

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 10, 1977

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

Prayer by Father Thomas Joyce of St. Mary's Catholic Church of Augusta.

The journal of yesterday was read and approved.

Papers from the Senate

A Joint Resolution in memory of The Honorable Ralph A. Leavitt of Portland, member of the 90th, 91st, 92nd, 93rd, 94th and 95th Legislatures. (S. P. 122)

Came from the Senate read and adopted.

In the House, the Resolution was read and adopted in concurrence.

Reports of Committees Ought to Pass

Report of the Committee on Business Legislation reporting "Ought to Pass" on Bill "An Act Providing for Extension and Modification of the Joint Underwriting Association" (Emergency) (S. P. 70) (L. D. 149)

Came from the Senate with the Report read and accepted and under suspension of the rules, the Bill was read twice and passed to be engrossed.

In the House, the Report was read and accepted in concurrence and the Bill read once. Under suspension of the rules, the Bill was read a second time and passed to be engrossed in concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Non-Concurrent Matter

Bill "An Act to Provide Funds for Additional Police Communications Operators within the Department of Public Safety, Bureau of State Police" (Emergency) (H. P. 156) (L. D. 194) which was referred to the Committee on Appropriations and Financial Affairs in the House on February 1, 1977.

Came from the Senate indefinitely postponed in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Anson, Mr. Burns.

Mr. BURNS: Mr. Speaker, Ladies and Gentlemen of the House: This is a departmental bill which I sponsored for them. Since the bill was submitted, LEAA funds have been found for the communicators and I asked a member of the other body to indefinitely postpone so we could reduce by one the number of bills we have, so I now move we recede and concur.

Thereupon, the House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Require a Legislator to Abstain from Voting in Either Branch of the Legislature when his Membership in a Profession, Trade or Organization Causes a Conflict of Interest" (H. P. 165) (L. D. 203) which was referred to the Committee on Legal Affairs in the House on February 1, 1977.

Came from the Senate referred to the Committee on State Government in non-concurrence.

In the House: On motion of Mr. Curran of South Portland, the House voted to recede and concur.

Messages and Documents

The following Communication: (S. P. 124)

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
AUGUSTA, MAINE

February 9, 1977

To the Honorable Senate and

House of Representatives
of the 108th Legislature

In accordance with the provisions of Chapter 96, Private and Special Laws of 1975, An Act Providing for a Study to Determine the Feasibility and Location of a New Bridge across the Kennebec River, the State Department of Transportation herewith submits the enclosed report entitled, "Waterville-Winslow Bridge Study" prepared by the Department's Bureau of Planning.

Respectfully,

Signed:

ROGER L. MALLAR
Commissioner of Transportation

Came from the Senate read and with accompanying papers ordered placed on file.

In the House, the Communication was read and with accompanying papers ordered placed on file in concurrence.

The following Communication:

STATE OF MAINE
DEPARTMENT OF STATE
AUGUSTA, MAINE

February 8, 1977

Hon. Edwin H. Pert, Clerk
House of Representatives
State House

Augusta, Maine 04333

Dear Mr. Pert:

In keeping with the spirit of 3 MRSA c.15, which provides for disclosure of professional lobbying activities to "insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State," I herewith submit the list of lobbyists and employers of lobbyists registered with the Office of the Secretary of State as of 5 p.m. January 31, 1977.

During the period in which the Legislature is in session, every lobbyist must file a monthly report of lobbying activities. This office will compile summaries of the information supplied in these reports.

All information filed under 3 MRSA c. 15 is public record and available for inspection in the Office of the Secretary of State.

Sincerely,

Signed:

MARKHAM L. GARTLEY

The Communication was read and with accompanying papers ordered placed on file.

Tabled and Assigned

The following Communication:
Report of Committee on Elections
Election District 29

The Committee on Elections, having initially reported this matter to the House on January 13, 1977, at which time it recommended that certain questions be reported to the Justices of the Supreme Judicial Court for opinion, have had the matter under further consideration and beg leave to report that:

The House has received the answers of the Justices of the Supreme Judicial Court pursuant to the request for an advisory opinion. The Committee met on February 8, 1977, and reviewed that opinion. The Committee then reviewed the 39 disputed ballots in District 29 in light of that opinion and the report of the Committee on Governmental Ethics and Election Practices.

Based on that review the Committee endorses the findings of the Commission on Governmental Ethics and Election Practices regarding the election in House District 29.

Further, the Committee recommends to the House that Gordon F. Cunningham be seated as the duly elected Representative of House District 29.

The vote approving this Committee action was 6 in favor and 1 opposed.

Signed:

HARLAND C. GOODWIN JR.

WILLIAM J. GARSOE
THOMAS R. PERKINS
LENA C. DURGIN
ANNE M. BOUDREAU
ARMAND A. LEBLANC
RICHARD J. CAREY

The Communication was read.

On motion of Mr. Tierney of Lisbon Falls, tabled pending acceptance and specially assigned for Wednesday, February 16.

Petitions, Bills and Resolves Requiring Reference

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

Appropriations and Financial Affairs

Bill "An Act to Award Transitional Allowances to Permanent Full-Time and Limited Period Full-Time Unclassified Employees" (Emergency) (H. P. 309) (Presented by Mr. Martin of Eagle Lake) (Cosponsors: Mrs. Najarian of Portland, Mr. Palmer of Nobleboro)

Bill "An Act to Increase the Salaries of the Judiciary" (H. P. 310) (Presented by Mr. Martin of Eagle Lake) (Ordered Printed)

Sent up for concurrence.

Business Legislation

Bill "An Act to Clarify the Consumer Credit Code" (H. P. 311) (Presented by Ms. Clark of Freeport)

Bill "An Act Relating to a Consumer's Notice of Right to Cure under the Credit Code" (H. P. 312) (Presented by Mrs. Boudreau of Portland)

Bill "An Act Relating to Processing Certificates of Authority, Annual Statement Fees and Continuation of Broker and Adjusters' Licenses under the Insurance Law" (H. P. 313) (Presented by Ms. Clark of Freeport)

Bill "An Act Pertaining to Parens Patriae Suits by the Attorney General on Behalf of Consumers" (H. P. 314) (Presented by Mrs. Kane of Augusta) (Cosponsor: Mrs. Gill of South Portland)

Bill "An Act to Clarify which Violations of Law also Constitute Violations of the Unfair Trade Practices Act" (H. P. 315) (Presented by Mrs. Kane of Augusta) (Cosponsor: Miss Brown of Bethel)

(Ordered Printed)

Sent up for concurrence.

Education

Bill "An Act to Extend the Time During which School Budgets may be Adopted" (Emergency) (H. P. 316) (Presented by Mr. Green of Auburn)

Bill "An Act to Clarify the Responsibility of the State to Educate Children under State Care" (H. P. 317) (Presented by Mrs. Nelson of Portland)

(Ordered Printed)

Sent up for concurrence.

Election Laws

Bill, "An Act Relating to Notification of Results of Election Contests by the Commission on Governmental Ethics and Election Practices" (H. P. 318) (Presented by Mr. Garsoe of Cumberland)

Bill, "An Act to Establish Withdrawal Dates for Candidates and Nominees" (H. P. 319) (Presented by Mr. Raymond of Lewiston) (Cosponsor: Mr. Truman of Biddeford)

Bill, "An Act to Revise Primary and Nomination Petitions" (H. P. 320) (Presented by Mrs. Boudreau of Portland) (Cosponsors: Mr. Birt of East Millinocket, Mrs. Mitchell of Vassalboro)

(Ordered Printed)

Sent up for concurrence.

Health and Institutional Services

Bill "An Act to Revise the Laws Relative to

the State Military and Naval Children's Home" (H. P. 321) (Presented by Ms. Goodwin of Bath)

Bill "An Act to Expand Protective Services to Mentally Retarded Individuals" (Emergency) (H. P. 322) (Presented by Mrs. Kane of Augusta) (Cosponsor: Mrs. Kany of Waterville)

Bill "An Act to Provide for the Licensing of Denturists" (H. P. 323) (Presented by Mr. Dudley of Enfield) (Cosponsors: Mr. McBrairty of Perham, Mr. Quinn of Gorham, Mr. Conners of Franklin)

(Ordered Printed)
Sent up for concurrence.

