

MAINE STATE LEGISLATURE

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

SUMMARY REPORT
TO THE
ONE HUNDRED AND SIXTH LEGISLATURE

VOLUME TWO

JANUARY, 1973



STATE OF MAINE

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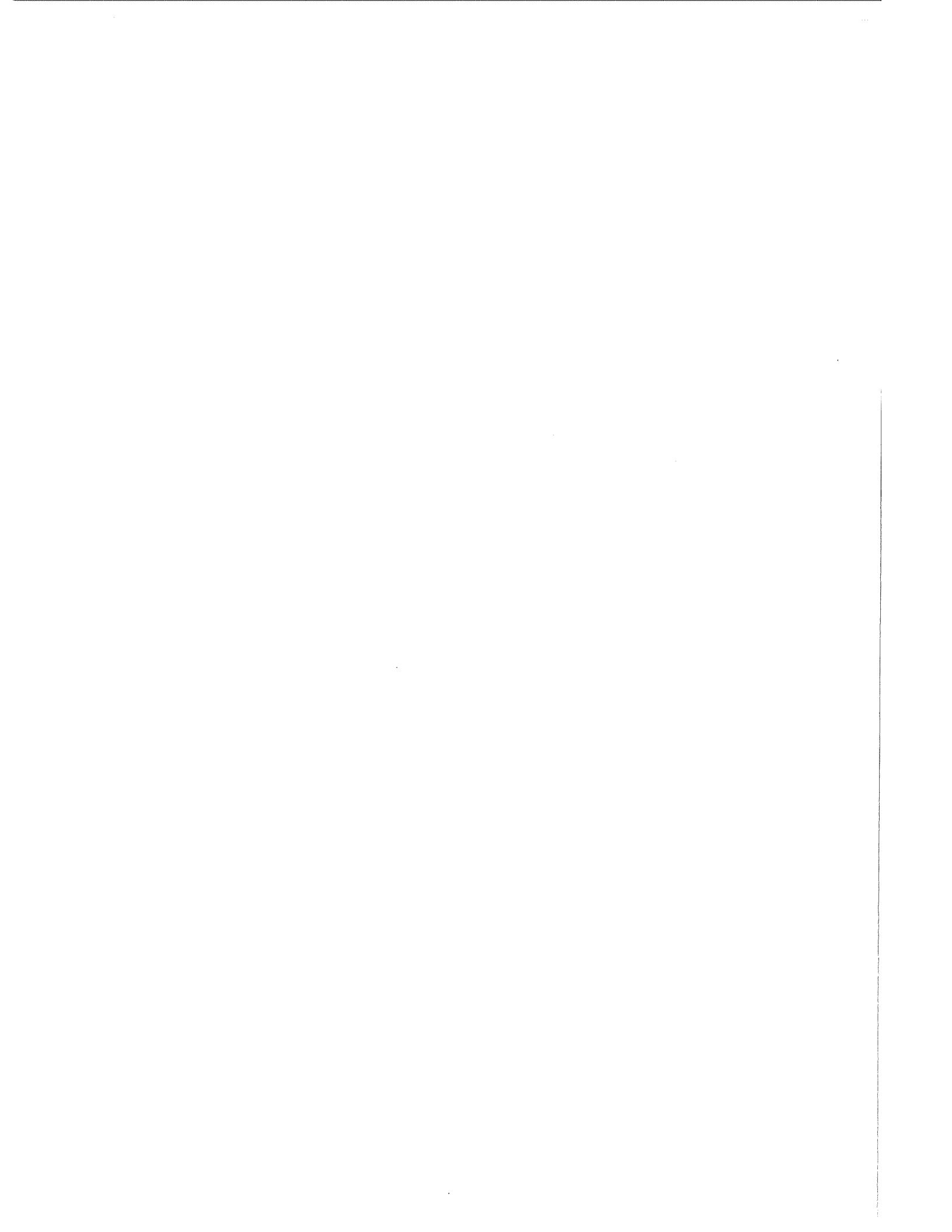
***Replaced Representative Gill

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STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE
STATE HOUSE
AUGUSTA, MAINE 04330

January 3, 1973

To the Members of the 106th Legislature:

The Legislative Research Committee hereby has the pleasure of submitting to you Volume II of its report on activities for the past two years.

