

# MAINE STATE LEGISLATURE

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# DOCUMENTS

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## THE LEGISLATURE,

OF THE

## STATE OF MAINE,

DURING ITS SESSION

**A. D. 1835.**

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*AUGUSTA:*  
WILLIAM J. CONDON,.....PRINTER.

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1835.

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## FIFTEENTH LEGISLATURE.

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**NO. 34.**

**SENATE.**

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### STATE OF MAINE.

IN SENATE, FEBRUARY 27, 1835.

The Joint Select Committee, to whom was referred an order directing an inquiry respecting the Steam Navigation Lottery, and also an order respecting the Cumberland and Oxford Canal Lottery, have had the same under consideration, and ask leave to

#### REPORT :

That, injurious as all Lotteries are to the morals and well being of the community, the Committee have nevertheless endeavored to avoid all influence of this consideration over their inquiry into facts. In regard to the Steam Navigation Lottery, however deleterious its operation may be, and however easy it would be for the Managers to relieve the State from the evil, by declining further to act, we are yet bound, so long as they conform to law, to consider them in the light of public servants. They are servants, however, having no claims founded on the irrevocable nature of the grant, and none on the indulgence of that public sentiment, against whose strong conviction they are acting. If, therefore, they shall be found not to have conformed to law, as they are removable at the pleasure of the Governor and Council, it cannot be anticipated that they will be permitted further to enforce an Act which the progress of Society has disabled from doing

good, but not from doing injury. On this point, the following results are all that the limited means enjoyed by the Committee, of ascertaining facts, have enabled them to present.

The law provides that "the Managers shall keep a book in which they shall charge themselves with the amount received for each ticket, in every class in said Lottery, numbering the same; and of prizes not claimed within one year; and they shall credit themselves with the amount of prizes paid to the purchasers of tickets; which book shall be exhibited to the Governor and Council, at the first session they shall hold after the drawing of any class, and oftener, if required: and a transcript of the account shall be filed in the Treasurer's Office." Although near two hundred classes have been drawn, since the last settlement with the Governor and Council, in the year 1831, the Committee are satisfied that no such book has been so exhibited, and no pretence is made that any "transcript of the account," or, at least, for several years, any transcript of any kind, has been filed in the Treasurer's Office.— Certain books, of which one is designed for each class, have indeed been filed, though not always seasonably, in the Secretary's office, accompanied by a general account of each class; but these books contain only printed numbers from one progressively to something near the whole number of tickets in the class, without any charge against themselves of "the amount received for each ticket" or any other charge. Occasionally some hundreds of these numbers are also missing, either at the beginning or end of the book. In each of these books are further found a few other numbers, marked with the pen, said by one of the Managers, to represent all the prizes drawn against tickets sold in each class. On examining several of them, however, the amount of prizes there exhibited was found to

be small, compared with that charged to the class in the accompanying account. There was not pretended to be any account of prizes not claimed within one year, either in the book or accounts. It is exceeding clear that these books are not the "book" required by the Act to be exhibited, and that they can answer no valuable purpose whatever. As the classes are drawn by combination, and not by register numbers, the books are not better than waste paper; whereas a book kept according to law, with a "transcript" thereof filed in the Treasurer's office, might be some security to the public, and an important check in the settlement of the Managers accounts.

Not only have the Managers omitted, at least, for several years, to render any account of unclaimed prizes, but they have also omitted to pay over anything on account thereof. As the first omission is against the letter, so the other is believed to be contrary to the meaning of the Act. Circumstances might require that this money should remain in the hands of the Managers, until the expiration of the year, when it would become available "for the purposes intended by this Lottery;" but no reason can be assigned why they should have the use of it from one to nine years longer, until "the whole business of said Lottery shall be completed."

It cannot be doubted that the Managers have also misapprehended the law, in their claim for "services and expenses." The act provides that this claim shall be only to "such sums as shall be allowed them by the Governor and Council, not exceeding twenty-five per cent. on the sum allowed to be raised by the Lottery." As the sum allowed to be raised is only \$25,000, it would seem that their claim for "services and expenses," in raising that amount, could not exceed \$6,250, which would average only twenty per centum on the gross amount of all the profits. Con-

ceding, however, that they were entitled to twenty-five per centum on said gross sum, according to their charges, their whole claim could never exceed \$8,333 $\frac{1}{3}$ , which is one quarter part of \$33,333 $\frac{1}{3}$ , and deducted therefrom will leave the net sum of \$25,000. In accounts already settled, they have been allowed \$3,557 57, and in the further accounts exhibited for settlement they have charged the further sum of \$7,236 87, making \$10,794 34, while their statements show that they have not realized half the sum allowed to be raised. In these unsettled accounts they make their own quarter part of the gain amount to \$7,236 87, and the three quarter parts due to the Lottery only \$34 91. This is done by lumping together some 15 or 20 classes, and where there is a balance of gain, charging twenty-five per centum thereof for "services and expenses; but making no corresponding credit, where there is a balance of loss. If they were right in so doing, they might and should have charged their 25 per centum on the gain of each class separately, making no deduction therefrom for losses. It is also obvious, that if they were right they might make an unlimited amount for themselves, without making any thing for the Lottery. But it needs no argument to prove that this mode of charging is wholly illegal. Allowing the charge of 25 per cent. which they made, to be correct, and of the \$7,271 78 which their accounts show to have been gained since the settlement, \$1,817 95 belongs to them, and \$5,453 84 to the Lottery. This at least should have been paid into the Treasury "within sixty days after the drawings," but it has not been. In excuse for this, it may be said that no settlement had been obtained with the Governor and Council, according to the Act of Feb. 25, 1833. If this excuse were valid, as it is believed not to be, it would only apply to such parts as had accumulated before the passage of said Act.