Human Resources

Bill "An Act to Define 'North American Indians residing in Maine' for Purposes of the North American Indian Scholarships" (H. P. 324) (Presented by Mr. Pearson of Old Town)

(Ordered Printed)
Sent up for concurrence.

Judiciary

Bill "An Act to Repeal the Habitual Offender Law" (H. P. 325) (Presented by Mr. Dow of West Gardiner)

Bill "An Act to Clarify Authorization for Payment of Witness Fees for State Witnesses in Criminal Prosecutions" (H. P. 326) (Presented by Mr. Hughes of Auburn)

Bill "An Act Relating to Guardianship of Incapacitated Adults in Need of Protective Services" (H. P. 327) (Presented by Mr. Hughes of Auburn) (Cosponsor: Mr. Spencer of Standish)

Bill "An Act to Specify the Grounds and Procedures Whereby a Residential Tenancy at Will may be Terminated" (H. P. 328) (Presented by Mr. Hughes of Auburn)

Bill "An Act Relating to Payment of Expenses for Examination of Crime Victims" (H. P. 329) (Presented by Mr. Hughes of Auburn)

(Ordered Printed)
Sent up for concurrence.

Labor

Bill "An Act to Provide for Continued Employment after Age 65" (H. P. 330) (Presented by Mr. Martin of Eagle Lake) (Cosponsor: Mr. Elias of Madison)

(Ordered Printed)
Sent up for concurrence.

Legal Affairs

Bill "An Act Eliminating the Requirement of January Annual Meetings by the Parishes of the Protestant Episcopal Churches of the Diocese of Maine" (H. P. 331) (Presented by Mr. Connolly of Portland)

(Ordered Printed)
Sent up for concurrence.

Local and County Government

Bill "An Act to Appropriate Funds to Purchase Copies of 'Franklin Sesquicentennial 1825 to 1975' by Bruce Carter, and 'History of Franklin' by Henry Oberman for Sterling Douglas, Deceased" (H. P. 332) (Presented by Mr. Conners of Franklin)

Bill "An Act Relating to the Probate Fee for a Certificate of Appointment" (H. P. 333) (Presented by Mrs. Durgin of Kittery)

Bill "An Act Appropriating Funds for the Purchase of Copies of 'Archaeological Excavations at Pemaquid, Maine, 1965-1974' by Helen Camp" (H. P. 334) (Presented by Mr. Blodgett of Waldoboro)

Bill "An Act to Provide for the Purchase of Copies of 'The History of the Town of Cumberland' Edited by Phyllis Sweetser" (H. P. 335) (Presented by Mr. Garsoe of Cumberland)

(Ordered Printed)
Sent up for concurrence.

Marine Resources

Bill "An Act to Repeal Fishing Regulations

on the Pemaquid River" (H. P. 336) (Presented by Mr. Blodgett of Waldoboro)

Bill "An Act to Repeal the Oversize Lobster Law" (H. P. 337) (Presented by Mr. Conners of Franklin)

(Ordered Printed)
Sent up for concurrence.

Natural Resources

Bill "An Act to Promote Consistency Between Certain Regulatory and Proprietary Decisions of the State" (H. P. 338) (Presented by Mr. Palmer of Nobleboro)

(Ordered Printed)
Sent up for concurrence.

Taxation

Bill "An Act to Remove the Manufacturer's Excise Tax on Tires from the Sales Tax" (H. P. 339) (Presented by Mrs. Martin of Brunswick)

Bill "An Act to Provide an Excise Tax Credit for Construction and Operation of Breweries within the State" (H. P. 340) (Presented by Mr. Norris of Brewer)

Bill "An Act Amending the Elderly Homeowners Tax and Rent Refund Act to Expand the Eligibility Ceiling for Low Income Elderly" (Emergency) (H. P. 341) (Presented by Ms. Goodwin of Bath) (Cosponsors: Mr. Greenlaw of Stonington, Mr. Bagley of Winthrop, Mr. Valentine of York)

(Ordered Printed)
Sent up for concurrence.

Transportation

Bill "An Act to Remove the Identification of the Original License Issued to a New Driver as a Provisional License" (H. P. 342) (Presented by Mrs. Berube of Lewiston)

Bill "An Act Relating to the Maine Turnpike Authority" (H. P. 343) (Presented by Mr. Greenlaw of Stonington) (Cosponsors: Mr. Morton of Farmington, Mr. Jackson of Yarmouth, Mr. Carroll of Limerick)

(Ordered Printed)
Sent up for concurrence.

Veterans and Retirement

Bill "An Act to Increase Retirement Benefits for Teachers Who Taught Prior to July 1, 1942" (H. P. 344) (Presented by Mr. Sprowl of Hope)

(Ordered Printed)
Sent up for concurrence.

Orders

Mr. Birt of East Millinocket presented the following Joint Order and moved its passage: (H. P. 345) (Cosponsor: Mr. Curran of South Portland)

WHEREAS, the State of Maine is recognized nationally for its abundant and important historic and cultural resources, resources which are of great potential benefit to the economic, cultural and spiritual well-being of the citizens of Maine; and

WHEREAS, it is in the best interest of the State to give encouragement to public and private institutions and agencies which promote a common understanding and appreciation by Maine citizens of their State and its achievements and add to the variety and richness of Maine life; and

WHEREAS, there already exist various state agencies and activities within the Department of Educational and Cultural Services and the Department of Conservation which contribute to these ends; and

WHEREAS, it is of critical importance to the State and its citizens that a consistent and meaningful policy be established for the most effective conduct of these agencies and activities with respect to themselves, the public and those private institutions and agencies operating in the historic and cultural fields; now, therefore, be it

ORDERED, the Senate concurring that there is established a Joint Select Committee on State Policy for the Preservation, Development and Utilization of Historic and Cultural Resources, this committee to consist of two members of the Senate, one of whom shall be a member of the Joint Standing Committee on State Government; and 2 members of the House, one of whom shall be a member of the Joint Standing Committee on State Government; additional members shall include the President of the Maine League of Historical Societies and Museums, the President of the Maine Cultural Resources Council and 6 members of the general public; 3 to be chosen by the President of the Senate and 3 by the Speaker of the House; and be it further

ORDERED, that the committee shall make a final report of its findings, together with complete and final drafts of any proposed legislation, to the Legislative Council no later than 90 days before the beginning of the second regular session of the 108th Legislature for the purpose of establishing and implementing a consistent and coordinated policy and program by the State of Maine toward the acquisition, development, preservation and promotion of its historic and cultural resources, and their utilization by the people of the State; and be it further

ORDERED, that this committee shall receive the same reimbursement of expenses as other members of a joint standing committee; and be it further

ORDERED, that upon passage in concurrence, and after appointment of all the members of the committee, a suitable copy of this order shall be sent to each member of the committee.

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

An Expression of Legislative Sentiment (H. P. 346) recognizing that: Wendy Sue Achorn of Waldoboro, Medomak Valley High School, is Maine's winner of Voice of Democracy Scholarship Program "What America Means to Me" Presented by Mr. Blodgett of Waldoboro.

Was read and passed and sent up for concurrence.

A Joint Resolution (H. P. 347) in memory of The Honorable Ernest Malenfant of Lewiston, who served the people of Maine for many years as a State Legislator Presented by Mr. Jacques of Lewiston.

The Resolution was read and adopted and sent up for concurrence.

