MAINE STATE LEGISLATURE

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Proceedings of the
SECOND CONSTITUTIONAL COMMISSION
OF THE
STATE OF MAINE

Augusta
SAMUEL S. SILSBY, JR.
Maine

PREFACE

Since the deliberations of the Constitutional Convention of 1819-20, which were painstakingly recorded by Jeremiah Perley and published in his "Debates," no single work has been published which satisfactorily comprehends either the Constitution or the Constitutional history of the State of Maine in nearly 143 years. Records, such as they are, exist in the Legislative files, records and journals of the House and Senate, in the Maine State Library (Public Document Collection) and Secretary of State's office, the Laws of Maine, Advisory Opinions and Decisions of the Supreme Judicial Court and in various manuscripts and publications dealing with selected parts of the Constitution.

The fact that no serious effort has been made to reassemble the scattered documents and papers of the Convention, itself, is particularly appalling, when viewed in the light of the importance of the protections guaranteed to each of us in the resulting document.

It is not, therefore, suprising that no record exists of the deliberations of the first Constitutional Commission, created in 1875, notwithstanding the fact that Amendments XIII to XXI are the direct result of its recommendations, nor for that matter of the recent Joint Select Committee on Constitutional Revision of the Ninety-Fourth Legislature which was responsible for initiating several amendments, including the unique provision for periodic codification by the Chief Justice.

The following pages represent an attempt to preserve the proceedings of the second such commission for future reference. Deficiencies in style, and particularly in the matter of completeness, will be obvious, since none of the proceedings, except for the Public Hearings of the Commission of March 21 and December 11, 1963 were taken verbatim by a professional reporter.

The compiler expresses his appreciation to the members of the Constitutional Commission for permitting him full attendance to their meetings, and to Mr. Samuel H. Slosberg, Director of Legislative Research, for his active interest in making arrangements for the necessary time.

Samuel S. Silsby, Jr.

Augusta, Maine May, 1963

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CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

Fred C. Scribner, Jr., President

Emery O. Beane, Jr.

John P. Carey

Carleton E. Edwards

Robert A. Marden

Edwin R. Smith

Stanley G. Snow

George D. Varney

John F. Ward

Robert M. York

Portland

Augusta

Ba th

Raymond

Waterville

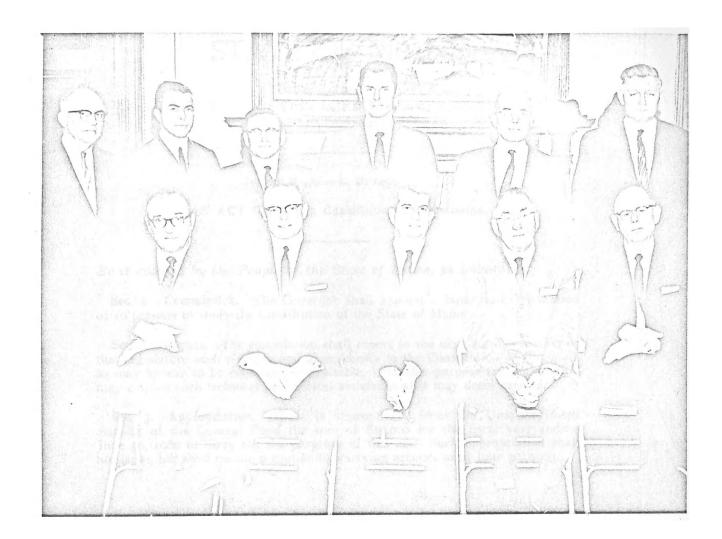
Bar Harbor

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SIXTY-ONE

Chapter 2/2 S. P. 498—L. D. 1498

AN ACT Creating a Constitutional Commission.

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

- Sec. 1. Commission. The Governor shall appoint a bipartisan commission of 10 persons to study the Constitution of the State of Maine.
- Sec. 2. Report. The commission shall report to the next regular session of the Legislature such changes and amendments to the Constitution of the State as may appear to be necessary or desirable. For this purpose the commission may employ such technical and clerical assistance as it may deem necessary.
- Sec. 3. Appropriation. There is appropriated from the Unappropriated Surplus of the General Fund the sum of \$10,000 for the fiscal year ending June 30, 1962 to carry out the purposes of this act. Such appropriation shall not lapse, but shall remain a continuing carrying account until June 30, 1963.

In House of Representatives,
Read three times and passed to be enacted.
Speaker
In Senate,1961
Read twice and passed to be enacted.
President
Approved1961
Governor

•

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

JANUARY 25, 1962 FEBRUARY 19, 1963 Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

THURSDAY, JANUARY 25, 1962

First Meeting

By Private and Special Laws, 1961, Chapter 212, Governor Reed was authorized to appoint a bipartisan commission of 10 persons, to study the Constitution of the State of Maine, and report to the regular session of the 101st Legislature such changes and amendments to the Constitution as may appear to be necessary or desirable. The Governor, on December 22, 1961, appointed Messrs. Emery O. Beane, Jr., Augusta, John P. Carey, Bath, Carleton E. Edwards, Raymond, Robert A. Marden, Waterville, Fred C. Scribner, Jr., Portland, Edwin R. Smith, Bar Harbor, Stanley G. Snow, Auburn, George D. Varney, Eliot, John F. Ward, Millinocket and Robert M. York, Orono, as members of the Commission.

Pursuant to the call of the Governor, the first meeting of the Commission was held at Augusta on January 25, 1962, in the Judiciary Room, State House, for the purpose of organization. The meeting was called to order at 2 P.M. by the Governor, acting as temporary presiding officer, with all the members of the Commission present.

The following remarks were made by Governor Reed before the Commission:

I am extremely pleased to have the opportunity to greet you on the occasion of this first meeting of our Constitutional Commission.

It has long been my desire that such a Commission be created and this meeting today is the culmination of that goal.

This Commission will be the second such Commission to function in the history of our State. In 1875 the Legislature created a Constitutional Commission consisting of ten extremely capable members with Mr. Justice Edward Kent of the Supreme Judicial Court of Maine as its President.

This Commission made seventeen recommendations to the Legislature and nine were adopted at the 1875 session and five at a later date.

The results would indicate the Commission's recommendations met with a favorable response which might well forecast the possible accomplishments that could be attained by a dedicated effort on the part of this Commission.

I hope you Gentlemen will have a sense of history about you as you approach the task with which you are being charged today. The founding fathers, who gathered in Constitutional Convention at Portland in 1819, as Maine was achieving statehood, did their work well. Over the years some amendments have been needed but basically the document they produced has continued to meet the requirements of our people. On one previous occasion there was a review by a Constitutional Commission but at no time have our citizens demanded a complete revision of the Constitution.

In the days ahead your group will have an opportunity, free from the heat of legislative debate and the excitement of a Constitutional Convention to hear the proponents of change, to test the various proposals against the experience of other states and the conditions which prevail here, and then after calm deliberation to decide what your recommendations will be to adapt this fundamental document of government to Maine's needs.

I anticipate you will find that the passage of the years have made some provisions obsolete and that the time has come when certain provisions should perhaps be changed or modified. The members of the Commission bring to the task at hand a wide range of experience in state government and impressive records of public service. I am very confident that you will prove to be worthy successory to those who originally drafted the Constitution of our State.

On concluding his remarks, the Governor called the attention of the members to the fact that the title of the presiding officer of the Commission of 1875 was that of President, and for the sake of history, it would be well to preserve this tradition. He thereupon, requested nominations for the office of President of the Commission.

Upon motion of Mr. Robert A. Marden, duly seconded by Mr.

John P. Carey, the name of Mr. Fred C. Scribner, Jr. of Portland was placed in nomination, and he was thereupon unanimously elected President of the Commission.

Before relinquishing his office as temporary presiding officer, the Governor requested that the Commission temporarily suspend its proceedings for the purpose of taking photographs. This being done, the Governor turned the meeting over to the newly elected President.

President Scribner directed his opening remarks to the purposes for which the Commission had been created, and presented suggestions as to the manner in which the Commission should proceed in its deliberations, emphasizing the need for generating state-wide interest in the purposes of the Commission, and the need for public participation in arriving at necessary changes in the document. He suggested that such participation could be achieved through public hearings held by the Commission in the several areas of the State, talks by the members to such interested groups as the AAUW, Grange and League of Women Voters. He felt that the Commission should likewise make full use of the press, radio and television facilities in the State, adding that the Commission should make a sufficient exploration in depth, so that the people of Maine would feel the study had been well done.

The President, by way of calling the attention of the members to the task before them, reviewed each Article of the Constitution, commenting upon certain sections which appeared to present particular problems; indicating that it was his own feeling that the Constitution should not be changed unless there was some real desire for change by the people and a demonstrated need for change.

Sections specifically called to the attention of the Commission were those relating to reapportionment (Art. IV, pt. 1, §§2, 3), terms and allocations of Senators (Art. IV, pt. 2, §1), annual sessions (Art. IV, pt. 3, §1), compensation (Art. IV, pt. 3, §7), Executive Council (Art. V, pt. 2), judges and registers of probate (Art. VI, §7), education (Art. VIII), assessment of real property taxes (Art. IX, §8), state debt limit (Art. IX, §14), limitation on municipal indebtedness (Art. IX, §15) and whether or not pertinent sections of the Constitution might well be changed to permit various other officials to be elected on a State-wide basis.

The matter of scheduling the next meeting of the Commission was discussed in considerable detail. It was finally agreed to hold a public hearing at Augusta on Wednesday,

March 21, 1962, to commence at 11:00 A.M. At the request of the President, the Commission authorized the issuance of future calls at the President's discretion. It was decided that the Commission should meet an hour prior to the public hearing on March 21st in order to formulate the manner in which it should conduct its proceedings.

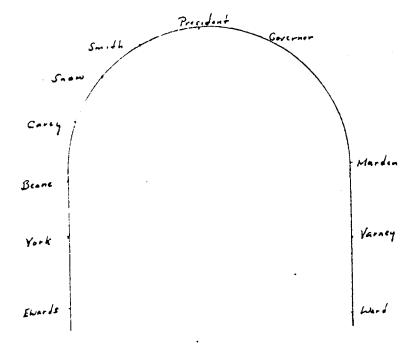
The Governor then retired, the members rising.

The matter of expenditure of the Commission's appropriation being raised by the President, it was voted to authorize him to employ such necessary clerical and stenographic assistance as in his discretion seemed desirable. All the members agreed that there would be no need for such assistance until after the March 21st hearing.

The matter of publicizing the March hearing was then considered, and the President suggested that this could be accomplished by means of news releases and notices published by the Commission in the various newspapers printed throughout the State. This suggestion met with the approval of the Commission, and the President was duly authorized to take the necessary action.

As preparation for the hearing, the President suggested that each member review the Constitution prior to that time. indicating that the Secretary of State would be pleased to make additional copies of the Constitution available to the Commission. The members discussed the various studies which other states had made or were currently conducting, and the possible value of such studies and experience in relation to the Commission's study. The President called the attention of the membership to the Selected Materials on State Constitutions compiled by Miss Edith L. Hary, the State Law Librarian, and Miss Hary being present, reviewed the list with her in order to determine those materials on the list which the library could make available, as well as to her suggestions of other sources the Commission could consult as its study progressed. The President commented that the Commission could spend such funds from its own appropriation for the purchase of books as it felt necessary.

There being no further business before the Commission, the meeting was adjourned by the President at 4:00 P.M.



Seating Plan
Constitutional Commission
Judiciary Room, State House
Jenuary 25, 1962

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, MARCH 21, 1962
Second Meeting

Public hearing held in the Legal Affairs Room, State House. PRESIDENT SCRIBNER: This is the first public hearing held by the Maine Constitutional Commission which came into being as a result of legislation passed at the last session of the Legislature, which called for the appointment of a bipartisan Commission to be composed of ten individuals to be appointed by the Governor. Commission is charged with making a study of the Constitution of the State of Maine and reporting to the next session of the Legislature any amendments or changes which appear to them might be desirable. This Commission of course has no legislative or enacting authority; we can be only advisory. The method, acting on any suggestions we might present, would be for the Legislature to pass the proposed amendments, if found acceptable, and then to submit the matter to the people for their acceptance or non-acceptance. We at this hearing will be very happy to hear from all who are present who have any suggestions, comments or ideas they would like to

present on any part of the Constitution. This is not of course a debate; it is rather an opportunity for people to be heard with an original presentation of their points of view. We would ask only that you stick to matters that are covered by the Constitution or matters that you feel are properly within the Constitutional field. We have noted the various comments made by commentators concerning the Maine Constitution; that there seems to be some confusion as to what is in the Constitution or what is properly covered within the Constitutional field. We do not want to cut anyone off; on the other hand, we want everyone to have an opportunity to have an equal amount of time. There is a yellow pad of paper there and if any have come in recently who do want to be heard, if you will give your name and the city or town and what section of the Constitution you might like to speak to, this would be helpful in trying to get all the speakers who want to cover one particular area up at one time. However, if you want to speak just generally, that is understandable. you do not testify, we will reach you in due time. Deputy Secretary of State Edgar is here and I think he has one matter to present to us, so we will hear from you at this time. MR. EDGAR: Thank you very much. Mr. Chairman and members of the Commission:

PRESIDENT SCRIBNER: Would each give his name and the office he might hold.

>

MR. EDGAR: My name is Joseph T. Edgar and I am the Deputy Secretary of State. I can be very brief in my The specific part of the Constitution on which I would like to very briefly comment are those portions of it that have to do with elections. I have already submitted to each of you - and in case you need more I have left an additional supply with the Chairman - a list of comments bearing upon what appear to be minor discrepancies or points of non-conformity between the Constitutional provisions for elections and the newly revised State election laws. I won't bother to go into those in detail because you all have them before you, and I would merely like to state that in discussing this general subject with Mr. McDonald. Secretary of State, he and I both share the opinion that in so far as the matter of elections are concerned it would be our feeling that detailed mechanics and detailed procedures covering elections should not be contained in the Constitutional provisions on that general subject. is our feeling that the Constitution should more properly set up the broad framework or the broad outline on the subject of elections and leave it to statutory provision to fill in the detail. The election laws, as you all know, were revised in the last regular session of the Legislature: It was the first revision in one hundred thirty-one years and, as in many things, changing times

require changing procedures and require a certain flexibility in the source of authorization for these procedures which the Constitution by going into such detail minimizes. In the light of those mimeographed sheets that I have presented to you, together with some brief comments, my only purpose in being here is to request on both Mr. McDonald's behalf and on my own behalf that you give consideration to the possibility of recommending such changes in the Constitution as would eliminate detailed requirements and leave it more up to the statutes to be flexible, to meet changing needs, to meet changing times in so far as election procedures are concerned, which it cannot do now in the light of Constitutional requirements. That is my only point in appearing before you gentlemen. You have the mimeographed sheets which outline it more in detail and illustrate what we mean. I merely wanted to leave that particular point with you for your consideration. Thank you very much.

PRESIDENT SCRIBNER: Thank you very much.

Dr. Mawhinney of the University of Maine.

DR. MAWHINNEY: Eugene A. Mawhinney, Associate Professor of Government at the University of Maine.

Mr. Chairman and members of the Commission, I have copies of the presentation which I would like to make in reference in general to the Constitution of the State of

Maine and to your job as a Commission.

It certainly is a very pleasant opportunity to address these few words to you as a State Constitutional Commission charged with the responsibility of reporting to the Maine State Legislature. I wish to speak candidly as a political scientist carrying the banner neither of a political party nor an interest group. I speak as a native of Maine. I speak as one who, though humble over what he does not know about state constitutions, has had experience with them as a student and teacher, and for several months in 1957-8 served as a consultant to New York's Special Legislative Committee (sometimes referred to as the Rockefeller Committee) on the Revision and Simplification of the Constitution.

Constitutional commissions or conventions are not frequent in the life of a single state. When they are established they should accept their charge seriously and proceed to examine thoroughly the existent constitution, making those recommendations which, in their best judgment, will enable state government to perform at its highest level of efficiency. A number of years may elapse before an over-all study of the constitution of Maine is again attempted. Therefore, I believe you gentlemen have a serious obligation to the State of Maine, present and future. Yours is not an easy task if it is performed well.

May I address my initial comments to the spirit of approach which I think should guide you in studying the Constitution of Maine -- in other words, the eyes through which you might view it -- and secondly I shall list some of the constitutional topics to which your group might turn specifically in suggesting improvements.

When Governor John H. Reed addressed you at your · initial session, according to press reports he encouraged you to approach your work "with a sense of history." Better, it seems to me, that you approach your duty primarily with a sense of need for highest governmental efficiency of this state. You should not tie the living present and the unforeseeable future of the State of Maine too closely to the dead past. There is much interesting history written within and between the lines of the Maine Constitution, but in no event should it remain simply because it is history if it cannot be defended as advisable governmental practice. When any wise business institution determines that a past organizational scheme or practice no longer fits its needs, it cannot risk hanging onto it for sentimental reasons. This is absolutely not to say that we should discard all precedent with reckless abandon. No new, or much revised, constitution of any state of our union has ever done that, nor should it. Wise is the constitutional commission or convention which strikes a proper balance between that

which is to go and that which is to remain in a constitution.

The spirit and power allotment of the Maine State Constitution is primarily a product of the Jeffersonian philosophy of government. It is legislatively overbalanced. It is historically close to those first state constitutions prior to the turn of the nineteenth century which reflected worry of excessive executive power based on colonial experience with British-appointed governors. As a child of the earlier Massachusetts Constitution it establishes legislative entry to executive power through the executive council and through the legislative choice of certain top executive officers. Much in contrast is the Federal Constitution. When it was written in 1787 we were fortunate that the Hamiltonian or Federalist philosophy of governmental organization and power prevailed. If you have not read recently Alexander Hamilton's discussion of the nature of executive power in Federalist Papers No. 70-73 I suggest it may be valuable background reading for you. In essay No. 70 Hamilton stated:

A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government. Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic executive, it will only remain to inquire what are the ingredients which will constitute this energy?

Hamilton then proceeded to define those ingredients as unity, duration, adequate provision for support and competent powers. One further paragraph from Hamilton's Federalist Paper No. 70 on executive power has particular pertinence to the State of Maine Constitution:

The idea of a council to the executive, which has so generally obtained in the State constitutions, has been derived from that maxim of republican jealousy which considers power as safer in the hands of a number of men than of a single man. If the maxim should be admitted ... I should content that the advantage on that side would not counterbalance the numerous disadvantages on the opposite side. But I do not think the rule at all applicable to the executive power. I clearly concur in opinion, in this particular, with a writer whom the celebrated Junius pronounces to be "deep, solid, and ingenious," that "the executive power is more easily confined when it is one"; that it is far more safe there should be a single object for the jealousy and watchfulness of the people; and, in a word, that all multiplication of the executive is rather dangerous than friendly to liberty.

The executive power situation, in my opinion, is one of the most important problems you should discuss. Already Maine has gone to a four-year term for its chief executive, but the major goal of an integrated executive office still is unfulfilled. As regards the executive role--as so well pointed out by the Hoover Commissions at the national level--responsibility and accountability are impossible without authority--the power to direct. The exercise of authority is impossible without a clear line of command from the top to the bottom, and a return line of responsibility and accountability from the bottom to the top. The governor of a state is a political

leader whose election attracts great interest. He is held politically accountable for what is done or not done by the state's public officers. His power to appoint and remove these officers, and hence to control them, is a common sense requisite of political leadership and political accountability. Responsibility without authority makes little sense.

In many state constitutions written in the 1830s and for several decades thereafter, especially in the new midwestern states as they were forming, the influence of Jacksonian democracy replaced or supplemented the Jeffersonian. This philosophy was based on the myth that any reasonably intelligent citizen can discharge the obligation of a public office and that democracy means the public choice of that individual official. This led to the inclusion in state constitutions of the popular election of several "row officers" at state departmental level, separating further the chief executive's responsibility and authority. Fortunately the State of Maine did not adopt this idea at the state level. Any thought that now we should turn from legislative selection of executive officials to popular choice (such as members of the executive council or secretary of state or others) would simply constitute going from the frying pan into the fire, or, more exactly, advancing our constitutional theory from 1820 to 1830.

Having suggested for your consideration a "spirit of approach" I shall conclude with a listing of subjects to which you might well give your attention as a constitutional commission. This is not an exclusive list, but it is suggestive of some of the problems emanating from the Maine Constitution when it is measured by the yardstick of "governmental sense."

