mandatory or directory?

ANSWER: We answer that as certain provisions of Maine Revised Statutes Annotated, Title 21, section 862 may be applicable to, and involved in, the particular factual situation described by the question, the provisions are to be interpreted as directory. **Opinion of the Justices, 124 Me. 453, 473, 126 A. 354 (1924); Opinion of the Justices, 152 Me. 219, 225-227, 130 A.2d 526 (1956).**

QUESTION II: What effect does the failure by election officials to comply with the provisions of the Maine Revised Statutes, Annotated, Title 21, section 862, have upon the validity of ballots 1 through 7 and 17 through 20?

ANSWER: We answer that the failure by election officials to comply with the provisions of the Maine Revised Statutes Annotated, Title 21, section 862, as such failure is particularly stated in the question, is without legal effect upon the validity of ballots 1 through 7 and 17 through 20. **Opinion of the Justices, 124 Me. 453, 473, 126 A. 354 (1924); Opinion of the Justices, 152 Me. 219, 225-227, 130 A.2d 526 (1956).**

QUESTION III: Questions based on review of the face of each individual ballot.

We offer a general prefatory statement to allow concise discussion and facilitate understanding of our answers to the questions based on a review of the face of each of 39 ballots.

The House of Representatives has characterized as "questions of law" those it has addressed to us concerning the validity of, and proper count to be assigned to, each of 39 ballots based on a review confined to the face of each ballot. The stated basis of the characterization is that

"... the reason for counting the questionable ballots one way or another must appear on the face of the ballots and must, therefore, be reduced to a question of law."

We, however, are not controlled by this reasoning of the House of Representatives. As the Justices of the Supreme Judicial Court from whom the House of Representatives is seeking an advisory opinion we have obligation to make an independent determination whether, by answering, we shall be acting within the limitations of Article VI, Section 3 of the Constitution of Maine, one of which is that the questions

asked must truly be "important questions of law." **Opinion of the Justices, Me., 343 A.2d 196 (1975).**

We must evaluate, then, whether it is correct that, invariably, the question whether a disputed election ballot is valid, or is to be counted one way or another, if submitted to be decided strictly from a review of the face of the ballot, is to be deemed to raise only a question of law because

"the reason... (to govern the determination) must appear on the face of the ballots..."

We are mindful that on other occasions when a House of the Legislature requested an advisory opinion and made a statement to the Justices of the Supreme Judicial Court similar to that we now propose to evaluate, the Justices answered and gave advisory opinions without undertaking an independent assessment of the legal correctness of the statement. See: **Opinion of the Justices, 161 Me. 32, 206 A.2d 541 (1965); Opinion of the Justices, Me., 227 A.2d 303 (1967).**

The present situation is significantly different, however. The Legislature saw fit to establish, effective as of January 1, 1976, the "Commission on Governmental Ethics and Election Practices." This Commission is an independent body charged with the duty, among others,

"... to investigate and determine the results, within the limits of the Constitution, of any contested county, state or federal election within this State." (a M.R.S.A. Sections 1002-1008) The Legislature expressly stated that its purpose in creating this Commission was "to strengthen" as

"... essential under the American system of representative government that the people have faith and confidence in the integrity of the election process and the Members of the Legislature." (1 M.R.S.A. Subsection 1001)

By 21 M.R.S.A. Section 1421 the Legislature also made the Commission on Governmental Ethics and Election Practices responsible to

"... make findings of fact and opinion on the final determination of election results in primary, general and special elections for county, state or federal offices that are contested." (emphasis supplied)

As to such "findings of fact and opinion on the final determination of the election", if the election be one

"... where the Constitution of this State or the United States Constitution provides for final determination of the election of a candidate, the commission shall transmit to the body vested with final determination powers a copy of the findings of fact and opinion." 21 M.R.S.A. Section 1423 (emphasis supplied)

Article IV, Part Third, Section 3 of the Constitution of Maine provides that each

"... House shall be the judge of the elections... of its own members..."

When, therefore, as here, the contested election relates to a member of the House of Representatives of the State of Maine, it is the duty of the Commission to make findings of fact, subject to such ultimate action relative to the findings as the House of Representatives, the body vested with final determination powers, may see fit to take.

These recent developments concerning the fact-finding process operative in contested elections for legislative office accentuate the necessity that the Justices of the Supreme Judicial Court be highly sensitive to ensure compliance with the constitutional mandate that in rendering advisory opinions, they shall not engage in fact-finding but shall deal only with "questions of law."

Prior decisions of the Justices of the Supreme Judicial Court (rendered in other than advisory opinion contexts) have made abundantly plain that merely because determination as to the

validity of, or the appropriate count to be assigned to, contested election ballots is to be made solely from the face of the ballots, it does not follow, necessarily, that a question of law is being decided; on the contrary, the decision will usually involve fact-finding. For example, in *Bartlett v. McIntire*, 108 Me. 161, 79 A. 525 (1911) the Justices observed:

"When . . . we come to the question of whether the marks placed in the square amount to a cross (or as the law presently authorizes, a check mark) and meet the statutory requirement, a question of fact is raised. . ." (p. 167) (emphasis supplied)

Similarly, the Justices in *Bartlett v. McIntire* (p. 172) deemed the questions involved in the determination of distinguishing marks to be, in general, questions of fact. This point was amplified in *Frothingham v. Woodside*, 122 Me. 525, 120 A. 906 (1923) in which the Justices stated that because inquiry must be directed to ascertainment of the apparent intent of the voter,

" . . . the question of whether a given mark is or not distinguishing so as to invalidate the ballot is a question of fact and one upon which persons of equal intelligence, experience and learning may well and honestly differ." (p. 533)

It must be acknowledged, then, that notwithstanding the questions addressed to us are confined to review only of the face of the ballots, fact-finding may be involved. We advert, therefore, to the following general legal principles to guide our determination whether we may be dealing with a question of law or a question of fact:

Principles

(1) As a matter of law, regardless of intent, a voter fails to make an effective voting choice unless he uses the cross or check mark presently mandated by statute for the purpose. *Bartlett v. McIntire*, supra; *Frothingham v. Woodside*, supra; *Opinion of the Justices*, Me., 227 A.2d 303, 308 (1967).

(2) As a matter of law (absent other reason to invalidate a ballot), a voter makes an effective voting choice if he causes any part of the statutorily authorized mark to fall inside an appropriate square. *Frothingham v. Woodside*, supra.

(3) As a matter of law, an effective voting choice is not defeated solely because the voter, in using a statutorily prescribed mark, has failed to cause any part of such mark to fall within the appropriate square. *Frothingham v. Woodside*, supra.