Tabled and Assigned

Mr. Palmer of Nobleboro presented the following Order and moved its passage:

WHEREAS, Gordon F. Cunningham and Michael H. Gibbs were the Republican and Democratic candidates, respectively, for election to the 108th Legislature of the Maine House of Representatives; and

WHEREAS, subsequent to the general election, Gordon F. Cunningham caused a recount to be had before the convening of the 108th Legislature by appropriate election officials of the State of Maine, at which recount both parties were represented by legal counsel of their own choice; and

WHEREAS, subsequent to said recount, Gordon F. Cunningham then appealed from the recount to the Commission on Governmental Ethics and Election Practices as provided in Maine law; and

WHEREAS, during the pendency of this appeal both parties participated through their respective counsel, in the proceedings of the commission; and

WHEREAS, at the conclusion of appellate review by the commission, the commission, by

opinion dated January 4, 1977, ruled that there were 1,911 votes cast for Gordon F. Cunningham and 1,904 votes cast for Michael H. Gibbs; and

WHEREAS, on January 5, 1977, Gordon F. Cunningham petitioned the House to declare him the duly elected representative of those persons residing in Legislative District #29; and

WHEREAS, the House referred the petition of Gordon F. Cunningham to the House Committee on Elections and, pending return of that committee's report, voted to conditionally seat Michael H. Gibbs on the basis that he was the individual who had been certified by the Governor and Council as the apparent winner and to whom a Certificate of Election had been issued; and

WHEREAS, this House, during the time this matter was pending before the committee, requested an Opinion of the Justices, which opinion, dated February 1, 1977, was received by this House and referred to the Committee on Elections; and

WHEREAS, the Committee on Elections, after review of the ballots, the report of the commission, and the Opinion of the Justices, has recommended, by a vote of 6 to 1, that this House accept and adopt the findings of the Commission on Governmental Ethics and Election Practices as the findings and determinations of this House; now, therefore, be it

ORDERED:

1. That the Secretary of State be, and hereby is, instructed to revoke the election certificate previously issued to Michael H. Gibbs and to issue a Certificate of Election to Gordon F. Cunningham indicating that the said Gordon F. Cunningham is the lawfully elected representative to the 108th Maine Legislature from Legislative District #29;

2. That the conditional seating of Michael H. Gibbs as a member of this House representing Legislative District #29 be, and hereby is, revoked;

3. That this House hereby declares, in accordance with the Constitution, Article IV, Part Third, Section 3, that Gordon F. Cunningham of New Gloucester is the lawfully elected representative to the 108th Maine Legislature from Legislative District #29.

4. That Gordon F. Cunningham, as soon as practicably possible, be administered the oath of office; and

5. That, upon taking the oath of office, Gordon F. Cunningham be, and hereby is, instructed to take his seat in the 108th Maine Legislature as the Representative to the 108th Maine Legislature from Legislative District #29.

The Order was read.

The SPEAKER: The Chair recognizes the gentleman from Nobleboro, Mr. Palmer.

Mr. PALMER: Mr. Speaker, Ladies and Gentlemen of the House: I speak this afternoon not only as the gentleman from Nobleboro, Mr. Palmer, but as the Minority Leader of the House. I hoped that I could speak without notes, but this occasion being what it is, I have to confine myself to a prepared text, which I dislike greatly, but you will have to bear with me while I do that.

Mr. Speaker, Ladies and Gentlemen of the House, over three months ago, the people in the towns of Gray, New Gloucester, Raymond and Sebago went to the polls to elect a Representative to the 108th Legislature. There is no question that the people and not this body are the electors which are referred to in the Constitution of Maine. It is the people and not this Legislature which elect the members to this body.

Immediately following the November 2 election, it was announced that the gentleman from Gray, Mr. Gibbs, was the winner of that election. Shortly thereafter, Mr. Gordon Cunningham of New Gloucester requested a

recount of the ballots. The recount was conducted under the auspices of the Secretary of State. At the recount, both parties were represented by legal counsel. At the conclusion of the recount, it appeared that the parties disputed 39 ballots and agreed that 1,893 ballots should be counted for Mr. Cunningham, and 1,887 should be counted for Mr. Gibbs.

Mr. Gibbs, within his rights, declined to concede the election to Mr. Cunningham. Thus, Mr. Cunningham was compelled by law to file an appeal with the Commission on Governmental Ethics and Election Practices. At the proceedings before the commission, both parties were again represented by legal counsel. On December third, 1976 the commission met and reviewed the ballots. The commission dealt with each ballot separately and called for argument from each party's counsel prior to rendering a decision on each ballot. At the conclusion of the commission's proceedings, it determined that 18 of the disputed ballots should be counted for Mr. Cunningham and that 17 of the ballots should be counted for Mr. Gibbs. The commission also determined that four of the ballots should not be counted. These determinations resulted in a final vote tally of 1,911 votes for Mr. Cunningham and 1,904 votes for Mr. Gibbs, a seven vote margin in favor of Mr. Cunningham.

Who were the members of this commission? The chairperson, elected by the other members of the commission, was Madeline R. Freeman of Orono. Speaker Martin appointed Allen F. Harding of Presque Isle to the commission. Reverend Daniel E. Pollard of Portland was the appointee of former majority floor leader Neil Rolde. Attorney Barnett I. Shur of Portland was selected by the Senate Minority Leader, Senator Conley. Professor Douglas I. Hodgkins of Lewiston, a professor at Bates College, was appointed by the Senate Majority Leader, Senator Speers. Senate President Sewall appointed former Chief Justice Robert Williamson of Augusta; and I, as Minority Floor Leader, appointed Mrs. Francis W. Williamson of Jefferson. All of these individuals, with the exception of former Chief Justice Williamson, participated in the matter which was before them.

This commission recommended that the election certificate of the gentleman from Gray, Mr. Gibbs, be revoked and that a new certificate of election be issued to Mr. Cunningham.

During the period between December 3, 1976 and January 5, 1977, Mr. Gibbs did not concede to Mr. Cunningham. As a result, Mr. Cunningham petitioned this House on January 5, 1977. He requested that he be seated as the lawfully elected representative of the people of his legislative district. This body received Mr. Cunningham's petition and referred it to the House Committee on Elections. In the interim, Mr. Gibbs was conditionally seated as the representative from District 29.

Since January 5, 1977, Mr. Cunningham has attended each daily session of this House and has, to the greatest extent possible, attempted to keep current on the Legislative activities of this Legislature. He has patiently waited through the various plateaus in this process. It has now reached mind-boggling heights.

Since January 5, 1977, the House Committee on Elections has had the matter of Mr. Cunningham's petition under consideration. After taking testimony from various witnesses and listening to the allegations of Mr. Gibbs, this committee found it necessary to report to the House that it required the justices of the Supreme Judicial Court to answer certain questions which the committee felt were "critical in determining the outcome of the election."

On January 19, 1977, this body transmitted questions to the court. It asked the court to ad-

verse it whether certain errors committed by election officials, not by the voters or the candidates or their supporters, were of such a nature as to destroy the validity of certain ballots. It also inquired as to the validity of each of the disputed ballots and, if valid, for which of the candidates these ballots should be counted.

On February 1, 1977, the Chief Justice of the Supreme Judicial Court transmitted the answers of the justices to the Speaker of the House. Those answers were printed in the Advance Journal of this body. Every member has had ample opportunity to read those answers. What were those answers and how did they differ with the determination of the commission, which had looked at the ballot before it went to the Supreme Court?

As to the questions posed to the court respecting errors by election officials, the justices said that failure of the election officials to comply with statutory requirements is without legal effect upon the validity of ballots. What had the commission said? The commission stated that violations of the election laws by election officials should not be utilized to deprive voters of the franchise. The court and the commission were in total agreement on that issue.

As to the ballots, the court ruled that ballot one, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot two, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot three, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot four, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot five, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot six, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot seven, as a matter of law, should be counted for Mr. Cunningham. The commission ruled in the same mind.

The court ruled that ballot eight, as a matter of law, should be counted for Mr. Cunningham. The commission was of the same mind.

The court and the commission ruled that ballot number nine could not be counted for either candidate.

The court declined to advise the House concerning ballot number ten on the basis that it involved a question of fact for the commission's determination. The commission found that ballot number ten should be counted for Mr. Cunningham.