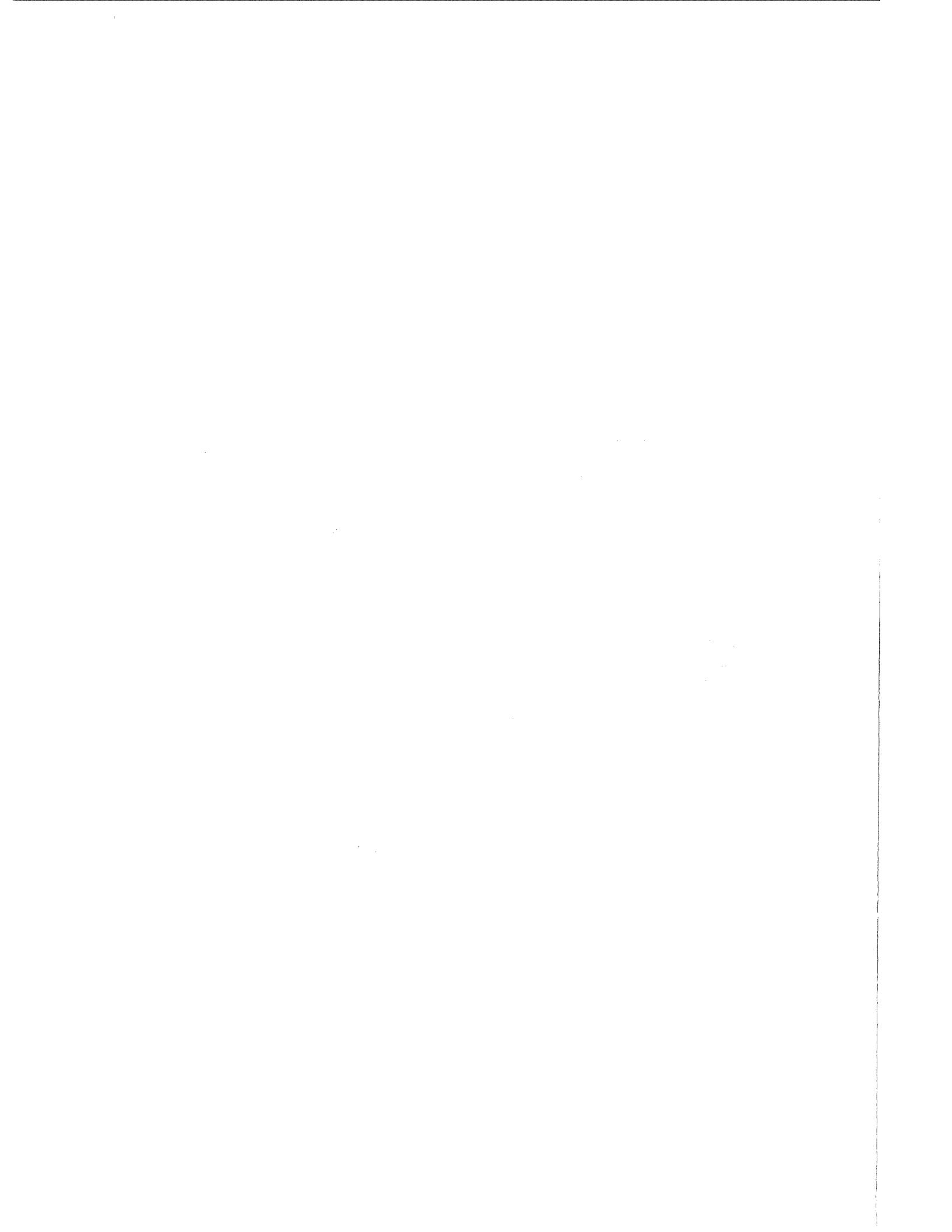
This volume, designated as the second summary volume, is a continuation of both, assigned and unassigned matters undertaken by the Committee and contains findings and recommendations pursuant thereto.

Again, we of the Committee, gratefully acknowledge our indebtedness to the many individuals, organizations and agencies for their valuable contributions to the work of the Committee and it is our hope that the information contained in this report will be of assistance to the members of the 106th Legislature and the people of the State of Maine.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Sewall".

JOSEPH SEWALL, Chairman
Legislative Research Committee



STATE OF MAINE
LEGISLATIVE RESEARCH COMMITTEE

REPORT ON
COUNTY GOVERNMENT AND
STATE FUNDING OF THE COURT
to the
ONE HUNDRED AND SIXTH LEGISLATURE

JANUARY, 1973
Legislative Research Committee
Publication 106-19

SUBCOMMITTEE ON COUNTY GOVERNMENT AND
STATE FUNDING OF THE COURT

CHAIRMAN - Louis Jalbert

VICE CHAIRMAN - Edwin H. Greeley

Armand J. Fortier

David J. Kennedy

Ronald S. Wight

COUNTY GOVERNMENT

ORDERED, the Senate concurring, that the Legislative Research Committee be directed to make a comprehensive study of County Government in the State of Maine and all associated agencies; and be it further

ORDERED, that the Committee report its recommendations, together with such legislation as it deems appropriate, at the next special session or regular session of the Legislature.

HP 926	House of Representatives	In Senate Chamber
Jalbert	Read and Passed	Read and Passed
Lewiston	March 2, 1971	June 21, 1971
	Sent up for concurrence	In concurrence

FINANCING THE COURT SYSTEM

ORDERED, the Senate concurring, that the Subcommittee on County Government of the Legislative Research Committee be, and hereby is, directed to study the subject matter of the Bill: "AN ACT Relating to Revenue Sharing and Financial Relief to Counties for Expenses of the Superior and Supreme Judicial Courts," Senate Paper 712, Legislative Document 1986, introduced at the First Special Session of the 105th Legislature, to determine whether the best interests of the State would be served by the enactment of such legislation; and be it further

ORDERED, that the Committee report its findings and recommendations at the next regular session of the Legislature.

HP. 1615	House of Representatives	In Senate Chamber
Wight	Read and Passed	Read and Passed
Presque Isle	March 9, 1972	March 9, 1972
	Sent up for concurrence	In concurrence

COUNTY GOVERNMENT AND
STATE FUNDING OF THE COURT

The Legislative Research Committee has studied at length with serious purpose, problems attendant to Maine County Government and costs of operation of the Supreme Judicial and Superior Courts under joint order, House Papers 926 and 1615 respectively, of the 105th Legislature.