(4) Since by legal definition there can be a distinguishing mark only when the ballot manifests that the " . . . intent of the voter (is) to make his ballot distinguishable", 21 M.R.S.A. Section 1 (9), the finding whether or not the voter has made such intent apparent is, in general, a finding of fact. It becomes a determination of law only when the circumstances are such that there can be no honest disagreement by reasonable persons as to the apparent intent of the voter. *Bartlett v. McIntire*, supra, at p. 172; *Frothingham v. Woodside*, supra, at p. 533.

(5) The determination of the nature, or place, of a mark rests on what visual perception the person examining the ballot derives and, therefore, the determination involves a finding of fact unless the perceptions of reasonable persons, capable of accurate visual perception, cannot differ. *Bartlett v. McIntire*, supra, at pp. 167, 168.

Applying the foregoing principles to the 39 individual ballots which are the subject of the instant questions, we find that the ballots fall into classes, rendering it feasible for us to answer through a comprehensive general discussion rather than by a response to the questions in the seriatim form in which they have been asked.

A

Ballots 1 to 7, inclusive.

ANSWER: We answer that, as a matter of law, ballots 1 to 7, inclusive, are all valid ballots and, as a matter of law, each ballot should be counted as a vote for Cunningham.

In our view, the only ground of doubt concerning these ballots is that in each of them the check mark (which appears so plainly that there can be no rational disagreement as to its presence) may be thought to have its apex outside the appropriate square signifying a Cunningham vote. In each instance, however, it is plain beyond rational dispute that some part of the check mark is within the square. Under Principle (2) above, this suffices to establish as a matter of law that the ballot should be counted as a vote for Cunningham.

B

Ballot 8

ANSWER: We answer that, as a matter of law, ballot 8 is a valid ballot and, as a matter of law, should be counted for Cunningham.

The seeming reason for dispute, here, is that there is a plain check mark obviously adjacent to the Cunningham square at the left of the square, but entirely outside the square. Under Principle (3) above, as a matter of law, this does not defeat the voter's choice, otherwise plainly manifested beyond possibility of rational disagreement, to vote for Cunningham.

C

Ballot 9

ANSWER: We answer that, as a matter of law, ballot 9 is a valid ballot but, as a matter of law, should be counted neither for Cunningham nor for Gibbs.

Here, the question appears to be whether the voter's mark, obviously placed in the Cunningham square, is either the check mark or cross mandated by statute. We are satisfied that reasonable persons, capable of accurate visual perception, could conclude only that the mark in the Cunningham square is other than the statutorily prescribed check mark or cross. Under Principle (1) above, as a matter of law, the voter has failed to make an effective choice of either Cunningham or Gibbs.

D

Ballots 10 to 16, inclusive.

ANSWER: (1) We must decline to answer whether each of the ballots 10 to 16, inclusive, is a valid ballot since this determination cannot be made as a matter of law but in each case depends on a finding of fact.

The validity of ballots 10 to 16, inclusive, appears to be in question because each contains a mark either of a type or in a place not specifically permitted by 21 M.R.S.A. We are of opinion, however, that the nature of the marks and their location is such that as to each ballot reasonable persons could honestly disagree whether the apparent intent of the voter was to make his ballot distinguishable. As to the validity of each of these ballots, then, the question to be determined is not one of law. The appropriate answer requires findings of fact, as made initially by the Commission subject to fact-finding review by the House of Representatives, the ultimate judge of the elections of its members.

(2) If, but only if, the ultimate determinations of fact produce a conclusion that some or all of ballots 10 to 16, inclusive, are valid ballots, then:

(a) We answer that if any of the ballots 11, 12, 13 and 15 is found valid, such ballot should be counted, as a matter of law, for Cunningham since there can be no rational disagreement that the voter placed a statutorily authorized mark in the appropriate square to manifest a vote for Cunningham.

(b) We must decline to answer as to the counting of ballot 10. The only rational alternatives are whether the ballot should be

counted for Cunningham or not at all. While there is an obvious cross in the Cunningham square, there is also plainly apparent a cross in the Gibbs square which is accompanied by other markings. We are satisfied that reasonable persons, capable of accurate visual perception, can honestly disagree whether the apparent intent of the voter was to erase the cross in the Gibbs square. The question is, therefore, not one of law but is a question of fact for the Commission's determination, subject to fact-finding review by the House of Representatives.

(c) We must decline to answer as to the counting of ballot 14. Reasonable persons, capable of accurate visual perception, could honestly disagree whether the mark in the Cunningham square is a statutorily authorized mark. The question is, therefore, one of fact.

(d) We answer that, as a matter of law, ballot 16 should be counted neither for Cunningham nor Gibbs. We are satisfied that reasonable persons, capable of accurate visual perception, could conclude only that in each of these ballots the mark appearing in the Cunningham square is other than the statutorily required cross or check mark.

E

Ballots 17 to 20, inclusive.

ANSWER: We answer that, as a matter of law, each of the ballots 17 to 20, inclusive, is a valid ballot and, as a matter of law, each should be counted as a vote for Gibbs.

The only question apparent as to each of the ballots 17 to 20, inclusive, is that in each of them some part of the statutorily authorized check mark is in the Gibbs square — and in no other square, — but the apex of the check mark is outside the Gibbs square. Under Principle (2) stated above, each such mark is, as a matter of law, an effective vote for Gibbs.

F

Ballot 21

ANSWER: (1) We must decline to answer the question directed to the validity of ballot 21.

The validity of ballot 21 appears brought in question because relative to the office, "State Senator (District 6)", a cross appears in the write-in square, and in the write-in space are, the words, "I. M. Graft Jr. Portland."

Although a person whose municipality of residence is "Portland" is not eligible as a candidate for State Senator (District 6), the ineligibility of a person to serve in the office for which the person is designated as a write-in candidate does not, per se, constitute the write-in of the person's name a distinguishing mark, *Libby v. English*, 110 Me. 449, 86 A. 975 (1913). Hence, the issue of the validity of ballot 21 becomes directed to whether the apparent play on words represented by "I. M. Graft Jr." as a purported write-in candidate necessarily renders those words a distinguishing mark, on the ground that the voter may be taken to have used the words as a comment rather than as a genuine undertaking to make a write-in vote. We believe that in the circumstances here present reasonable persons may honestly disagree as to whether the ballot manifests an apparent intent by the voter to make the ballot distinguishable. The question of the voter's apparent intent is, therefore, a question of fact upon which the Justices may not, constitutionally, render an advisory opinion. This fact-finding decision is for the Commission, subject to fact-finding review by the House of Representatives.