- (1) Much of the language of the Constitution needs to be modified and clarified that it may be read and understood more easily.

 As a teacher of college students, I have no doubt of the value of this modification and clarification.
- retained--an excellent characteristic of the
 Maine Constitution in contrast with those of
 many states--but the articles could be organized
 more meaningfully. It would be helpful in
 Articles IV and V to eliminate the so-called
 "parts" and integrate each article. The
 Military Article (VII) makes little sense today,
 and anything within it needing retention could
 be inserted within the Executive Article.
 The Literature Article (really education)
 VIII need not stand alone as presently written.
 The responsibility could be incorporated within

the Legislative Article. Materials on local government should be written into a separate article. Materials on finance should be written into a separate article. The materials in Articles IX and X could be distributed to their proper places, and if additional short articles for separate items are necessary they could be created with the proper headings. These suggestions do not call for lengthening the constitution - I would be opposed to that - but merely putting it into better order, which may actually shorten it. The present codification procedure is excellent and should be retained.

- (3) You might consider the reduction of voting age to 18 years. Four states are now below 21 years. The movement will increase in this direction recognizing the educational and communicative improvements toward more and broader knowledge of public affairs at an earlier age.
- (4) You should take a serious look at the representative nature of our state legislature.

 This will require considerable study. I am certainly not in position to define what kind of representative basis should underlie the structure. I do think that bicameralism can be justified at the state level only if it is

possible to discover two logical, fair and distinct bases of popular representation. Those states that have a larger number of counties than Maine have done this by setting up senate districts roughly equal in population and consisting of a number of counties, while having the house districts patterned on a clearer population basis. I personally prefer bicameralism, but I would certainly be opposed to imitating at the state level, with counties, the federal pattern which requires states to be represented equally in the Senate. State-local relations are not of the same legal nature as national-state relations. In our state legislature population should be the primary guide to representation. Whatever the emergent form, the responsibility of districting state legislative representation, and likewise Congressional within the state. should fall to a bi-partisan commission appointed by the governor from lists submitted by the major parties. This plan with variations is used in the new constitutions of Missouri and Alaska, and with still wider variation in the constitutions of Hawaii. Texas and even the Commonwealth of Puerto Rico.

- (5) I would suggest increasing the term of state senators to four years.
- (6) Increased pressure will be building up, as you know, for annual sessions of the state legislature with no limitation on the subjects to be discussed and no time limit to the sessions. This idea merits attention.
- (7) Every effort should be made to make truthful Article V, Part First, Section 1, providing that "The supreme executive power of this state shall ve vested in a Governor" by eliminating the executive council. No student of responsible government could argue otherwise. There is every justification for a proper checks and balances system, but not for everdoing it to the point of strangulation.
- (8) That constitution is wise which provides that state administrative departments shall be established by statute rather than in the constitution. It is perhaps sensible to place a limitation upon the number of departments, as many state constitutions do--say at 15 or 20--so that the legislature will be held to administrative consolidation of similar functions.
- (9) In further pursuance of the above-mentioned goal of executive authority you should consider

the elimination of legislative choice of the secretary of state, treasurer and other statutory department heads, and provide for their appointment and removal by the governor. The only variation of this principle should be in the case of certain quasi-judicial commissions where terms of longer duration than the governor's term (or staggered in relation to it) and requirement of a minimum number of members from each party may be desirous.

- (10) The one legislative appointment which should be in the constitution—and interestingly enough is now only in statute form—is that of the state auditor. The post—audit function is a proper legislative check upon the executive branch.
- (11) Consideration should be given to the establishment of an item veto for the governor.
- (12) With the election date now established in November it would seem most desirable to provide for an early September primary.
- (13) A strong argument may be made in the name of popular government that periodically--perhaps every 20 years--the voters of the state will have the opportunity to vote on the question

whether a constitutional convention will be called. This provision would bring into the Maine Constitution a more advisable bit of Jeffersonian philosophy than that criginally included. Though Jefferson may have been strong in his convictions, he did not insist that a constitution wise in his day would necessarily remain wise, but suggested that each new generation would need to examine its constitution in order to make the desirable changes.

They are controversial, as is most governmental change. There is not an idea in the list which is not currently used in a number of states varying from "several" to "many." You would be well advised to consult the constitutions of more recent date such as those of Missouri, New Jersey, Alaska, Hawaii and even the Commonwealth of Puerto Rico. Further, in order to procure the contemporary thought and experience of a group who know constitutions and government operation well, I suggest seriously your consultation with a few of the leading political scientists in the colleges of this state, as well as with one or two from out of state who have been consultants to state constitutional conventions or commissions.

Your work as a commission will be judged for many years to come. I hope that you will serve our state well by undertaking a penetrating analysis of Maine's Constitution, suggesting retention of that which is sound and suggesting the elimination of, or substitution for, that which does not now contribute to the highest quality of governmental performance. The problem of legislative approval of your report should not deter you from making those recommendations deemed desirable, even to the extent of recommending a constitutional convention if you believe the normal amending process is not practical. You have freedom and authority, but above all responsibility, in performing your task. The citizens of Maine await your recommendations. Thank you, Mr. Chairman and members.

PRESIDENT SCRIBNER: Dr. Mawhinney, do you want to wait a minute. Some of the members may have some questions. First, I want to express the appreciation of the Commission for the work which you have obviously put in in preparing this presentation. I am sure it is going to be stimulating to the Commission in doing its work. We felt that since we are having a Reporter here and keeping a record of all that is said, the members of the Commission may well want to study some of these presentations further and ask some of the people back later to go into further depth in some areas. We also

may want to perhaps ask a few questions this morning.

So does any member of the Commission have any questions they would like to ask of Dr. Mawhinney at this time?

If there are no questions, thank you very much.

DR. MAWHINNEY: Thank you, sir, very much.

PRESIDENT SCRIBNER: There are a few seats here for those who are standing. If there is going to be enough interest, we will arrange to move to another room. I suppose perhaps we can have a few chairs brought in here. There are four seats here if some of you want to take those. We will have some more chairs in just a few minutes.

We are honored to have Governor Haskell with us today. It is particularly noteworthy because he was the Senate Chairman of a special committee that was appointed in 1949, a Joint Select Committee to consider the need for revision of the Constitution. They brought in several suggestions which were adopted. One which I believe is particularly noteworthy was one providing for a revision of or a codification, in a sense, of the Constitution. Each time our laws are codified the Chief Justice is authorized to take the amendments which have been passed and place them in the proper sections of the Constitution, so instead of having a Constitution with seventy-five or eighty amendments you have a Constitution very much up to date. This has made our Constitution a far more workable document than

it otherwise would be. I am afraid it is a change that many people do not know about, because we have had comments already about the great difficulty of going through a lot of amendments and trying to find out what hasn't been amended or what has been amended. People making those comments obviously have not looked at the Maine Constitution, at least since it has been put in shape as a result of this particular amendment that Governor Haskell's committee brought in. Bob, we would be glad to hear from you at this time.

MR. HASKELL: My name is Robert N. Haskell. I live and work in Bangor. Thank you for your comments on this '49 effort, and my point here today is to speak to what appears to be a deficiency in that effort made in 1949.

At the outset I will say that it is of a relatively unimportant nature, and the briefness of my presentation will reflect my own opinion that it is not too important. In the '49 effort we looked at a Constitution that was pretty well messed up. There were seventy-nine, as I remember it, amendments that needed to be codified. Harold Murchie was Chief Justice at that time and volunteered the task of codifying the thing if the Legislature wished. One of our housecleaning jobs was to recognize since the Constitution was written it provided that no debt could be created by the Legislature except for the purpose of recalling of data or putting

down an impression of something that didn't mean much of anything. The end result was that every bond issue was carried over in the Constitution, and to find the current live bond issue was quite a task. So it occurred to us that while we sincerely believed that no debt should be created without a two-thirds vote of both branches of the Legislature and a majority affirmative vote of the people, we saw no sense in carrying all that into the Constitution to clutter it up. So we thought we put the same safeguards into the creation of debt as was there before by simply providing that debt to be created must be voted by a two-thirds majority in both branches and must have an affirmative vote of the people. thereby safeguarding the debt structure of the State, we thought. However, I have been told, and I can't document this, that an Attorney General has ruled that whereas the initiative and referendum provision which we adopted during that 1904-1916 period when there was a wave of "give the government back to the people" we did adopt the proposition, include the proposition in the initiative bill that no amendments to the Constitution could be initiated under those words, so long as debt required an amendment to the Constitution debt presumably could not be initiated and that made sense. However, there appears to be enough of a loop-hole in our striking the debt out of the Constitution and

the provision in the existing initiative section of the Constitution -- I regret that I cannot recite the proper section -- that debt presumably can be initiated which by-passes the two-thirds vote of both branches of the Legislature -- that may be good -- it is up to this Commission to conclude whether it is good or not, but as a practical person who has spent a few years over here and who has seen bond issue bills before the Legislature that might well have passed by a majority and might well have passed in an election, yet if you want to retain what I think is a sound concept of the original Constitution, I believe you should so strengthen the initiative bill as to preclude that. Now it is stupid to point to an initiated soldiers bonus that well might well pass, although it was killed in '46. It is stupid to think in terms of an initiated one hundred million dollar bill for some institution, but it well might pass. It is stupid to refer to other ventures that could be sold on a self-supporting basis, yet I doubt very much if you could sell both branches of the Legislature it was self-supporting. Personally I believe it is a hazard and I would hope you at least would give consideration to closing that door if it is I see it as a real danger to future finances of the State of Maine if left as wide open as I am told an Attorney General says that it is. Any questions?

PRESIDENT SCRIBNER: Has any member any question?

MR. HASKELL: Thank you. I apologize for not being as well prepared as the last speaker.

PRESIDENT SCRIBNER: Thank you very much. We are very hopeful that all those who are here and want to participate will do so and be comfortable. There are some chairs here, three or four chairs here. If there are enough additional people in the hall we will move to another room if that seems advisable. Are there any standing out there who cannot get in? Are there any standing in the hall now? There is a pad of yellow paper here at the desk and if any who have come in since we started wish to be heard, would you please sign your name and give some indication of what section you might want to cover. Mr. Squires.

MR. SQUIRES: Honorable Mr. Scribner and members of this Commission: My name is Alden W. Squires. I am a resident of Augusta.

I am here as spokesman of Maine Citizens for Public Schools, a group with statewide membership organized (1) to enlist maximum support for the public school system from both the public and public officials, and (2) to oppose all expenditures of public funds to aid or in any way to support the programs of sectarian schools. We neither defend nor object to any particular faith or church and are concerned with religion only

when public funds are expended for activities related to religious establishments.

Our position is fully consistent and, indeed, is based upon the principle of State-Church separation established by the Federal Constitution, the First Amendment of which prohibits enactment of laws "respecting an establishment of religion". Some persons now speciously assert that this prohibition merely restrains Congress from establishing a State Church, but there is ample evidence which irrefutably proves that the intent of this provision was to forbid all Federal legislation affecting, either favorably or unfavorably, any religious institution or establishment.

It is significant that of the several State

Constitutions, no less than forty-one contain provisions
relating specifically to the expenditure of public funds
for sectarian institutions.

I have made available for your further attention a compilation of laws relating to the subject as they are set forth in these various State Constitutions, and to some of these are appended annotations of decisions of Law Courts in cases which have arisen under these laws. I believe all these are transcribed accurately and set forth existing laws as they now operate.

In Maine and eight other states the Constitutions fail to specifically provide in this field. The

provision as it now exists is found in Article I,
Section 3, and reads as follows: "No subordination
nor preference of any one sect or denomination to another
shall ever be established by law." There can be no
doubt that the authors of our Constitution intended to
provide, and thought they had provided an adequate
guarantee of religious freedom. Anyone who will look
into the records of that Constitutional Convention will
find ample evidence that this subject was discussed, debated
and decided upon, and that the decision was that this
article and section sufficed to cover the needs.

The position of this convention was summed up by Mr. John Holmes, its Chairman, when he asserted:
"Religion needs no aid from government."

On the 4th of January, 1923, Governor Baxter addressed the Legislature of Maine in the following words:

"The time has arrived for the people of Maine to squarely meet this situation. Unless our state constitution is amended so as to stop the immediate extension of state aid, and finally put an end to it altogether, the day is not far distant when privately managed institutions will no longer request aid as a gift or gratuity but will demand their share of the public money as a matter of right. Should this happen our public schools will have lost their hold upon the people and our communities will be divided into

contending groups, each faction struggling jealously to extend its influence over the rising generation."

Governor Baxter's prediction has come true.

Private, sectarian schools are now demanding appropriations of public funds "as a matter of right". Divisive contentions and factional jealousies are becoming increasingly frequent and detrimental throughout the state.

No law can please everyone; therefore it must always be asked, when one considers a law, "Whom will this law most displease, and why?" May I ask you, gentlemen, is it worse or better to displease a person seeking peculiar benefits for his particular religious faith, or is it worse or better to displease those who are motivated solely by their concern for the maintenance of a principle that government shall neither favor nor interfere with any establishment of religion.

The proposal now respectfully submitted for your consideration specifically is concerned with Article VIII, entitled "Literature". It is proposed that the Article just named be deleted or rescinded and that the following be recommended in its stead:

ARTICLE VIII

Education

The general diffusion of the benefits of education being essential to the preservation of the rights and liberties of the people and to their economic and social welfare, the Legislature is authorized and it shall be their duty to provide for the establishment, support and maintenance of public schools in the several communities of the state; and it shall be the further duty of the Legislature to establish and suitably support and maintain such other colleges and institutions for mental, moral and corrective training as the circumstances and requirements of the people may from time to time make advisable.

All schools and other institutions established by the Legislature for purposes of providing instruction and education shall be wholly owned and controlled by the public, and shall be open to persons of all races, colors and religions.

Neither the Legislature nor any county, city, town, plantation, district or other subdivision of government shall ever appropriate or use any public money or property to establish, support or in any way assist any school or other institution owned or controlled by any religious denomination, order, sect or organization; nor shall any public money or property ever be appropriated or used to support or in any way to benefit or aid any school or educational institution wherein any teacher or other person is regularly engaged in the teaching or promulgation of the distinctive doctrines, tenets or

creed of any particular religious faith or worship;
nor shall any public money or property ever be appropriated
or used to encourage or to facilitate the attendance of
pupils at any non-public school of any kind, unless such
school specifically grants the Legislature power to alter,
limit or restrain its privileges and activities as the
public interest may require.

Every non-public school shall provide and maintain facilities for adequately educating its pupils and for safeguarding their health, safety and welfare, comparable and in effect equivalent to those provided and maintained by the public school officials in the community or district in which such non-public school is situated.

PRESIDENT SCRIBNER: Thank you very much, Mr. Squires.

We appreciate the time and effort you have spent preparing this presentation. Have any members of the Commission any questions?

Representative Plante.

MR. PLANTE: Thank you, Mr. Scribner. All of you will be given a copy of this very brief amendment that I would like to submit for your consideration, proposing an amendment to the Constitution to require a roll call vote upon all bills on final passage. It is very brief and I am quite certain self-explanatory. Each house shall keep a journal, and from time to time publish its proceedings, except such parts as in their judgment may

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require secrecy, and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, and the names of the persons voting for and against the same be entered in the journal. Mechanical devices may be employed to record the votes of members. I wish that you would consider this because I am sure it would go a long way in curbing public apathy, and responsibility for curbing this is two-fold. It is not just limited to the citizen so that he may. become aware how a legislator conducts himself, but equally the responsibility of the legislator to make his record readily accessible to any voter who would like to check same. In addition to this, I would like to submit for your consideration also concerning the flexibility of this Constitution in giving some thought to a Constitutional initiative, so that if your efforts and the efforts of many individuals are frustrated by inaction. you would still have an instrument by which individuals even on this committee, along with many other individuals, could initiate some recommendations. This could serve as a safety valve for any potential inaction by legislative bodies. If there are any questions, I would be glad to answer them.

PRESIDENT SCRIBNER: Are there any questions by any of the members?

MR. BEANE: You believe that this should go in as an

amendment through the Constitution. As things stand now, there is no question as to whether the Legislature should have mechanical means of conducting a roll call.

MR. PLANTE: In the past we have taken both positions.

We have submitted legislation calling for an electrical roll call system. Then they present this Constitutional objection, so it was felt that at this time probably if we amend the Constitution and they would see the necessity of an electrical roll call system as they are now being used in twenty-eight other states. There are thirty-five such devices being used. Twenty-eight states use it in one house and the difference between twenty-eight and thirty-five, some use it in both the House and Senate.

MR. BEANE: You feel that would be the function of this Commission to make a recommendation to this effect?

MR. PLANTE: Well, it is a Constitutional provision.

MR. BEANE: A general revision of the Constitution rather than acted on by the Legislature.

MR. PLANTE: The calling of year and nays is a Constitutional provision. I felt it would be adequate to amend it. I felt this was the best method of doing it.

MR. VARNEY: Are there any of the states that now require the recording of the final vote on passage?

MR. PLANTE: Yes, sir. In fact this was taken from a combination of several states, the language you now

have before you, it seemed to be the best. There are several states that require the vote on final passage of every bill.

MR. VARNEY: Required by their Constitution?

MR. PLANTE: Yes, sir.

MR. SMITH: Do you happen to know some of those?

MR. PLANTE: I would be glad to submit a list to the

Committee.

PRESIDENT SCRIBNER: Any other questions? Thank you very much.

PRESIDENT SCRIBNER: Mr. Jalbert.

LOUIS JALBERT: Mr. Chairman, I think I can well remember when you and I debated over the radio in Portland the change in election date and you opposed it. What I would like to talk about is I think that this committee could do a great service to Maine and its citizens by setting up the mechanics for a Constitutional Convention. I feel that in so far as my own personal feelings are concerned, the party I represent is not as well represented on this committee, but I think when we talk about the Constitution of Maine, I think if any committee is named, I think both parties should be equally represented. However, that is my personal viewpoint. My own feeling and thinking is that I urge it strongly that this Commission do set up the mechanics for a Constitutional Convention. Thank you.

PRESIDENT SCRIBNER: I understand that doesn't reflect any lack of confidence in the ability of this Commission.

MR. JALBERT: None at all. As you know, I hold you in very high esteem.

PRESIDENT SCRIBNER: Any questions by any member?
Thank you very much. Senator Erwin.

MR. ERWIN: My name is James Erwin, State Senator of the County of York.

Mr. Chairman and members of the Commission: I had a temptation when I first came in to look upon you and perhaps state publicly that I felt in some measure you were my foster children, but I don't think I want to take that credit now because Pandora's box may well have been opened.

However, I have nothing specific to say to you except that I would like to wish you well, and I would like the record to show how some of this came about and what we were trying to say. Now obviously everyone is going to lean over backwards in a situation like this to avoid politics and to avoid the charge of partisanship in amending or drafting of any phase of the Constitution. We are all practical people and the pressures that operate on us very generally have political origins.

This began, as a matter of public record, this particular impulse began in the Republican Convention two years ago when this was presented as an idea and

defeated, but it was defeated on a vote of a proportion of three to two, meaning that two out of every five people in the room felt that the time had come for the State of Maine to take a good hard look at its organic charter.