In the implementation of this study, the Subcommittee held regular meetings at the State Capitol which were supplemented by a number of hearings at various locations throughout the State in order to facilitate more direct testimony from interested and informed citizens and officials. These hearings were held in Bangor, Augusta, Portland and Lewiston and were for the most part, well attended. The Committee took great care to insure that all interested parties were represented and given ample opportunity to express their views. In doing this, a great number of invitations were sent to officials and other interested individuals inviting them to attend the hearings and give testimony. The Committee followed this procedure with the firm belief that regional hearings result in greater citizen participation in the legislative decision-making process since it alleviates the inconvenience of traveling, sometimes long distances, by interested parties wishing to express their views.

For ease of handling and dealing with the complex areas assigned, the Committee divided the subject matter into the following areas:

1. Study of Clerk of Courts office
2. Study of Registry of Deeds
3. Study of Home Rule for Counties
4. Study of Probate Fees and Institution of a System of Full-time Probate Judges
5. Study of Cost of Operations of the Supreme Judicial and Superior Courts
6. Study of County Food Stamps
7. The Uniform Probate Code

Although the basic findings and determinations have been made and are reported here, the arduous task of preparing legislation to implement these recommendations still remains to be done. In this respect the Committee has been fortunate as it has had the professional assistance throughout the study of former Assistant Attorney General, Jon Doyle, and the Committee has great confidence in his ability to translate the recommendations made here into statutory form.

Upon completion of this legislation in the form of separate bills, it is the hope of the Subcommittee assigned to the study that the Reference of Bills Committee of the 106th Legislature will follow their recommendation in referring each bill, excluding the Uniform Probate Code, to the Joint Standing Committee of the Legislature on County Government.

Taken in the order listed above, the Committee respectfully submits the following reports individually on each topic:

STUDY OF CLERK OF COURTS OFFICE

The Subcommittee on County Government has studied certain matters relating to the operation of the office of Clerk of Courts. Specifically, the Committee has studied the present fee schedule applicable to filings with the Clerks' offices in order to determine whether an increase in the fee structure is justified.

The Committee was primarily concerned with whether the existing fee schedule was adequate to generate the necessary revenue for the operation of the Clerks' offices. The overwhelming consensus of opinion heard by the Committee from various Clerks of Courts and others was that the existing fee schedule was inadequate and, in fact, many Clerks' offices were being operated at substantial losses. For example, in Sagadahoc County in 1970 costs were \$16,666. In Cumberland County costs in 1971 were approximately \$60,000 and fees collected in the approximate amount of \$6500. It was apparent from these figures and costs gathered by the Committee that the present fee schedule is inadequate. However, it is also obviously apparent that no schedule of fee increases could be passed which as a practical matter would fully pay the expenses of many of the Clerks' offices. For example, Sagadahoc County would require a 2,000% increase in fees and Cumberland a 1,000% increase to break even. This would require an increase in a present \$2.00 fee to \$40.00 and fees which are now \$1.00 would have to be \$20.00.

Some persons appearing before the Committee suggested that since most Registers of Deeds' offices operate on a break-even basis, that it should be likewise possible for Clerks' offices to do the same. This is not a fair comparison. Although the various Registries of Deeds do operate on a break-even basis, taking in roughly the same

amount as they expend, there are important differences. First, the Register of Deeds, once a deed is presented for recordation, does not need to expend a great deal of time as a result of the recording of that deed. As a practical matter, the deed is presented for recordation, the necessary stamps are purchased and affixed and the Register collects the fee, enters the deed and records it. The deed is later returned by the Register to the grantee or his attorney. The Register's work ends there. However, if a summons or complaint are filed in the office of the Clerk of Courts to commence a suit, a great deal of work flows from that filing. The case must be docketed; quite probably there will be motions scheduled which will require that the Clerk set the matter up for hearing on a motion day; additional documents, such as depositions or interrogatories, may be filed. Thereafter, the Clerk is required to set the case up for pre-trial, which is a conference with the judge, and the matter is presumably set up for trial requiring a great deal of work by the Clerk and the attendance of the Clerk or his representative at the trial. Of course, throughout the whole proceeding, the Clerk is required to send out a number of various notices to attorneys. It is obvious then that the paper which enters the office of the Register of Deeds requires relatively little attention but one which enters the Clerk of Courts office requires a great deal of attention. Too, the volume in the Register's office is obviously sufficient to generate a great deal of income while the volume in the Clerk's office is nowhere near as great.

With this in mind, Attorney Jon Doyle, counsel for the Subcommittee, proposed the following fee schedule which, although it would not make the Clerk of Courts' operation self-sustaining, would generate some additional revenue. Let it be noted that the

present fee schedule is parenthetically set next to or below the new fee schedule.

1. Entry fee	\$ 5.00	(\$2.00)
1A. Entry fee for appeal cases	25.00	(1.00)
2. Blank documents such as writ of attachment, summons, writ of replevin with seal, signature and blank bond and subpoena	.50	(.10)
3. Exemplifying-certifying copies	2.00	(1.00)
4. Rulings of Referee	2.00	(1.50)
5. Executions	2.00	(1.00)
6. Copy of divorce decree or certification of same	5.00	(1.00)
7. Copies - \$1.00 for a page or part thereof and \$.25 for each additional page or part thereof. (\$1.00 for the first 500 words and \$.20 for each 100 words or fractions thereof in excess of 500 words)		
8. Executions of Possession	2.00	(.50)
9. Authenticated copies	3.00	(1.00)
10. All other documents	.25	(.10)
11. Computing damages, interest and taxing costs. (Present costs vary by county).	2.00	

The above proposed fee increases will probably result in an increase in income, depending on the county involved, of from 200 to 300%.