(2) Should the ultimate fact-finding determinations support ballot 21 as a valid ballot, we answer that, as a matter of law, ballot 21 should be counted for Gibbs.

We are satisfied that there can be no rational disagreement that the voter has made an effective vote for Gibbs by placing a cross, a

statutorily authorized mark, in the Gibbs square.

G

Ballots 22 and 23

ANSWER: We answer that, as a matter of law, each of these ballots is a valid ballot and should be counted for Gibbs.

As to ballots 22 and 23, we discern the only reasonable ground for dispute to be that in each of them the voter added small extra lines, or made extra shadings in the statutorily prescribed mark obviously placed in the Gibbs square. However, we find the nature of these additional markings or shadings plainly such that it is not open to rational dispute that they are entirely consistent with an honest purport of the voter to reflect a vote. Hence, as a matter of law, they cannot be distinguishing marks invalidating the ballot. *Libby v. English*, supra, at pp. 454, 455.

H

Ballots 24 and 25

ANSWER: (1) We must decline to answer whether ballots 24 and 25 are valid ballots.

As to ballot 24 the questionable feature relates to whether marks placed by the voter upon the word, "Dem.", appearing on the ballot opposite the names of candidates for whom the voter had plainly cast legal votes, are distinguishing marks invalidating the ballot. We find the manner of the marking such that rational persons could honestly disagree as to whether it was the apparent intent of the voter to distinguish his ballot. The question of the validity of the ballot is, therefore, not a question of law as to which we may constitutionally advise but is a question of fact for the determination of the Commission subject to fact-finding review by the House of Representatives.

As to the validity of ballot 25, we apprehend as the source of doubt that in voting for the office of "State Senator (District 6)", the voter placed in the write-in space the words, "Wade Trudel", but omitted to place a mark in the write-in square. In these circumstances reasonable persons could honestly disagree whether it was the apparent intent of the voter to make his ballot distinguishable. The question of the validity of the ballot is thus not a question of law upon which we may constitutionally give an advisory opinion but is a question of fact for the determination of the Commission subject to fact-finding review by the House of Representatives.

(2) If, but only if, the fact-finding determinations sustain the validity of either ballot 24 or 25, we answer that, as a matter of law, such ballot should be counted as a vote for Gibbs.

We are satisfied that it is not open to rational disagreement that on each ballot the voter placed a statutorily authorized mark in the appropriate square to manifest a vote for Gibbs.

I

Ballot 26

ANSWER: We must decline to answer both whether ballot 26 is a valid ballot or how it should be counted, if at all.

Reasonable persons, capable of accurate visual perception, could not disagree that in ballot 26 a cross appears in the Gibbs square, a check mark appears in the Cunningham square which has been subjected to a pressured rubbing and there is a break in the paper within, and in the immediate vicinity of, the Cunningham square. In these circumstances a question of fact is raised whether the intention of the voter, as effectively manifested, was to achieve an erasure of the check mark in the Cunningham square. Further, if this question of fact is resolved in favor of a finding that the voter intended an erasure, the existence of the break in the paper could be thought by reasonable persons to have occurred as an incident of the erasure, and in such event the break would not

constitute mutilation invalidating the ballot. *Murray v. Waite*, 113 Me. 485, 94 A. 943 (1915). It is, therefore, a question of fact (1) whether, by the markings in and about the Cunningham square, the voter manifested an intent to distinguish his ballot and (2) should not such intention be found, whether the voter manifested an intent to erase the check mark in the Cunningham square, thus to leave an effective vote — by a statutorily authorized cross placed in the appropriate square — for Gibbs. Hence, the question concerning ballot 26 as to validity, or should validity be upheld, as to the candidate for whom the ballot should be counted, are not questions of law within our constitutional province to answer by an advisory opinion. They are questions of fact for the Commission's determination, subject to fact-finding review by the House of Representatives.

J

Ballot 27

ANSWER: (1) We answer that, as a matter of law, ballot 27 is a valid ballot. We see nothing on the face of the ballot open for disagreement by rational persons to affect the validity of the ballot.

(2) We must decline to answer, however, whether, as the only rational possibility indicated by the ballot, the ballot should be counted in favor of Gibbs.

The difficulty, here, is that we believe that rational persons, capable of accurate visual perception, could honestly disagree as to what they perceive the mark placed in the Gibbs square to be, and until this underlying factual perception is determined, no ultimate judgment can be made whether the voter used a statutorily authorized mark. The issue is thus not one of law as to which alone we have constitutional authority to answer by an advisory opinion. The question of fact is for the Commission subject to fact-finding review by the House of Representatives.

K

Ballots 28 and 29

ANSWER: We answer that, as a matter of law, ballots 28 and 29 are valid ballots and, as a matter of law, each should be counted for Cunningham.

Our reasons for these conclusions are the same as stated in answer G above, dealing with ballots 22 and 23.

L

Ballot 30

ANSWER: We answer that, as a matter of law, ballot 30 is a valid ballot and, as a matter of law, should be counted for Cunningham.

We discern the problem as to ballot 30 to be whether the legal effect of the check mark plainly appearing in the Cunningham square is nullified as a vote for Cunningham because of the presence of an additional marking in the Gibbs square. We are satisfied that reasonable persons capable of accurate visual perception could conclude only that there is a mark in the Gibbs square which embodies neither a cross nor a check mark — the only marks authorized by statute to make a vote effective. As a matter of law, therefore, the voter has failed to register a vote for Gibbs but has effectively registered a vote for Cunningham.

M

Ballots 31 to 34, inclusive, and Ballot 38.

ANSWER: We answer that, as a matter of law, ballots 31 to 34, inclusive, and ballot 38 are valid ballots and, as a matter of law, each of them should be counted as votes for Gibbs.

We apprehend the doubt as to the validity of ballot 31 to be directed to whether a mark on the write-in line for the office of Register of Probate visible immediately to the left of a woman's name written in (as to which in the appropriate place the voter indicated the municipality of residence and placed a cross in the appropriate square) is a distinguishing

mark. We find that the only conclusion open to reasonable persons is that the mark consists of the word "Mrs." with obliterating lines over it. These circumstances show, as a matter of law, that the apparent intent of the voter was to further his attempt to vote correctly and is inconsistent with an intent by the voter to make the ballot distinguishable.