Now many of the things I had in mind to say have been said, far better than I can say them, by Professor Mawhinney, and certainly any layman is diffident in the presence of the faculty of the State of Maine, and I certainly am. I certainly am not going to run back over the things which brought about the Maine Constitution in the beginning, except to point out that it interested me in looking back over this that the men who drafted the original Constitution of the State of Maine had living memories of George Washington and the Revolutionary War. They had probably personal acquaintance with many of the great figures of the early United States. If my cursory study serves me correctly, the men who fifty-five years later drafted the first serious changes to be proposed or the first serious effort made to study the Constitution as a whole document, were looking back to the days when the Civil War was the greatest thing that had ever happened. Obviously times have changed very greatly, but times have changed so much more in the interim that there are a good many of us that felt this had to come; that the pressures which had been responded to by the politicians in the State of Maine were bringing about a very

undesirable situation. It didn't matter where the pressures were coming from, whether they came from the Republican or the Democrat party, the pressures were such that the Constitution of Maine was being nicked at and pulled aside piece-meal and individual portions of it were taken out of the context of the entire document and changed sometimes merely for the sake of change but almost always for the sake of political advantage. Now you and I and the people of the State of Maine are not being served by that and that is why we tried to say that when an attempt, for instance, is made to rewrite the functions and composition of the Governor's Council, the authors of the draft will inexorably find themselves drawn into consideration of the whole executive system, and when they get into the whole executive system of course they will run into the legislative system, because obviously if you do away with the executive council somebody has to do their work. For all that the executive council has been pilloried in the State of Maine in the press in the last few years, the Council performs a function. Now I don't believe -- I can be made to be wrong--but I don't believe there is a state where the Governor has an appointive power upon which there is no legislative check or balance, and that for the public interest in the Council anyway and the Council's function is where the importance

of the Council lies, and whenever the Council takes a position in opposition to the Governor the newspapers light up with neon lights saying that the Council has to go. If you want to argue the question, if you want to remove the Council, fine, but don't forget you create a power vacuum when you do. This is one of the little things that we have objected to. question of annual sessions of the Legislature comes into this, because obviously if you do away with the Council, the normal procedure, as I understand constitutional government, is to give some form of consent power in the Senate, and the Senate meets every other year or only in special session, and if you don't want to go to annual sessions of the Legislature then you have got to have a committee of the Senate, and if you have a committee of the Senate you simply have an Executive Council by another name, and you have, by so doing, deprived the House of Representatives from its share in the selection of the Executive Council. I am stating this only to show that this piece-meal, half thought through movement, responding to the pressures in the State of Maine, has got to stop. I am just delighted that you people are here, and primarily all I wish to say is that I wish you well, and I would be honest to say that of all the challenges which are before men in public life in the State of Maine, I

think yours represents the greatest challenge. I think that whether or not you come with preconceived notions to this place, you will leave a great deal wiser and all of you will have had you cutlock changed in some respects, because perforce through you the people of the State of Maine are going to re-examine what is fundamentally a social contract. I would confess to you too that if I had my choice of all the public offices available by election or by appointment in the State of Maine, this is the one job that I would consider to be the most worthwhile in the state today, and again my felicitations and best wishes to you.

PRESIDENT SCRIBNER: Any questions of the Senator?

MR. SMITH: I have one. Do you remember what that resolution, the wording of the resolution was?

MR. ERWIN: The resolution in the State Convention asked that a plank be inserted in the Republican platform calling for a State Convention.

MR. SMITH: A Constitutional Convention.

MR. ERWIN: Calling for a State Constitutional Convention.

I don't recall the exact wording but it called for a

State Constitutional Convention, and because the idea

sprang up the night before, as a matter of fact, on an

attempt to head off some more piece-meal changes in the

Constitution, it was brought onto the District Convention

in the First District and from there it went to the

State Convention in the afternoon and was completely unrehearsed and unprepared and it was defeated, and I think probably rightly defeated, but the point of it is whether or not the call by a political party for a Constitutional Convention failed of passage, the point I am trying to make is that although it failed, the idea struck so many people—Oxford County voted incidentally one hundred per cent in favor of a review of the Constitution of Maine, that it gave it its impetus. It happens I was the one who carried it through the floor fight in the Convention and I also sponsored the bill which passed the 100th Legislature which brought this about.

PRESIDENT SCRIBNER: Any other questions? I don't know, Senator, when we finish whether we will be grateful to you for the sponsorship or not. At least we know where to look to place the blame.

MR. ERWIN: I will be grateful to you, Mr. Chairman. PRESIDENT SCRIBNER: Mrs. Allen.

MRS. ALLEN: My name is Mrs. Charles W. Allen.

Mr. Scribner and Members of the Commission: I am

speaking for myself as an individual citizen, only.

First, may I say that I hope that this is only the first of many hearings on the Constitution that the Commission will hold in different parts of the state, because it is to the Commission that the public and the next legislature will look for guidance in choosing between proposals for change.

You have the tools of scholars at your command in the resources of the colleges, both professors and students may I add, and the leadership of people like Professor Dow and a lay person like Mrs. Norton Lamb, and the very excellent material recently published by the National Municipal League.

I think there is evidence of the need for revising the Constitution in the fact there are four times as many amendments to our Constitution as there are to the Federal Constitution.

Some of the issues which confronted the Constitutional Commission of 1875 are the same today. The consolidated election date was first proposed in 1875 and effected in 1960. It was also proposed in 1875 that the House be truly representative, that the Executive Council be abolished and that the appointive and removal powers of the Governor be increased.

I will mention the issues which particularly interest me. Some are general suggestions and some specific, and several coincide with those of previous speakers.

One of these is the lowering of the voting age to 18. My reason is that I feel that students are very well taught the election process in our schools and then

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they must spend three years when they cannot use this education, and I think this makes for the dropping of interest in this vital matter.

In the matter of apportionment of the legislature,

I think that is by far the most important issue but the

most difficult one to solve, and I have no pet plan; the

only thing about it is the difference between the

number of people whom one representative represents.

This could be corrected probably by setting up a district,

as has been suggested, or no limitation on the number

of representatives from local areas.

On reapportionment I think this should be effected after each census and not by the legislature that is to be reapportioned but by a separate administrative group.

I would be interested to see the terms of the Senators increased to 4 years.

One of the very good sections I think of the Constitution, which does not appear in all state constitutions, but does in ours, is that one on the Judiciary. It is very brief and very flexible, and were it not so I do not believe the establishment of the District Court System under the leadership of Chief Justice Williamson could have been so well effected.

I would like to see the appointive and removal powers of the Governor increased in respect, particularly,

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to the heads of administrative departments and probate judges.

I would also like to see the establishment of the office of Lieutenant Governor to run with the Governor and replace him in case of vacancy.

I would recommend run-off primary elections, when they are necessary.

I would like to see cities have more home rule, to avoid the complexities of the western-type myriad authorities which seek to circumvent constitutions in financial matters.

I believe there are parts of the constitution where the language could be modernized, such as the "Literature" article which has been mentioned.

I agree with Mr. Edgar that the unnecessary details in the sections dealing with Election Laws be omitted to conform with the new laws.

It disturbed me to have a high school student comment on the Constitution as follows: I asked if he had studied it in school. He said, "Yes, it's quite a mess, isn't it?" I do not think that is an attitude we should permit of our Constitution.

I think that the amending process might possibly be made easier by reducing the requirement of a two-thirds vote of the legislature to one of a simple majority.

I would recommend a September primary, partly to shorten the burden of campaigning on candidates for office.

In closing, may I hope that the Commission will recommend that the late Dr. Kenneth Sills' dream come true in your recommendation to call a Constitutional Convention. Thank you very much.

PRESIDENT SCRIBNER: Any questions?

Representative Lowery.

MR. LOWERY: Mr. Chairman and members of the Commission:
I am very pleased to be here before this Commission.
PRESIDENT SCRIBNER: Would you give your name please?
MR. LOWERY: Representative Charles Lowery of Brunswick.
There are many aspects of the Constitution which I
believe could be corrected, but I think that I should
take up only one or two of these items.

First, I would like to discuss the matter of reapportionment. It is apparent here in the State of Maine, as in other parts of the nation, that Maine is following the national treand in moving from a predominantly rural to an urban population. I believe our latest figures show that we are somewhere near 53% urban and 47% rural. To keep abreast of the times, it seems to me that we should consider changes in the system of apportionment of the House of Representatives. I believe that we should keep a total number of seats to 151, but this should be apportioned on the registered

voter basis rather than on the census figures. I believe that the present system of using census figures is not realistic, and I would recommend that consideration be given to the registration of voters as a basis for the allotment. We all know the census figures can change overnight. It might even make more citizens aware of their responsibility in becoming registered voters.

I would like to submit for your consideration a formula for distribution of seats. Based upon the registration figure of the 1960 election, which showed a total of 537,922 voters, divided by 151 seats, wo arrive at a figure of 3,563 as a mean figure or, in round numbers, 3,600. Using a range based on this figure, I would suggest the following formula. The minimum figure for representation by a community or voting district would be 3.000, with a maximum in the first state of 5,000 for one representative. 5,000 to 8,000 for two representatives, and then in increments of 4,000 for each representative, with no Constitutional limitation. The remaining towns and plantations within the county should be formed into representative districts conforming with the lowest bracket range of registered voters, allowing one representative to each such district. Each district so created should be formed as nearly as possible with consideration for geographical contiguity and compactness. Apportionment would be based upon

figures submitted by the Secretary of State for the year preceding the gubernatorial election. Time for reapportment could be set either by the Legislature or by production of the Governor, but a review of the figures should be made every four years and reapportionment should be made not more than four years after its need according to the formula.

I would also like to suggest to this committee that consideration, strong consideration should be given to the matter of annual sessions. As a member of the 99th and 100th Legislatures, the two longest on record I believe. I am firmly convinced that annual sessions would increase the efficiency of our Legislative procedure. It would allow for a certain amount of continuity of office for many legislators and certainly in the off years the Legislature would convene with an experienced membership. Much of the first session to which a member is elected is more difficult due to his inexperience. With annual sessions I feel that we would also be able to enact better legislation by allowing certain standing committees to continue to function for study purposes during the interim period. This would allow the reference of many bills which otherwise would either be passed hurriedly without sufficient time for study or indefinitely postponed for the same reason and yet continue the bill in the same Legislature in

which it had been introduced. The necessity for calling special sessions would be practically eliminated. The need for the Executive Council would diminish, if indeed it exists now.

Thirdly, I would recommend that you consider the lim of succession. I would recommend that the same procedure that is being used in the State of Alaska be used in the State of Maine. There of course the Secretary of State is elected, and may I read to you a section of their constitution.

"There shall be a Secretary of State. He should have the same qualifications as the Governor and serve the same term. He shall perform such duties as may be prescribed by law and as may be delegated to him by the Governor. The Secretary of State shall be nominated in the manner prescribed by law for nominating candidates for public office. In the state election the votes cast for Governor should be considered as cast also for the candidate for Secretary of State running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for Governor shall be elected Secretary of State."

It goes on with the temporary absence of the Governor and other clauses. If the Governor elect dies, resigns

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or is disqualified, the Secretary of State elected with him shall succeed to the office of Governor for the full term. If the Governor elect fails to assume office for any other reason, the Secretary of State elected with him shall berve as acting Governor and shall succeed to the office of Governor if the Governor elect is not in office within six months of the term. If per chance the office might be designated Lieutenant Governor, then an article in the Constitution shall read: "The Lieutenant Governor shall exercise and discharge the powers and duties of the Secretary of State."

I believe that those are the recommendations that
I present to this committee and I ask that you consider
them. I would be pleased to answer any questions.
PRESIDENT SCRIBNER: Any questions of Representative
Lowery? Thank you very much for coming here and giving
us the benefit of these ideas.

Mr. Cram.

MR. CRAM: My name is Robert Cram. I am an attorney from Portland, a candidate for the Senate in Cumberland County, and Mr. Lowery is not my campaign manager. I don't know how we happened to be so close together on one aspect of this thing. I am a Republican and he is a Democrat. I have been a Republican all my life and so is my grandfather I think.

I hope it will not be considered presumptious for

a candidate to the Senate to make suggestions concerning the operation of the Legislature before receiving his party's nomination.

Legislature, I have always been greatly interested in its operation, and have closely followed the fortunes of a number of bills in every Legislature since the 93rd.

Several of my close friends have been Legislators and we have discussed the legislative process at length.

I first became acquainted with these corridors in the State House when I was nine years old when my father was in the House, and I don't think he would find the place much different in 1961 than it was in 1921.

I have the following mild criticisms of our Legislature:

- 1. The brief, easily understood bills usually receive more careful consideration than the long, complex bills.
- 2. Most bills have very little publicity. A bill has to be news or it will be completely ignored by the newspapers. Consequently, if you suspect that there may be bills introduced on a certain subject it is necessary to make arrangements with a Legislator to send you the bills and keep you informed of developments, or you may subscribe to the mailing service of the Document Clerk. It takes an expert to follow a bill through the legislative process. As a result, a very

small segment of the population, or of the Bar, if it be a change in substantive law, may have a chance to examine the bills and suggest desirable amendments.

Legislators should remember that many people are interested in every bill, and that some are better acquainted with the subject matter involved than any Legislator.

- 3. Legislative hearings have insufficient public notice. Advertisement on Friday of a hearing the following Tuesday, when you may never have seen or heard of the bill, is too little notice. As a rule there are no hearings on amended bills.
- 4. Hearings before the Appropriations Committee extend over too long a period. I realize this may be necessary because of the heavy schedule of work that the committee has.
- 5. Some matters could better beleft to the municipalities and counties to decide.
- 6. Hearings are very poorly attended by the Legislators, perhaps because they are members of other committees in session at the same time.

By annual sessions of the Legislature we might be able to speed up the legislative process, and at the same time give more careful consideration to the more complex bills, without spending more money. I suggest annual or split sessions of the Legislature with the

adoption of certain rules, as follows: Of course these are suggested rules.

- 1. The Legislature shall adjourn at the end of the second week in March until the first business day of the following year, subject to the call of a special session by the Governor.
- 2. All Private and Special Bills and Resolves shall be filed with the Director of Legislative Research before 5:00 P.M. of the third Wednesday of January of the current year.
- 3. All bills amending the Revised Statutes must be filed with the Director of Legislative Research before 5:00 P.M. of the last Wednesday of February of the current year. (This extra time should enable the sponsor to eliminate most of the bugs before filing.)

 4. After the cloture date no bill shall be accepted in either session without the unanimous consent of the Legislature. All new bills requiring action by the second session shall be referred to a Screening Committee, who may reject the same or recommend their acceptance by unanimous consent. Of course that is the procedure followed in the special session.
- 5. It is the intent of the Legislature to enact, before the end of the second week in March, the following:
 - a. Legislation providing funds for all current services of the State and counties for the biennium.

- b. All emergency bills that may merit passage.
- c. All private and special bills and resolves that may merit passage.
- d. Such bills correcting inequities in the pay of state and county officers and employees as may merit passage.
- e. Such of the bills, introduced early in the session, providing for amendment to the Revised Statutes as do not require extended hearing or deliberation.
- 6. In order to carry out the foregoing
 - a. The Appropriations Committee shall hold hearings on two days each week beginning with the second week of January. I perhaps should have said at least two days.
 - b. A motion to table to the first business day of the following year shall take precedence over every other motion, providing, that if the member sponsoring the bill is a member of the body where the motion is made, the question shall not be put until the member has had an opportunity to be heard on the motion. If the member is not present, the matter shall stand tabled until the next business day.
 - c. Committees will dispose of bills referred to them as expeditiously as possible.

7. On the convening of the second session of the Legislature, the Committee will immediately take up, and commence hearings on all matters on the table.

The above might not require amondment of Article IV Sec. 1 of the Constitution, but would require amendment of Article IV, Sec. 16 in part, perhaps as follows:

"No act or joint resolution of the Legislature
shall take effect until ninety days after the recess
of the Legislature passing it; unless in case of
emorgancy, . . . final adjournment of the session of the
Legislature held in odd numbered years. or ninety days
after the recess of the Legislature in even numbered years.
unless in case of emergency,

This program requires hard work on the part of the Appropriation Committee, and I suggest that its members receive an addition to their salary or expenses for serving on the Committee.

If this program were followed, most of the significant amendments to statutory law would not be considered until the second half of the session. This would enable the Legislators and the public to take a careful look at all such bills, as well as a careful look at all new spending programs proposed by the State departments.

I see little merit in the argument that higher pay will produce more competent Legislators. The more time an attorney spends away from his practice, the more

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practice he loses, and the same must be true of other businesses. I believe a reduction of the time spent would be the best means of holding competent men in the Legislature.

PRESIDENT SCRIBNER: Are there any questions of Mr. Cram?

MR. BEANE: I would like to ask Mr. Cram one question.

Concerning the introduction of bills and some of the things in the Appropriation Committee, do you feel those things which are largely covered in the rules of the Legislature should be, say we say, preempted by the Constitution, spelled out in the Constitution, limiting the Legislature on making their own rules?

MR. CRAM: No, I didn't mean that, Mr. Beane. My thought was that the Constitution might permit annual sessions if the Legislature chose to do it that way. If the Legislature adopted these rules at the present time, the bills would not become effective until ninety days after final adjournment.

PRESIDENT SCRIBNER: Any other questions? Judge Wernick.

MR. WERNICK: Mr. Chairman and members of the Commission: My name is Sidney W. Wernick. I am from Portland, Maine. I appear today as a representative of the Democratic Program Council.

At the outset I realize that by making that statement I tend to stamp everything I say as being

partisan. I should hope however that what I say will be considered on its merits and not strictly in terms of partisanship. The reason for that is that I am going to concern myself with areas that have been very controversial. They have been rather fully explored, especially during the last six years, and I should not be taking your time to argue the merits of that at this point. I know that you are just as familiar as I with all the details of these arguments, and my purpose is not to argue either side of these suggestions; it is rather to emphasize - and in this respect I take issue with something that Senator Erwin said - that some of these proposals have not been given extended consideration. I wish to emphasize that there have been areas that can be called to your attention which, even though controversial, have been analyzed and explored about as fully as it is possible for human intelligence to do it during the last six years, and with all the techniques at the command of the State, including professional surveys, including scientific approaches, and including evaluation by Citizens' Committees, together with recommendations submitted by them. Against that background, I should therefore like to say to you. so that it will be a matter of public record, that this Commission should consider very seriously changing the Constitution in

the following respects:

First: Abolition of the Executive Council, and I submit to you that that matter has been fully explored for your benefit and all the documentary material as well as research material is available to you so that there should be no difficulty in reaching a conclusion on the subject. For your own recollection, may I call to your attention the report of the Citizens' Committee on the survey of State Government made to the 99th Legislature. In that report the committee voted in favor of this recommendation, that the Governor's Council be abolished, and that Constitutional and statutory amendments should be adopted to dispose of the existing powers and duties of the Council. In their report this committee emphasized that they had given this question extremely careful study, that sub-committees had been appointed to conduct deliberations on the issue. and that as a result of the most careful consideration of all the functions of the Council, this conclusion had been reached. In addition, the statement was made categorically, and I should like to quote to you that they had sought professional assistance and that all the materials pertaining to the necessary Constitutional and statutory changes necessary to fill the power vacuum, so-called, that would be left by the abolition of the Executive Council, had been prepared. All of those

documents are on record, and as a matter of fact legislation was introduced at the last Legislature covering all of these areas. For that reason I submit to you that the issue of the abolition of the Executive Council is not something which is still up in the air in terms of further research or in terms of documentation or in terms of implementation through scientific study - this had been done. The only thing that remains to be done is to stand up and be counted and to take sides one way or the other. I should hope that this Commission would be willing to come out with a recommendation following the overall consensus of opinion that has been reached by the experts and the interested citizens who have studied the matter.

In the same vein, I should commend to you certain appointments to be made by the Governor. This is another area which has been controversial during the last six or eight years, but which I feel has been resolved by work that has preceded these meetings. Specifically, these recommendations involve Constitutional changes with regard to the offices of Secretary of State, Attorney General, and the State Treasurer. The recommendations in that respect are that instead of being elected by the Legislature, as these offices now are, they being Constitutional offices, they should be appointed by the Governor. The reasons for that have been fully set

forth in the survey that was conducted. It was further set forth in the report of the Citizens' Committee to the 99th Legislature, and once again the necessary legislation, the necessary language to implement the changes has been prepared and is a matter of record. It may be found among the legislative documents or it may be found in the reports of the Citizens' Committee, and all the records of the Citizens' Committee are on file in the State Library. So again may I repeat that this is another area in which the decision is all that remains to be taken. I think all the spade work, the preliminary work, has been done. It is really a question of reaching the ultimate conclusion one way or the other.

Another final point: The Citizens' Committee in its 1959 report did not take the additional step of recommending annual sessions of the Legislature, which might be entailed in abolition of the Executive Council. They rather left that for further study. Unfortunately the committee ceased to exist after that and nothing further of course could be done in that area. We feel however that there has been, again, sufficient study on this matter to allow a definitive and rational conclusion to be reached, and we think that that conclusion should be that there should be annual sessions of the Legislature.

It is in those specific areas, very frequently debated in the past, that we make these recommendations. We feel that the public record should show that this Commission is in a position today, as a result of the facilities available to it, to reach a final conclusion at this time and decision should no longer be delayed. Thank you.