The court declined to advise the House concerning ballot number eleven on the basis that it involved a question of fact for the commission's determination. The commission and the court both indicated that if it was found that there was no distinguishing mark on ballot eleven, it should be counted for Mr. Cunningham. The commission found that there was no distinguishing mark on the ballot and counted it for Mr. Cunningham.

The court declined to advise the house as to ballot number twelve on the basis that it involved a question of fact. At the commission, Mr. Gibbs and Mr. Cunningham, through their counsel, agreed that ballot twelve should not be counted. The court did indicate, however, that if ballot twelve were found valid, it should be counted for Mr. Cunningham. Thus, Mr. Cunningham conceded that a ballot cast for him should not be counted.

The court declined to advise the House with respect to ballot number thirteen on the basis that it involved a question of fact. The court in-

dictated that if the finding of fact was that there was no distinguishing mark on the ballot, the vote, indeed, should be counted for Mr. Cunningham. The commission found that the ballot did not contain a distinguishing mark and counted it for Mr. Cunningham.

The court declined to advise the House with respect to ballot number fourteen on the basis that it too involved a question of fact. The commission made the requisite finding of fact and determined that the vote should be counted for Mr. Cunningham.

The court declined to advise the House with respect to ballot number fifteen on the basis that it involved a question of fact as to whether a distinguishing mark was present on the ballot. The court did say, however, that if it was found as a fact that there was no distinguishing mark, the ballot should be counted for Mr. Cunningham. The commission determined that the mark was not a distinguishing mark and they counted the ballot for Mr. Cunningham.

The court declined to advise the House with respect to ballot number sixteen on the same basis as it declined on ballot number fifteen. However, it did say that even if it were found that ballot sixteen were a valid ballot, it should not be counted for either candidate. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that ballot sixteen should not be counted for either candidate.

The court ruled that ballot seventeen should, as a matter of law, be counted for Mr. Gibbs. The commission was of the same mind.

The court ruled that ballot eighteen should, as a matter of law, be counted for Mr. Gibbs. The commission was of the same mind.

The court ruled that ballot nineteen should, as a matter of law, be counted for Mr. Gibbs. The commission was of the same mind.

The court ruled that ballot number twenty should, as a matter of law, be counted for Mr. Gibbs. The commission was of the same mind.

The court declined to advise the House with respect to ballot number twenty-one on the basis that it involved a question of fact for decision by the commission. The commission made that fact-finding decision and ruled that ballot number twenty-one was a void ballot.

The court ruled that ballot twenty-two, as a matter of law, should be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that the ballot should be counted for Mr. Gibbs.

The court ruled that ballot twenty-three, as a matter of law, should be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that the ballot should be counted for Mr. Gibbs.

The court declined to advise the House with respect to ballot twenty-four on the basis that it required a finding of fact. The court did indicate that if the fact finding sustained the validity of the ballot, it should be counted for Mr. Gibbs. The commission made that finding of fact and counted the ballot for Mr. Gibbs.

The court declined to advise the House with respect to ballot twenty-five on the basis that it required a finding of fact. The court did indicate that if the fact finding sustained the validity of the ballot, it should be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that the ballot should be counted for Mr. Gibbs.

The court declined to advise the House with respect to ballot number twenty-six on the basis that it was a fact-finding determination for the commission. The commission found that ballot number twenty-six indicated the voter's intent to erase an initial vote for Mr. Cunningham and substitute a vote for Mr. Gibbs. Thus, the commission counted the vote for Mr. Gibbs.

The court declined to advise the House with respect to ballot number twenty-seven on the

basis that it was a fact-finding determination. The commission found a proper mark in the Gibbs square and counted the vote for Mr. Gibbs.

The court ruled that ballot number twenty-eight should, as a matter of law, be counted for Mr. Cunningham. At the commission, Mr. Gibbs and Mr. Cunningham, through their respective counsel, agreed that this ballot should be counted for Mr. Cunningham.

The court ruled that ballot number twenty-nine should, as a matter of law, be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot number thirty should, as a matter of law, be counted for Mr. Cunningham. At the commission, Mr. Gibbs and Mr. Cunningham, through their respective counsel, agreed that this ballot should be counted for Mr. Cunningham.

The court ruled that ballot number thirty-one should, as a matter of law, be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that this ballot should be counted for Mr. Gibbs.

The court ruled that ballot number thirty-two should, as a matter of law, be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that this ballot should be counted for Mr. Gibbs.

The court ruled that ballot number thirty-three, as a matter of law, should be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that this ballot should be counted for Mr. Gibbs.

The court ruled that ballot number thirty-four, as a matter of law, should be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that this ballot should be counted for Mr. Gibbs.

The court ruled that ballot number thirty-five should, as a matter of law, be counted for Mr. Cunningham. The commission was of the same mind.

The court ruled that ballot number thirty-six should, as a matter of law, be counted for Mr. Gibbs. The commission was of the same mind.

The court ruled that ballot number thirty-seven should, as a matter of law, be counted for Mr. Gibbs. The commission was of the same mind.

The court ruled that ballot number thirty-eight should, as a matter of law, be counted for Mr. Gibbs. At the commission, Mr. Cunningham and Mr. Gibbs, through their respective counsel, agreed that this ballot should be counted for Mr. Gibbs.

The court ruled that ballot number thirty-nine should, as a matter of law, be counted for Mr. Cunningham. The commission was of the same mind.

I have recited those to you because we have looked these matters over in the calendar before, and these are the 39 disputed ballots.

Thus, as you can see, there is agreement between the commission and the justices of the Supreme Judicial Court. We, as members of this House, have taken an oath of office to uphold the laws of the State of Maine. No higher authority than the justices of the Supreme Court can be called upon for an opinion as to the law of Maine. Therefore, one thing appears clear. We are bound by our oaths of office to count the ballots as indicated by the justices when they state that a ballot should be counted for one or the other of the parties "as a matter of law." To do otherwise is to fly in the face of the law as pronounced by the justices of our highest court of the State of Maine.

The court ruled that, out of the 39 ballots disputed, as a matter of law, 13 ballots should be

counted for Mr. Cunningham and 13 ballots should be counted for Mr. Gibbs, including these in the computation of agreed ballots at the conclusion of the recount, Mr. Cunningham has a total of 1,906 votes and Mr. Gibbs has a total of 1,900 votes.

Assuming that we dismiss entirely the remaining vote for Mr. Cunningham as found by the commission and count all of the remaining votes for Mr. Gibbs as found by the commission, this brings Mr. Gibbs' total to 1,905 votes. This gives Mr. Gibbs the benefit of the doubt on each and every ballot not ruled on as a matter of law by the court. The simple, straight, bottom line is that Mr. Gibbs did not win this election and has not been lawfully elected to this body under any set of circumstances.

The members of the House Committee on Elections met on Tuesday and three Democratic members of that committee conducted independent reviews of the ballots. On the basis of those reviews, the gentleman from Waterville, Mr. Carey, the gentleman from Van Buren, Mr. LeBlanc, and the gentlewoman from Portland, Mrs. Boudreau, all concluded that Mr. Cunningham had been lawfully elected to this House of Representatives. The three Republican members of the committee were in agreement with that conclusion.

I recall that on January 19, the gentleman from Durham, Mr. Tierney, advised this House that quote, "we are groping for a fair, equitable and, yes, non-partisan way in resolving this issue." I would submit that there is a fair and equitable way to resolve this situation. That way is to vote in favor of the House order which I have presented. It accurately sets forth the facts and the action required. For too long, Mr. Cunningham has been deprived of the seat to which he was lawfully elected. We should not adjourn today without finally resolving this matter.

I am reminded that the justices of the Supreme Judicial Court recognized that the reason the Legislature established the Commission on Governmental Ethics and Election Practices was because it believed that it was "essential under the American system of representative government that the people have faith and confidence in the integrity of the election process." How can we expect the people to have faith and confidence in that process when we, as their elected representatives, choose to disregard the findings and determinations of a body which we established? Are we saying to the people of Maine — do as we say, not as we do?