The validity of ballot 32 seems to have been questioned on the ground of a distinguishing mark because in the write-in space as to the office for which Cunningham and Gibbs were candidates the words "Jean Bowman" appear with a continuous line running entirely through both words, and the write-in square is left empty. In addition, as to the office of Register of Probate, which appears on the ballot immediately below the office of Representative to the Legislature for which Cunningham and Gibbs were candidates, the voter plainly and correctly voted for "Jean Bowman" as a write-in for Register of Probate. We are satisfied from all these circumstances that reasonable persons could conclude only that the voter intended a write-in vote for "Jean Bowman" as Register of Probate and corrected a mistaken write-in of "Jean Bowman" for Representative to the Legislature. As a matter of law, then, no apparent intent to make ballot 32 distinguishable can be attributed to the voter.

As to ballots 33, 34 and 38 the only possible infirmities we see are the following. In each ballot it is plain that by placing an appropriate mark in the appropriate write-in square and writing in a purported name in the appropriate write-in space, the voter sought to cast a write-in vote for an office other than that for which Cunningham and Gibbs were candidates. In each ballot, however, the voter omitted to show the municipality of residence and also, in ballots 34 and 38, failed to give a complete proper name for the write-in candidate. As a matter of law, such omissions do not transform a plainly manifested attempt to vote for a write-in candidate into a distinguishing mark invalidating the entire ballot.

N

Ballots 35, 36, 37 and 39.

ANSWER: We answer that, as a matter of law, each of these ballots is a valid ballot and, as a matter of law, ballots 35 and 39 should be counted as votes for Cunningham, and ballots 36 and 37 should be counted as votes for Gibbs.

The only question we discern as to these ballots is whether the mark placed by the voter in the appropriate Cunningham or Gibbs square, respectively, is either the cross or check mark authorized by statute. We are satisfied that as to each of the ballots reasonable persons, capable of accurate visual perception, could not disagree, either as to their perception of what the mark in fact is or as to its classification as a statutorily authorized mark.

Dated at Portland, Maine, this first day of February, 1977.

Signed:

Respectfully submitted:

ARMAND A. DUFRESNE JR.
CHARLES A. POMEROY
SIDNEY W. WERNICK
JAMES P. ARCHIBALD
THOMAS E. DELAHANTY
EDWARD S. GODFREY

The Communication was read and ordered placed on file and the Answers of the Justices referred to the Committee on Elections.

Petitions, Bills and Resolves
Requiring Reference

The following Bills were received and referred to the following Committees:

Agriculture

Bill "An Act to Raise the Christmas Tree Transportation Registration Fee" (H. P. 179)

(Presented by Mr. Lynch of Livermore Falls)
(Ordered Printed) Sent up for concurrence.

Business Legislation

Bill "An Act Relating to an Increase in the Volume Fees Paid by Major Creditors Under the Maine Consumer Credit Code" (H. P. 180) (Presented by Ms. Clark of Freeport)

Bill "An Act Relating to Domestic Insurers' Assets" (H. P. 181) (Presented by Ms. Clark of Freeport)

Bill "An Act Relating to Notice of Authorization to Registers of Probate" (H. P. 182) (Presented by Ms. Clark of Freeport)

Bill "An Act Relating to the Qualifications for Licensure as a Real Estate Salesman" (H. P. 183) (Presented by Mrs. Boudreau of Portland)

Bill "An Act Relating to Abandoned Safety Deposit Boxes" (H. P. 184) (Presented by Mr. Ault of Wayne)

(Ordered Printed) Sent up for concurrence.

Education

Bill "An Act to Provide Minimum Subsidy Payments for Small Administrative Units" (Emergency) (H. P. 185) (Presented by Mr. Bagley of Winthrop)

Bill "An Act Increasing the Pay for Substitute Teachers" (H. P. 186) (Presented by Mr. Bagley of Winthrop)

(Ordered Printed) Sent up for concurrence.

Election Laws

Bill "An Act to Establish a Presidential Primary in the State of Maine" (H. P. 187) (Presented by Mrs. Kany of Waterville) (Cosponsors: Mr. Bustin of Augusta, Mr. Shute of Stockton Springs)

(Ordered Printed) Sent up for concurrence.

Fisheries and Wildlife

Bill "An Act to Eliminate Weight Limits on Certain Species of Fish and to Provide for Uniform Possession Limits by Numbers" (H. P. 188) (Presented by Mr. McKean of Limestone)

Bill "An Act to Establish an Annual Procedure for Updating Open Water and Ice Fishing Regulations" (H. P. 189) (Presented by Mr. Dow of West Gardiner)

Bill "An Act to Provide Uniform Open Water Seasons on Lakes, Ponds, Brooks and Streams" (H. P. 190) (Presented by Mr. MacEachern of Lincoln)

Bill "An Act Relating to Smelt Fishing Seasons and Possession Limits" (H. P. 191) (Presented by Mr. Dow of West Gardiner)

Bill "An Act Establishing an Experimental Open Season on Moose" (H. P. 192) (Presented by Mr. McBreairey of Perham) (Cosponsors: Mr. Peterson of Caribou, Mr. Masterman of Milo, Mr. McKean of Limestone)

Bill "An Act Concerning Prosecution of Fish and Wildlife Law Violators Who are 16 Years of Age or Older" (H. P. 193) (Presented by Mr. Tozier of Unity) (Cosponsor: Mr. Conners of Franklin)

Bill "An Act Relating to the Taking of Smelts and Bait Dealer Licenses" (H. P. 194) (Presented by Mr. Dow of West Gardiner)

Bill "An Act to Make Allocations from the Department of Inland Fisheries and Wildlife for the Fiscal Years Ending June 30, 1978 and June 30, 1979" (Emergency) (H. P. 195) (Presented by Mr. Dow of West Gardiner)

(Ordered Printed) Sent up for concurrence.

Judiciary

Bill "An Act Relating to the Penalty for Liquor Violations for Persons under 18 Years of Age" (H. P. 196) (Presented by Mr. Green of Auburn) (Cosponsor: Mr. Hughes of Auburn)

(Ordered Printed) Sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Labor

Bill "An Act Concerning Representation Proceedings under the State Employees Labor Relations Act" (H. P. 197) (Presented by Mr. Burns of Anson)

Bill "An Act to Extend the Exemption for Certain Individuals Engaged in Fishing From Coverage Under the Employment Security and Workmen's Compensation Laws" (Emergency) (H. P. 198) (Presented by Mr. Greenlaw of Stonington) (Cosponsors: Mr. Jackson of Yarmouth, Mr. Perkins of Blue Hill, Mrs. Post of Owls Head)

(Ordered Printed) Sent up for concurrence.

Legal Affairs

Bill "An Act to Revise the Laws Relating to Private Detectives" (H. P. 199) (Presented by Mr. Dow of West Gardiner)

(Ordered Printed) Sent up for concurrence.