PRESIDENT SCRIBNER: Have any members of the Commission any questions? Judge Wernick, coupled with your recommendation of annual sessions, have you some limitation as to the period of time that the Legislature should be in session each year?

MR. WERNICK: I think that would be a good idea, to avoid the problem of professional legislators especially.

Of course I did not say it, but a corollary to the abolition of the Executive Council is of course the proposition that if annual sessions were adopted, the Senate would be the confirming body for gubernatorial appointments.

PRESIDENT SCRIBNER: You would still favor some confirmation of appointments?

MR. WERNICK: Yes, indeed.

MR. SMITH: Do you feel there is a popular feeling or demand for the abolition of the Executive Council?

MR. WERNICK: I can give only my personal opinion on that.

I have never undertaken anything in regard to a survey

of public opinion. In the area from which I come, I would say the answer to your question is yes, there has been popular pressure in favor of it. I don't know about other areas of the state.

PRESIDENT SCRIBNER: Thank you vory much. I appreciate having your views and I also want to thank Mr. Cram for coming and preparing the material which he left with us.

I think that concludes the presentation of those who have indicated to us their desire to be heard. When we adjourn this morning we will adjourn until 2:30 this afternoon because the delegation from the University of Maine asked that we meet in the afternoon so that they could I suppose obviate any cuts of classes and still be here to assist us. Are there others who would like to be heard at this time.

MR. CRANE: Mr. Chairman and members of the Commission. Percy F. Crane of Orono.

I appear as an individual, with a background in education for over thirty-seven years, fifteen as a principal and administrator in secondary education; twenty-two years as director of admissions at the University of Maine.

My views are a summation of my experiences and

I wish to speak to the question of the voting age.

Today I believe that we have a new concept; it is not new -

that is a misnomer - it is a growth, a result of the growth of our country. I believe that we should look at it more realistically in view of a few things such as what are boys and girls interested in? When Johnny is interested in breaking a window in your house, that is Johnny's interest. Now in our schools in recent years we have put great emphasis upon civics; in the colleges also; asking for more participation without practice. There is no practice teaching available until some years later, some five years later, that is approximately the age range. Another point I want to bring out is that our armed services are educating the boys and the girls, spending considerable money and time along these various lines of civics in order that the public relations of the members of our armed services may be more effective. We might even mention the peace corps as an instance. Now it seems to me, gentlemen, that the handwriting is on the wall; it is only a matter of time before we are going to lower the voting age. I do not say it is the right thing to do, but I do believe that the evidence tells us that we must give it a very sincere look. Our schools are educating the youth in civics. armed forces throughout the world today are practicing this. As a supplement to that theory, I believe if we can trust these men and women, and remember we are increasing rapidly the numbers and percentages of

our young population whom we are educating into the higher brackets, that we should provide the element of practice as a sound proposition. They are our kids. If we have confidence in them, let's show it and not leave it on the books. I would like to add that my experience includes five sessions as an officer of the Senate in the Legislature, including secretary of the Senate, and in that way I have a little idea of the mechanics of law making, and it is always interesting to watch the delegations of boys and girls of all ages coming into the hall of the House to watch the proceedings and then into the Senate and into the Council Chamber, and then we tell them, well, of course it will be five or ten or fifteen years before you will be allowed to vote. All I suggest is from my experience the concept is different, and I am asking this Commission to give it a fair look. Thank you.

PRESIDENT SCRIBNER: Has any member any questions? Mr. Crane, do you know whether any study has been made or any material prepared to show what percentage of young people between the ages of twenty-one and twenty-five exercise the right of franchise by registering and voting? MR. CRANE: I do not. My first guess on it is that it shockingly low. May I add that it would be my opinion that that may be one of the reasons to prove the point that we are in error in the earlier years.

PRESIDENT SCRIBNER: I think there are some four states now that allow voting below the age of twenty-one. Do you know whether any studies have been made there since those provisions became effective to see what the actual practical effect was?

MR. CRANE: No, I do not, Mr. Scribner; I am sorry to say.

PRESIDENT SCRIBNER: Material on both those areas would

be very helpful to the Commission. Thank you very much.

I appreciate your coming and giving this material.

Is there anyone else?

MR. WHITMAN: Thank you, Mr. Chairman. I am Representative Whitman from Woodstock. I would like to have just a moment of your time this morning, and I would like to speak to you as a member of the State Government Committee, who I think perhaps was largely responsible or instrumental in creating the Commission on which you now serve. In fact I personally collaborated with the sponsor of the bill in bringing out a new draft which was acceptable to the Legislature in general. I would also like to concur with the Senator, Mr. Erwin. in wishing you well in your duties. I would like to tell you that I concur very much in my thinking with many of the remarks made by Senator Erwin relative to his concern for the Constitution as a whole and have been concerned for several years in that respect because of the piece-meal operation and chipping away

of various portions of the Constitution. For that reason it was the feeling of myself and I think perhaps several members of the State Government Committee, in considering the establishment of this Commission. that we did need to take an overall look at our Constitution. We are not entirely opposed to bringing our Constitution up to date. We are not adamantly opposed to any amendments. However, I think we did feel that a commission of such distinguished citizens as I am sure we have here this morning in your Commission could very well take a broad view of the entire Constitution, make the necessary changes, if there be such, and view the operation in total, and at the same time in so doing preserve the basic concepts of the law as they are, and by doing that to defend our Constitution from perhaps further chipping away. As a member of this State Government Committee, I have been concerned with Constitutional amendments, that being the committee which hears all the proposed bills to amend the Constitution, and we have been faced with many, many bills in past sessions, many of them recurring, which deal with amending the Constitution in one way or another. These bills invariably are sponsored by well-meaning sponsors and advocated by well-meaning citizens, and the bills and the proposed amendments in themselves individually perhaps could be

absolutely harmless. However, in the aggregate I feel that in the aggregate they perhaps could upset the very delicate balance of the entire basic laws of the State of Maine. When such bills as these have been introduced for my consideration and other members of the committee. I always ask myself - what is this bill going to do to the overall structure of our State government and has the existence of the present system in any way been detrimental to the State of Maine? Has the State of Maine suffered from the retention of the Governor's Council? Has the State of Maine suffered greatly in not having annual sessions? Invariably I cannot find that the State of Maine has suffered to any great extent. Now in voting the way I have on some of these, I have perhaps often been accused of being against anything that is a new change in our Constitution. is not entirely true. Many have said that I am perhaps completely satisfied with things as they are, and, in this one respect, that may be entirely true. When I consider some of these bills, I have but to look around me and consider the government of the State of Maine as it is today. Personally I feel that nowhere in the country will you find a better legislative system and a better state governmental system than we have here in the State of Maine in regard to integrity and honesty and the high type of conduct that we carry on

in the State of Maine. Now if this is true, and I think it is one hundred per cent true in those respects, perhaps when you consider efficiency, it may be that the State of Maine does not conduct certain procedures as efficiently as other states, but I would submit to you that it is perhaps also true that we have been just a little reluctant to substitute honesty and integrity for efficiency. I think this all relates to our basic law, and I think the basic law is reflected in the quality of our state government, and along those lines I submit to you that I hope that you will also consider how any of these proposals will affect the overall structure of our state government, and I thank you very much.

PRESIDENT SCRIBNER: Thank you very much for being at this hearing. Do any members of the Commission have any questions? Does anyone else desire to be heard this morning?

(inquiry from audience) Will we hear other people and University of Maine students this afternoon?

PRESIDENT SCRIBNER: Yes, if they desire to. I think it would fit into our schedule better if there are any others who want to be heard at this morning's session, but if any came this afternoon, within the limits of our time, we certainly would give them an opportunity to be heard.

Does anyone else desire to make any presentation this morning? Is it the will of the Commission that we adjourn and reconvene at 2:30 this afternoon? We will adjourn and reconvene at 2:30 this afternoon. We hope that all who are interested will be back with us at that time. Thank you very much.

(Hearing adjourned to 2:30 p.m.)

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Hearing reconvened at 2:30 p.m.

PRESIDENT SCRIBNER: I will ask the Commission to come to order. The first witness this afternoon will be Mr. Chapman of the Maine Municipal A iation. MR. CHAPMAN: Mr. Chairman and members of the Commission: I would like to use a couple minutes of your time to suggest that if you do undertake this study that you give some attention to the matter of the municipal debt limit as it relates to the cities and towns in Maine. Presently it is seven and one-half per cent of local assessed valuation. The local assessed valuation idea is probably a very good one because this encourages towns to use a relatively good level of assessment and more of them are approaching one hundred per cent. and I think that idea is very good. The seven and one-half per cent figure today is probably pretty unrealistic. By and large, financial organizations of the caliber of Dunn and Bradstreet indicate that somewhere between fifteen and twenty per cent is a very realistic level. Because of the narrowness of this seven and one-half per cent, our Legislature in past years has been inundated with the creation of special districts to circumvent this unrealistic limitation. We have school districts, we have sewer districts, we have all kinds of districts, and when we ran out of districts we set up

a special state lending or guaranteeing agency for towns that were bankrupt under the interpretation of our Constitution so that they could borrow money to build schools in the school building authority type of thing. We think this is an unnecessary type of thing and that it is forcing communities into paying rather exorbitant rates of interest on their bonds. The other thing, I was discussing with the Legislative Research Committee this very intense problem of financing municipal sewage treatment plants in this state, which face us in the next twenty to twenty-five years, and faces us with a tremendous expense, and there is no way that we can possibly get out of it, we have just got to meet it.

Che of the real drawbacks in this is the fact that the municipal revenue bond law as it exists today is completely inadequate. It needs to be rewritten, plus the Constitution bars the full faith and credit of the municipality from being put behind a municipal revenue bond, because immediately it is it becomes part of the debt limit and unreasonable restriction and there you go. A number of communities, a number of other states get around this by permitting a pledge of the credit of the community, that is, the use of tax money to make up any deficit, and the result of this pledge is not laid against the general debt limit of the community, only in the eventuality that in one

year payment cannot be made, then the municipality is authorized in these other states to raise money by taxation to meet that deficit. Now this makes that bond far more saleable and it drops the rates on those right down virtually to the same rates that are paid by municipalities for the general obligation issues, which is somewhere in Maine today between - these are general figures - about 3.2 and something under 4%. We have a number of municipalities that do far better than 3.2 but these are the unusual ones, very few worse than 4, so my thought would be perhaps that you might consider in working over the Constitution that this prohibition against the guarantee on revenue bonds be spelled out and it not be considered a part of the general debt limit and that more freedom be given to the Legislature to meet the demands of such things as this sewage problem which faces us, more freedom in adjusting the municipal debt limit. I would hesitate to suggest for anything but your consideration that you leave cut a percentage and leave it to the Legislature, but if you do consider percentage, probably realistically fifteen or twenty woul be better than seven and one-half. Thank you very much for permitting these few moments. I will be glad to answer any questions.

PRESIDENT SCRIBNER: Are there any questions?

MR. VARNEY: Did I understand you would recommend that

we would change the Constitution so that a town could guarantee an issue of revenue bonds and that guarantee would not count against the debt limit?

MR. CHAPMAN: Yes, in the sense that could agree on the bond indenture that in any your that there was a deficit they would then use their powers of taxation to raise the difference, that type of guarantee, and that guarantee would not -- this is not pledging the full faith and credit of the municipality behind the revenue bond issue, it is merely permitting them to include this in the bond indenture, and in most instances it never arises; once in a while it might, but the mere inclusion of this increases the saleability of these.

MR. VARNEY: Yes, I am well aware that increases the saleability. Actually it increases the saleability because in effect they have committed the property in the town to make up any deficit, if there is a deficit, correct?

MR. CHAPMAN: Through the medium of taxation.

MR. VARNEY: And isn't that the very thing that the Constitution seeks to prevent when they fix a debt limit?

MR. CHAPMAN: That is exactly right. My plea here is that you reconsider that philosophy.

MR. VARNEY: Yes, but we would be in effect certainly increasing the possibility of a debt limit guarantee or perhaps --

MR. CHAPMAN: Very clearly.

MR. VARNEY: maybe releasing it entirely.

MR. CHAPMAN: Very clearly, except in my considered judgment that is pretty remote. I think the last time we ever had any real difficulty with this in Maine was back in the railroad days, just preceding and following the Civil War, we got into a real rhubarb in this situation, but I doubt if this would ever occur again, and frankly if the Constitution did not cover this field so forcefully the Legislature could then move in and enact whatever protections were necessary from time to time depending on the circumstances as they arose, and I think that this merely shifts from a document that is very difficult to modernize to a Legislature who can view the circumstances.

MR. SMITH: This indenture would call upon the town to make up this difference in a specified period of time?

MR. CHAPMAN: No, they would agree in any particular year.

MR. SMITH: That is what I am getting at - it would have to be done in one year.

MR. CHAPMAN: Well, any year that there would be a deficit they would make it up through taxation. It would be an annual guarantee; it would be for the life of the issue.

PRESIDENT SCRIBNER: These bonds would be serial bonds with a certain amount coming due each year, and the interest, and any year there wasn't enough to pay the

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principal plus the interest --

MR. CHAPMAN: You see these revenue bonds are supported entirely by income, and that is what the revenue bond is predicated on, and the only conceivable situation where revenue would be insufficient would be in a general depression time where people just couldn't pay their rates and here is the municipality sitting there holding a whole mess of liens. Well, they do have a bond that is based on the lien interest of cities and towns; we don't have it in this state; it is a special assessment bond and the lien powers are behind it, so the municipality except under those circumstances would never be called upon to honor this type of thing; it would be an unusual circumstance.

MR. VARNEY: It would be called upon to honor it if they spent too much money for their project. Now if you are talking about a sewer district for instance, if the town can sell the bonds because they are in effect guaranteed by the town, then they can conceivably spend more money for a sewer plant than they can receive income from the use of the sewer to support, in which case the town has agreed to make up the difference.

MR. CHAPMAN: With this single exception. Today, for practical purposes, that is impossible because Federal and State subsidies must approve the costs and then sixty per cent of it comes to them for free, so that in effect

what they are bonding for is forty per cent of this installation, so you actually have two and one-half times equity laying behind the bond issue so far as it covers the major part of the outlay. So the possibility of an abuse here is almost to remote in the particular field that it is hardly worthy of consideration, with the single exception of a recession or depression.

PRESIDENT SCRIBNER: Any other questions? Thank you very much.

Mr. Nichols.

MR. NICHOLS: Mr. President and members of the Commission:
My name is David Nichols. I live in Lincolnville. Any
comments that I have here today should be taken as my
own remarks and not as the views of any committee with
whom I serve at the present time. I am sure that my
colleagues on at least one committee would wish you
well in the important work and the time consuming mission
that you gentlemen are undertaking, but no committee on
which I am a member has adopted any fixed recommendations
in this work.

My first and my general comment on this important undertaking is that this Commission should proceed slowly and deliberately before it recommends drastic changes in Maine's fundamental document. It is my observation that the Constitution of Maine has served and is serving the State quite well. There seems to be very

Constitution. I think the same general satisfaction with the Constitution is evident here today. Unfortunately I wasn't able to be here throughout the morning session although I hoped to be. There has been a fine group of people here to present their views, but when you think of the other side of the coin, the important elements of Maine's population which are not here and which apparently have no great concern about this work, I think that is something you will also weigh as you go about your work -- our labor groups -- our various industrial groups -- various elements of Maine government at the State and local level apparently feel there is no pressing need for Constitutional revision in so far as their respective activities are concerned.

I thought I would just briefly offer a few observations in each of the three great departments of government. I believe when you gentlemen study the provisions of our Constitution relating to the judicial department, and when you compare them with the similar provisions in other states, you will find that our founding fathers in Maine did a pretty good job for us. We have a pretty fine judicial system here in the state in so far as Constitutional provisions can make it so. It has been my privilege for four or five years to be pretty close to the activities of the American Bar

Association, and I have always come home from those gatherings rather pleased with the way the judiciary is organized in Maine, after I talked with lawyers who found themselves involved in popular election of judges and some of those situations which still prevail in many of our great states. I believe your Commission already has before it the model judicial article prepared and recommended by the American Bar Association, and I hope over the weeks ahead that each of you will review that document and compare our own provisions in Maine with it. You may find some things that could be improved in Maine. Possibly our probate judges should be appointed just as our other judges in Maine are appointed. By and large, I think our judicial machinery is in good shape from the Constitutional point of view.

On the legislative scene, I think that the years have changed the situation somewhat and that you gentlemen will probably do well to take a very close look at those provisions of the Constitution which restrict the representation of at least Maine's largest city.

I doubt in these times that prohibition as to representation beyond a certain number in a large city can be justified. I think all the citizens of Maine are entitled to equitable representation in Maine's House of Representatives.

On the subject of annual sessions of the Legislature,

I have no strong personal views, but I do think again it is something that you want to approach very carefully. I know that to have annual sessions might place Maine in line with other states who have followed this practice for come years, but it has always seemed to me that it might make a change in the type of people who could make themselves available for the Legislature. It would seem to me that it would be more time consuming. Even if some limit was written into the annual session, there is still a possibility of special sessions from time to time. It has been my observation at least that we have had a pretty good cross-section of Maine people come to serve in our Legislature, and I am wondering if many of them for business, professional or family reasons might find themselves less able to serve if the situation was drastically changed. I am mindful too of the fact that many of the perennial bills that are introduced in every Legislature but never enacted might still consume the time not every two years but every single year if a change was made to annual sessions. I think there are many pros and cons to be weighed before we abandon the system which seems to serve the state pretty well. Perhaps, as one of the speakers said this morning, the test really should be - how well is the Constitution serving? The argument I know is very frequently made that if we had annual sessions it might be more easy

to budget on an annual basis than on a biennial basis. But have there been any great shortcomings in the ability of our Legislature to budget on a biennial basis?

Moving on quickly to the executive department of government. I submit as my personal observation that the office of Governor might be strengthened effectively if the Governor was permitted to appoint the department heads. Now today, while he nominates most of the department heads, there are certain situations where some collateral group nominates, and there are several that are chosen by the Legislature. Now stronger arguments may be made for some of these than for the others. suppose if you want to justify the status quo or want to limit the Governor in some respect, perhaps you can make the best argument with reference to the auditing function. Possibly some independent choice of an auditor is good. At the other extreme I think is perhaps the Attorney General. It would seem to me and I submit to you that a Governor should have an opportunity to choose his own chief legal advisor.

Now whenever Constitutional revision is suggested in Maine, most newspaper consideration centers around the Executive Council. I enjoyed the opportunity to serve two years on the Executive Council and I would like to offer just two or three thoughts on this

proposition that has been before you today and I am sure you will hear more about as time goes on.

First I would like to recall to you gentlemen the history of the Maine Constitution. When our forefathers met in Constitutional Convention in 1819 or 1820, Maine was a staunchly democratic state, and true to the Jeffersonian tradition the members of that Commission decided that they wanted a system of checks and balances, and that they wanted some limits on the authority of the chief executive, and it is to them that we owe this heritage of a Governor and Council. They might have found either way because there were precedents either way, but they deliberately chose to follow and our forefathers adopted their proposal of a Council system. I submit to you that by and large it has served the State of Maine well. What I find somewhat disturbing is to hear the almost emotional approach of some people - let's abolish the Council. Now I suggest to you that in order to seriously entertain that proposal you have got to consider the alternative. Now my concern is with the people who sometimes say let's abolish the Council - without thinking about those alternatives. Now there are at least two things that you could do. You could make the Governor - you could give him complete authority in this field - you could make his power absolute to a point with department

heads. Not too many people seem to propose that. I think most of our people, as some of the speakers before you this morning, have recognized the value to the State of Maine of some check on the prerogative of the Governor. So then it comes to the case of what is the alternative. One speaker I heard this morning proposed that appointments should be confirmed by the Senate. Now I submit to you that a Governor who found it difficult to clear his appointments and secure the approval of seven Councillors might have his trouble with thirty-four State Senators. In other areas of government we have heard of this thing called senatorial privilege, and it well might be that a situation could ensue where the Senate would not confirm anyone unless the Senators from that county approved the nominee. I think whatever difficulties a Governor may experience under the present system, he might also experience if he had to do business with thirty-four Senators.