I am fully aware that the Constitution of Maine provides that each House shall be the judge of the elections and qualifications of its own members. However, I do not believe that any member of this House should utilize our Constitution to delay for one minute the only action which is proper and just. That action is adoption of the order which I have presented, which is consistent with the commission's recommendation and our own Committee on Elections Report.

I am also aware that section 6-A of article one of the Constitution of Maine declares that no person shall be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof. A similar provision is contained in federal laws. By continuing to exclude Mr. Cunningham from a seat to which it is blatantly obvious he was elected is, in my opinion, a denial of Mr. Cunningham's civil rights. I wish no part of such an action and shall not idly sit and watch it happen while he is denied his civil rights.

I have been informed that the members of the majority party voted at a caucus on Wednesday to conduct an independent examination and determination of the ballots by this House and essentially disregard the findings of the commission, the opinion of the justices, and the recommendation and vote of six of the seven

members of the House committee on elections. If that is the intent of this body, it will become painfully obvious and will be signalled by the tabling or defeat of the order which I have presented. If that is the case, I say now is an appropriate time for this House and the people of Maine to find out how far the majority party is prepared to go to retain a seat unlawfully held for a fellow party member. Anything except immediate removal of Mr. Gibbs and immediate seating of Mr. Cunningham is, in my opinion, a travesty of justice which should not be permitted to continue any longer. Regardless of rhetoric, there are only two motivating factors for any action in opposition to this proposed order. Neither of them is the sanctity of the Constitution of Maine. These motives are either an attempt to prolong the tenure of the gentleman from Gray, Mr. Gibbs, as a conditional member of this body, or an attempt, by brute partisan force, to declare the gentleman from Gray, Mr. Gibbs, as the lawfully elected member of the House of Representatives of Maine.

No amount of rhetoric will disguise these motives if they are present. A negative vote on this order or tabling action will, in fact, present irrefutable evidence to the people of Maine that such are the motives of the majority party of this body. I am reminded that the gentleman from Durham, Mr. Tierney, on January 17 told this body, and I quote, "nothing can be more important to a Democracy than the method by which we select our elected officials." I am in total agreement with that statement of principle. This legislature has, in a year past, established a basis to remove from the arena of partisan rhetoric and maneuvering the question of elections. We repudiate the principle which the gentleman from Durham has so ably articulated if we choose to disregard the findings of the commission and the justices and break new ground with a new independent determination of this election.

Mr. Speaker, we are a nation of laws, not of men. Let us act accordingly.

Mr. Speaker and Members of this House, I urge you to vote in favor of the passage of this order. Let conclude this matter once and for all and move on to other equally compelling matters.

Mr. Speaker, when the vote is taken, I request that each member of this House publicly declare to his constituents the manner in which he or she voted. Therefore, I request the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Lisbon Falls, Mr. Tierney.

Mr. TIERNEY: Mr. Speaker, Men and Women of the House: I sat with interest and listened to the remarks of my good friend from Nobleboro, Mr. Palmer, and until he reached the point when he used the expression "travesty of justice," I was to commend him, in all sincerity, for the moderation of his speech, because it is rare that a leader in any party, in either branch of this house, would use such a very strong, very questionable phrase, for the veiled accusation in stating that the travesty of justice is occurring casts a long shadow on everyone who sits in this house, be they Republican or be they Democrat.

I would like to return to the statements that I have made on this floor earlier, and that is that it is true that nothing can be more important in a democracy than the process by which we choose our elected officials. So to that end, I am going to point out two facts which I feel are self evident and which lead me, as an individual legislator, in only one direction.

The first fact is that the Constitution of this State places in our hands the ultimate responsibility in deciding who shall represent District 29 in the 108th Legislature. We have gone to the Supreme Court to ask for an advisory ruling,

and they have given it to us. We have asked for our Attorney General to give us a report, and he has. We have asked the counsel for both Mr. Cunningham and Mr. Gibbs to brief the matter, and they have, even to the extent that one of those briefs has just been read into the record of the Maine Legislature. But, because these statements have been made and because we have this professional, non-partisan advisory rulings from our commission, this does not obviate the need for us as individuals to conscientiously decide this important question. It does not remove from our shoulders the responsibility to make the final decision.

The good gentleman noted that we, when we raised our hands on the first day of the legislature, swore to uphold the laws of the State of Maine. Well, I suggest if that gentleman returns to that oath of office and looks at it more closely, he will see that it says we shall uphold the Constitution and laws of the State of Maine. It is my responsibility as an individual legislator, representing one district, to uphold that Constitution and to make the final decision as to who shall represent District 29.

Fact number two, the overwhelming majority of the members of this branch in both parties have not personally viewed the underlying evidence in this case. The overwhelming majority of us have not read the Supreme Court decision. We have not read the Commission Report, and most important of all, we have not looked at and we have not had the opportunity to review the 39 contested ballots. Those two facts are self evident.

Number one, the Constitution says we have to make the decision, number two, we have not had the opportunity to view the underlying information necessary to conscientiously make that decision. That leaves me as an individual with only one conclusion, and that is that we give ourselves more time, one more legislative day, and to use that time to view all of the underlying evidence and to view the briefs and read the Supreme Court decision so that we can make our ultimate decisions based on the facts, based on our conscience. This is not an indication of brute partisan force, it is simple logic, so within this time, we can decide, as I have said before, in an impartial, non-partisan manner, who will hold the seat. Nothing could be more important to us all.

The SPEAKER: The Chair recognizes the gentleman from Gorham, Mr. Quinn.

Mr. QUINN: Mr. Speaker, I move this order lay on the table one legislative day.

The SPEAKER: The Chair recognizes the gentleman from Nobleboro, Mr. Palmer.

Mr. PALMER: Mr. Speaker, I request a roll call.

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. Those in favor 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 Gorham, Mr. Quinn, that this House Order be tabled pending passage and specially assigned for Wednesday, February 16. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Bachrach, Beaulieu, Bennett, Benoit, Berry, Berube, Biron, Blodgett, Boudreau, A.; Brenerman, Brown, K.C.; Burns, Bustin, Carey, Carrier, Carroll, Carter, D.; Chonko, Clark, Cote, Cox, Curran, Davies, Diamond, Dutremble, Elias, Flanagan, Fowlie, Goodwin, H.; Goodwin, K.; Green, Greenlaw, Hall, Henderson, Hickey, Hobbins, Howe, Hughes, Jacques, Jalbert, Jensen, Joyce, Kany,

Kelleher, Keiry, Kilcoyne, LaPlante, LeBlanc, Lizotte, Locke, Lynch, MacEachern, Mahany, Martin, A.; Maxwell, McHenry, McKean, Mills, Mitchell, Nadeau, Najarian, Nelson, M.; Nelson, N.; Peakes, Pearson, Post, Prescott, Quinn, Raymond, Rideout, Spencer, Talbot, Theriault, Tierney, Tozier, Trafton, Truman, Twitchell, Valentine, Wilfong, Wood, Wyman, The Speaker.

NAY — Ault, Austin, Bagley, Birt, Boudreau, P.; Brown, K. L.; Bunker, Byers, Carter, F.; Churchill, Connors, Devoe, Dexter, Drinkwater, Durgin, Fenalason, Garsoe, Gill, Gillis, Gould, Gray, Higgins, Huber, Hunter, Hutchings, Immonen, Jackson, Kane, Laffin, Lewis, Littlefield, Lougee, Mackel, Marshall, Masterman, Masterton, McBreairey, McMahan, McPherson, Moody, Morton, Norris, Palmer, Peltier, Perkins, Peterson, Rollins, Shute, Silsby, Sprowl, Strout, Stubbs, Tarbell, Tarr, Teague, Torrey, Whittemore.

ABSENT — Aloupis, Connolly, Dow, Dudley, Gauthier, Lunt, Powell, Smith, Stover, Tyn-dale.

EXCUSED — Gibbs.
Yes, 83; No, 57; Absent, 10; Excused, 1.