Liquor Control

Bill "An Act Raising the Age of Persons who may Purchase Alcoholic Beverages or Sell as Licensees" (H. P. 200) (Presented by Mr. Joyce of Portland)

(Ordered Printed) Sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Natural Resources

Bill "An Act Amending the Great Ponds Alteration Statute" (H. P. 201) (Presented by Mr. Burns of Anson)

(Ordered Printed) Sent up for concurrence.

Performance Audit

Bill "An Act to Require Periodic Justification of State Government Programs" (H. P. 202) (Presented by Mr. Spencer of Standish) (Cosponsors: Mr. Mackel of Wells, Mr. Ault of Wayne, Mr. Wilfong of Stow)

(Ordered Printed) Sent up for concurrence.

State Government

Bill "An Act Concerning Territories Included in Baxter State Park" (H. P. 203) (Presented by Mr. Dow of West Gardiner)

Bill "An Act to Transfer Regulations Regarding the Security of Certain Parks, Grounds, Buildings and Appurtenances Maintained by the State from the Department of Finance and Administration to the Department of Public Safety" (H. P. 204) (Presented by Mr. Burns of Anson)

(Ordered Printed) Sent up for concurrence.

Transportation

Bill "An Act Relating to Use of Motor Vehicles in Racing Events" (H. P. 206) (Presented by Mr. Dow of West Gardiner)

Bill "An Act Relating to use of Flashing Red Lights on School Buses when Negotiating Turn Arounds on Public Ways" (H. P. 207) (Presented by Mrs. Prescott of Hampden) (Cosponsor: Mr. Gibbs of Gray)

Bill "An Act to Repeal Provision for Lighted Headlamp on Motorcycles using the Highway" (H. P. 208) (Presented by Mr. Goodwin of South Berwick) (By Request)

(Ordered Printed) Sent up for concurrence.

Study Report

Committee on Health and Institutional Services
Mr. Goodwin from the Committee on Health and Institutional Services to which was referred the study relative to Mental Retardation Services in Maine, pursuant to H. P. 1724 of the 107th Legislature, have had the same under consideration, and ask leave to submit its findings and to report that the accompanying Bill, "An Act to Require the Department of Human Services to Make Reimbursements to Nursing Homes and Most Boarding Homes on the Basis of Reasonable Operating Costs" (H.

P. 178) (L. D. 192) be referred to this Committee for public hearing and printed pursuant to Joint Rule 17.

Report was read and accepted, the Bill referred to the Committee on Appropriations and Financial Affairs, ordered printed and sent up for concurrence. (Later Reconsidered)

Orders

An Expression of Legislative Sentiment (H. P. 210) recognizing that:

Francis B. Henderson of Skowhegan has faithfully served with outstanding accomplishment and dedicated service as sheriff of Somerset County for twenty-one years.

Presented by Mr. Henderson of Bangor. (Cosponsors: Mr. Burns of Anson, Mr. Hall of Sangerville, Mr. McBreairey of Perham)

Was read and passed and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The House reconsidered its action of earlier in the day whereby Bill "An Act to Require the Department of Human Services to Make Reimbursements to Nursing Homes and Most Boarding Homes on the Basis of Reasonable Operating Costs," House Paper 178, L. D. 192, was referred to the Committee on Appropriations and Financial Affairs.

Whereupon, the Bill was referred to the Committee on Health and Institutional Services, ordered printed and sent up for concurrence.

The following Enactor appearing on Supplement No. 1 was taken up out of order by unanimous consent:

An Act to Amend the Charter of the Baileyville Utilities District (S. P. 35) (L. D. 43)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 132 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, ordered sent forthwith.

House Reports of Committees

Divided Report

Majority Report of the Committee on Local and County Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-6) on Bill "An Act Authorizing Municipalities to Raise or Appropriate Money for a Consumer Action Program" (Emergency) (H. P. 7) (L. D. 17)

Report was signed by the following members:

Mr. O'LEARY of Oxford — of the Senate

Messrs. HICKEY of Augusta

DRINKWATER of Belfast

Mrs. MARTIN of Brunswick

Messrs. HENDERSON of Bangor

McPHERSON of Eliot

TRUMAN of Biddeford

— of the House.

Minority Report of the same Committee

reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Messrs. HICHENS of York

JACKSON of Cumberland

— of the Senate.

Mr. GRAY of Rockland

Mrs. BERUBE of Lewiston

Mr. LaPLANTE of Sabattus

— of the House.

Reports were read.

Mr. Henderson of Bangor moved that the

House accept the Majority "Ought to pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Men and Women of the House: L. D. 17 would authorize municipalities to provide funds for private consumer action programs. A number of programs are innocently initiated as volunteer programs but with an eye on the future to tap public monies.

It is true that this bill would only authorize the municipalities to appropriate funds, but these organizations become very effective in getting what they want. I personally feel we would be doing our locally elected municipal officials an injustice.

This bill, if passed, would open the door to still another organization that would be appealing to our local municipalities for public funds. I also see this bill as a duplication. We do have the Consumer Fraud Division in the Attorney General's Office, and I know from personal experience that they are very effective.

I ask that we defeat this bill.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: This bill is permissive legislation. It says, "who wishes to raise municipal dollars."

I might talk to my good friend from Rockland a moment and say it is permissible and government should be open to anyone, and it should encompass municipal officers if in fact they do wish to entertain a request from any consumer group; government should not be closed to anybody. And if the gentleman from Rockland cares to oppose a request from a consumer group in his particular town, he has that option to do so. He has that option right here today to complain about the fact that he doesn't want anyone else to have that opportunity, and I think government is bigger than that. Government is to provide a necessary service for any individual who comes before it.

It is permissible, it does not mandate one single law in terms of saying to your municipal towns or cities that they have to accept these requests. It simply says that it gives them the opportunity to make requests, and that is what government is all about.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: I share the concern of the Representative from Rockland. Most of this type of legislation that is on the books is permissive, but I find that the next session we generally make it so its not permissive. I find that the tax burden of these towns that I represent is just about to the saturation point at the present time, and I don't think they need anyone else tapping them for money from any side or direction.

I am very concerned about this legislation, and I think the gentleman from Rockland put it very wisely, that to further tax the people through any of these organizations that are very effective is not good at this time.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker and Members of the House: The gentleman in the back row, among others, is fond of indicating to this house what their constituents do or don't want and allowing the local people to speak their piece. This is, again, a very basic issue of local control, whether the State of Maine is going to be telling the municipalities what it can't do, or are we going to have faith in the local elected officials to make the decisions at the local level.