As a practical matter this fee schedule would probably, in considering the additional filing fee above, result in an increase in revenue in Cumberland County to \$10,000 from \$6,000; in Aroostook County to \$3,800 from \$1,400; and in Lincoln County to \$3,600 from \$1,200. The total expenditures,

for example, in Cumberland County are approximately \$60,000 yearly and in Aroostook County approximately \$22,000.

In the main, the above proposal represents the joint thinking of most of the Clerks of Courts and is viewed by the Committee as acceptable to them and is viewed by them as a justifiable increase which they would support.

The Committee also considered other methods of stimulating revenue for the operation of the Clerk's office and has particularly examined whether or not a fee should be imposed for the privilege of a jury trial. Counsel for the Committee has serious doubts about the constitutionality of such a provision although it has been adopted in other states. Too, the fee which is typically assessed (\$25.00 to \$50.00) would do little toward matching the cost in a jury-tried case which usually runs into hundreds and sometimes thousands of dollars. Therefore, the Committee has decided not to recommend the imposition of such a fee.

The Committee has also considered, in recommending increases in fees of Clerks of Courts, that in many areas the District Court and Superior Court have concurrent jurisdiction. If for example the filing fee in the Superior Court were increased an amount disproportionate to the District Court filing fee, then there would be concern that an additional burden would be thrown on the District Court because some cases may be docketed there for a \$1.00 entry fee.

The Committee sincerely feels that the above schedule of increases is both practical and politically acceptable and would alleviate some of the financial burden presently placed on the counties.

STUDY OF REGISTRY OF DEEDS

The Subcommittee on County Government has studied certain matters pertaining to the operation of the Registry of Deeds in this State.

Specifically, the Subcommittee has studied the feasibility of fee increases in the Registry of Deeds office.

The purpose of the Committee's study was to determine whether or not the existing fee structure in the Registry of Deeds was adequate to generate the necessary income for the operation of that organization. It appeared from the outset of the public hearings that generally the various Registries of Deeds operate on a self-sustaining basis. The Committee noted also that the 105th Legislature had recently enacted fee increases for the Registries of Deeds (36 M.R.S.A. §751, as amended by P.L. 1971, Chapter 321). The various Registers of Deeds themselves indicated to the Committee that they did not believe any further fee increases were warranted or justified. Most Registers indicated that they believe the recent fee increases would be sufficient to operate the various Registries on a self-sustaining basis into the foreseeable future.

Almost all of the Registers of Deeds who testified before the Subcommittee, however, were unanimous in indicating that the commission which they receive from the deed transfer tax (36 M.R.S.A. §4651, et seq.) was insufficient. Presently, revenue stamps are required to be affixed to deeds either before or after recording and the various Registers serve as sales agents for the stamps for the Bureau of Taxation. The Registers presently receive as compensation for their efforts 10% of the tax and the State retains the balance of 90%.

The gross tax collected for the entire State for the year ending June 30, 1971 was \$333,313.91. The net revenue to the State was \$299,969.63. The counties received the following monies:

<u>County</u>	<u>Amount + 10%</u>
Androscoggin	\$ 3,427.23
Aroostook	1,732.62
Cumberland	11,103.63
Franklin	1,103.72
Hancock	2,044.56
Kennebec	3,607.01
Knox	1,791.60
Lincoln	1,340.56
Oxford	1,304.91
Penobscot	3,500.99
Piscataquis	456.79
Sagadahoc	914.49
Somerset	1,132.22
Waldo	904.50
Washington	928.75
York	5,345.38

It appeared to the Subcommittee that most of the work which generated the tax revenue was done by the various Registers and that their present compensation was not truly reflective of that work and responsibility. The Committee, therefore, determined that a redistribution of a portion of the tax revenues would be more equitable and, after much discussion, the Committee decided to recommend that the Registers should receive 20% and the State the balance of 80%. The Subcommittee did not feel that any decrease in State revenue would have any adverse effect on the State budgetary requirements.

It also appeared to the Subcommittee that a great deal of administrative work by the Registries and by the State Bureau of Taxation was generated because under present law revenue stamps may be affixed to deeds either before or after recording. Therefore, the Committee determined to recommend that legislation be enacted to require the affixation of stamps prior to recordation. The Committee has fully considered that members of the legal profession may object

to this proposed practice on the basis that it could cast clouds on a title since questions could be raised as to the validity of the recordation of a deed recorded without revenue stamps. However, the Committee feels that it should be pointed out that there now are a number of prerequisites to the recordation of deeds. For example, a deed may not be recorded without an acknowledgment. (33 M.R.S.A. §203). The Committee feels that very little burden would be added to require attorneys or grantees to check and make sure that the revenue stamps are on a deed before recordation. Presently, the Bureau of Taxation expends a great deal of administrative time in sending field men to the various Registries to check recorded deeds and determine whether stamps have been affixed and then to follow up, if stamps have not been affixed prior to recordation, to determine whether they were purchased and affixed after recordation. This practice is costly and unnecessary and the Committee believes its recommendation will save valuable time and money.