Now another observation that I offer on the subject of the Executive Council, is how few public comments you hear and possibly even how few comments you hear at this hearing -- I don't know -- I wasn't here all morning -- how few comments you hear about the work of the Council outside of this one area of their activities - their sharing the appointing power with the Governor. Now they have a variety of functions

in state government, as you gentlemen well know, but the public has very little to say or very little comment upon it.

Finally, on the subject of the Executive Council, in the activity in which I have been engaged for about two years, I try to keep abreast as well as I can on public opinion and any of these questions which are advanced from time to time, and I report to you that I have seen little objective evidence that the people of Maine desire any real change in the organization of the Executive Department of State Government.

Again, once you leave those who teach and write in this field, and once you leave those of us who are fairly close to the addivities at the State House, the average choisen to make gives little thought to the organization of the Emscutive Department, and I submit that there is no pressing need at this time for drastic reform.

So those briefly are the observations that I would like to leave with you. I wish all of you well in the very interesting and important work you are undertaking for the Stark of Maine. Thank you very much.

PRESIDENT SOLLEGER: Are there any questions by any members of the Commission? Thank you very much.

As Chairman of the Commission, I was very pleased to receive a letter from the President of the General

Student Senate of the University of Maine, indicating that a group of students desired to meet with us and give us some of their views on the voting age.

I was interested to note on the letterhead of the letter that was sent to me there is a picture of a laghet, with a title: "Operation Magnet". It says this represents a program being conducted by the General Student Senate of Maine to encourage college graduates to live and work in the State of Maine. I have a hunch we wouldn't have to deliberate as a Constitutional Commission fory long if we felt that we could write something and the Laine Constitution to guarantee that all these graduates would stay in Maine and be healthy, wealthy and happy thereafter.

Unfortunately, Mr. Ferguson, the President of the Student Senate, could not be here, but Mr. Chandler is here and Mr. Lambert, and I think Mr. Lambert is going to speak first to this group.

MR. LAMBERT: Mr. Chairman and Members of the Commission: As the Chairman has stated, my name is Leroy Lambert and I attend the University of Maine. PRESIDENT SCRIBNER: Where are you from?

MR. LAMBERT: I ... from Rumford, Maine.

In the United States, college life usually is looked at just as an extended childhood. In the rest of the world, college students usually take an active part

WEDNESDAY, MARCH 21, 1962

in the making up of their government.

As you can see, we at the University of Maine through such programs as Operation Magnet are beginning to take a more serious outlook upon our function or our part in our state government. That is why I am especially pleased to be able to address this Commission this afternoon on my own personal views just as a citizen of this state and as I hope by next June a voter in the State of Maine. These views are completely my own and do not in any way represent the University of Maine student body.

Executive Council. I think first of all it is interesting to note the number of states since colonial days that have adopted an executive council. It is also interesting to note the number of states that have long since abolished the Governor's Council. The scoreboard at present reads that forty-seven states in the United States have no executive council, two states have a council elected by the people, and one state - Maine - has a Governor's Council upon which the people have no direct sheet. I think first of all we should ask ourselves they these other states have abolished their executive council and why other states have not adopted an executive council if it is a better form of government. I think it was mentioned if we abolished the executive

council who will take care of the business that the executive council presently takes care of. Well, these other forty-seven states have found a system for doing this, and I think even if the Senate does take the responsibility that the executive council has now it will be more responsible to the people. I believe that the executive council shows an unfair bias toward a majority party. While less than fifty per cent of the enrolled voters in Maine are Republicans, this party, because it is the majority party, controls one hundred per cent of the executive council seats. Now this isn't the fault of the Republican party. I am sure if the Democrats had a majority in the Legislature they most certainly would elect all Democratic members of the executive council. I think this shows an inherent fault with the system. This again is another way in which I think the executive council is not responsible to the will of the people. It is the Governor, not the Council, that has to answer to the people. The people by electing a Governor vest in the Governor supreme executive power, but the Council can harass this Governor, if it so desires, and we have seen lately. I think, that the Council can harass a Republican Governor just as easily as that of a Democratic Governor, the only exception being is when an all Republican Council harasses a Democratic

Governor it makes better news, so maybe we hear more about it, but I don't think that the Democrats are harassed that much more than the Republicans.

The people, if they don't like a Governor, can always vote this Governor out of office, but let's see the people try to vote an executive council out of office. You have been told all day today that many groups, commissions and individuals of both professionals and citizens and people who are not partisan in one way or another because they are just doctors or what have you, instructors, or people who have studied government, and some of them, from what I understand, haven't even been from the State of Maine, have urged the abolition of the Executive Council. I would urge this Commission to seriously examine the reasons why these people have gone so far as to urge its abolition or at least urge the curbing of some of the powers of the Executive Council. I think if Maine is to have a good, effective and efficient government it is going to have to take a long, hard second look at these ideas such as the abolition of the Executive Council. Thank you.

PRESIDENT SCRIBNER: Are there any questions? Thank you for your presentation.

Mr. Chandler.

MR. CHANDLER: Mr. Scribner and members of the Maine

Constitutional Commission. I am fighting off a case of laryngitis, so I hope you will bear with me.

My name is William Chandler. I am a resident of Old Town, Maine, and also a student at the University of Maine, majoring in public management.

I refer you to Article 2, Section 1, of the Constitution, which establishes the minimum age at which a resident of Maine may be entitled to participate in the political processes in Maine. I request that you consider lowering this age from twenty-one to eighteen.

Two questions first arise; one being why eighteen, and next, why in the State of Maine. First of all, I would like to investigate this why eighteen. There are many arguments in favor of lowering the voting age. Perhaps the one most directly concerning students is that modern, broad based educational opportunities, and the ready access to information through the mass media of communication, equip young citizens of today to vote intelligently before they are twenty-one. Also eighteen is the normal age for high school graduation, and any civic enthusiasm instilled by the teachers may well be dissipated by waiting three, possibly four years before practicing our sacred privilege.

Now a lot of students have argued with me that at eighteen they aid not feel capable of making this

decision of deciding on the candidates or the issues.

So I immediately turn around and I ask them "Well, is this perhaps because you did not have the privilege of voting?", and they say "Well, that could be it." They sometimes wonder; they say: "If I did have the privilege, would I have investigated more; would I have perhaps taken more government courses in high school; would I have read the papers more?" I think this is very thoughful to consider.

National laws require that all male citizens upon attaining the age of eighteen register with the Selective Service for possible induction into the military service, yet these same male citizens may not participate in the formulation of this policy until they are twenty-one. Is it right that an American should die for his country before even exercising the right to vote once?

Statisticians point out that an increasingly larger percentage of people now live beyond sixty-five, and that an aging electorate needs to be counter-balanced by youth. Former President Dwight D. Eisenhower recognized this weakness in our democracy when he called for a Constitutional amendment to lower the voting age in his State of the Union message to Congress on January 7, 1954. Senator Estes Kefauver of Tennessee has also long agitated for a similar proposal.

Now the next question, why here in the State of Maine? A few facts on this if you might. To allow Maine citizens of eighteen years of age to participate in the formulation of public policy would encourage more interest in Maine. It would also present a more liberal cutlook on the economy of Maine to those who in the future will be called upon to be its leaders. I sincerely believe that a reduction in the voting age here in the State of Maine would be a big step toward encouraging young people to remain in Maine and take an active part in its economic and political growth.

I have prepared a visual aid which I would like to present a few facts. I don't mean to indulge upon you people but I think a visual aid helps somewhat in showing what we want. I don't know whether all of you can see this or not, but I will try and hold it up here if I may.

What this is is a percentile population distribution of the State of Maine as of 1960. These are the most authenticated figures we could have, rather than try and estimate for 1961 and 1962.

Now each step here represents five years. Zero to four; five to nine; ten to fourteen. Now I have taken the median point on this percentile at eighty-five and older, and the median point on zero to four, and drawn a straight line. Now I think the most dramatic point

of this is the gap right here, and what is the lowest age percentile - twenty-five to twenty-nine. Now is this indicative of a growing economy to have people twenty to twenty-four - twenty-five to twenty-nine, lacking in our economy? Now my contention is that by lowering the voting age we can help out in this respect rather than people moving away and participating somewhere else.

Now along with this I have broken down between the age of eighteen, twenty-one, sixty-five, and those eighty-rive and over, or ninety. You will see that the percentage of population in our state as of 1960, zero to eighteen was 36%; those from eighteen to twenty-one was 4%; to sixty-five from twenty-one is 49%, and sixty-five and older 11%. Now gentlemen, we are only asking for 11% of the population - I am sorry - 4%, to be given this privilege of voting. This amounts to 38,621 people in the State of Maine we would be enfranchising by giving them suffrage. I don't personally feel that this is too much to ask. I am sure that some of them will vote Democratic and some will vote Republican and that we are not going to decide one way or the other just by giving them the vote.

PRESIDENT SCRIBNER: Do you have a copy of that or are you going to leave that with us?

MR. CHANDLER: If you would like, I would gladly leave

it with you.

PRESIDENT SCRIBNER: We would like to have it.

MR. CHANDLER: Fine. I did it last night so it is not

very neat.

PRESIDENT SCRIBNER: I think it gives the picture very clearly.

MR. CHANDLER: Fine. Also from the 1960 census I picked up a few figures as to the increase in the median school years completed here in the state. In 1940 it was the ninth grade that was the median school year completed by those people twenty-five years or older in the state. In 1950 we jumped a year to the tenth grade. In 1960 it was the eleventh grade. Now I had a friend of mine check with the Department of Education and I understand that four years of English and one year of United States history is now required in all of our public high schools, and it is strongly recommended that a course in government or civics or problems of democracy or something of that nature.

Now the question comes to mind, is this sufficient education to prepare a student? If it isn't, should we pass a statute or should we pass an administrative regulation to increase it so that every student has to take, say, civics or problems of democracy to encourage them in active participation in the political processes.

Mr. Chairman, I believe you requested earlier

in the morning some information relative to this proposal - what percentage of those in the age bracket between twenty-one and twenty-five here in the state do exercise their privilege, and No. 2 - have any studies been made in any of the four states that have a voting age lower than twenty-one, and what has the effect been. If I may. I would like to comment on those two items. PRESIDENT SCRIBNER: My first question was not limited to Maine: it was whether there had been any studies anywhere that would cast any light on how quickly people take advantage of their right to register and vote. MR. CHANDLER: I see. Well, the facts still apply; they are relative to all states. I think number one is the mobility of young people. They are constantly shifting. They are going through school or they work on one job for two or three years and moving on. I think it is the general concensus that the small percentage - not small but relatively small percentage of those who are eligible, who take the franchise, or who exercise it, is small because of this reason. They are unsettled; they are moving around; they are looking for jobs here or going through school.

Secondly, as you all know, when a process starts, in other words, there is a little slowness to initiate the process. In other words, to get registered. They may have to wait six months or a year because, other than

the cities here in the state, the registration bureaus are only open at certain times. These are the only times they can actually register. I am afraid that the other big item is the lack of interest in the future of the state. These people are mobile. They come into the state or they graduate from high school or from college and away they go. You see even if they stay until twenty-one or twenty-two, these are in the percent that could go but they don't because they feel there is nothing here for me and I am not interested so I think I will move on.

Now in regard to the studies in some of the states, I took the liberty of going down to the library this noontime to get the Congressional Digest, Volume 33, March 1954. Now I hope when you gentlemen have time that you will investigate this volume because it contains pro and con arguments on the voting age. I have a few quotations that I would like to give in reference to the studies that have been made. These are all relative to the State of Georgia which, as you know, has a voting age of eighteen.

First, just a short paragraph on the history of it.

The amendment to the Georgia Constitution fixing eighteen as the minimum age for voting was first suggested by Governor Ellis Arno in his inauguation address in January 1943. On January 13, 1943, the amendment was

proposed simultaneously in the State Senate and in the House of Representatives. It was adopted by the Senate on February 11th and by the House on March 3rd. In the general election of August 3, 1943, when the amendment was submitted to the voters of Georgia for ratification, there were 42,284 affirmative votes and 19,682 opposed, a majority of more than two to one. Of Georgia's 159 counties, 130 favored the adoption of the amendment, which was declared ratified in a proclamation of the Governor, and became a part of the State Constitution on August 10, 1943. In 1945 the state revised its entire Constitution, retaining the eighteen year limit. PRESIDENT SCRIBNER: That was only for the whites?

MR. CHANDLER: It doesn't say in here, sir, and I wouldn't want to state on that.

The next quotation comes from the Honorable Hubert
Humphrey, United States Senator from Minnesota, Democrat,
speaking in the Senate. As members of the Senate well
know, and I just mention this, one state has already
extended suffrage to those eighteen and over. It is the
State of Georgia. Last year Ellis Arno, a distinguished
former Governor of Georgia, testified before a subcommittee
of the Senate Judiciary Committee on the operation of the
eighteen year old voting law in Georgia. His testimony
was extremely favorable to this amendment. He quotes:
"Experience in our state has been very salutary and

very fine. It has met with widespread support and approval."

The next is from the Honorable Kenneth Keating, United States Representative from New York, Republican. He states: "So far as Georgia is concerned. Mr. Albert Tuttle, who is counsel for the Treasury Department here, tells me that it has worked very well in Georgia; that there isn't anyone who would want to change it in Georgia among the political figures of the day. He feels that it has been a great suggestion." PRESIDENT SCRIBNER: As a matter of fact, Judge Tuttle is now the Presiding Judge of the Circuit Court of Appeals in that area; a very distinguished gentleman. MR. CHANDLER: I might like to add just a little bit on the history of this proposal so far as the State of Maine is concerned. Proposals were made in 1943, 145, '47 and 1951, with no action taken. In 1953 document No. 188 was introduced, with no action forthcoming. Now I ask you gentlemen what is the alternative. Ever since the Second World War and the Korean War, the cry so far as if you have got to fight for your country and die for it, then you should be able to vote, has

But on the other hand there is a growing demand

et cetera.

quieted down. I think this is the reason for the large

number of proposals at this time of the year, in '43, '47,

we enter into the question of state's rights versus our National Constitution. I seriously contend that I would rather have it by state's rights and have the individual Constitutions amended than have a Federal amendment process. Several people have spoken before me as regards this proposal and I feel very good that they have supported it. I believe it is an indication that there is a grassroots desire to let our future citizens participate as early as possible in our democratic process. Thank you, gentlemen. Do you have any questions?

PRESIDENT SCRIBNER: Do any members have any questions?

MR. VARNEY: I would like to ask a question. I don't know as it has to do with amending the Constitution. It is about your chart.

MR. CHANDLER: Yes, sir.

MR. VARNEY: Do I understand that chart would indicate that a substantial number leave the State of Maine when they are about eighteen years of age or thereabouts?

MR. CHANDLER: I won't say they leave the state, sir. I will say this graph represents a lack of them.

MR. VARNEY: Of people that leave the state of that age.

It indicates apparently that they move out of the state at about that time and then, if I understand it correctly, couldn't you use that to argue that by the time they

are twenty-six or twenty-seven they come back and decided they made a mistake when they left?

MR. CHANDLER: Well, you are trying, sir, but actually you will see it is not until age thirty-five to thirtynine.

MR. VARNEY: Age thirty-five to thirty-nine.

MR. CHANDLER: Right.

MR. VARNEY: As one who always stayed in the State of Maine, I wondered if I couldn't use that to show that is what they did, made a mistake.

MR. CHANDLER: We can both get whatever we want from figures, sir.

PRESIDENT SCRIBNER: I think what he means is that they made all they needed in the outside world and come back to enjoy life.

Mr. Chandler, how general is the interest in student bodies, in college student bodies about this increase. There has been, as you quite properly pointed out, a good deal of agitation among I think the more vocal leaders on some campusses and those who studied government, but from the great rank and file of the student body, how much interest is there in this right to vote before they reach age twenty-one.

MR. CHANDLER: To be very honest with you, sir, I think the majority so far as campusses are concerned, you have on the average people who are either eighteen,

nineteen or twenty-one, people who have attained the age, and I think - at least this is my contention that they are almost approaching the age or they have already attained it, and therefore they feel that we had to wait, I think we should let everybody else wait. Now the second contention is that because they have studied government they have advanced their education; they feel that they can make a more intelligent vote. so when you consider those people who are in the colleges or institutions of higher learning. I think the majority would say they would stress the quality vote rather than the quantity vote. Myself, being a firm believer in the democratic process, in other words, the greatest good for the greatest number, we should not exclude those people who do not want a higher education, and let them develop a little bit of responsibility and initiative on their own. This is the only light I can give on this particular question, is that there is this tendency -I don't concur with it but I think the majority of students do. There is a lot of disinterest or apathy - I mean they just are not interested; they go to school for an education and maybe they have made plans for leaving the state or going back in business with their father or what have you, and so they are not interested. (Question from the audience) Do you think if a vote were taken on the University of Maine campus or the other college campusses that it might be adverse to your proposition?

MR. CHANDLER: Yes.

MR. SMITH: In your study of this problem, have you run into any of the reasons why twenty-one was chosen in the first place?

MR. CHANDLER: Yes, I have as a matter of fact. I could take the time now; it is in here.

MR. SMITH: The historical reason for twenty-one rather than nineteen.

MR. CHANDLER: In the middle ages it was determined for some reason that twenty-one was the usual majority age, and so it naturally carried over when the colonies were formed here. Back in 1867 when New York was first considering revising its Constitution, these facts were all brought out. If you will bear with me for just one moment, there is one point in here that is very good in regard to it. This was from a delegate from the eighteenth district in New York, offered on June 19, 1867, a resolution, addressing the Convention, quoting: "Before the flood when man lived to the age of nearly one thousand years, a child of one hundred was still a child. Afterwards we find Isaac emancipated his sons Esau and Jacob at the age of forty. Under the Jewish economy the age of majority was fixed at twenty-five. During the middle ages in the western part of Europe it was fixed at twenty-one. Now at the age in which

we live - and mind you this was back in 1867 - in this fast age men mature in body and mind at a great deal earlier period than formerly."

MR. SMITH: Was he advocating eighteen?

MR. CHANDLER: He was advocating eighteen.

PRESIDENT SCRIBNER: I notice I think the Hawaii

Constitution fixes the age at twenty.

MR. CHANDLER: That is right.

PRESIDENT SCRIBNER: We think of Hawaii as a state which has a younger age level than most of the older states and also a group of people who are more interested in perhaps experimenting than some of the older states.

Would you think there might be some age between twenty-one and eighteen that would be an effective age to move to?

MR. CHANDLER: There could be, sir. I personally feel that if you are going to bring it down you should go to eighteen. One of the biggest things to be gained is the civic mindedness instilled in high school; why have them wait at all; if you are going to give them the privilege and tell them all about it, let's give it to them at eighteen. Let's say that I would like to see it lowered, any step; if we could get twenty or nineteen, but personally I would advocate eighteen.

PRESIDENT SCRIBNER: Are there any further questions?

Thank you very much. We appreciate your responsiveness to our questions and your very fair statements.

Are there any other presentations to be made? Is there anyone else who cares to be heard by the Commission today?

MR. HEALY: I am Joseph Healy from Portland.

I have listened with a great deal of interest to the arguments for changing our Constitution. I had the experience of sitting through the 99th Legislature and as I watched things unfold there, the processing of bills such as somebody's cow stepped in a hole in the highway, or somebody's sheep was destroyed by a predatory animal, or someone wanted an increase in their pension, it occurs to me that the most of these bills, possibly they would amount to I would say half of the bills that are processed in any session of the Legislature, could be taken care of in department heads.

During the session I was particularly interested in the Constitution of the State of Nebraska. It seems that they have one legislative body in the State of Nebraska that they have lived with I believe since 1937, and I felt and still do feel that we are topheavy in our legislative bodies, and I would recommend that this Commission take a long look at the Constitution of the State of Nebraska and maybe we can tear up the Constitution of the State of Maine and adopt a simpler one. Thank you. PRESIDENT SCRIBNER: Thank you, Mr. Healy. Any questions? Does anyone else have a statement? If not, we will adjourn the public hearing and consider as a Commission

the next step to be taken by this group. Thank you very much for coming and we appreciate all the material presented to us.

The hearing is adjourned.

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Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

TUESDAY, MAY 22, 1962

Third Meeting

President Scribner convened the third meeting of the Commission at 10:07 A.M. in the Judiciary Room, State House, with the following members present: Messrs. Beane, Edwards, Marden, Scribner, Smith, Snow, Varney, Ward and York.