I certainly wouldn't mind if one particular area or community of the state was not in-

terested in this particular program, but this is an example where we passed the Home Rule law which allows communities to make decisions for themselves except in areas where the legislature has spoken. In this particular section of the law, there is a list of items for which communities can make contributions to other agencies. Among those other agencies are the chambers of commerce, for instance. Local chambers of commerce can and do accept money from local communities. Without proposing this option, local communities would not be able to entertain, at least, the question from these consumer organizations.

This grows out of a particular circumstance in Penobscot County where there is a consumer action organization, Northeast Combat, which, by the way, does not engage in legal actions but refers people to the Consumer Fraud Division, but in other cases tries to mediate between the business people and the consumers in many circumstances and, in fact, have a good reputation among the business people. They have come to communities asking for contributions and the communities have not been able to even entertain their request because the State of Maine has in effect ruled them out. And what these communities are asking for is just the opportunity to hear those and then make up their own minds on whether they wish to contribute.

I wish you would give serious consideration to this and support the "ought to pass" recommendation.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker and Members of the House: As the gentleman from Rockland indicated, the legislature does limit the number of organizations that can tap the local municipalities for funding.

Mr. Speaker, I request a division.

The SPEAKER: A vote has been requested. All those in favor of accepting the Majority "Ought to pass" Report will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Strout of Corinth requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Bangor, Mr. Henderson, that the Majority "Ought to pass" Report be accepted. All those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA — Bachrach, Bagley, Beaulieu, Benoit, Biron, Blodgett, Boudreau, A.; Brenerman, Brown, K. L.; Brown, K. C.; Burns, Bustin, Carroll, Chonko, Churchill, Clark, Connolly, Cox, Curran, Davies, Diamond, Dow, Drinkwater, Durgin, Elias, Fenlason, Flanagan, Fowle, Garsoe, Gibbs, Gill, Goodwin, H.; Goodwin, K.; Gould, Green, Hall, Henderson, Hickey, Higgins, Hobbins, Howe, Huber, Hughes, Jensen, Joyce, Kane, Kany, Kelleher, Kerry, Kilcoyne, Laffin, LeBlanc, Locke, Lougee, MacEachern, Mackel, Mahany, Marshall, Martin, A.; Masterman, Masterton, Maxwell, McBrearty, McHenry, McKean, McPherson, Mills, Nadeau, Najarian, Nelson, M.; Norris, Palmer, Peakes, Pearson, Peterson, Post, Prescott, Quinn, Talbot, Tarbell, Theriault, Tierney, Tozier, Trafton, Truman, Valentine, Whittemore, Wilfong, Wood, Wyman, The Speaker.

NAY — Aloupis, Austin, Berry, Berube, Birt,

Boudreau, P.; Bunker, Byers, Carey, Carrier, Carter, D.; Carter, F.; Conners, Cote, Devoe, Dexter, Dudley, Gauthier, Gillis, Gray, Hunter, Hutchings, Immonen, Jackson, Jacques, Jalbert, LaPlante, Lewis, Littlefield, Lizotte, Lunt, Lynch, Moody, Morton, Nelson, N.; Perkins, Raymond, Rollins, Shute, Silsby, Sprowl, Strout, Stubbs, Tarr, Teague, Torrey, Twitchell.

ABSENT — Ault, Bennett, Dutremble, Greenlaw, McMahon, Mitchell, Pelletier, Powell, Rideout, Smith, Spencer, Stover, Tyndale.

Yes, 91; No, 47; Absent, 13.

The SPEAKER: Ninety-one having voted in the affirmative and forty-seven in the negative, with thirteen being absent, the motion does prevail.

Thereupon, the Bill was read once. Committee Amendment "A" (H-6) was read by the Clerk and adopted and the Bill assigned for second reading the next legislative day.

Consent Calendar

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(H. P. 57) (L. D. 78) Bill "An Act Pertaining to Issuance of Marriage Licenses" — Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-4)

(H. P. 56) (L. D. 77) Bill "An Act Concerning Certified Copies of Records of Marriage" — Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-5)

No objections being noted, the above items were ordered to appear on the Consent Calendar of February 9 under listing on Second Day.

(H. P. 52) (L. D. 73) Bill "An Act Pertaining to Birth Records" — Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-8)

On the request of Mr. Biron of Lewiston, was removed from the Consent Calendar.

Thereupon, the Report was accepted and the Bill read once. Committee Amendment "A" (H-8) was read by the Clerk.

Mr. Biron of Lewiston offered House Amendment "A" to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-12) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Members of the House: I am delighted to see my good friend and colleague from Lewiston taking such a deep interest in these marriage bills, and I know, Mr. Speaker, that you share my thinking in this philosophy.

The SPEAKER: The Chair recognizes the gentleman from Stow, Mr. Wilfong.

Mr. WILFONG: Mr. Speaker, I would like to pose a question to the gentleman from Lewiston, Mr. Biron. I would just like to know what the amendment does.

The SPEAKER: The gentleman from Stow, Mr. Wilfong, has posed a question through the Chair to the gentleman from Lewiston, Mr. Biron, who may answer if he so desires, and the Chair recognizes that gentleman.

Mr. BIRON: Mr. Speaker, in answer to Mr. Wilfong's questions, the signature on the birth certificate presently authorizes that the father and the mother of an illegitimate child — it is requested under this amendment that it be taken by a notary public or a justice, not just a nurse at the hospital.

The SPEAKER: The Chair recognizes the gentleman from Old Town, Mr. Pearson.

Mr. PEARSON: Mr. Speaker, I would like to pose a question to the gentleman from Lewiston

if he cares to answer. That is, why does he wish to have a notary do that instead of just a nurse?

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Biron.

Mr. BIRON: Mr. Speaker, to answer the question of the gentleman from Old Town, I would like to refer the question to Mr. Cote, the sponsor of the bill.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: The answer to the question is, just any nurse signs the certificate and it probably wouldn't be valid in a court of law, so I would like to have it signed by a justice of the peace or a notary public. That is at the request of the town clerk and city clerk organization.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker and Members of the House: I believe that our new criminal code calls for the same class penalty for false swearing as it does for a misstatement on an official paper, so I can't see any advantage to bringing in an official. Basically, it would be the same penalty if someone did not sign correctly.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: This amendment came at the request of John Hull, a Legislative Assistant, a lawyer, and he claims that it would clarify the passage much better than the way it was written, so that is why this amendment came in.

The SPEAKER: The Chair recognizes the gentlewoman from Bridgton, Mrs. Tarr.

Mrs. TARR: I would like to pose a question through the Chair to Mr. Cote.

