

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Legislative Record

OF THE

Eightieth Legislature

OF THE

State of Maine

1921

AUGUSTA
KENNEBEC JOURNAL PRINT
1921

HOUSE

Monday, Feb. 21, 1921.

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

Prayer by the Rev. Mr. Walch of Augusta.

Journal of the previous session read and approved.

Papers from the Senate disposed of in concurrence.

STATE OF MAINE
OFFICE OF ATTORNEY GENERAL

Augusta, Maine,
February 16, 1921.

TO THE HONORABLE HOUSE OF REPRESENTATIVES OF THE EIGHTIETH LEGISLATURE:

I have the honor to acknowledge receipt of a copy of the order passed by your Honorable body on Wednesday, February 9th, 1921, requesting the Attorney General to advise your Honorable body in writing whether Article IV, Section 2, of the Constitution of Maine, providing that the House of Representatives shall consist of one hundred fifty-one members, has been amended, and also to advise your Honorable body as to the number of representatives now allowed under the Constitution of Maine.

In compliance with your request, I respectfully advise you that in my opinion Section 2 of Article IV of the Constitution of Maine has not been so amended as to permit an increase of its membership at the present time to a greater number than one hundred fifty-one, and that the number of representatives now allowed is fixed at one hundred fifty-one.

This conclusion is based upon the following historical statement and general principles of constitutional and statutory interpretation.

The original Constitution, in Article IV, Part 1, Section 2, made provision for an initial membership of not less than one hundred nor more than one hundred fifty, with the additional provision in Section 3, that under certain conditions of increase in population

this number might be increased to two hundred. In 1841, by an amendment to Section 2, duly submitted and adopted, the number of representatives was definitely established at one hundred fifty-one, the provision for an increased membership being eliminated. This amendment will be found in Chapter 181 of the Resolves of 1841, and has ever since that time been a part of our organic law. In 1917, there was submitted to the voters of the State and accepted by them, an amendment to Section 3 of Part 1 of Article IV of the Constitution, which amendment appears in Chapter 116 of the Resolves of 1917. The sole purpose and effect of this amendment, in my judgment, was to add to the then existing provision that no town should ever be entitled to more than seven representatives, the exception that in the event of the merger of towns or cities, the new town or city should be allowed the combined representation of the former units. The resolution submitting the proposed amendment, however, concluded by purporting to recite the amended section as it would read by the insertion of the proposed amendatory language, but in the recital a very obvious error was made in incorporating the original obsolete provision authorizing an increase in the membership in the House to two hundred under certain conditions.

We do not feel that this error in recital, so palpably inconsistent with the express intention of the resolve, should be treated as having the effect of restoring the obsolete provision. It is well recognized that in the interpretation of both Constitutional and statutory amendments, the real intention of the legislative body is to be given effect wherever possible, that all other provisions of the Constitution and of existing statutes in *pari materia* are to be read together, and that consequences manifestly not within the spirit of the law makers are to be avoided. Their intention inferred from a reasonable interpretation of all their expressions upon the subject matter constitutes the real law.

A careful search of the authorities fails to disclose cases precisely in point involving the construction of Constitutional provisions, but similar problems have occasionally arisen in

cases where statutes have been amended and in reciting the original statute as amended, intervening legislation has been overlooked resulting in an erroneous statement of the effect of the amendment after the words "so as to read as follows." The decisions in such cases appear to be uniform to the effect that the true intent of the legislature should be given effect and the obvious error in the recital disregarded. The case most closely in point is that of *Svennes vs. West Salem*, 114 Wisc. 650. The first paragraph of the syllabus contains the gist of the decision, which is as follows:

"A statute (Sec. 3187a, Stats. 1898) was amended by striking out certain words. A subsequent amendment was expressly limited to another portion of the section, but by inadvertence the words before stricken out were incorporated in the recital of the section, as amended. Held, that such recital did not re-enact those words but the clerical error should be disregarded."

The following language from the opinion is also in point:

"The question recurs whether such mere recital had the effect to re-enact the four words so expressly stricken out two years before. Such amendments by its terms was expressly limited to the third line of the section, whereas the sentence in question commenced in the sixteenth line of the section. There was manifestly no intention of changing the last sentence of the section in any manner. By inadvertence, there was a failure to recognize the fact that the four words mentioned had been stricken out two years before. This court has repeatedly held that such a mistake or omission in such recital will not defeat the intention of the legislature." *Custin v. Viroqua*, 67 Wis. 314. 30 N. W. 515; *State v. Stillman*, 81 Wis. 124; 51 N. W. 260. Such clerical error in the recital of the section as amended must therefore be disregarded, and effect given only to the amendment specified."