President Scribner discussed briefly the public hearing held by the Commission on March 21, 1962, and distributed copies of the transcript of testimony prepared by the reporter, Mr. Ervin E. J. Lander, for the Commission. reminded the members that the hearing had been held in order to allow all the citizens of Maine an equal opportunity to appear and present their suggestions, comments and proposed changes concerning the Constitution. President described the results of the hearing as somewhat disappointing from the standpoint of public interest and participation. He emphasized the importance of developing more effective plans and procedures for carrying out the Commission's responsibility to study the Constitution and report to the Legislature necessary and desirable changes. This, he said, should be determined by the Commission as quickly as possible, and suggested that the members should make every effort to submit their ideas for study starting at the next session of the Commission.

At the President's suggestion, the Commission reviewed individual sections of the Constitution and discussed each as to amendments and changes which seemed desirable.

Article I, declaration of rights. President Scribner stated that he thought that the assumption made by Dr. Dow in his article that most of the people think this article is alright as it is was probably correct. He suggested that Section 3, on religious freedom, might be shortened after the Federal provision. The Commission discussed Section 4, freedom of speech, as to why the section was made to apply to libel; specifically the reason for specially including the libel provision as apart of the section. No definite conclusions were reached. It was suggested that Section 5, relating to unreasonable searches, be broadened to cover wiretapping.

The question was raised under Section 6 as to whether the section should be amended to provide counsel for indigent persons. Mr. Smith indicated that he felt that this was purely a statutory matter. It was thought by the Commission that Section 7 on indictment requirements should be clarified as to offences cognizable by justices of the peace. Under Section 10, or bailable offences, the question was raised as to whether bail should be allowed in murder cases. There was some objection made to the language "when the proof is evident or the presumption great," several members feeling that the phraseology seemed at odds with the presumption of innocence. Section 13, relative to suspension of laws, was questioned as to the Governor's powers under civil defense. The right of citizens to keep and bear arms, authorized under Section 16, has been variously construed. The Commission felt that perhaps the section should be examined as to its impact on matters of licensing, registration and concealment requirements. Section 20, or trial by jury, was criticised for the language "except in cases where it has heretofore been otherwise practiced." The members felt that the newer constitutions were more specific. The waiver of trial by jury where the amount involved is less than 100 dollars was considered, but no conclusions were reached. Section 21, concerning the taking of private property, was of special interest to Mr. Ward who felt the Commission should give it some detailed study. The possibility of combining Section 22 on taxes with other tax sections under Article IX was suggested. It was further suggested that the Commission examine Section 23, relative to tenure of offices, for the meaning of the term "good behavior." The Commission felt that Section 24, providing for the retention of rights, was a necessary section and should be kept.

Article II, electors. The Commission discussed Section one, the qualifications of electors, in detail. President Scribner reminded the Commission that he had suggested at the public hearing that the University of Maine people present conduct a survey to determine the extent of student interest in changing the voting age. He stated that he had received their report which indicated that there was no great interest in lowering the voting age. The question was raised as to the definitions of paupers. The point being made that there are many people receiving aid of one sort or another and the fact that most paupers as such aren't challenged when they go to vote. It was questioned whether guardianships include conservatorships. Commission decided to leave the guardianship and pauper provisions alone. The 6 month residency requirement for persons to establish voting residence in the State and the 3 month provisions governing change of voting residence from municipalities within the State were discussed

but the Commission decided against making any changes. The Commission discussed the prohibition against students acquiring a voting residency at places of learning and the possibility was suggested that perhaps the prohibition could be limited to municipalities while allowing students to vote in state and national elections. Basically, the reason for the prohibition is to prevent a floating population from controlling the affairs of a particular locality. The Commission expressed some dissutisfaction with the educational qualifications laid down in the second paragraph of Section one, and suggested that perhaps a provision providing for a literacy test, such as that found in the Alaska Constitution might be much better. It was decided to recommend that the words ", nor to any person who had the right to vote on the fourth day of January in the year one thousand eight hundred and ninety-three" be omitted from the last sentence of paragraph 2. Further study was suggested to determine whether the last paragraph of the section was needed.

Article IV, Part 1, House of Representatives. 2. relating to apportionment of Representatives, was examined. President Scribner noted that the Legislature determines the apportionment of the House of Representatives, but that nothing is said about who shall do the The difference between the provisions governing the apportionment of the House and Senate is that the Senate, under Article IV, Part 2, §1, is required to base its apportionment on the Federal Census. The Federal Census includes every inhabitant, and perhaps the State, for apportionment purposes, should be more careful in breaking the figures down. Section 3, on apportionment of Representatives among the counties, was considered. It was suggested that the limitation of seven Representatives to a municipality be removed. Mr. Varney thought that counties should be abolished as a factor in apportioning the House, and voting districts used to apportion the Senate. President Scribner said that he liked the Alaska provision for accomplishing apportionment, and felt that the courts, the Governor or a special commission should have the responsibility for reapportioning the Legislature rather than the Legislature itself.

The Commission recessed at 12:30 p.m. for lunch and was called to order at 1:30 p.m. by President Scribner.

The matter of calling a special session of the Legislature to consider reapportionment was discussed, and it was the feeling of the Commission that this should not be done.

Section 5, relating to election proceedings, passed with the sole comment that the word "aldermen" was redundant and should be changed.

The President informed the Commission that he had received a letter from the Hon. Georgo C. West, Deputy Attorney General, suggesting that the impeachment powers of the House of Representatives, under Section 8, and those of the Senate, under Article IV, Part 2, §6, were unclear and possibly in need of clarification. The Commission considered both sections for clarity and felt that the meaning of both sections was sufficiently clear.

Article IV, Part 2, Senate. The question was raised under Section one, or the number of Senators, as to whether the State had enough Senators. The Federal Census provision was discussed, and Mr. Varney suggested that voting lists should be used rather than the Federal Census figures which reflect the number of inhabitants. President Scribner thought that a comparison should be made between the number of votes cast and the number of registered voters before the Commission reached any conslusions. It was suggested that the words "Indians not taxed" presented an inconsistency with the provisions of Article IV, Part 1, §2.

Article TV, Part 3, legislative power. Section one was considered with reference to whether the Commission should recommend annual rather than biennial sessions of the Legislature. The point was raised as to whether Maine should adopt a provision similar to that of Hawaii which established a limited budget session. The Governor's veto power was considered, and Messrs. Ward and Varney and President Scribner felt that it should be expanded to include the item veto.

President Scribner suggested that the members of the Commission examine the recent article by Lincoln Smith on granting municipal charters in New England, appearing in 38 Boston University Law Review 390 (1958). He indicated that the Constitution of Maine is not especially clear on how a town becomes a city and on various other problems, such as districts. Another subject suggested for consideration was the need for an additional taxation method for the support of municipalities beyond the real property tax which provides the greatest part of present municipal revenues.

The manner in which the Commission should proceed with its study was discussed. President Scribner suggested that in all probability the Commission would need several persons for research before too long, but that the Commission would have to proceed very cautiously on the \$9,000 left of its appropriation. He commented that if the Commission felt that it had a good thing it should put it out to public hearing for support and criticism. Mr. Varney indicated that he was opposed to holding

further public hearings because of the possibility of political misuse before the November elections. President Scribner suggested, as an argument for holding further hearings, that there was little interest in holding a constitutional convention, and the Commission should try to promote interest in the present undertaking through the medium of public hearings. The people should be alerted to the fact that it is their Constitution. Mr. Ward stated that he felt that public hearings would be in order after the election, suggesting that there was no great outcry to revamp the Constitution. President Scribner suggested that since it would require at least one more day to complete its initial review, the Commission should hold another meeting reasonably soon. Following discussion, it was decided to hold the next meeting of the Commission on Wednesday, June 27th, at 10:00 a.m., in the Judiciary Room, State House.

The meeting was adjourned at 3:15 p.m.

Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, JUNE 27, 1962

Fourth Meeting

President Scribner convened the fourth meeting of the Commission at 10:10 A.M. in the Judiciary Room, State House, with the following members present: Messrs. Beane, Edwards, Scribner. Smith. Varney and Ward.

President Scribner called the attention of the Commission to the materials before each member, including a resolution introduced in the New York Legislature (In Senate. Print. 3835, 4359, 4653. Intro. 3530) proposing a bill of rights and home rule powers for local governments, and a summary of major changes contained in the newly proposed constitution for the State of Michigan. He commented that the summary would give a good idea of what the Michigan Convention had adopted when it passed the document, over some objection, on May 11th. The Constitutional Convention consisted of 148 delegates, or 99 Republicans and 49 Democrats, broken down into 10 Committees, each responsible for a particular area of the Constitution. Following the reports of the various Committees, each article was taken up and debated, the first of the debates starting in February. Each article came before the Convention three different times during the course of the proceedings. The Convention was provided with its own research staff to assist it in its delibera-One of the primary objectives of the convention was to strengthen the Governor's role in Michigan. The proposed Constitution will be submitted to the voters for adoption later this year.

The President announced that the Eastern Regional Conference of the National Association of Attorneys General would be held at the Marshall House, York Harbor, Maine, June 28th to 30th. The Solicitor General of the United States, the Honorable Archibald Cox, will discuss the matter of reapportionment on June 30th, at 10:00 A.M. He suggested that those on the Commission who could possibly do so should plan to attend.

President Scribner informed the Commission that he had met with Mr. Silsby prior to the meeting and requested him to pull materials and information together on apportionment, with special emphasis on reapportionment based on registered voters, the desirability of house and senate districts rather than the county formula, and the various means in which reapportionment could be accomplished independently of the Legislature.

The sectional review of the Constitution began at the May 22nd meeting was resumed with Article IV. Part 3. Section 16. the provision governing the effective dates of acts of the Legislature. The President observed that as far as emergency legislation was concerned that the section was honored in breach rather than observance, and suggested that perhaps this should be changed. Mr. Varney stated that he thought that the emergency provision shouldn't apply except for the period prior to the time the people have the right to vote on the act on referendum. The Legislature by declaring an emergency makes the bill effective for the next 2 years, since an emergency bill goes into effect immediately. An obvious example of this was the sales tax law which was passed as an emergency bill. This type of situation should The people should have had a chance to vote upon be avoided. it by referendum. Mr. Varney suggested that perhaps emergency enactments should be limited to the period within the 90 days. He reiterated his belief that the provision wasn't intended to take away the right of the people to decide whether they want a particular bill. Mr. Smith stated that he believed that there was some virtue to keeping the present language. Mr. Ward indicated that he felt there was no particularly valid reason for making a change. Mr. Varney suggested that perhaps the change should be made only with respect to revenue measures.

Article IV, Part 3, Section 17 was discussed relative to proceedings for referendum.

Article IV, Part 3, Section 18 was discussed relative to direct initiative of legislation. Mr. Ward objected to the authority of the Secretary of State, under Article IV, Part 3, §20, to word the questions appearing on the ballots because of the great authority given to the person who words the question to influence the vote on the question. It was Mr. Ward's contention that voters may be fooled by titles. He remarked that during his service in the Legislature the Honorable Robert N. Haskell, of Bangor, when President of the Senate, was a stickler for accurate titles.

Article IV, Part 3, Sections 19-22 were passed over without comment.

Article V, Part 1, Section 1, relative to the executive power, was taken up. President Scribner pointed out that the Constitutional Convention in Michigan had changed their language from "chief executive power" to "executive power."

The President discussed the role of the Commission under the act creating it, and the purposes and functions it was intended to fulfill. He stated that there had been no convention in Maine since 1819; that in 1875, the Governor in his message to the Legislature suggested that since the Constitution hadn't been looked at in 50 years, it would perhaps be a good idea to hold a constitutional convention to bring the document up to date. There wasn't time, so the Legislature and Governor settled on a Commission arrangement instead. The Commission made 17 recommendations for change after 10 days deliberation. The State's minority party has consistently agitated for a convention, and the Governor has had another constitutional commission created to review the Constitution and make recommendations. would hope we could do the job with enough publicity so that the agitation would die down for a while. Personnally, I don't think we should knit-pick about this thing. Do you think we should do something to strengthen the Constitution and so suggest to the next Legislature? Of course, the ultimate that gets through is going to be less than what we suggest -- certainly not more.

Article V. Part 1. Section 8 was discussed as to whether the Governor should have the power to appoint Judges of Probate, now presently exempted from his power to appoint all judicial officers granted under this section. Commission, in reviewing the section, felt that there was no valid reason for retaining the provision for the appointment of coroners, justices of the peace and notary publics. (Note land agent still provided for under this section). See Article VI, §7 for the provision governing the election and tenure of judges and registers of probate. President Scribner stated that he couldn't find any real argument against the present method of selecting judges of probate. Mr. Smith felt that the Commission was charged with the responsibility of reporting important changes; that this was an important change, and that judges of probate should President Scribner commented that there was be appointed. noting in the Constitution that required that judges of probate to be lawyers or learned in the law so that evidently the Legislature can control or make additional requirements. Mr. Varney voiced his opinion that all judges should be appointed, be members of the bar and have a term of at least 7 years. Mr. Ward stated that he could see no particular reason for singling out judges of probate for special treatment under the Constitution. It was finally decided to defer decision on the question of judges of probate, notary publics and justices of the peace until a later date.

It was suggested that in view of the fact that considerable criticism had been directed at the lack of real power and authority in the Governor that consideration be given

to amending Article IV, Part 3, §2 to give the Governor the item veto.

Article V, Part 1, Section 11, the Governor's power to pardon, was discussed. The question was raised by President Scribner as to why it was necessary that the Governor be constitutionally required to communicate pardons and remissions of penalities to the Legislature. Mr. Varney indicated that he bolieved that the provision had a certain value publicity-wise. The President noted that the new Michigan Constitution had retained a similar reporting provision, but that he felt the whole pardoning procedure imposed an awful burden on the Governor. Mr. Varney commented that he didn't know whether the power imposed an undue burden on the Governor or not; that it was an essential provision and it would seem better to leave the pardon power, as it now is, with the Governor.

President Scribner asked whether the office of Lieutenant Governor should be created. Whether the Governor and Lieutenant Governor should be elected in tandem, or whether they should be treated separately on the ballot so that they could be elected from different parties. He stated that he thought the Commission should give some consideration to the fact that we have state-wide elections and maybe there should be more offices to vote for; particularly since the terms of Senators might be lengthened to 4 years. He said from his point of view he thought that if there were a Lieutenant Governor his term should coincide with that of the Governor's and that both should be elected in tandem on a bracketed ballot. Mr. Ward commented that if the State had a Lieutenant Governor he might be used as the presiding officer of the Senate and that this might result in a definite change in the makeup of the various legislative committees, i. e., the committees would possibly be formed on an entirely different basis of selection. The President remarked that in Maine not enough major officials are elected and that there ought to be perhaps more. Governor Clauson's death has given rise to the feeling that his party should have had the office for his entire term. added that he had addressed the Kiwanis Club in Portland the day before and was greatly impressed with the wide spread apathy and lack of interest in the Constitution. The Commission decided to reconsider the matter of Lieutenant Governor later.

Article V, Part 1, Section 14, vacancy in the office of Governor, was commented upon by Mr. Ward who called the attention of the Commission to the change of the word "exercise" to "assume" so that Senate President Haskell, on succeeding Governor Clauson, wasn't an acting Governor, but was the Governor.

Article V, Part 2, the Governor's Council, was passed over without comment.

Article V, Part 3, the Secretary of State, was passed over without comment.

Article V, Part 4, the Treasurer of State, was considered on the basis of whether the office should be retained as a constitutional office. President Scribner stated that it was his belief that the office of Treasurer throughout the states was a much different office than it was 150 years ago; and that he wondered whether it was still necessary to continue the office as a constitutional office. Mr. Ward said that he didn't think the provision could be changed as a practical matter, but that he felt the Commission should make the recommendation.

Article VI, the judicial power. President Scribner explained that Judge Carey had been working on the Article and that he didn't seem to feel that any major changes were needed. There was some question in Section 5 as to whether justices of the peace and notary publics should be continued as constitutional officers.

Article VI, Section 7, election and tenure of judges and registers of probate (See Article V, Part 1, §8). President Scribner commented again that he was not against the present method of selecting judges and registers of probate, but that it would certainly be a question that the Commission would have to decide as to whether they should be elected or appointed. Mr. Smith suggested the possibility of district judges of probate as an eventual solution. President Scribner thought that the general consensus of opinion was that the judges of probate should be appointed rather than elected. The Commission of 1875 suggested in its recommendations that judges of probate should be appointed, but this particular recommendation wasn't accepted by the Legislature for submission to the people. He indicated that he thought the day was coming when the State would have to have full-time judges of probate appointed on a district basis.

Article VI, Section 8, judges of municipal and police courts. The Commission agreed that this section should be deleted.

Article VII, the military. Mr. Ward asked what would happen if the entire article were eliminated. President Scribner suggested that the Commission contact the Adjutant General for an expression of opinion as to necessary or desirable changes in the article.

Article VIII, literature. President Scribner stated that a number of people felt that the Commission should take a close look at the article from the standpoint of the use of public funds for private schools, particularly secretarian schools. He commented that there had been a lot of debate during the 1819 convention on these questions, mentioning that all this had occurred about the time of the Dartmouth College Case. He expressed his opinion that the Commission ought to leave the article alone.

Article IX, Section 1, oaths and subscriptions. Mr. Beane said there had been instances where officers had experienced difficulty in being sworn in while the Governor was away. President Scribner commented that the section was not too clear, but there was a provision made that such oaths or affirmations could be taken in the recess of the Legislature by any Justice of the Supreme Judicial Court. During the legislature both Governor and Council are required to be present.

Article IX, Section 2, incompatible offices. This section should be combined with Article IV, Part 3, §11.

Article IX, Section 7, valuation. President Scribner thought the meaning of this section was not clear.

Article IX, Section 8, taxation of intangible property. President Scribner questioned whether the State assessed any taxes on real estate over the State. Discussion brought out the fact that the State, at the present time, assesses taxes, but doesn't collect taxes on real estate in the unorganized territory. Mr. Ward noted that the Sly Report wanted to create a district of all the unorganized territory and tax it for school purposes.

Article IX, Section 10, sheriffs. Mr. Varney suggested that sheriffs should be elected for 4 rather than 2 years. President Scribner asked whether the Commission shouldn't consider the possibility of abolishing the office of sheriff as a constitutional office.

Article IX, Section 14, state debt limit,
Article IX, Section 15, municipal debt limit. The
question was raised as to how the Commission felt about
Sections 14, 14-A and 15. President Scribner commented
that Michigan had a provision requiring that long term
debts be approved by the property owners, i. e., only
those voters paying ad valorem taxes are entitled to
vote on bond issues. He asked whether the Commission
felt that it should include a provision that no income
tax be imposed. Mr. Smith said that Florida had it and

that he thought the Commission should give it a great deal of thought; that, if the Commission decided in favor of it, Section 8 would be a good place to put it.

Article IX. Section 19, dedicated highway revenues. President Scribner asked whether the section should be repealed. Mr. Varney said no, but that he thought it needed a change. The way the section reads cuts out aid to town highways since they aren't under the jurisdiction of the State Highway Commission. Some aid is given, but this is being done in violation of the provision. President Scribner asked Mr. Varney if he wouldn't care to work something up to make this legal. He suggested that by deleting the words "having jurisdiction over such highways and bridges" would eliminate the present objection. Mr. Varney commented that the situation had come to a head while the Honorable Burton M. Cross was President of the Senate. He had introduced a bill providing state aid to town highways. The Senate requested an advisory opinion of the Supreme Judicial Court which held that this was unconstitutional since town highways were not under the jurisdiction of the State Highway Commission.

Article X, Section 4, amendments to the Constitution. The President stated that many people claimed that it was too difficult to amend the Constitution. Possibly there ought to be a provision for an automatic calling of a constitutional convention every 10 or 20 years.

The Commission recessed at 12:05 p.m. for lunch and was called to order at 1:10 p.m. by President Scribner.

After a short discussion of the Baker v. Carr decision on reapportionment, the Commission proceeded to reexamine its preliminary findings.