Does the mother's signature also have to be notarized?

The SPEAKER: The gentlewoman from Bridgton, Mrs. Tarr has posed a question through the Chair to Mr. Cote of Lewiston who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. COTE: Mr. Speaker, I do not believe so. On the first amendment, I believe that she has to, yes.

Thereupon, House Amendment "A" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted and the Bill assigned for second reading the next legislative day.

(S. P. 37) (L. D. 45) Bill "An Act to Revise the Charter of the Aroostook-Prestile Treatment District" — Committee on Public Utilities reporting "Ought to Pass"

No objection being noted, the above item was ordered to appear on the Consent Calendar of February 9, under listing of the Second Day.

Consent Calendar Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(H. P. 39) (L. D. 56) Bill "An Act Converting Mount Chase Plantation into the Town of Mount Chase" (Emergency)

(H. P. 58) (L. D. 79) Bill "An Act Relating to Reapportionment" (Emergency)

No objections having been noted at the end of the Second Legislative day, the House Papers were passed to be engrossed and sent up for concurrence.

(H. P. 24) (L. D. 33) RESOLUTION. Proposing an Amendment to the Constitution to Provide for a Four-year Term of Office for Sheriff.

On request of Mr. Moody of Richmond, was removed from the consent calendar.

The same gentleman moved the Resolution and all accompanying papers be indefinitely postponed.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Curran.

Mr. CURRAN: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you will not go along with the motion that has been proposed by the gentleman from Richmond. The item has been sitting on the consent calendar and I have been waiting for objection. It has a long history of objections as it has been introduced over the years.

The bill, I think, has a great deal of merit, and I would just like to point out some of the areas of merit as the committee saw. The bill itself, of course, as one would expect, is wholeheartedly supported by the sheriffs for many of the reasons that I am sure we may propose a longer term of office, and that is the campaigning involved in the two years.

I think those of you who have had the opportunity to work on county budgets, those of you who live in areas outside of the cities and towns that have their police forces, can see some merit with having an individual holding this position for longer than two years.

I think one of the real strong points for this particular piece of legislation is the continuity that the position of sheriff needs. If you have tried to do any long-range planning with the sheriff's budget and you see the change that is taking place or the amount of time that is being used for reelection, you don't always get a handle on those dollars being spent. I think this is a plus for extending that term of office, that there is some continuity.

There is also some concern about the training and the investment of dollars that goes into the training of a newly elected sheriff and how long he is going to be around to use that training, which is a cost to the taxpayer.

There are many who would like to see the position of sheriff taken right out of the elective process and put into an appointive process. The committee did not address that at this time, and perhaps there is still legislation to be introduced on the matter.

I do feel, however, that the four-year term is reasonable. If you take a look at your other county officers who are elected, the sheriff is the only one who remains a two-year term.

I think also, although I did not go into it but I would throw it out for thought, if you take a look at rural crime, there may be a direct relationship to that sheriff's position being a two-year term and the amount of time he is able to spend in organizing, training and the other things that go into a good sheriff's department.

Mr. Speaker, I ask when the vote is taken that there be a division.

The SPEAKER: The Chair recognizes the gentleman from Richmond, Mr. Moody.

Mr. MOODY: Mr. Speaker, Ladies and Gentlemen of the House: A two-year term, which our county sheriffs presently have, makes the sheriff's department more responsible to the people's needs. If they know that they have got to be elected in two years to retain their position, they are going to be more responsible to us, the people.

The only reason why the sheriffs' departments want a four-year term instead of a two-year term is that they currently feel insecure in their positions. If they were doing their jobs the way that they should be doing them, they wouldn't have anything to worry about.

I have worked in two county sheriff departments, Sagadahoc and Kennebec, and some of the things that go in our sheriff departments are less than what I would call inefficient.

The election of our county sheriff is the only direct input that the citizens and people of Maine have in the law enforcement system.

Before this House takes action to increase the

term of county sheriff from two to four years, they first had better consider setting some specific qualifications for our county sheriffs. Presently, there are hardly none. If you are 18 years of age and a registered voter, you are qualified to be county sheriff — that is what our statutes currently say.

Prior to cloture date, I talked to members of the House and of the Senate about introducing legislation that would set some specific qualifications for our county sheriff. They told me I wouldn't get off the ground. I asked them why. They said, "Well, the Maine Sheriffs' Association has a very strong lobbying power." The position of our county sheriffs is not to make the laws; we make the laws. We are the representatives of the people. The positions of our sheriffs' departments is to solve crimes, not make laws.

Therefore, in conclusion, Mr. Speaker, I would ask that item 3 be defeated.

The SPEAKER: The Chair recognizes the gentleman from Buxton, Mr. Berry.

Mr. BERRY: Mr. Speaker, Ladies and Gentlemen of the House: I agree wholeheartedly with the gentleman from Richmond, Mr. Moody. I think he shows great promise as a legislator. His making the motion for indefinite postponement on this particular bill, that has got to show extreme intelligence on his part.

He mentioned responsibility, and I agree with that. The county sheriffs presently are elected for two-year terms, we are presently elected for two-year terms, and I am certain that everybody in here is responsible or at least would like to consider himself responsible, but I would suggest that you think about a four-year term and think about you being here for four years. Ask yourself the question, if you were here for four years and you were guaranteed four years, is it conceivable that you might possibly not be quite so responsible as if you were here presently under a two-year term? There is no doubt in my mind that responsibility is tied to the two-year term.

I would like to give you an example, and probably some of you are aware that in York County we had a very close election for sheriff. As a matter of fact, it was a recount. The person who thought he had won didn't win, but the person who thought he wasn't going to win was a little bit concerned for some time, and after the recount and the incumbent sheriff was finally returned to office, a number of things changed in the York County sheriff's department, and it changed for the better. I give the sheriff credit for making some of those changes. I think possibly he could have gone a lot further than he did, but at any rate, he became a very responsible person in a very short time, and I for one would very much not like to see sheriffs elected for a four-year term. Those are some of the reasons: there are many more.

I am not going to get involved too deeply in this because I understand that this particular bill came out of the State Government Committee with a unanimous report. I don't know as I understand why, but, nevertheless, it did. It is also my seatmate's bill, so I think I will sit down and give him a shot at the defense, but I do hope you will go along with the indefinite postponement motion.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker and Members of the House: I am not going to speak either for or against the bill, but I think you heard, about 20 minutes ago, the Speaker speak and lay that on the line like it was, if we wanted to keep on as we were, we would spend a nice fall here, and if we wanted to move along, we should do the things that are right.