To the same effect is *Lewis vs. Brandenburg*, 105 Ky. 14, in which the contention was made that where after a specific amendment the legislature declared that the section as amended "would read as follows" the section as thus enacted, being the last expression of the legislative will, constituted the law on the subject.

The Court called attention to the fact that the particular amendment would not make the statute "read as follows," and the statutes, although passed at different times, should all be read together to ascertain the true intent.

The general principle is also borne out by the text of Lewis' *Sutherland on Statutory Construction*, Vol. 1, 2nd Ed. paragraph 234.

Respectfully yours,
RANSFORD W. SHAW,
Attorney General.

On motion of Mr. Farnsworth of Caribou, the above communication was ordered placed on file.

Mr. MOODY of York: Mr. Speaker, I move that 500 copies be printed.

The SPEAKER: Mr. Moody of York moves that 500 copies of the communication from the Attorney General be printed. Does the Chair hear it seconded? (No response).

The following bills, resolves and petitions were presented and, upon recommendation of the committee on reference of bills, were referred to the following committees:

Agriculture

By Mr. Crabtree of Island Falls: Bill "An Act to amend Sections 110 and 112 of Chapter four of the Revised Statutes, relating to payment of damages done by dogs and wild animals to domestic animals.

Education

By Mr. Hinckley of So. Portland: Bill "An Act to amend Sections 169, 170, 171, 172, 173, 174, 175, 176 and 177 of Chapter 16 of the Public Laws of the State of Maine relating to teachers' pensions.

Judiciary

By Mr. Hinckley of So. Portland: Bill "An Act to prevent cruelty in slaughtering of animals."

Placed on File

By Mr. Thomas of Chesterville: Remonstrance of J. B. M. Lovejoy and 45 others of No. Chesterville against the "Barwise Bill."

By Mr. Bennett of Yarmouth: Remonstrance of Mrs. E. J. Bennett and 23 others of No. Yarmouth and Pownall against same.

By Mr. Winter of Auburn: Remonstrance of W. W. Rowell and 93 others against same.

Orders

On motion by Mr. Holley of North Anson, it was

Ordered, that the use of the hall of the House of Representatives be granted the Educational Department for the evening of Wednesday, Feb. 23, 1921, for the purpose of an illustrated lecture by Dr. Thomas.

On motion by Mr. Gardiner of Gardiner, it was

Ordered, that the use of the hall of the House of Representatives be granted to a joint committee, consisting of appropriations and financial affairs and judiciary, for the afternoon of February 23.

Reports of Committees

Mr. Maher from the Committee on Judiciary reported "Ought not to pass" on Bill "An Act to amend Section 35 of Chapter 126 of the Revised Statutes relating to prohibiting business and recreation on Sunday."

(On motion by Mr. Maher of Augusta, tabled pending acceptance of report.)

Mr. Baker from the Committee on Sea and Shore Fisheries reported the same on Bill "An Act to regulate the laws of fishing in the waters around Monhegan Island."

The report was read and accepted, and the bill ordered printed under the joint rules.

Same gentleman from the same Committee reported the same on Bill "An Act to repeal Chapter 91 of the Private and Special Laws of 1919 relating to the use of trawls and nets within certain waters."

(On motion by Mr. Rounds of Portland, tabled pending acceptance of report.)

Report "A" of the Committee on Judiciary reporting "Ought to pass" in new draft under same title "An Act to amend Section One, Chapter 84 of the Revised Statutes in relation to the appointment of clerks of the judicial courts."

The report was signed by the following:

Messrs. FARRINGTON of Kennebec of the Senate

MAHER of Augusta,

COLE of Eliot,

HINCKLEY of So. Portland,

GARDINER of Gardiner

of the House

Report "B" of the same Committee reporting "Ought not to pass" on the same Bill.

The report was signed by the following:

Messrs. GILLIN of Penobscot,

PARENT of Androscoggin,

of the Senate.

WING of Auburn,

BUZZELL of Belfast,

MURCHIE of Calais

of the House.

(On motion by Mr. Maher of Augusta Report A and Report B were tabled, pending acceptance of either, and specially assigned for Wednesday, February 23.)

Mr. Cram from the Committee on Public Utilities on Bill "An Act to incorporate the Cumberland Center Water Company and to authorize that Company to take over the properties of the Cumberland Water Company" reported same in a new draft under same title and that it "ought to pass."

(On motion by Mr. Rounds of Portland, tabled pending acceptance of report.)

Mr. Viles from the Committee on State Lands and Forest Preservation reported "Ought to pass" on Resolve authorizing the Land Agent to sell public lot 85 in Moro Plantation, Aroostook County.

(On motion by Mr. McIlheron of Lewiston, tabled pending acceptance of report.)