Article I, declaration of rights. President Scribner asked whether the following provision should be added: "No person shall be denied the equal protection of the laws because of race, color or religion . . . " He stated that the provision was taken from the Federal Constitution and that it had been inserted in the proposed Michigan Constitution. The question is whether something comparable shouldn't be included in Article I. Mr. Varney suggested that the protections contained in the suggested provision were already included in Article I, §3 "all persons demeaning themselves peaceably, as good members of the state, shall be equally under the protection of the laws . . . " President Scribner remarked that he didn't think that Section 3 had all the protection that the proposed section had, since it primarily protects civil rights. Mr. Varney stated that he for one didn't want to see the protections added to the Maine Constitution,

since it might require business people to do business with many undesirables without any right to refuse. President Scribner added that Michigan had a companion provision that established a civil rights commission which he was sure the Commission wouldn't want. Mr. Ward stated that New Jersey had a civil rights provision forbidding denial of the equal protection of the laws.

Article I, Section 6, due process requirements. President Scribner commented that it had been suggested by Professor Dow that the first sentence be amended by adding at the end the words "and to have the assistance of counsel for his defense." Messrs. Varney and Ward were both opposed to this guarantee, maintaining that it was already provided for by statute. Mr. Smith asked whether Dr. Dow, from his wide experience, could say that counsel had been denied to any person in the Maine courts, adding that he didn't think Dow's words added much to the meaning of the section. President Scribner said that he thought they added something. Mr. Ward stated that New Jersey had about the same provision providing for assistance of counsel for the defense of an accused. It was pointed out that Alaska had a similar provision.

Article I, Section 7, criminal indictments. President Scribner suggested this section might be modified to provide that in all trials by jury, verdicts would not be required to be unanimous. He would like to check on this proposal to see if there is any interest.

Article I, Section 19, right of redress for injuries. President Scribner stated that he wondered what was meant by the section; does it give remedies unknown to law and equity. Mr. Varney said he thought that it was intended to assure legal and equitable remedies. President Scribner commented that he didn't believe that the Commission would want to take it out even though it might not be necessary.

The President, noting the presence of the Honorable Harvey R. Pease, the Clerk of the House, requested the benefit of any comments he would care to make concerning changes in the Constitution.

Mr. Pease suggested that the Commission give consideration to changing the amending clause to make it more difficult to amend the Constitution; for example, require an amendment to pass two successive sessions of the Legislature before submitting it to be voted on by the people. He stated he would like to see full-time probate judges on an appointive and probate district basis; that he was very definitely in favor of making probate judgeships a non-constitutional office and making them appointative. This would not have to mean a change in registry personnel. They could be retained and the registries operated on a county basis.

Mr. Varney commented that the only thing the Commission would have to do in order to accomplish this change would be to recommend the removal of the provision from the Constitution relative to the election of judges of probate. Mr. Pease suggested that since there was already great difficulty in finding qualified persons to run for the office that the State would have to make the change before too long.

Article II, electors. Mr. Scribnor asked if there was anything anyone wanted to bring up under Article II. Mr. Ward stated that he questioned the necessity of the 6 months residency requirement to vote and the need for the 3 month continuance of voting rights upon changing residency in the State. He asked whether this meant that removal caused a loss of residence for voting and inheritance purposes. Mr. Ward also objected to the word "seminary." President Scribner suggested the substitution of the words "school" or "educational institution." Mr. Smith commented that he thought the section could be greatly improved by redrafting. President Scribner suggested that the voting machine does not conform to the requirement under Section one that elections shall be by written ballot. Mr. Beane suggested that Section 5 which authorized the use of voting machines overcame this objection.

Article IV, Part 1, Section 3, apportionment. Mr. Ward asked whether in those states that base apportionment on the number of registered voters did they make new lists of the number of registered voters for each election. Mr. Varney indicated that he liked the idea of using the number of votes cast for Governor as the basis for apportionment rather than the number of registered voters; that it would result in getting out the vote. President Scribner thought that it should be based on the votes cast for President, and said that Tennessee based its apportionment on the total votes cast; Hawaii on the number of registered voters.

Article IV, Part 3, Section 2, Governor's veto. President Scribner suggested that the Commission might like to give serious consideration to the matter of an item veto.

Mr. Varney said that he liked the idea of electing Senators and Representatives for 4 year terms. That if it were done it would result in shorter sessions for at least one session because they would be already to go to work.

President Scribner asked what the Commission thought about having a single house. Mr. Varney said that he guessed that he was a little too old fashioned for that. President Scribner commented that the class town representation has presented a barrier to lengthened house terms, though the reluctance of people to serve has had

some effect in breaking down this barrier. Some districts now allow a man from a town to serve several terms. In other class districts a man sometimes has to wait for 12 years before he can try to come back. Mr. Ward stated that New Jersey elects Senators for 4 years, but divides them into 2 classes and elects a class every 2 years.

The future procedures of the Commission were discussed. President Scribner said that he wondered if the Commission hadn't reached the point where each member should put his suggestions in writing for a discussion and vote on the merits. If the proposition received a favorable vote, the Commission could have it drafted; if not, it could be discarded and forgotten. The specific proposals once drafted should then be reviewed for changes and either approved or disapproved as recommendations. He indicated that some research would be done before the next meeting, and suggested that the agenda could be arranged on the basis of suggestions sent in by the membership. Mr. Ward suggested that the meeting should be called two weeks after the receipt of the research material. President Scribner said that he thought that he would be able to send the material along by the end of July; thereupon, it was decided to schedule the next meeting for Wednesday, August 15th, at 10:00 a.m.

The Commission discussed whether it would hold a panel discussion at the Maine Bar Association meeting in August. The proposition was favorably received by the members present and the President stated that he would make the necessary arrangements.

The meeting was adjourned at 3:00 p.m.

Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, AUGUST 15, 1962

Fifth Meeting

President Scribner convened the fifth meeting of the Commission at 10:00 A.M. in the Judiciary Room, State House, with the following members present: Messrs. Beane, Carey, Scribner, Smith, Snow, Varney, Ward and York.

President Scribner outlined the task before the Commission and asked the members of the Commission to make suggestions as to what sections of the Constitution should be studied in detail.

The President indicated that about \$1,000 had been spent by the Commission as of the present time, approximately one-half of this amount in connection with the March public hearing. He emphasized that the Commission would need to earmark a considerable amount of its appropriation to publish its final report and, in the event that the Commission found it necessary so to do, to hire a full-time assistant.

President Scribner commented that if the Commission was sufficiently impressed with the need for recommending a constitutional change that it should be prepared to follow the matter through to show the way in which the change should be implemented.

The President announced that at the previous meeting the Commission had concluded it would be desirable to review reapportionment in detail and that the matter had been assigned for research. He stated that the subject had been extensively researched and that the information was available to the Commission.

Reapportionment was discussed. Mr. Varney suggested that perhaps the State should follow the Federal provision on apportioning the House in that it must be on equal representation. The President commented that if you make such a suggestion and someone asks how it's going to be done, you've got to come up with some pretty good answers.

He stated that the Commission should consider creating 150 legislative districts based on equal population. Even so, Portland will want to know if you're going to elect by wards or by some other arrangement. Perhaps by changing the composition of the Senate, you could elect a Senator from every 5 legislative districts. Basically, the question is whether the proposition will be acceptable to the people.

Mr. Varney stated that it was his belief that the function of the Commission was to eliminate unnecessary detail from the Constitution; that the Constitution should be a statement of principles only; that it should not attempt to be specific as to detail.

The discussion moved to the provision on voting machines, Article II, §5. Mr. Varney stated that he thought that all elections should be so conducted as to preserve the secret ballot. He stressed again his feeling that the Constitution should deal with principles only and not include a lot of detail which could be taken care of by statute. Perhaps the time has come when we can eliminate a lot of detail that might have been necessary for inclusion when the Constitution was first adopted. President Scribner observed that this all seemed to add up to a constitutional convention since the points for consideration under this philosophy could become quite substantive. If the Commission comes up with a lot of substantive changes maybe it will have to recommend a constitutional convention.

Mr. Smith was asked to read his letter of August 8, 1962, to President Scribner in which he outlined a number of items which he believed should be considered by the Commission. It was agreed that copies of the letter be reproduced and copies mailed to each member.

The President asked for suggestions as to how the Commission wished to proceed. Whether it would prefer to discuss Mr. Smith's letter or did it have other alternatives in mind. He noted that Judge Carey had made an interesting speech in Bath on apportionment and that he would have it copied and distributed to the membership. He indicated that Judge Carey and Mr. Smith had both stated that they believed that professional assistance should be employed by the Commission, adding that it would be well before this were done for the Commission to get their thoughts firmly in mind.

President Scribner asked Mr. Varney if he had any specific items in mind. Mr. Varney replied that he had a number of things in mind which he would put into

language and mail out. He stated that he thought the Commission could proceed by eliminating from further consideration any satisfactory sections.

The President remarked that he hadn't been fully aware of the costs involved in recording testimony and making transcripts. He said, "\$10,000 won't go very far. Obviously, we must report on reapportionment. Perhaps we'll have to ask for more money. We should reach some decision on what we want to do fairly soon."

Mr. Ward stated that he didn't think that there was too much wrong with the Constitution that needed change.

Copies of Mr. Ward's suggested changes to Article II, Section 1, concerning electors, and Article IV, Part 1, Section 2, were distributed.

Mr. Ward's draft of Article II, Section 1 was taken up. Mr. Varney suggested that one part of the section which was striken out defeated Mr. Ward's purpose for the reason that it was necessary to provide for continuance of the former voting residence until a new residence was established. It was Mr. Varney's suggestion that the sentence starting with "Persons in the military..." should be striken out entirely to allow military personnel to vote once residency requirements were met. President Scribner commented that random deletion could pose more problems than it caused by leaving the provision intact. If you take something out that's been in since 1820 just because you think it shouldn't be there although it doesn't basically do any harm, you will lose the benefit of a lot of decisions and precedent. Mr. Ward stated that both New Jersey and Hawaii constitutions contained the same provision. President Scribner suggested that perhaps it might be a good idea to get the section in shape by the next meeting for a vote, as well as the possibility that students might be allowed to vote in State elections, but not in municipal elections.

Four proposals prepared by the President on reapportionment were distributed to the members and marked for identification as A, B, C and D. Mr. Ward was asked by the President if he wished to discuss his suggestion on apportionment and he replied in the affirmative stating that he had no objection if Representatives were elected on the basis of districts or if Portland had 10 or even 20 Representatives so long as it was divided into districts. He added that he didn't think that the Federal census was too satisfactory. President Scribner explained that his reason for selecting 150 as the number of legislative districts was that on that figure

you could have a Senate of 30 members or one Senator for each five legislative districts. He went on to say that he did not think on the basis of his study of the Wisconsin situation that Maine's position was invidious yet and was probably alright. The President commented, "It's true that Portland has reached 7, but I don't believe it would be considered invidious discrimination yet; it might be if it reached 14. You can't have exact mathematical equality," he stated, referring the Commission to the remarks of the Solicitor General in his address before the Eastern Regional Conference of the National Association of Attorneys General held recently at the Marshall House, York Harbor, Maine.

Mr. Varney advanced the proposition that perhaps respontionment should be done every ten years unless otherwise ordered by the Legislature. President Scribner expressed his opinion that the plan for legislative districts might be acceptable to the people since much of the voting at the present time is done on the basis of class towns or districts and it would seem that town identification is no longer such an important factor. The Senate plan probably is impracticable from the standpoint of acceptance.

The Commission recessed at 12:25 P.M. for lunch and was called to order at 1:10 P.M. by President Scribner.

The provisions of Article V, Part 1, Section 3 were discussed concerning the reason for the amendment to the section changing the election of Governor from a majority to a plurality vote. President Scribner suggested that this be made a subject for research, noting that it might be well to check other State constitutions against any provisions they might have concerning tie votes for Governor.

Consideration of reapportionment was resumed by the Commission. Mr. Varney asked if it would be constitutionally possible to apportion on the basis of registered voters. President Scribner commented that the New Hampshire Supreme Court had ruled that that State's provision for reapportioning on the basis of direct taxes paid was not unconstitutional or, in other words, they could find no good reason for finding that the provision was not constitutional. He called the attention of the Commission to the chart prepared by the Council of State Governments on reapportionment and suggested that it would probably be helpful if he had it reproduced and distributed to the members. Mr. Varney stated that he would conclude that it would be constitutional to base State apportionment on the number of qualified electors. President Scribner remarked that this scheme would

probably be better than basing it on the number of votes cast. He then suggested that the Commission consider the relevant topic of apportioning agencies. There being no objection, he read off from the Council of State Governments chart the various State provisions for accomplishing apportionment other than by the Legislature. Mr. Varney stated that he would like to see an expression of opinion as to how the individual members felt it should be done.

The President, after reading excerpts from a law review article on the various methods of carrying through reapportionment, indicated that he thought if the Commission could work out a formula for reapportionment it would be a good job done. He then asked if anyone thought the Commission should give further attention to the proposition of providing for apportionment by an agency other than the Legislature. Judge Carey stated that it was his belief that the Commission should concentrate on what would be saleable. Professor York stated that he leaned toward the idea of an independent redistricting authority and asked what the arguments were against it. President Scribner replied that it probably was the fact that it was an important power and should be kept responsive to public The Legislature doesn't want to minimize the importance of this particular power. Probably any attempt to get a provision through for reapportionment by any other body than the Legislature would fail the first time. A constitutional convention directly responsible to the people would probably be in a much better position to secure acceptance.

President Scribner suggested that at the next meeting the Commission see if it could get a consensus of whether a) it wants to do anything, such as eliminate the rule of seven or change the basis of reapportionment, b) if it doesn't want to do anything. Judge Carey indicated that he felt that the limitation of seven should come out; that the matter of reorganizing the Senate should be held open for further discussion. The President commented that the trouble with the Senate is the fact that the Senators from Penobscot County come from Bangor, Cumberland from Portland, Androscoggin from Lewiston, et cetera, and that this is just unfair.

Mr. Ward suggested that the Commission shouldn't overlook the possibility of submitting various proposals to the Legislature on reapportionment rather than concentrating on a single recommendation.

The matter of recommending a prohibition against the income tax was discussed. President Scribner stated that

this was a new proposition suggested by Mr. Smith; that it was considered a few years ago, but that nothing much had been said about it recently. Mr. Smith elaborated saying that this was a thing clearly within the Commission's instructions to report such recommendations as it felt necessary or desirable, and read a memorandum which he had prepared to sustain the need for recommending the proposition to the Legislature. He pointed out that it would be necessary to be very careful to avoid jeopardizing the excise or gross receipts taxes. The adoption of an income tax prohibition, he stated, would attract retired people to the State to escape the heavy taxes imposed on incomes in other States. It would have a strong psychological value and would create much favorable publicity outside the State.

The matter of Commission participation and agenda at the Maine Bar Association meeting in August was discussed and arrangements were left to the President.

The President raised the question of annual sessions and whether the Commission felt there should be some research done prior to the next meeting. The Commission decided to defer action on this matter for the present.

The President suggested that the Commission might give consideration to the need for a Lieutenant Governor. He explained that the purpose of having a Lieutenant Governor was that if something happened to the Governor there would be a person to take his place who was chosen by the people rather than more indirectly. In some States the Governor and Lieutenant Governor are elected in tandem to insure continuity of a given political party. This is otherwise in Massachusetts. Of course, there will be the usual objections, that it'll be a new office and mean more money. Professor York stated that he thought it would be a good idea to take a hard look at the proposal. The Commission thereupon authorized research upon the desirability of having a Lieutenant Governor.

The date of the next meeting was fixed for Wednesday, September 26th, at 10:00 A.M., in the Judiciary Room, State House.

The meeting was adjourned at 4:40 P.M.

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, AUGUST 29. 1962

Sixth Meeting

Panel discussion conducted by the Commission at the summer meeting of the Maine State Bar Association at the Samoset Hotel, Rockland, with the following members present: Messrs. Beane, Carey, Marden, Scribner, Smith, Snow and Varney.

President Scribner, noting that the State Constitution had been adopted in 1820, reminded the members of the Bar that there had never been a second Constitutional Convention. He said that he felt that one of the Commission's jobs was to determine whether there was a real need for a Constitutional Convention, or if the same result could be accomplished through the Constitutional Commission. urged the support of the members of the State Bar Association, expressing the belief that the Commission would need more than its present \$10,000 appropriation if it were to continue its work properly. He suggested that if the Legislature felt that the Commission should make a through review of the Constitution, it should be given more time and money to complete the project. President Scribner estimated that a Constitutional Convention would cost the people of the State at least \$50,000 with no sure guarantee that the result would be entirely satisfactory. He expressed his disappointment over the apparent lack of interest in the Commission's study on the part of the public.

Senator James S. Erwin, who sponsored the act creating the Commission at the 100th Legislature, said that there had been a great deal of political pressure in the past to amend the Constitution piecemeal and that the symmetry of the Constitution had been altered considerably because of this. He indicated that since 1870, there had been 80 amendments made to the Maine Constitution. He said that he objected to the constant harping by political parties seeking advantage through Constitutional amendments, and that the purpose of the Commission was to investigate

such "annual cries" as the abolishment of the Executive Council, the establishment of annual sessions of the Legislature, creation of a Lieutenant Governor and other matters. He pointed out that either these were good or bad ideas and it would be the job of the Commission to resolve their merit and lay some of the issues to rest. Senator Erwin said that the only people who would miss these issues would be those politicians who had made a lot of mileage out of them.

President Scribner said that one of the prime jobs of the Constitutional Commission was the resolving of the reapportionment problem. He emphasized that the Commission was open to suggestions on all matters pertaining to the revision of the Constitution, requesting that those present give careful consideration to the overall problem of revision so that they could properly present their views.

The discussion pointed out areas that needed study which included whether or not to continue the Executive Council, annual Legislative sessions, creating the office of Lieutenant Governor, appointment and election of Probate Judges, lowering the minimum voting age to 18, altering residency requirements for voting, reapportionment of the Legislature and Constitutional provisions authorizing State funds for private schools.

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, OCTOBER 31, 1962

Seventh Meeting

President Scribner convened the seventh meeting of the Commission at 10:20 A.M. in the Judiciary Room, State House, with the following members present: Messrs. Carey, Edwards, Marden. Scribner, Smith, Snow, Varney and Ward.

President Scribner quickly reviewed the history of the constitutional convention issue in the State, indicating that part of the agitation for having a constitutional convention was originally a push at a four year term for Governor, change of election date, annual sessions and the abolishment of the Executive Council. He commented that the adoption of the constitutional amendments changing the election date and providing a four year term for Governor had taken some of the heat off the demand for a constitutional convention. He pointed out that one of the remaining issues which the Commission should reach a decision on was the abolishment or retention of the Executive Council. He emphasized that the Commission would have to face up to a decision on this as well as on similar issues and that its report should explain the decisions in detail giving the reasons why it had reached a particular conclusion. The President then asked the members for their thoughts as to what decision the Commission should make concerning the Executive Council.

Mr. Snow suggested that the abolishment of the Council would be no solution, but only result in replacing it with some other body. Mr. Ward said that he believed that a body such as the Council performed a worthwhile function, and, as an example, cited the recent situation when the Governor needed funds for emergency Civil Defense use and called the Council into session to approve it. He stated that he thought the Governor would prefer this way of handling the matter rather than assume the entire responsibility himself. The question was raised by Mr. Marden as to what the specific objections were to the Council and whether they couldn't be specified. Mr. Snow replied, stating that one thing was the way the Council was elected. The President

called the Commission's attention to the materials which Mr. Silsby had pulled together on the Executive Council, including the theses of Robert N. Larson and William A. The Council has lost some of its power in Newdick. recent years and is now reduced to three basic powers: 1) pardons, 2) appointments, and 3) allotment of funds out of special funds and insurance. Most of the public objection to the Council arises because of appointments. President Scribner stated that it was his belief that there was no great enthusiasm on the part of the people for the Council. They don't really understand it, and don't seem to realize that its a grand check on the Governor. Mr. Ward said that if the thing was setup so that a small group of the Sonate was utilized which could be readily called in, it would be better than using the entire Senate. He pointed out that minority representation in committee is complete today, but that this situation wasn't true originally. President Scribner noted the study made by the Citizen Committee on the Survey of State Government and stated that it had recommended that the Council be abolished and that the Senate be used as a confirming body. If this authority is given to the Senate, it would probably have to operate on the basis of a committee arrangement. There have been all sorts of different suggestions made on how the Council functions could be handled. Then there's the feeling that the minority party is never represented on the Council. Some of this objection could probably be overcome by providing that when a county is entitled to a member on the Council that he shall represent the party which has a majority of the legislators from the county in the Legislature. Actually its difficult, of course, to tell whether this would relieve any of the pressure or not. Mr. Varney commented that in New Hampshire the Council is elected from Councillor Districts and yet the same groups still complain. The President said that he felt that part of the argument comes from the League of Women Voters which wants to got rid of the Council in order to strengthen the executive power.