STUDY OF "HOME RULE" FOR COUNTIES

The Subcommittee on County Government has devoted a good portion of its time in conducting its several studies of various aspects of county government to the question of whether counties should have home rule. It is important to note that the phrase "home rule" as used in the study concerns only "fiscal home rule" for counties and does not have the broader connotation of ability to adopt and change charters or the ability for a county to completely govern itself as do municipalities. Specifically, the Committee has studied whether counties should have more independence with respect to their financial affairs and in that sense, whether counties should be free to implement and set their own budgets without resort to the Legislature. Under existing Maine statutes the County Commissioners prepare an initial county budget, the budget is subjected to a public hearing and is then submitted to the entire legislative delegation of the respective county for that delegation's approval. The legislative delegation may and does often alter or change the budget. Thereafter, the budget, in final form, is submitted to the Legislature for its approval and is again reviewed by the Legislative Committee on County Government. Another public hearing is held by the Committee and the budget is thereafter finalized and submitted to the entire Legislature for its approval.

This procedure has been subjected to a great deal of criticism both within and without the Legislature as being unwieldy and as imposing an undue burden on county government. Many county officials feel that the Legislature does not have a full appreciation of the problems of particular counties and those same officials indicate that they, as duly elected officials of the county, are

in the best position to determine and set the county budget. Those officials, in the main County Commissioners, suggest that counties should be in no different position than municipalities who have the ability to set and determine their own budgets. They further allege that there is little or no interest on the part of legislators to seriously examine county budgets and that because of the politics involved, budgets are often established without reference to the real needs of counties.

Other persons, including a number of experienced legislators, feel that there should be some method of retaining control over county budgets because those budgets have a direct effect on the property taxpayers in individual counties.

The Committee, in conducting its hearings, has endeavored to elicit from persons appearing before it their ideas as to some means whereby counties might have fiscal autonomy, including the ability to set their own budget and levy their own taxes while retaining some semblance of control by the Legislature or by another body. It has been suggested by a number of persons that the legislative delegation in each county be established as a county budget committee with the responsibility of approving the final county budget while other suggestions have been made that a budget committee composed of municipal officials, citizens and legislators should be created to act as an agency for the approval of the county budget.

Under such proposals the County Commissioners would draft an initial budget, submit it to a budget hearing and after public hearing it would be submitted to the budget committee for its approval or disapproval. After that committee had finally approved it, it would be the county budget and the county tax would be levied on the basis of its requirements. Too, under this plan the salaries

of county officials presently established by the Legislature would be set by the County Commissioners. This would include Clerk of Courts, County Treasurer, Sheriff, Register of Deeds, Register of Probate, Judge of Probate and other county officials. A number of procedural provisions would be necessary to provide for the details of the handling of the budget and specific provisions would be placed in the statutes to spell out the purposes for which counties might raise monies.

A number of states in which county government is very active have provisions similar to the above and the Committee, through its counsel, has examined those provisions in detail in order to determine whether that might be adapted to procedures in Maine.

Counsel has suggested that if these provisions were to be adopted in Maine, certain provisions of the Maine Constitution should be closely scrutinized to determine whether any further constitutional amendment would be necessary in order to implement the provisions. It should be recalled that it was felt necessary to amend the Constitution to give municipalities full home rule powers. Although the present situation can be distinguished from that, the Committee has considered this an important factor in reaching its decision. Too, Article IX, Section 9 of the Constitution of Maine, which indicates that the Legislature may not delegate the power to tax, may cause possible constitutional problems in the implementation of legislative efforts not properly drafted. Counsel has advised the Committee that an enumeration of powers in the statutes which would spell out the purposes for which a county could raise money would probably satisfy the constitutional provision.

It would appear that neither of these legal problems can be

finally determined without a court opinion. The Committee, in the course of its deliberations, has considered whether it might be most beneficial in the long run to submit either or both of these questions to the justices of the Supreme Judicial Court for their opinion before any final decision is made.

The sense of testimony heard by the Committee appeared to be about equally divided between approval of limited home rule for counties and disapproval of the concept. The Committee met on numerous occasions with representatives of the County Commissioners Association which is wholeheartedly in favor of the proposition but the Committee was also advised by representatives of other counties that they disapproved of the concept. After a great deal of consideration the Committee feels that since there are a number of problems in the implementation of such a provision, both legal and practical, which would require further study, that it would be well advised to recommend to the Research Committee some further consideration of the problem. While the Committee appreciates the position that some counties are placed in by present practices, it does feel that there is a need for further study and definition of the problem and would recommend that the matter continue to be studied by the Legislative Research Committee. It would further recommend that pending the outcome of that study, the present practice of approval of the counties' budgets by the various county delegations be continued and it feels confident that due recognition will be given by the Standing County Government Committee to the findings and recommendations of the county delegations.

Particularly, the Committee would suggest that the Legislative Research Committee determine whether such legislation should be

submitted to referendum in order to get a better reading on the feelings of the citizenry of the State of Maine toward the proposed change. Present discussions between the Legislature and the County Commissioners should be continued since it has been greatly beneficial to the Committee and hopefully to the counties. Without the assistance of the various members of the County Commissioners Association, who gave many hours of their time to appearances before the Committee, important avenues of communication would not have been opened and important progress made toward resolution of the problem.

STUDY OF PROBATE FEES AND INSTITUTION
OF A SYSTEM OF FULL-TIME
PROBATE JUDGES

The Subcommittee on County Government has studied certain matters relating to the operation of the registries of probate in this State.

Specifically, the Subcommittee has studied the statutory fee structure which requires payment of certain fees in the probate of decedent's estates. Too, the Subcommittee has directed its attention toward determining whether or not the institution of a system of full-time judges of probate would be feasible.

