

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1850.

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1850.

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# THIRTIETH LEGISLATURE.

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No. 34.]

[HOUSE.

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## R E P O R T .



The joint select committee to which was referred an order relating to county commissioners, have had the subject under consideration and ask leave to report, as follows :

The expense attending the action of the courts of county commissioners is felt, very generally throughout the state, to be a grievous burden, that should be lessened. Petitions from various quarters, setting forth faults and abuses and suggesting remedies, have been laid before the committee. Several individuals, also, have appeared before the committee for the same purpose.

The first step taken, was to ascertain, from the returns in the office of the secretary of state, what the actual cost to each county has been for the personal services, travel and attendance of the Commissioners for a series of years. This investigation was attended with some difficulty from the imperfect state of the returns when found, and from the entire absence in some cases of all returns. The committee would notice in this connection, that although the law is imperative that county commissioners should make a return of their accounts to the office of the secretary of state, those returns have not been made for the year 1849, from six counties.

There was found an almost perfect statement of the expenses of

the court of sessions and committees for the year 1829. The total amount for that year, in the ten counties of the state, was \$3,943.69; making an average of about \$65 per annum to each judge and each member of the board of committees. The total county expenses for that year, exclusive of the cost of a gaol in one county, and a court house in another, amounted to \$66,713.10. The cost of the personal services, therefore, of judges and committees, was about one-nineteenth part of the whole county expenses.

In 1832, which was the first year in which county commissioners acted, the estimated expense of their personal services in the ten counties of the state, was \$5,246; and the total county expenses were estimated at \$73,318.81, making the personal services of the commissioners about one-fourteenth part of the whole expense. In 1834, the estimated expense for the same purpose was \$6,654, or about one-eleventh part of the whole expense which was \$73,693. In 1835, the proportion was the same. From 1837 to 1845 inclusive, the proportion varied but slightly from one-twelfth part of the whole county expenses, and was about \$9,000 per annum. In 1847, the *actual* pay of the county commissioners swelled to \$11,318.87; in 1848, to \$12,731.61, about one-ninth part of the whole county expenses, which amounted to \$118,836, making an average for each commissioner of \$326.45 per annum for the year 1848. In Lincoln county, the average to each commissioner was \$574.16, being the largest in the state. In Washington county, the average was \$117.48, being the smallest. In 1849, the average pay of each commissioner in Lincoln county, was \$759.86, a sum in striking contrast to the \$65 per annum to each judge of the courts of sessions and each member of the committees throughout the state, in 1849.

It will be seen, therefore, from the foregoing statements, that the *proportion* which the cost of the personal services of the county commissioners bears to the whole county expenses, has increased from one-ninth part in 1829, up through one-fourteenth, one-twelfth and one-eleventh, up to one-ninth part in 1847 and 1848. It will be seen also, that the total cost in 1848, was more than three times

as great as it was in 1829, while the total expenses were less than twice as great.

The actual cost of building roads and the amount paid for damages on account of them, could not be obtained with sufficient accuracy to justify the committee in stating them. But they are well known to be very great, and to form a large proportion of the county expenses.

The actual and proportional cost of the personal services of county commissioners having thus largely increased, the question at once arose, how is the fact to be accounted for?

Many causes combine to swell the cost.

*First.* The mode of compensation leads directly to such a result. Their pay is made to depend upon the number of days they are employed and the number of miles they travel. It is directly for their interest, therefore, to be employed as many days as possible, and to travel as many miles as possible. For this, there is, in the opinion of the committee no remedy, except in the selection of honest men for commissioners, men who will not seek to create business for their own benefit.

*Secondly.* The next source of this great increase of cost, is to be found in a direct and palpable violation of the law fixing the compensation of county commissioners, openly committed in some counties of the state and in some cases even justified. This violation consists in charging constructive mileage. The method adopted, as the committee are informed, is this:—the hearing upon a petition in a town is assigned for a certain day. The next day is assigned for the hearing of a petition in an adjacent town. Although the two towns are not more than five miles distant from each other, the commissioners charge full mileage from their homes upon each petition, though they in fact travel but five miles. This is done in the face of the provisions of the statute, which are, that they shall charge only “for the miles *actually* traveled, and for services and travel on but one petition, or one case at the same time.” And yet the accounts containing these illegal charges are regularly audited and sworn to and allowed. The commissioners in some

counties are in the habit, also, as the committee are informed, of allowing fees to county attorneys for attendance upon their courts, and thus swelling the expense of these courts illegally. The salary of a county attorney is a fixed one and is intended as a full compensation for his services, and therefore all such allowances by the county commissioners are in direct violation of law. In one county, the committee are informed that the commissioners employ and pay the sheriff of the county, to attend upon their courts while in session. It will be seen, therefore, that a portion of the expense of county commissioners which is felt to be so heavy a burden upon the people, arises from direct violations of the laws of the state.

*Thirdly.* The next source of this great increase of cost is the large number of roads unnecessarily petitioned for and constructed. Petitions for roads are so readily and thoughtlessly signed, that there is but little difficulty in getting them up any time, for although, by statute, the signers of petitions that are rejected, must pay the expense incurred by the proceedings under such petitions, it is found in practice, that many roads are laid out by the commissioners to save the petitioners from being called upon to pay this expense and apparently for no other reason. After an interval, in many such cases, they will be called upon to discontinue the roads so laid out and thus a double expense is entailed upon the county.

*Fourthly.* The right of appeal from the decision of county commissioners, as to the location and discontinuance of roads, to a committee appointed by the district court, is a fruitful source of expense to the counties, and is open to other grave objections. It is wrong in principle, because it is an appeal from a higher tribunal to a lower. Three men, selected usually as friends of the party appealing, not accustomed to viewing and locating roads, are called upon to undo the work of men selected, in theory certainly, as well qualified to attend to such matters. The result most generally is, that they decide against the county commissioners, who are then compelled to do what in their judgment is not right or expedient, and the county must pay the costs.