The SPEAKER: Eighty seven having voted in the affirmative and fifty three in the negative, with ten being absent and one excused, the motion does prevail.

House Reports of Committees Ought to Pass with Committee Amendment

Mr. Curran from the Committee on State Government on Resolve, Authorizing the Bureau of Public Lands to Convey by Sale the State's Interest in Certain Real Property in Warren and Cushing, Knox County. (H. P. 90) (L. D. 116) reporting "Ought to Pass" as amended by Committee Amendment "A" (H-13)

Report was read and accepted and the Resolve read once. Committee Amendment "A" (H-137) was read and adopted and the Resolve assigned for second reading the next legislative day.

Divided Report

Majority Report of the Committee on Public Utilities reporting "Ought Not to Pass" on Resolve, Providing Funds for Repair of Olamton Stream Dam in the Town of Greenbush, Penobscot County (Emergency) (H. P. 59) (L. D. 80)

Report was signed by the following members:

Mr. CARPENTER of Aroostook
Mrs. CUMMINGS of Penobscot
Mr. COLLINS of Aroostook

-of the Senate

Mrs. TARR of Bridgton
Messrs KELLEHER of Bangor
WOOD of Sanford
McHENRY of Madawaska
BERRY of Buxton

-of the House

Minority Report of the same Committee reporting "Ought to Pass" on same Resolve.

Report was signed by the following member:
Mr. PEARSON of Old Town

-of the House

Reports were read.
On motion of Mr. Kelleher of Bangor, the Majority "Ought Not to Pass" Report was accepted.

Subsequently, on motion of Mr. Gould of Old Town, the House reconsidered its action whereby the Majority Report was accepted.

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

Mr. GOULD: Mr. Speaker, Ladies and Gentlemen of the House: No state in this United States has nature been so profusely lavished as it has on the State of Maine, and the area in question was one of those spots. I know that in

your areas you have certain places that are very difficult to describe because they are so beautiful, and the only thing I can say about it is that there would be the stupendous, colossal, heavenly and superlatives like that, but this is an area that is fed by springs and when the dam was in there before it went out in the high water in 1954, it flooded back the area of the watershed for nine miles and you were able to drink the water anywhere in that area. There are not any houses to pollute it, there isn't anything to pollute it. There was some of the greatest pickerel, bass, perch and trout fishing in the whole State of Maine. Mal Colter, who was head of the Marine Resources Department at the University of Maine told me that Sunkay Stream and that Alamon Stream was the best natural feed for fishing anywhere in the state.

It isn't any good for me to stay here and try to tell you how beautiful it is if you have not seen it, so that is the end of my story.

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

Mr. PEARSON: Mr. Speaker, Ladies and Gentlemen of the House: Seeing this on the calendar this morning, I asked Mr. Gould what our game plan ought to be, since I was the only one that reported this out of the committee and I feel rather strongly about it and he said to me, "I don't know what I can say." As he just said to you, how do you describe beauty? It is very difficult to do that, but it is a project that, if it were completed, would last probably for a hundred years. I would like to have the House consider that and I request a division.

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

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: It was with a heavy hand that I voted against this proposal that Representative Gould had brought before the Public Utilities Committee. In essence, they need \$40,000 to reconstruct the dam on the Alamon Stream. Mr. Pearson and members of the committee, as well as Mr. Gould, tried every avenue possible to try to find funding for them rather than go the route of taking \$40,000 from the General Fund.

There is one avenue of funding that could be available for them in 1977, and that is through the Parks and Recreations Bonding Fund over in that particular department. But I think if this legislature — the area that he is talking about is in my County and it is a beautiful area — but if we are willing to spend \$40,000 to reconstruct this dam on this particular stream, then I can see an avalanche of other requests coming for similar financial requests. I do not think this legislature should be using money out of the General Fund for this particular type of a construction project. I know that the committee almost unanimously took the same position, as you can see by the committee report. I would urge you not to move for reconsideration.

I have talked this over personally with the gentlemen from Old Town. I was willing to work with him and with others to try to find funding and I think it is possible, but there is only a possibility we will find the money. I would think it would be remiss on the part of this House, if we should ever accept this document and pass it, taking \$40,000 of the General Fund for this particular project.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I had no intention of getting into this, but what we are talking about is money and certainly my good friend Mr. Gould and my good friend Mr. Pearson have indicated some need for this. My good friend Mr. Kelleher from Bangor has spoken of funds, and if we let this piece of legislation kind of go along this morning, give them a little longer time to

study it, I am sure that it will end up on one of the Appropriation Tables that we have on one end or the other and then, when we all get ready with our sharp knives to cut up the pie, perhaps Mr. Gould and Mr. Pearson would have enough clout to carry this thing along, so let's give them a chance at the funds.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: I have been sitting here for ten years and I have listened to Mr. Norris clutter up the Appropriation Table term after term, and if there is any time to kill anything, it is when you have it straight in your mind to kill and not after the confusion has set in.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Bangor, Mr. Kelleher, that the House accept the Majority "Ought not to pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Norris of Brewer requested a roll call.

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. Those in favor 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 Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, Ladies and Gentlemen of the House: I liked the little speech from my good friend from Waterville, and all I can say to him is that he always does pretty well when they cut up that Appropriation Table. He always seems to be in a position where Waterville comes out well and his constituents come out well, and I am happy with that —

The SPEAKER: The Chair would advise the gentleman from Brewer, Mr. Norris that the pending question before the House is on this L.D., not on the Appropriations Table. The gentleman may proceed.

Mr. NORRIS: As I stated before, if we allow this bill, if we will defeat this motion and accept the "Ought to pass" report, then let it go through the legislative process, it will not create any great problem because there will be plenty of time to do away with it later on if we don't happen to have the necessary funds.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Carey.

Mr. CAREY: Mr. Speaker, Ladies and Gentlemen of the House: I will not attempt to reply to the gentleman from Brewer pertaining to the Appropriations Table, except that hopefully I will be able to clear that up a little later because it has absolutely nothing to do with this particular bill and I would tend to stay with the subject.

I would point out that not only has the gentleman from Brewer tried to clutter up the Appropriations Table, he has also cost the state some money by asking for this roll call.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of the gentleman from Bangor, Mr. Kelleher, that the House accept the Majority "Ought not to pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Bachrach, Beaulieu, Benoit, Berry, Berube, Biron, Boudreau, A.; Boudreau, P.; Brenerman, Brown, K.L.; Brown, K.C.; Bunker, Carey, Carroll, Carter, D.; Chonko, Clark, Cote, Curran, Diamond, Dutremble, Elias, Fenlason, Fowlie, Garsoe, Gill, Gillis,

Goodwin, H.; Goodwin, K.; Henderson, Hickey, Hobbins, Huber, Hughes, Hunter, Immonen, Jackson, Jacques, Jalbert, Jensen, Joyce, Kane, Kany, Kelleher, Kerry, Kilcoyne, Laffin, LaPlante, LeBlanc, Lizotte, Locke, Lynch, Mahany, Marshall, Masterton, Maxwell, McHenry, McKean, McMahon, Mills, Mitchell, Morton, Nadeau, Najarian, Nelson, M.; Nelson, N.; Peakes, Peterson, Post, Prescott, Raymond, Silsby, Spencer, Sprowl, Talbot, Tarr, Teague, Theriault, Tierney, Torrey, Tozier, Trafton, Truman, Twitchell, Valentine, Whittemore, Wilfong, Wood.

NAY — Austin, Bagley, Bennett, Blodgett, Burns, Bustin, Byers, Carrier, Carter, F.; Churchill, Conners, Cox, Davies, Devoe, Dexter, Drinkwater, Durgin, Flanagan, Gibbs, Gould, Gray, Greenlaw, Hall, Higgins, Howe, Hutchings, Lewis, Littlefield, Lougee, MacEachern, Mackel, Masterman, McBreairty, McPherson, Moody, Norris, Palmer, Pearson, Peltier, Perkins, Quinn, Rideout, Rollins, Shute, Strout, Stubbs, Tarbell, Wyman.