The second branch of inquiry respecting said Lottery, namely, whether the Managers "have raised the sum authorized by said Act?" it would be impossible satisfactorily to answer without a thorough examination of their books and clerks, which the Committee have not had the means nor the time to make. They have paid into the Treasury \$10,672 71½, and the preceding estimate leaves \$5,453 84 in their hands, according to the accounts exhibited, making together \$16,126 55, and leaving a balance of \$8,873 45 not yet raised. If, however, bad debts are not to be charged to the Lottery, the Managers agree that they have raised the whole sum. Although this question has not been judiciously settled, it may be doubted whether they may not be so charged, if properly incurred. It has been said that debts have been charged by the Managers, which were made by S. H. Mudge & Co. and the Register of the Governor and Council shows that at least one debt so made has been allowed. This could not be properly done, unless S. H. Mudge & Co. were agents of the Managers, and if they were so, they must sell at no less discount than is charged by the principals, as the agents could have no authority but what they derived from them. The principals have in all cases charged the Lottery with six per cent. discount, whereas it is in evidence before the Committee that Mudge & Co. have sold at less discount, and sometimes without any. Whether any bad debts have been charged, made under such circumstances, your Committee are not informed. The mode recommended to determine this point, as well as to make the examination requisite for a settlement of the accounts, is that of having Commissioners or Auditors appointed for the purpose.

While the Committee are thus of opinion that the Managers of this Lottery have failed in several particulars to "comply with the provisions of the Act," it is no more than justice, to men whose characters are considered as

fair, to say that no evidence of fraud, on their part, was before the Committee. Mr Willis was before them a short time, and expressed his readiness to furnish any books required. Several communications from him to the Chairman, are, at his request, herewith submitted, with copies of two letters to the Managers.

In regard to the further conditional requirements of this order, it may be permitted to remark, that no neglect or even misconduct, on the part of the Managers, can forfeit the right of the grantee, and hence no law counteracting the grant, would be constitutional. Whether any other legislative action should be had, in consequence of want of conformity to law on the part of the Managers, is respectfully submitted to the Legislature.

From the Executive Register, it appears that a balance unaccounted for, of \$11,489 22, remained in the hands of the Managers of the Cumberland and Oxford Canal Lottery, June 28, 1832. It also further appears, that "the Managers claimed [to be allowed] a large amount of bad debts, with the evidence of which the Executive were not satisfied, and that the Managers had not furnished them with an account of the unclaimed prizes, on the last 63 classes drawn." Although it is believed, that the bond given by these Managers, has expired by the limitation thereof in the law, yet as the Managers would doubtless be individually liable for money in their hands, it may be desirable that such Commissioners or Auditors, as may be authorized to report on the accounts of the Steam Navigation Lottery, should also be authorized to investigate these points.

For these purposes, the Committee ask leave to recommend the passage of the accompanying Resolve. All which is respectfully submitted.

B. RANDALL, Chairman.



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**STATE OF MAINE.**

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**RESOLVE** authorizing the appointment of **Audi-**  
**tors** to investigate the unsettled accounts of  
**Lottery Managers.**

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*Resolved,* That the **Governor**, with advice of **Council**, be authorized to appoint two suitable persons as **Auditors** of the unsettled accounts of **Lottery Managers**, whose duty it shall be to examine all the books of the **Managers** of the **Lottery** granted for the encouragement of **Steam Navigation** in this **State**, which have not heretofore been settled, and also to examine, on oath or otherwise, such **Clerks** of said **Managers**, and others, as they shall think proper, for the purpose of ascertaining, and reporting to the **Governor** and **Council**, what sums, if any, may be due from said **Managers** to the **State**; and also to make similar investigations and reports, respecting the unsettled accounts between the **State** and the **Managers** of the **Cumberland** and **Oxford Canal Lottery**. And said **Auditors** shall have the same powers to compel witnesses to attend and testify before them, that **Justices of the Peace** have to compel deponents to appear and depose.

*Resolved,* That on the receipt of said reports the **Governor** and **Council** be authorized to settle the accounts of the **Managers** of both said **Lotteries**. And if upon such settlement, it shall appear that

the Managers of the Steam Navigation Lottery, shall have raised the full sum authorized by the Act granting the same, and said Managers shall not discontinue the drawing of further classes, the Governor and Council be authorized to cause the Attorney General to prosecute the bond filed in the Treasurer's office by said Managers, or obtain such other process against said Managers, as to them shall seem proper.

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STATE OF MAINE.

IN SENATE, February 27, 1835.

The foregoing Report and Resolve, were read and ordered to lie on the table, and that five hundred copies be printed for the use of the Legislature.

[Extract from Journal.]

(Attest,) WILLIAM TRAFTON, *Secretary*.