Same gentleman from same Committee reported the same on Resolve authorizing the Land Agent to sell a strip of land 15 rods wide from one of the public lots in West Forks Plantation in Somerset County.

(On motion by Mr. Viles of Augusta, tabled pending acceptance of report.)

Mr. Small from the same Committee reported the same on Resolve appropriating money for further public instruction in forestry.

The report was read and accepted and the resolve ordered printed under the joint rules.

Mr. Viles from the same Committee reported the same on Resolve authorizing the State Land Agent to sell Lot numbered 93 in the town of St. Agatha in the county of Aroostook.

(On motion by Mr. McIlheron of Lewiston, tabled pending acceptance of report.)

Mr. Granville from the same Committee reported the same on Resolve appropriating money for continuance of White Pine blister rust control.

The report was read and accepted, and the resolve ordered printed under the joint rules.

Mr. Viles from the same Committee reported the same on Resolve authorizing the State Land Agent to seil certain lots in the public lots in Dennistown Plantation in Somerset County.

(On motion by Mr. McIlheron of Lewiston, tabled pending acceptance of report.)

First Reading of Printed Bills and Resolves

House 52: An Act to prevent the marriage of persons having syphilis.

(On motion by Mr. Buzzell of Belfast, tabled pending second reading.)

House 126: An Act to extend the charter of the Eastern Maine Railroad.

House 127: An Act additional to Chapter 33 of the Revised Statutes as amended, prohibiting hunting in certain territory in the town of Fairfield in the county of Somerset.

House 128: An Act to amend and extend Chapter 40 of the Private and Special Laws of 1911, entitled "An Act to authorize the improvement of Fall Brook in the towns of Bingham and Bridgton."

House 129: An Act to amend Section 67 of Chapter 142 of the Re-

vised Statutes relative to escapes from the Reformatory for Women.

(Tabled by Mr. Towne of Madison, pending second reading.)

House 130: An Act to amend Section 10 of Chapter 182 of the Public Laws of 1919, relative to inmates escaping from Reformatory for Men.

House 138: An Act to revive, renew and extend the charter of the Lubec and Machias Railway Company.

House 139: An Act to permit the town of Southport to obtain a supply of pure water.

House 140: An Act to amend an act entitled "An Act to incorporate the Knox Woolen Company."

House 141: An Act to amend Sections 2, 7 and 13 of Chapter 180 of the Private and Special Laws of 1869, as amended by Sections 1, 2 and 3 of Chapter 5 of the Private and Special Laws of 1899, relating to annual meetings of Protestant Episcopal churches of the Diocese of Maine.

Mr. McILHERON of Lewiston: Mr. Speaker, you are assigning these for reading tomorrow morning. I still believe, as I did at the session on Friday, that tomorrow will be a legal holiday—Washington's Birthday, and I will move you that when we adjourn, it be to Wednesday morning at ten o'clock.

The SPEAKER: The House will entertain the motion at the proper time.

House 143: An Act to amend Section 1 of Chapter 62 of the Revised Statutes of Maine relating to the corporate powers of secret fraternities as respecting the Improved Order of Red Men.

House 144: An Act to extend the charter of the Quebec Extension Railway Company.

House 145: An Act to amend Chapter 134 of the Public Laws of 1919, relating to fishing in Kennebago stream, in the county of Franklin, and in the county of Oxford.

House 146: An Act to amend Chapter 211 of the Private and Special Laws of 1911, relating to the Con-

gregational Conference and Missionary Society of Maine.

House 147: An Act to amend an Act granting a charter to the Alumni Association of Bates College.

House 125: Resolve for the purchase of History of Grand Lake Stream.

House 142: Resolve in favor of Northern Oxford Fish & Game Association.

House 131: Resolve appropriating funds heretofore provided and authorizing new funds to pay for one-half the cost of an international bridge between Madawaska, Maine, and Edmundston, New Brunswick.

Passed to Be Engrossed

Senate 53: An Act to ratify, confirm and make valid the doings of the Old Folks' Home, in Bath, and the Home for Aged Couples and Old Men, in consolidating the Home for the Aged, maintained by them severally.

Orders of the Day

On motion by Mr. Holley of No. Anson, the House voted to reconsider its action whereby bill "An Act to provide for the appointment of a treasurer and resident auditor at the University of Maine and define their duties" was referred to the committee on education; and on further motion by the same gentleman, it was referred to the committee on appropriations and financial affairs.

Mr. BUZZELL of Belfast: Mr. Speaker, I move that we now adjourn until tomorrow morning at ten o'clock.

The Chair declared the motion carried.

Mr. McILHERON of Lewiston: I doubt that vote.

A rising vote being taken, the motion to adjourn prevailed.

The SPEAKER: The House stands adjourned until tomorrow morning at ten o'clock.