ABSENT — Aloupis, Ault, Birt, Connolly, Dow, Dudley, Gauthier, Green, Lunt, Martin, A.; Powell, Smith, Stover, Tyndale.

Yes, 88; No, 48; Absent, 14.

The SPEAKER: Eighty-eight having voted in the affirmative and forty eight in the negative, with fourteen being absent, the motion does prevail.

Sent up for concurrence.

Consent Calendar

First Day

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

(H. P. 101) (L. D. 125) Bill "An Act to Amend the Laws Relating to Adoption Proceedings" — Committee on Judiciary reporting "Ought to Pass"

No objections being noted, the above item was ordered to appear on the Consent Calendar of February 16, under listing of the Second Day.

Consent Calendar

Second Day

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

(S. P. 6) (L. D. 11) Bill "An Act Relating to Transfer of Unexpended Appropriations of State Funds"

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

(H. P. 88) (L. D. 114) Bill "An Act to Allow the Taking of Suckers with Bow and Arrow"

On the request of Mrs. Tarr of Bridgton was removed from the Consent calendar.

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

Mrs. TARR: Mr. Speaker, I didn't realize this was zipping right along on the Consent Calendar, but this taking of suckers by bow and arrow, I don't think it is a good idea. I think it ought to have some discussion, so I would like to talk about it.

According to the people in my area, the ones who are out spearing suckers or shooting at them with a bow and arrow destroy the smelt eggs along the banks of the lakes, especially around Moose Pond. They also leave the suckers along the banks to rot, and I will leave that up to you, you can imagine what that does. It is also difficult to see in the water just what you are aiming at. Some game fish are killed

this way, even by spearing suckers. I just don't think a bow and arrow is necessary.

I also don't think there has been any thought given to the safety of this. When you have a bow and arrow, you have got to have something sharp on the end of that arrow to shoot the fish. I just don't think it is safe. If you are shooting at them in shallow water and it is rocky, you stand a chance of hitting that arrow, splinter it on a rock, and really, they are sharp and dangerous.

There is no age for this. Anyone can run right out here with a bow and arrow and start shooting suckers. I think it is dangerous; I don't think we need it.

I talked with some of the game wardens, and they were surprised that the bill ever came in here, and I am surprised it ever came in here. I also understand that the game wardens would have a problem with night hunting with bows and arrows. This is true, Mr. Speaker, that they stop hunters in the fall with bows and arrows, and if they have bows and arrows, they can say they are out shooting suckers, and they are going to have a problem.

I would move that this bill and all its accompanying papers be indefinitely postponed.

The SPEAKER: The gentleman from Bridgton, Mrs. Tarr, moves that this Bill and all accompanying papers be indefinitely postponed.

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

Mr. MILLS: Mr. Speaker, Ladies and Gentlemen of the House: This bill did start off in a very funny, joking manner by all members, but as the evidence was produced before the committee, it became a very serious matter.

We have 2,500 members of the archery club here in the State of Maine, and this came from their organization on a definition of law. That is all this bill pertains to. The reason for that is that one warden arrested an archery man, or took him to court, wasn't really taken into court, but he claimed that the man should have a hunting license because he was using a bow and arrow. The other warden, in another location, claimed he should have a fishing license because he was taking fish. That is all this archery thing does, clarify the law and define what it shall be, that is all.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Nadeau.

Mr. NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: To the good gentleman from Bridgton, Mrs. Tarr, I say, shall it be muzzle loader or bow and arrow?

I have been under mild apprehension since the beginning of the session since the fine gentleman asked me to present this bill and I said I would do so not knowing what trouble I would get into.

Remarks have been made since the first day it was introduced to the House, remarks from my back row seatmates, my roommate and even the Speaker of the House. I don't even want to mention what he said about it. It wouldn't be worthy to say on the floor of this House.

In order to straighten out Mrs. Tarr and many many members of this House, in order not to misconstrue the nature of the term 'sucker' and in order to make it clear in everyone's mind that I am truly talking about a type of fish, not any person or other life form, and I refer you to Title 12, subchapter 4, Miscellaneous Species, subsection 2701: Eels, suckers, hornpout, yellow perch, alewives permits. The law states in the first paragraph that it shall be unlawful to take, kill, catch or have in possession more than one bushel of alewives taken from the inland waters of the state, except the commissioner may grant permits to take suckers, eels, hornpout, alewives, yellow perch and cusk for market by means of eel pots, traps, spears or nets in inland waters frequented by these fish —

in other words, the term fish, not anything else — in the rules and regulations as he may establish.

It shall be unlawful for any person, firm or corporation to take any of the above-mentioned fish for market until he, person, not sucker, has obtained a permit to do so from the said commissioner. The minimum fee for such permit shall not be less than \$25.

Now, under this first paragraph of Subsection 2701, the word sucker, I feel, has been clearly defined as a fish, not anything else a human mind might tend to imagine.

Having truly defined the term, we can come to the heart of the matter. If Mrs. Tarr would read the bill, it says that if by bow and arrow, the arrow must have a barbed or pronged point and must be attached to the bow with a line.

I am sorry I don't have the magazine which I produced in front of the Inland Fisheries and Game Committee, but it shows bow hunters in the State of Oregon and how they catch mullet over there. It is a very safe sport. It increases the accuracy of the bow hunter. The gentleman who put this through presented it to me because he wanted it to be lawful. He had, as Mr. Mills stated, one person tell him it was against the law and another one tell him it was all right to do so.

I assure you that I present this very seriously and I present to you and read you a letter received by this Mr. Lincoln Frye from Mr. Maynard Marsh. It states, "This will acknowledge your letter and petition requesting a hearing regarding the manner of taking suckers. Since our statutes do not provide any provisions for making such regulations, I am returning the petition to you. Also enclosed please find a copy of our law governing the manner of taking fish in the State of Maine for whatever value it may be to you. Thank you for your interest in this matter."

This letter was dated March 21, 1975, so Mr. Frye has shown a definite interest in doing this sport which he enjoys doing lawfully. Mr. Marsh told him that there was no way of doing petitions, so he naturally came to me and I thought I would come to the legislature and do it the right way. So in all seriousness, I have had a lot of fun with this bill and I do hope you vote against the motion of Mrs. Tarr to indefinitely postpone it and vote yes on letting it go on its merry way and hopefully Mr. Frye will be able to take his sucker fish by bow and arrow, do it legally and do it correctly under the auspices of Inland Fish and Game.

The SPEAKER: The Chair recognizes the gentleman from Yarmouth, Mr. Jackson.

Mr. JACKSON: Mr. Speaker, I have a question. When you are taking suckers, are the suckers edible, are they used for anything, or is it merely we are shooting at them as a moving target in the water and something to kill?

The SPEAKER: The gentleman from Yarmouth, Mr. Jackson, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the Gentleman from Sanford, Mr. Nadeau.

Mr. NADEAU: Mr. Speaker and Members of the House: In answer to the gentleman's question, Mr. Frye uses them mostly for target practice, but some people do eat suckers and they are used for fertilizer also.

The SPEAKER: The Chair recognizes the gentleman from Milo, Mr. Masterman.

Mr. MASTERMAN: Mr. Speaker, I would just like to point out one thing. I agree with my good friend and colleague from Eastport. We laughed for pretty near two hours when this bill came in by Mr. Nadeau. As a matter of fact, he started our laughing process. But I would like to point out one thing. I said to him, why not. I wouldn't care what method was used if we could deplete our sucker population, because

one point hasn't been pointed out. It was pointed out that maybe the eggs might be tread on by those who were spearing suckers, but I would like to point out that these big suckers, some of them weighing up to 8 or 10 pounds, lay out in the mouth of the stream and gobble up your good spawn, eggs, of your good game fish that I am sure all of you are interested in, your salmon, togue and trout.

The SPEAKER: The pending question is on the motion of the gentleman from Bridgton, Mrs. Tarr, that this Bill 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.