A very great and very general misapprehension, in the opinion of the committee, exists, as to the qualifications necessary for a fulfillment of the duties of a county commissioner. It is forgotten that he is a judge and should have the qualifications necessary for discharging the duties of a judge. It is forgotten, too, that the powers of a county commissioner are more extensive than those entrusted to any other officer in the state—in truth, so extensive, that in the opinion of many persons they should be curtailed materially and distributed among other tribunals. The best men, therefore, in every county should be chosen to fill the office, and they should be selected not from party considerations, but solely for their capacity and character.

Numerous suggestions have been made to the committee as to changes and modifications of existing laws regulating the duties of county commissioners. Some have proposed an entire abolition of the court and a transfer of all its powers to the district court. The committee have not felt disposed to introduce so entire a change in the judicial system of the state as the adoption of such a measure would produce, but have contented themselves with endeavoring to find out some of the defects of the system and some of the abuses that have crept into the working of that system and to apply a remedy. Whether their propositions will, in the opinion of the legislature, be effectual and should be adopted, is left to their decision. It may be of service, if nothing more is accomplished, to have set forth these defects and abuses so that the people may know that they exist, and succeeding legislatures may take up the matter where we leave it and provide an effectual cure for them all.

The committee propose—first : that the compensation of county commissioners be fixed at two dollars per diem and ten cents for each mile actually traveled, the accounts to be made up and published in the same manner as is now done, with a penalty for every illegal charge, of ten dollars, one half to the complainant and one half to the use of the county. Second : that the petitioners in all cases pay the expense of viewing, locating and discontinuing roads. Third : that the law of eighteen hundred and forty-seven granting

an appeal from the decision of county commissioners as to the location and discontinuance of roads, be repealed.

The committee would also recommend the passage of a law providing that railroad companies should pay all expenses incurred by county commissioners when called upon to act upon questions between those companies and the owners of lands through which the railroads are built. The committee have been informed that the counties through which railroads have been carried have been put to great expense on their account for the want of such a law.

The committee have framed bills in accordance with the recommendations made in this report and would respectfully submit them, together with this report, to the legislature.

R. M. CHAPMAN, *per order.*



# STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
FIFTY.

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## AN ACT in relation to railroad companies.

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*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. All railroad companies now chartered, or  
2 that may hereafter be chartered by the state, shall pay  
3 all fees and other expenses of the county commis-  
4 sioners incurred in the settlement of all questions  
5 between said companies and the owners or occupants  
6 of lands through which said railroads are located.

SECT. 2. This act shall take effect from and after  
2 its approval by the governor.

# STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
FIFTY.

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AN ACT to repeal the twenty-eighth chapter of the  
public laws of eighteen hundred and forty-seven.

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*Be it enacted by the Senate and House of Representa-  
tives in Legislature assembled, as follows :*

SECTION 1. The twenty-eighth chapter of the public  
2 laws of eighteen hundred and forty-seven, relating to  
3 appeals from the decisions of county commissioners  
4 as to the location and discontinuance of roads, is  
5 hereby repealed.

SECT. 2. This act shall take effect from and after  
2 its approval by the governor.

# STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND  
FIFTY.

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AN ACT to amend the ninety-ninth chapter of the  
revised statutes relating to county commissioners.

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*Be it enacted by the Senate and House of Representatives in  
Legislature assembled, as follows:*

SECTION 1. Petitioners for roads shall in all cases  
2 pay the fees of the county commissioners and all  
3 other expenses for viewing and locating said roads,  
4 said commissioners fixing a reasonable time for the  
5 payment thereof; and if the same be not paid as  
6 aforesaid, they shall issue a warrant of distress against  
7 said petitioners; and the county shall in no case be  
8 liable therefor.

SECT. 2. The compensation of each county com-  
2 missioner shall be two dollars a day, and in that pro-  
3 portion for any part of a day, actually employed in

4 the service of the county, including time necessarily  
5 spent in making drafts or other labor, and exclusive  
6 of time spent in traveling, for which they shall be  
7 allowed ten cents a mile for the distance actually  
8 traveled; and the account shall specify the kind of  
9 service performed, each day or part of day; and no  
10 additional charges shall be allowed for trouble or ex-  
11 penses of any kind; neither shall they be allowed for  
12 services or travel on more than one petition, or one  
13 case at the same time.

SECT. 3. Each commissioner shall keep an accurate  
2 account of his time spent and actual travel, as afore-  
3 said, specifying the places from and to which he  
4 traveled each day, and he shall not be allowed for any  
5 services not so specified. Such account shall be  
6 audited and examined by the county attorney and  
7 clerk, who shall certify the amount allowed, one of  
8 them having first sworn such commissioner to the  
9 truth of his account; and no further sum shall be  
10 paid on such account by the county, than is thus cer-  
11 tified. And if any commissioner shall charge in his  
12 account for any miles not actually traveled or for  
13 any time not spent, he shall forfeit and pay the sum

14 of ten dollars for each and every such charge, to be  
15 recovered in an action of debt in the name of the  
16 county, one half to be paid to the complainant and  
17 one half to the use of the county.

SECT. 4. Sections twelve, thirteen and fourteen of  
2 chapter ninety-nine of the revised statutes are hereby  
3 repealed.

SECT. 5. This act shall take effect from and after  
2 its approval by the governor.

# STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, August 15, 1850.

ORDERED, That 1,000 copies of the foregoing Report and Bill,  
be printed for the use of the Legislature.

E. W. FLAGG, *Clerk.*