The main thrust of the Committee's study concerning the adequacy of the probate fee structure was to determine whether existing fees were adequate to generate the necessary revenue for the operation of the various registries of probate. It appeared at the outset that the various registries of probate were generating very little revenue in proportion to their expenditures. The consensus of the testimony heard by the Subcommittee was that the probate fee structure should be upgraded to generate additional revenues but that it probably was not possible, because of the nature of the duties performed by the office, to put probate registries on a self-sustaining basis so that their revenues would roughly equal their expenditures. The Subcommittee therefore examined in detail the present statutes which impose fees for the administration of estates and is recommending increases in those fees as will appear from the schedule attached to this report.

There were several other areas discussed with respect to generating additional revenue for the use of the probate registries.

A number of witnesses suggested that a portion of the State Inheritance Tax revenue should be allocated for the use of the registries.

Typically, it was suggested that approximately 1% of the total inheritance tax revenue should be divided, and a portion attributable to the amount of estates generated by each county, among all the counties. After extended discussion, the Subcommittee has rejected this possibility because of its obvious impact on State funding and has determined that the problem could be adequately solved by the above mentioned increases in probate fees.

The Committee discussed other methods of generation of revenue into the registries such as the imposition of a filing fee or other fee based upon the complexity of the estate; the levy of a fee based upon a percentage of the inheritance tax paid and a number of other minor suggestions. The Committee rejected these ideas feeling that a general increase in the statutory fees, those that now exist, particularly an increase in the sliding scale of filing fees, would do the job adequately without adding unwarranted complexity.

It is worth noting that the Committee has worked very closely with registers of probate, judges of probate and county commissioners who are in general agreement over problems presented and the Committee's proposed solution. In fact, a number of suggestions made by registers have been directly incorporated into the Committee's proposals and the specific proposals have received the general approval of a number of registers.

The Committee also considered whether or not a full-time system of judges of probate should be implemented. It has carefully studied the report of the Institute for Judicial Administration dated Jan. 1969,

which recommended the adoption of such a system. It appeared, however, from the testimony heard by the Subcommittee that although there are a number of proponents of some system of full-time judges of probate there was no consensus requiring such a system and no demonstrated need of such a system. There does not appear to be any inherent problems in the present system which would lead to its inability to cope with its present work load. The Committee is therefore determined that it should take no further action to implement this proposal.

PROPOSED PROBATE FEE SCHEDULE

(Present Fee Schedule Set Out in Parentheses)

1. Petition for probate. Receiving and entering a petition for probate/administration when the value of the estate is

a. Under \$1,000	\$2.00 (\$2.00)
b. \$1,000 to \$10,000	5.00 (\$5.00)
c. \$10,000 to \$20,000	10.00
d. \$20,000 to \$30,000	20.00
e. \$30,000 to \$40,000	30.00
f. \$40,000 to \$50,000	40.00
g. over \$50,000, \$50, plus \$10 for each additional \$10,000, but in no event shall the fee exceed \$150 (present fees are \$10,000 to \$25,000, \$10; \$25,000 to \$50,000, \$15; \$50,000 to \$100,000, \$20; over \$100,000, \$25)	

2. Notice to beneficiaries

First 10 lines, and	1.00
Each additional line of 10 words (\$0.50 for the first line and \$0.05 for each additional line)	.10

3. Deposit of will 5.00 (\$1.00)

4. Making and recording the determination in petition for valuation 5.00 (\$4.00)

5. Fees for services for which no charge is apparently now made by the registries, such as filing and any certificate to be issued
- a. Adoptions 5.00
 - b. Separations 5.00
 - c. Change of name 5.00
 - d. Guardians and wards 5.00
 - e. Involuntary hospitalization of the mentally ill 10.00
 - f. Missing or absent persons 5.00
6. Filing of foreign wills (fees, including present fees, are the same as set out in Paragraph 1)
7. Filing fee for each document (as, for example, the fee for filing warrant and inventory or an account) 3.00
8. Making certificate of appointment (present fee is from \$1.00 to \$2.00) 3.00

STUDY OF THE COST OF OPERATION
OF THE
SUPREME JUDICIAL AND SUPERIOR COURTS

The Subcommittee on County Government was directed by the 105th Legislature of the State of Maine to study the subject matter of the bill "AN ACT Relating to Revenue Sharing and Financial Relief to Counties for Expenses of the Superior and Supreme Judicial Courts," Senate Paper 712, Legislative Document 1986, which was introduced at the first Special Session of the 105th Legislature. L.D. 1986 provided that the State should assume the cost of operation of the Superior and Supreme Judicial Courts. The bill was based on a study conducted by the Institute of Judicial Administration and dated January 1971. This study recommended that the State should assume the burden of financing the Superior Court which would include the provision of physical facilities for the court, payment of salaries to justices and other personnel and the furnishing of supplies and equipment.

The Legislature directed the Committee to determine whether the best interests of the State would be served by the enactment of legislation similar to L.D. 1986. In order to carry out the study the Committee held a number of hearings and meetings over approximately a six-month period and heard from and met with members of the judiciary, representatives of the various counties, court officials, members of the Bar, legislators and interested citizens. The Committee also met privately with all the members of the Supreme Judicial Court and held a similar meeting with representatives of the Maine County Commissioners Association. The hearings held by the Committee were public hearings and were held in conjunction with other matters being studied by the Committee. These hearings were held in Bangor, Augusta, Portland and Lewiston and at the close of

each of those hearings the Committee met in executive session with members of the Supreme Judicial and Superior Courts to discuss the subject matter of the Committee's study.