21 having voted in the affirmative and 86 having voted in the negative, the motion did not prevail.

Thereupon, the Report was accepted, the Bill read once and assigned for second reading the next legislative day.

(H. P. 114) (L. D. 144) Bill "An Act Concerning Approval of Marriage by the Judge of Probate after the Filing of Objections"

(H. P. 30) (L. D. 47) Bill "An Act Placing Professional Wrestling Matches, Shows and Exhibitions under the Jurisdiction of the Maine Boxing Commission"

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.

Passed to Be Engrossed

Resolve, Authorizing the State Tax Assessor to Convey by Sale the Interest of the State in Certain Lands in the Unorganized Territory (H. P. 104) (L. D. 128)

Resolve, Reimbursing Certain Municipalities on Account of Taxes Lost Due to Lands being Classified under the Maine Tree Growth Tax Law (H. P. 92) (L. D. 119)

Resolve, Reimbursing Certain Municipalities on Account of Property Tax Exemptions of Veterans (H. P. 91) (L. D. 117)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent up for concurrence.

Amended Bill

Bill "An Act to Increase the Property Tax Exemption for Parsonages to \$50,000" (H. P. 25) (L. D. 34) (C. "A" H-11)

Resolve, Authorizing the Bureau of Public Lands to Convey by Sale the State's Interest in Certain Real Property in Hebron, Oxford County (H. P. 69) (L. D. 93) (C. "A" H-9)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed as amended and sent up for concurrence.

The following papers from the Senate appearing on Supplement No. 1 were taken up out of order by unanimous consent:

Bill "An Act Relating to Cruelty to Animals" (S. P. 114) (L. D. 273)

Bill "An Act Relating to Livestock Disease Control" (S. P. 119) (L. D. 278)

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

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

Resolve, Providing Funds for Clients in Special Age Groups Served by Cerebral Palsy Centers. (S. P. 121) (L. D. 297)

Came from the Senate referred to the Committee on Appropriations and Financial Affairs and ordered printed.

In the House, referred to the Committee on Appropriations and Financial Affairs in concurrence.

Bill "An Act Amending the Maine Property Insurance Cancellation Control Act" (S. P. 116) (L. D. 275)

Bill "An Act Amending the Maine Automobile Insurance Cancellation Control Act" (S. P. 118) (L. D. 277)

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 Relating to Reconstruction of Certain Railroad Grade Separation Structures on Non Federal Aid-State Aid Highways" (S. P. 112) (L. D. 271)

Bill "An Act Relating to Registration of Trucks of Less Than 6,000 Pounds as Automobiles" (Emergency) (S. P. 113) (L. D. 272)

Bill "An Act to Require Periodic Eye Testing as a Condition for Holding a Driver's License" (S. P. 115) (L. D. 274)

Bill "An Act to Make Certain Revisions in Highway Related Laws Concerning State Aid Funds" (S. P. 117) (L. D. 276)

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

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

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

From the Senate: The following Order:

ORDERED, the House concurring, that when the House adjourns, it adjourns to 9:30 in the morning on Wednesday February 16, and when the Senate adjourns, it adjourns to 10 o'clock in the morning on Wednesday, February 16. (S. P. 158)

Came from the Senate, read and passed.

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

Orders of the Day

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

Bill, "An Act to Amend the Laws Relating to the Reporting of Child Abuse or Child Neglect" (S. P. 99) (L. D. 228) — In Senate, Referred to Committee on Health and Institutional Services.

Tabled — February 9, 1977 by Mr. Talbot of Portland.

Pending — Reference in concurrence.

On motion of Mr. Talbot of Portland, the Bill was referred to the Committee on Human Resources in non-concurrence and sent up for concurrence.

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

Bill, "An Act Relating to Weights and Measures" (H. P. 297) (Committee on State Government suggested)

Tabled — February 9, 1977 by Mr. Birt of East Millinocket.

Pending — Reference.

On motion of Mr. Birt of East Millinocket, the Bill was referred to the Committee on Agriculture, ordered printed and sent up for concurrence.

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

Bill, "An Act Concerning Merit Ratings for State Employees" (Emergency) (H. P. 302)

(Committee on State Government suggested)

Tabled — February 9, 1977 by Mr. Jalbert of Lewiston.

Pending — Reference.

On motion of Mr. Jalbert of Lewiston, the Bill was indefinitely postponed and sent up for concurrence.

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

Bill, "An Act to Improve the Administration of the State's Merit System" (Emergency) (H. P. 239)

(Committee on State Government suggested)

Tabled — February 9, 1977 by Mr. Kelleher of Bangor.

Pending — Reference.

On motion of Mr. Kelleher of Bangor, the Bill was referred to the Committee on Labor, ordered printed and sent up for concurrence.

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

Tabled — February 9, 1977 by Ms. Goodwin of Bath.

Pending — Passage to be enacted.

On motion of Ms. Goodwin of Bath, was placed on the House Appropriations Table.

(Off Record Remarks)

The following papers from the Senate appearing on Supplement No. 2 were taken up out of order by unanimous consent:

Bill "An Act Relating to Adoption of Regulations for Maine Meat Inspection Act" (S. P. 143)

Bill "An Act Relating to the Display of Live Animals" (S. P. 142)

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

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

Bill "An Act Providing for the Practice of Architecture through a Corporation or a Partnership" (S. P. 137)

Bill "An Act Pertaining to the Central Licensing Division of the Department of Business Regulation" (S. P. 136)

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 Provide State Support for Preschool Programs for Handicapped Children" (S. P. 153)

Bill "An Act to Revise the Maine Regional Library System Law" (S. P. 140)

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 to Clarify the Responsibility for Payment of Expenses on Rendition of Prisoners" (S. P. 155)

Bill "An Act to Provide Investigators for the Several District Attorneys" (S. P. 156)

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

In the House, referred to the Committee on Judiciary in Concurrence.

Bill "An Act Relating to Representation of State Employees under the state Employees Labor Relations Act" (S. P. 149)

Bill "An Act Relating to Arbitration under the State Employees Labor Relations Act" (S. P. 150)

Bill "An Act to Strengthen the State Unemployment Fund" (S. P. 144)

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 Require Subcommittees of the Board of Trustees of the University of Maine and of the Maine Maritime Academy to Hold Open Meetings" (S. P. 157)

Came from the Senate referred to the Com-

mittee on Legal Affairs and ordered printed.

In the House: On motion of Mr. Birt of East Millinocket, tabled pending reference in concurrence and specially assigned for Wednesday, February 16.

Bill "An Act Relating to Incorporation of the Officers and Members of the Grand Royal Arch Chapter of Maine" (S. P. 138)

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

In the House, referred to the Committee on Legal Affairs in concurrence.

Bill "An Act to Remove Restrictions on the Salary of County Commissioners who Hire Full-time County Administrators" (S. P. 154)

Bill "An Act Converting Rangeley Plantation into the Town of Haley" (Emergency) (S. P. 146)

Came from the Senate referred to the Committee on Local and County Government and ordered printed.

In the House, referred to the Committee on Local and County Government in concurrence.

Bill "An Act Relating to the Examiner and Director, Economics and Finance of the Public Utilities Commission" (S. P. 139)

Bill "An Act to Authorize the Transfer of all Assets and Liabilities of the Newport Sewer District to the Town of Newport and the Dissolution of the Newport Sewer District" (S. P. 141)

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.

Resolve, to Evaluate Substate Districts in Maine (S. P. 148)

Bill "An Act to Facilitate the Sale of Community Industrial Buildings" (S. P. 134)

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

In the House, referred to the Committee on State Government in concurrence.

Bill "An Act to Establish 4-Year Motor Vehicle Licenses" (S. P. 145)

Bill "An Act to Prohibit the Use of Electronic Devices for the Purpose of Detecting Radar" (S. P. 147)

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

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

(Off Record Remarks)

On motion of Mr. Mahany of Easton, Adjourned until Wednesday, February 16, at 9:30 in the morning.