If I am incorrect, Mr. Speaker, you can correct me, but this measure here and its even-

tuality for enactment will need a vote of two thirds of the members present and voting, not 101 votes but two thirds of those present and voting, so I am sure that this debate will start all over again when it comes to the enactment stage and we will spend another hour. Hopefully it won't be snowing and won't be too slippery for us to get home. So I suggest we might vote either way on this thing. You will have another whack at it. Those who are not for it are over in the unmentionable body anyway, and it will come back here for final settlement, which will need a two-thirds vote, and then maybe we can save some time. At least we can save some time today and I hope we do so.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: Representative Berry is right, it is my bill. I also find, in going back through 10 years of research around the state and talking with different people in places of authority, we do have a major crime situation in the State of Maine. I also find that the sheriffs that I have talked to in the different counties spend the first six months after being elected to office in combating crime and the next 18 months trying to get reelected to continue combating crime. It is a very poor setup in my opinion.

I served 30 years as a police officer, but I was under civil service and did not have to contend with politicians telling me what to do or how to do it. I would like to see civil service in the State of Maine. Then you are picking qualified people to be on the law enforcement. With the present setup we have here now, there is no other choice to go than the way we can do it here. I think if we go four years on the sheriff's department, at least the man who is elected, he is considered qualified, he is considered to know something about law enforcement, and it is no picnic contending with the attorneys and the judges we have in the State of Maine today. It is a very serious situation.

We are continually changing from session to session here some of our criminal laws. These things are causing havoc all over the state and it is going to cost the taxpayer a lot more money if we stick with this two-year sheriff system that we have now.

There is no question in my mind, also, that we have got to back up our law enforcement procedures in the State of Maine or we are going to have a much larger increase in crime. Every record coming out today on crime reports shows continuing increase in crime in the State of Maine and it is getting more and more violent.

In my own home town, we have had three murders in a year, the last one by a fellow who wasn't mentally bright. If you think that these conditions are going to be allowed to continue in the State of Maine, that is fine, just hang on to that two-year system and watch the crime increase in the state. There is no question but that everybody sitting in this House has a degree of protection that is guaranteed to them by the Constitution of the State of Maine and the Constitution of this country.

I could go on and tell you a lot of things that you never read in the newspapers that I know have happened in the State of Maine. For instance, in the last campaign I was in, there was a woman who supported me strongly. Two weeks after the election, her camp was burned down and it has been standing there for 30 years. It was worth \$8,000. If you think these things should be continued, stay right with that two-year term and just watch it grow.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I, too, spent a lifetime in law enforcement, and I rise to support the

motion by Representative Moody. I want my sheriff to stand and let me look at his performance every two years. This is the only way that we get to assure proper law enforcement.

A similar bill to this was introduced in the last session, and the good people of this House gave it a proper burial. Today, I am asking you to go one step further and give it a cremation. I think we have had enough of this.

It kind of disturbs me to have a politician in law enforcement anyway. It might disturb some here to have a law enforcement person in politics. But I have got to be honest with you and tell you that my people want to look at that sheriff every two years. I hope you will vote along with Representative Moody to dump this bill.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Mills.

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I have been in here for 10 years, and this is the first time in my sitting in this seat here that I have ever heard a former law enforcement officer with a high rank stand up and lean toward the criminal element of this state by wishing to dump law and order.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Men and Women of the House: I think those of you who know me know me as being a strong supporter of law enforcement, but I too cannot support this bill.

They are asking us to legislate tenure, and this does absolutely nothing to cure the crime in Maine. So I hope that you will give this bill a proper burial.

The SPEAKER: The Chair recognizes the gentleman from Windham, Mr. Diamond.

Mr. DIAMOND: Mr. Speaker, Ladies and Gentlemen of the House: I would like to make a few comments, beginning with the fact that I am on the State Government Committee and we have done a lot of work with this bill, hearing people testify both for and against. I would ask you today to simply vote for this bill so you can have time if you don't feel you have as much information about it as you may wish. There is a great deal to consider here, more than what you have heard today.

So, again, I would say that possibly you might want to approve this measure at this point. As the gentleman from Lewiston has indicated, we will have a time again to rethink it and revote on it. But I would certainly hope that you would trust the judgment of the State Government Committee and vote for this bill right now.

The SPEAKER: A vote has been requested. The pending question is on the motion of the gentleman from Richmond, Mr. Moody, that this Resolution and all accompanying papers be indefinitely postponed. All those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

56 having voted in the affirmative and 66 having voted in the negative, the motion did not prevail.

Thereupon, the Resolution was read once and assigned for second reading the next legislative day.

(S. P. 7) (L. D. 12) Bill "An Act Appropriating Funds for the Purchase of Copies of 'The Penobscot Expedition'" (C. "A" S-3)

(H. P. 5) (L. D. 8) Bill "An Act to Appropriate Funds to the Maine Chapter of the Epilepsy Foundation of America" (C. "A" H-3)

No objections having been noted at the end of the Second Legislative Day, the Senate Paper was passed to be engrossed in concurrence, and the House Paper was passed to be engrossed and sent up for concurrence.

The following paper from the Senate was taken up out of order by unanimous consent:

From the Senate: The following Order: (S. P. 111)

ORDERED, the House concurring, that when the House adjourns, it adjourns to 9:30 in the morning on Wednesday, February 9. That when the Senate adjourns, it adjourn to 10 o'clock in the morning on Wednesday, February 9.

Came from the Senate read and passed.

In the House, the order was read and passed in concurrence.

Passed to Be Engrossed

Bill "An Act Concerning Proofs Required for the Issue of a Marriage Intention Form" (H. P. 154) (L. D. 170)

Was reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent to the Senate.

Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

Joint Order — Relative to Senate and House Services, Supplies and Equipment (S. P. 21) In Senate, read and passed.

Tabled — January 27, 1977 by Mr. Garsoe of Cumberland

Pending — Passage in concurrence.

On motion of Mr. Palmer of Nobleboro, the Order was indefinitely postponed in non-concurrence and sent up for concurrence.

Mr. Palmer of Nobleboro presented the following Joint Order and moved its passage: (H. P. 251) (Cosponsor: Mr. Tierney of Lisbon Falls)

ORDERED, the Senate concurring, that in the interim when the Legislature is not in session, purchases of equipment by the Clerk of the House or the Secretary of the Senate shall be subject to the approval of the Legislative Administrative Director.

The Order was read and passed and sent up for concurrence.

(Off Record Remarks)

On motion of Mr. Palmer of Nobleboro, Adjourned until Wednesday, February 9, at 9:30 in the morning.