The purpose of the Committee's study was to determine the necessity for legislation, its cost, any efficiencies realized and the probable effect of the legislation on county government generally. The Committee concentrated on the legislation as it would relate to the expenses of the Superior Courts since those courts had the most impact on county financing of the court system.

Presently, county financing of the Superior Court system includes four different areas:

1. Physical facilities (court rooms, judges chambers, clerks offices and jury deliberation rooms for both the grand and traverse juries);
2. Personnel (including Clerks of Court and their staffs, other attendants and jury commissioners);
3. Supplies, furnishings and equipment; and
4. Fees (including jurors fees and expenses for both traverse and grand juries, witness fees, costs of court appointed counsel, State laboratory fees, officers fees, professional fees and costs relating to the prosecution of indigents or the provision of counsel or transcripts for them including costs of hearings and counsel and transcripts relating to petitions for relief by those found not guilty by reason of mental disease or defect).

The Superior Court system is financed partly by the State and partly by the counties. While the above matters are the responsibility of the counties, compensation of the judges holding court, the court reporters and to some extent the law libraries are paid for out of the State budget. Too, the county prosecutors'

salaries are paid by the State from the Attorney General's budget.

It appeared to the Committee as it talked with County Commissioners and judges that many of the present difficulties in the Superior Court system are caused by inadequate physical facilities or the lack of those facilities. There have existed a number of occasions where, because of the case load in a particular county, two judges were assigned to hear cases. Since only one court room was available this resulted in a waste of valuable judicial time. A number of counties have made important strides in providing new and additional court room facilities in order to dispose of the mounting case load. Some counties, however, have not and this has created a problem in scheduling for the judiciary. It is apparent also that a number of the county courthouses are not suitable for the holding of court and typically complaints are heard because the court rooms are in poor repair and are not acoustically suited to modern-day trials and lack proper heating and ventilation. Too, in a number of cases jury deliberation rooms are not adequate or are insufficient in number.

The counties which have attempted to cope with this problem have done so only at the expense of their regular budgets and most County Commissioners feel that there should be some financial relief to the counties which would free up more monies for the provision of physical facilities.

Testimony heard by the Committee was almost unanimous in indicating that counties cannot continue to cope with the increased cost of operation of juries, increases in total witness fees and the cost of court appointed counsel. (The trend of recent United States Supreme Court decisions is seen as placing an even greater financial

burden on counties because of new and additional requirements for the provision of counsel for indigents. Specifically, counsel must now be provided in any case, whether misdemeanor or felony, where there is a possibility of a jail sentence.

The cost for juries, for counsel and for witnesses is not readily predictable and thus cannot be budgeted for. A number of counties have, over the past few years, found themselves in serious financial problems because of these mounting court costs. For example, York County in 1971 budgeted \$91,570 for the operation of the Superior Court. The county disbursed \$120,881.05 - a total over their budget of \$29,131.05. The total cost for that same period for only witness fees, officers fees and court appointed counsel was \$23,716.47. It was the consensus of the County Commissioners who appeared before the Committee that if the State would assume the cost of the operation of juries, pay all witness and lab fees and those expenses related to court appointed counsel and indigents, the county would be in a better position to provide better courthouse facilities without the necessity of the State taking over the entire system, including the physical facilities.

The Committee also noted in the course of its study that some existing courthouses were not being used to their full capacity while others were overutilized. It appeared from discussions with the judiciary and testimony from others that better utilization of Maine's 16-plus county courthouses might be realized through a change in the statutes relating to venue. Presently, a criminal committing a crime in Franklin County is tried at the Franklin County Courthouse in Farmington. There is no provision, other than by motion for a change of venue, for that trial to be held in an adjacent county as, for example, Oxford or Androscoggin County, and likewise, if the

Androscoggin or Oxford court trial docket is overcrowded, short of a motion for the change of venue, Oxford or Androscoggin cases cannot be referred to Franklin for trial where a courthouse is readily available. It has been recommended that in order to make the court system more flexible, the Chief Justice has the authority to regionalize the court system and to alter the venue provision presently relating to civil and criminal cases so that trial might be had on a regional or state-wide basis.

As a result of its studies, the Subcommittee recommends that the State should assume ~~by payment out of the general fund~~ certain costs of operation of the Superior Court system. The State should be required to pay, directly or on a reimbursement basis, the cost of operation of juries, grand and traverse, the cost of all witness fees such as witnesses who are subpoenaed to appear before juries, officers' fees and professional fees, the cost of State lab fees, the cost of court appointed counsel and all costs relating to the defense of indigents, including costs of hearings and transcripts. (This would also include costs of prosecution of petitions by indigent persons found not guilty by reason of mental disease or defect.) ~~The Committee feels strongly that these costs should be paid by appropriation from the general fund of the State and not, as has been suggested, by diversion of funds normally returned to the counties from the District Court fund.~~ The Committee feels that the counties should continue to assume and pay the costs of providing space for the operation of the courts, personnel, supplies, furnishings and equipment.

The Committee has noted that there apparently has been some difficulty with respect to responsibility of the Clerks of Courts. There have been instances where Clerks felt responsible to the presiding Justice subject to only his direction and in other

instances where the Clerks looked to County Commissioners for direction. It has been suggested as a solution to this problem that the Clerks be appointed and not, as is presently the case, elected. After a great deal of consideration of this problem the Committee feels that the present system of election of Clerks should be retained but would recommend that the County Commissioners and representatives of the judiciary enter into discussions to clarify the responsibilities of the Clerks.

The Committee also recommends that the Chief Justice have the authority to regionalize the court system and that venue provisions be altered so as to make that system more flexible. This, however, contemplates that the various offices of the Clerks of Courts would be retained and further contemplates that all of the county courthouses would remain open.

The Committee sincerely feels that the above recommendations will improve the administration of justice in the State of Maine while resulting in the least financial drain upon the State and counties. It is important to note that the counties derive their revenue from property taxes while financing at least a portion of the court system from the general fund of the State of Maine would derive its basis from the income tax. To this extent such a measure would serve as a relief for county property taxpayers.

The Committee would like to indicate that it has received the fullest cooperation in conducting its study from the members of the judiciary and from the various County Commissioners. As an aside, the Committee feels that an important avenue of communication which has heretofore been non-existent has been opened whereby the Commissioners and the court can more fully appreciate and seek to solve each others problems.

FOOD STAMP AND
DONATED FOOD PROGRAMS

In view of the fact the State of Maine had not provided specific statutory authority for counties to implement Food Stamp or Donated Food Programs and certain counties were seeking individual legislative authorization for such programs, general enabling legislation was, in the Committee's opinion, necessary and desirable to authorize counties to enter into food stamp or donated food programs and to provide a means for financing.

With this objective in mind, the Committee conducted a series of hearings which lead to the introduction and passage at the first special session of the 105th Legislature, under chapter 571 of the public laws of 1971, the following Act to Authorize Counties to Adopt a Food Stamp or Donated Food Program:

CHAPTER 571

AN ACT to Authorize Counties to Adopt a Food Stamp or Donated Food Program.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the welfare of disadvantaged citizens of the State of Maine is important to the well-being of the State of Maine; and

Whereas, various counties of the State of Maine are unable to take advantage of existing federal food programs and to fund the programs; and

Whereas, the various counties of the State of Maine should be able to provide for the implementation of the federal food programs as soon as possible in order to assist the welfare of the citizens of the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 30, § 416, additional. Title 30 of the Revised Statutes is amended by adding a new section 416, to read as follows:

§ 416. Food stamp or donated food program

The county commissioners of any county may provide for a food stamp or donated food program in conformity with regulations promulgated by the United States Department of Agriculture and the United States Department of Health, Education and Welfare and may expend county funds to operate and administer such a program.

Sec. 2. Funding. During the year 1972 counties may utilize funds from their contingent accounts, not exceeding 50% of the total available in such accounts, or \$20,000 which ever is less, to fund food programs. Counties with funds appropriated for donated foods may transfer those funds to a food stamp account and counties with funds appropriated for food stamps may transfer those funds to a donated food account, and utilize those funds for purposes of operating a food program. Counties may use, if available, a combination of both donated food money or food stamp money and contingent account moneys for such funding.

This legislation shall complement chapter 463 of the public laws of 1971 which enables the Department of Health and Welfare to administer a food stamp program if paid for by the Federal Government or by counties in the State of Maine. Action by any counties in adopting and funding a food stamp program in the year 1971 is validated.

For the year 1973 and thereafter counties desiring food stamp or donated food programs may fund the programs by including any necessary amounts in their budget.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

THE UNIFORM PROBATE CODE

With recent national publicity about the Idaho Code in Parade and Reader's Digest, the Committee's attention was directed toward the possibility of probate law improvement in the State of Maine through adoption of a Uniform Probate Code. The suggested Code has already been enacted in Idaho and Alaska and is making progress in legislatures and legal circles of several other states.

The Uniform Probate Code was approved for enactment in the states by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in August of 1969.

The underlying purposes and policies of the Code, as set forth at the beginning of the Act, are:

- (1) to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
- (2) to discover and make effective the intent of a decedent in distribution of his property;
- (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;
- (4) to facilitate use and enforcement of certain trusts;
- (5) to make uniform the law among the various jurisdictions.

After discussing the merits of the Uniform Act, the Committee, through counsel, called upon the Commissioners of the National

Conference of Commissioners on Uniform State Laws for the State of Maine to determine how best to proceed in presenting an Act of this magnitude, involving approximately 278 pages, for consideration by the Legislature.

As a result of these deliberations, the Committee found the subject matter of the Uniform Probate Code to be a somewhat technical one in which lawyers, probate judges and trust officers have a direct and specialized interest. In addition, the Committee found that the general public shares with the Bar a deep interest in having a probate system that is efficient and inexpensive and at the same time fully protective of the rights of all persons interested in decedent estates.

In this regard, the Committee sees merit in the creation of a Commission, by joint order of the Legislature, for the study of the Uniform Probate Code for purpose of possible adoption in Maine. Additionally, the Committee recommends that this special study commission be broadly representative of not only specialists in the field of probate law, but also represented by members of the public who could study the Uniform Probate Code with particular attention to the situation in Maine.

The Committee further recommends that the Commission be sufficiently funded to employ expert assistance to analyze the changes that would be produced by the Uniform Probate Code in present Maine practice.

Accordingly, the Committee will prepare and present a joint order for introduction at the 106th Legislature to carry out the foregoing objectives.