Mr. Varney said on the basis of his study of the Constitution that he believed that any proposed amendment would fall into one of three categories:

- 1. Those that wouldn't change its effect at all but only modernize or streamline it. The Commission could recommend that this class of amendments be taken care of as a single group.
- 2. Those, such as a change in the voting ago, which should be treated as a single amendment. The only question is whether or not the people

want it. The Commission is not qualified to decide this question by itself and should perhaps report only the pros and cons without making any actual recommendations for amendment.

3. Those, such as abolishing the Council and redistricting, which are more involved and comprehend a real substantive change in the State government. Perhaps, in some instances, the Commission might want to suggest various methods to accomplish a particular change, but without making any specific recommendation, either for the change or for any particular method.

Perhaps, if the Commission had recommended changes in the first two categories, and thought that the Legislature, because of the rush, would not be able to spend the amount of time necessary to decide whether changes suggested in the third category should be submitted to the people, it could recommend that the Legislature call a constitutional convention for the sole purpose of deciding those particular questions. Any questions involving the third category should be deliberated by a more representative group than this. Mr. Varney then commented that through all the complaining about the Constitution he had yet to hear anyone point out specifically anything that was actually bad. President Scribner mentioned that Governor Muskie had once with respect to appointments and when he had wanted to do something and couldn't because of the refusal of the Council. Mr. Varney remarked that eliminating the Council is really no solution because the people who don't get appointed are going to always be dissatisfied with the body that didn't appoint them.

President Scribner suggested that one of the questions that the Commission would have to decide was whether it should recommend that a constitutional convention be called. He commented that this was basically what the Commission had been trying to determine through its meetings and public hearing. He pointed out that a constitutional convention would be an expensive proposition costing \$75,000 to \$100,000 because of the large staff and record keeping requirements involved. He stated that he had followed the Michigan Convention very carefully and that he didn't think that Legislature would come up with anything better than a commission, since a commission operated through the Legislature rather than going directly to the people as a convention would. Obviously, something is going

to have to be done in Maine about reapportionment. We've been very fortunate in Maine that no suits have been started yet. President Scribner said that he thought the Commission should proceed from here on in by discussing the various questions for a consensus of opinion so that it would be able to take a vote on thom at the next meeting. He suggested that if the members of the Commission had anything they wanted to bring up for consideration that they should try to bring it to his attention before the next meeting. The President said that he agreed with Mr. Varney that there were certain specific things that the Commission could recommend be changed. He said that he didn't know whether each amendment had to be addressed separately to the people or could be proposed as some sort of blanket resolve. He stated that he had just received a copy of the report of the Rhode Island Constitutional Commission. The Commission was appointed in 1961 and was given an extension in time to complete its study. The Commission reported certain specific recommendations and also submitted the draft of a completely rewritten constitution. He indicated that perhaps the Commission could follow this approach saying, as to specific amendments, this is what we recommend as a Commission, but if we were a convention we would recommend that the Constitution be rewritten like this. The matter was discussed further. Mr. Carey stated that the Oregon Commission had just made a report on its constitutional study and that copies of its report would probably be available for the Commission's use. Mr. Ward asked if any of the members had any idea as to what the procedure would be if the Commission wanted to recommend the calling of a constitutional convention. He made reference to the fact that the language in the Maine Constitution is very vague as to the actual mechanics. Mr. Cary commented that the New Hampshire mothod of creating a constitutional convention is very good. President Scribner said that the Commission should try to take some votes at the next meeting as a part of its effort to publize what it was thinking about. He added that the recommendations made by the Commission wouldn't be any good without public support. The Commission has got to have someone in the Legislature to carry the ball and he's got to have public support to get the Commission's recommendations through. He stated that he felt that the Commission might gain a lot of this support through public discussion of its tentative proposals at public hearings.

At the President's suggestion, the Commission proceeded to review the Constitution. Article I was taken up. President Scribner said that it was his impression that the Commission felt that basically Article I needed little change. He montioned that there were a number of points which the Commission could polish up, but if it rewrote anything, it would probably raise a legal question, and that this didn't seem worth it in the absence of any compelling reason to make the change. The President proposed an amendment to Section 5, suggesting that the Commission recommend the amendment adopted in Rhode Island for the people to be secure from wiretapping. He indicated that the protection could be added as a sentence at the end of Section 5, and read it for the benefit of the Commission. Mr. Marden observed that if something like this had existed in the days of the founding fathers undoubtedly they would have put it in.

Mr. Marden suggested that the words "and in all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact," be deleted from Section 4. Mr. York suggested that the provision was written in during the time when the pross was very partisan. President Scribner commented that it was probably included because the judges at that time were very conscious of what the press wrote. Mr. Ward stated that the New Jersey Constitution which was revised in 1961 contained the same language. Marden said that there had been a number of dramatic libel cases in Maine during the last few years. Mr. Varmey thought that this change would probably fall into the first category which the Commission could suggest, and felt that the Commission should recommend that every thing be stricken out after the word "press" in the third line. Mr. Marden said that it was his feeling that the language definitely was intended to deal with criminal libel.

President Scribner said that there were unquestionably a lot of things in Article I that could be changed; for example, the words in Section 7 "capital or infamous crime" or "in such cases of offences, as are usually cognizable by a justice of the peace". Probably the Commission shouldn't touch them—they've been there a long time and no particular problems have arisen because of them. Mr. Varney suggested that if there were no further questions perhaps the Commission could take a vote. President Scribner said that the members weren't looking to a vote today but rather they wanted a consensus of opinion. He then asked if there were any of the members of the Commission who opposed the proposed changes to Sections 4 and 5. There were no objections, so the President then asked if there were further suggested changes. Mr. Mardon said that he would like to see the words "or the presumption great"

eliminated from Section 10. President Seribner suggested the elimination of Section 19, commenting that he didn't think the prevision was needed in the Constitution today since it didn't add anything that wasn't covered elsewhere. He then asked if the members had anything further to suggest as changes in Article I. There were none, so he suggested that if others were thought of that they be sent to him before the next meeting.

The Commission considered Article II. President Scribner commented that the members of the Commission had all agreed that Section one needed rewriting, and suggested that it might be advisable to discuss some of the points which needed changing. Mr. Varney said that the Commission might wish to do something about the voting age, and possibly strike out that part of the section respecting military residence. President Scribner called the attention of the Commission to the extensive redraft of the section made by Mr. Smith based on the draft proposed by Mr. Ward at the last meeting. Mr. Varney repeated his suggestion that the second sentence of Section one be eliminated, and stated that he would make it in the form of a definite proposal. His proposal would eliminate the following: "But persons in the military, naval or marine service of the United States, or this state, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack or military place, in any city, town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the city, town or plantation where such seminary is established." President Scribner noted the proposal and suggested that the Commission give it serious thought pending a vote on it at the next meeting. He commented that he thought the section was tremendously important and that it might be well for the Commission, when it had reached a decision as to content, to incorporate its ideas in a substantive draft and recommend it as a replacement. He then raised several questions which the Commission should consider concerning the qualifications of electors: 1) The voting age and whether the Commission should recommend that it be lowered. He said that it was his thought that the Commission could make the recommendation as a liberal gesture notwithstanding the fact that it probably wouldn't have any appreciable effect on changing the voting pattern. 2) Extending the voting franchise to paupers. 3) Changing the six month residence requirement for voting in the State elections. The President pointed out that the newer state constitutions are going for a longer residence requirement, and cited Alaska which has one year. He also mentioned Rhode Island which had a one year requirement and kept it, but eliminated the provision that permitted its Legislature to shorten the requirement

in the case of presidential and vice presidential elections. 4) Whether the provision that "he or she shall continue to be an elector in such city, town or plantation for the period of 3 months after his or her removal therefrom, if he or she continues to reside in this state during such period" should be changed. 5) Whether the provision on the educational qualifications of electors should be changed. President Scribner commented that if the Kormodys had their way anyone graduating from the sixth grade would have sufficient educational qualifications. He said that if the amendment were accepted as a constitutional requirement, there wouldn't be much left for the State to determine with respect to the educational qualifications of its electors. He suggested that the Commission leave the present requirements as they stood and not try to second guess what Congress would do. He indicated that he thought that the words "nor to any person who had the right to vote on the fourth day of January in the year one thousand eight hundred and ninety-three" could be removed. The question was raised as to eliminating the sentence: "Every Indian, residing on tribal reservations and otherwise qualified, shall be an elector in all county, state and national elections." Mr. York said that he thought that the Indians would prefer to have it left in. President Scribner stated that Mr. Varney had suggested that Sections 2 and 3 be stricken out on the grounds that they were no longer necessary. He suggested that the Commission defer any decision on the two sections until the next meeting. It was suggested that the word "citizens" in the second sentence of Section 4 be changed to "olectors" since the word "electors" is used throughout the election provisions in preference to "citizens" and this point probably was missed in amendment. Decision on the substitution of Mr. Varney's draft for Section 5 was postponed until the next meeting.

Article III. President Scribner stated that no one had proposed any changes to this article as far as he knew.

The Commission proceeded to Article IV, Part 1. President Scribner reminded the Commission that at the last meeting he had proposed a plan which provided 150 districts for the House and 30 districts for the Senate, with a proviso that the districts would follow as nearly as possible ward, city and town lines. That reapportionment would be done by the Governor on the advise of a citizens committee with an appeal to the courts. Here, he read his suggested lenguage on the reapportioning agency which he had proposed at the last meeting.

He stated that what he thought he wanted to do was to provide that the Legislature would do it, and, if it didn't, then the Governor; leaving an opportunity for application to the courts. He said that he believed that this was an area in which the Commission would have to make some recommendations. Mr. Ward asked why the Commission should offer a plan which would immediately antagonize the Legislature by providing for 150 districts rather than 151. The Prosident replied caying that the only advantage in the 150 and 30 rigures was that it would allow cotorminous districts for both the House and Senate. He commented that he didn't think that the Legislature would buy it, but, if there were a move for a court test of the State's reapportionment provision in the Maine courts, perhaps, where the Commission had already worked a plan out in advance, the Legislature might fall back on it as a solution. Mr. Smith expressed his opinion that the idea advanced by the minority decision of Baker vs. Carr had merit in that it eliminated the tie-up between population distribution and geographical areas. He indicated that he didn't believe that the State should rush into the use of the population distribution basis for both the House and Senate. President pointed out that at the present time State apportionment was geared to county lines. He stated that his idea in supporting districts along ward, city and town lines was to get away from the county line setup whereby Sonators from a given county were elected from a single city, such as in Androscoggin or Penobscot Counties. The way the Federal court is moving in the apportionment area is not going to allow the State to retain its present provisions much longer. There is absolutely no reason why a voter in the City of Portland should elect 12 legislators as against one in other districts. An objection has been made as to the practicality of the plan, but the Commission should at least make the recommendation. The Commission may not want to move to the Senate proposition now, but something has got to be done about the House, and if you change the Senate setup, it will certainly correct a bad situation. Mr. Varney suggested that the pressure of public opinion might force the Legislature to do something. President Scribner commented that according to what he had heard Judge Gignoux would definitely have to take the 7 limit out, and that he is just sitting tight praying that no one brings an apportionment suit. With respect to timing, he suggested that if the Legislature agreed upon a plan during the regular session and submitted it to the people at a special election in November, 1963, it would be possible for it to meet at a special session called after the election for the purpose of reapportioning under the amendment, if it were adopted. He pointed out that even though the plan were adopted you could expect a considerable amount of difficulty in putting it into operation. For example, the State of Vermont, where the Legislature under pressure of the State court, reapportioned the Senate taking the seat away from the President of the Senate. Its a matter

of record that he resisted until the last gun was fired. Mr. Varnoy suggested a modification of the President's plan to base it on the number of votes east for Governor. He indicated that he felt that this would have a tendency to get out the vote. The question was raised as to the time at which constitutional amendments had to be submitted to the people. Mr. Ward referred the Commission to Article K, Section 4, as amended by Amendment LXXXIII, found on page 33 of the Secretary of State's pamphlet on the 1955 codification. In. Varney suggested that the President take a concensus of opinion on whether the Commission should use the Federal census or the number of votes cast for Governor. Mr. Marden and President Scribner both said that they didn't like the consus. President Scribner stated that he leaned toward the votes cast for Governor rather than the number of registered voters because there is always a problem in registering voters, since the standards will vary from district to district depending on the registrar. He indicated that he felt that there wouldn't be any chance of fiddling with the number of votes cast for Governor where you are using the totals. He commented that the Commission could recommend the district plan and no other or take out the 7 limit or fractions thereof provision and let the Legislature stew in its own juice as to whether it would adopt a reapportionment plan. Ultimately, he thought, the State would accept the district idea, at least for the House, and perhaps the Senate later. The President put Mr. Varney's request for a consensus of opinion to the Commission which voted unanimously in favor of the use of the number of votes cast for Governor. Mr. Ward stated that he would favor redistricting being done by the Governor rather than by the Legislature, but, as a matter of practical politics, he didn't see how the Commission could recommend it. He added that he was not too sure that the Legislature would object to reapportioning in the first place. The President read the provision recommended by the Rhode Island Commission for reapportionment by another agency in the event the Legislature failed to act. Mr. Ward asked how reapportionment would be compelled under the Rhode Island provision. President Scribner said that he thought that it would probably be by mandamus, and referred Mr. Ward to the Hawaii provision which states specifically how it shall be enforced. Mr. Varney suggested that it might be a good idea to let the courts do it in the first instance. President Scribner said that he didn't think that the Chief Justice would want to because it smacked of politics and might lesson the dignity of the Mr. Ward commented that the less the Legislature was stirred up, the better the chances would be of getting some of the Commission's recommendations through.

The Commission recessed at 12:15 p.m. for lunch and was called to order at 1:20 p.m. by Prosident Scribner.

The President distributed copies of the reprint of the series of articles written by Dr. Edward F. Dow for the Portland Sunday Telegram.

President Scribner called the attention of the Commission to the question raised by Mr. Varney as to whether the provisions of Article IV, Part 1, Section 4 were correct in view of the change in election dates. The Commission discussed the section and decided to leave it alone.

The President suggested that there were a number of minor changes which the Commission should make in Article IV, Part 1, Section 5, none of which involved anything basis.

Article IV, Part 2 was taken up. President Scribner noted that the Commission had already discussed possible changes in the Senate under apportionment, and suggested that it might wish to give some additional thought to the possibility of lengthening the terms of Senators to 4 years and providing for staggered terms. Mr. Varney said that he would like to see both the House and Senate elected for 4 year terms; and, if possible, have staggered terms. He indicated that he felt that it would have a great effect on speeding up the session. President Scribner said that the reason why it hasn't been done in the house in the other states is that revenue bills start in the House and the feeling is that they want the House responsive to the people. If the House terms were lengthened to h years and staggered, it would mean that the electorate would have much less control over state expenditures. Mr. Carey suggested that there would be a practical problem in that some very capable people might feel that they could run for a 2 year term that might be discouraged from running at all if the term were 4 years. Mr. York said that he would like to see the Commission give serious consideration to the 4 year term. Mr. Marden pointed out that the Commission might have a real problem in the House with the class towns which rotate their representatives.

Mr. Varney said that he would like to see the Commission prepare a constitutional amendment before the next meeting providing for apportionment along the lines discussed during the morning on the basis of the votes cast for Governor, and to be made by the Governor, with the Supreme Judicial Court authorized to act if the Governor didn't. Also another amendment providing that the Governor shall apportion if the Legislature fails to act. President Scribner told Mr. Varney that he had planned to reduce the various proposals discussed during the morning session to draft form for consideration by the Commission at its next meeting. Mr. Varney said that he had been thinking in terms of a public hearing at the next meeting of the

Commission. President Scribner agreed that the Commission should hold another public hearing but that it should be held after the next meeting in order to give the Commission time to line things up. Mr. Ward said that he would like to see the present breakdown of the Constitution changed to eliminate its subdivision into parts. He suggested that perhaps this was appropriate action for the Chief Justice under his codification authority. Mr. Smith said that he doubted whether the Chief Justice would wish to make the change and suggested that the Commission make a specific recommendation that the parts subdivision be eliminated.

Mr. Varney questioned the meaning of the language in Article IV, Part 2, Section 3 "and also the lists of votes of citizens in the military service, returned into the Secretary's office". President Scribner noted that Mr. Varney thought that there should be a provision added to Section 4 that the Governor and Council should make a return of votes to the Senate, since the section provides that the Senate is the judge of the election of Senators. Mr. Smith indicated that he thought that the Commission should get the opinion of the Secretary of State before recommending any changes to either Sections 3 or 4. The Commission noted that the change over from majority to plurality vote occurred following the election difficulties of 1879.

Article IV, Part 3 was considered. President Scribner pointed out that the Commission had agreed that it wanted the item veto, noting that Mr. Smith had reduced the Commission's proposal to writing. He said that what it would mean on appropriation bills is that the Governor could strike out any specific item without vetoing the rest of the bill. He commented that the item veto usually relates only to money bills in that deletion in other types of legislation will affect the substance of the entire bill whereas in money bills it relates only to a specific item without any effect on the remainder of the appropriation or making any change in the character or complexity of the entire bill. He cited the item veto provision in the Alaska Constitution as an example of the type of item veto which related only to money bills.

President Scribner said that Mr. Varney had raised the question as to whether the language in the latter part of the last sentence of Article IV, Part 3, Section 2 meant that the Governor had a pocket veto. The Commission interpreted the language to mean that the Governor could hold a bill unless there were an intervening special session until the next regular session of the Legislature. Mr. Ward read a similar provision from the New Jersey

Constitution. President Scribner continued with Mr. Varney's comments, noting that he questioned, under Article IV, Part 3, Section 4, how a member could be expelled a second time for the same cause. Mr. Ward read the comparable provision from the Massachusetts Constitution which provides for the expulsion of a member only for disorderly behavior. President pointed out that Mr. Varney questioned the necessity of retaining Article IV, Part 5, 300 sion 13. He said that he thought that Sections 13 and 14 wont in together when there was a great doul of legislation which doult with private acts for corporations. Mr. Varney asked if the sections were intended to mean that the Legislature couldn't do by private and upecial legislation what it could do by general legislation. He said that he would like to see Section 13 clarified, and suggested adding the words "and cannot do by private and special legislation what it can do by general," at the end of the section. President Scribner indicated that he couldn't see where this language added a those to the meaning of the section. Mr. York explained as spection 13 was added to the Constitution by the 1875 commission, probably to eliminate some of the large number of private and special items hundled by the Legislavure at that time. President Scribner Suggested that the matter be continued for consideration to the next meeting.

The President stated that Mr. Varney had questioned Article IV, Paget 3, Section 15 relative to constitutional conventions and that he would send out copies of what Mr. Smith had prepared on the subject. Mr. Varney's next comment suggested adding language to Article IV, Part 3, Section 15 to the effect that "no act or resolution passed as an emergency measure should be in effect for 90 days after the convening of the next Legislature." Mr. Varney said that this suggestion seemed necessary since most, if not all, of the tax bills passed by the Legislature are passed as emergencies to prevent a referendum vote by the people. Mr. Smith asked whother the provision was intended to relate to private and special legislation. Both Messrs. Varney and Smith indicated that they felt that it should not apply. President Scribner suggested that the words "after adjournment of the next Legislature" be substituted for the convening of the next Logislature". Mr. Larmey's comment on Attricle IV, Part 3, Section _ raised the question as to whether electors shouldn't be allowed to propose amendments to the Constitution. The President said that he didn't think that the amending process should avoid the benefit of a deliberative examination and vote recvided under the present provision, commenting that he whought that the process should be much more difficult to change the Constitution than a law. He said that he thought it would be extremely unfortunate if the amending process were made too easy.

Article IV, Part 3, Section 20 was checked for consistency with the change of election dates and found consistent.

Mr. Varney's comment on Article IV, Part 3, Section 21 suggested striking out the entire section since the Legislature could provide a uniform method of initiative and referendum for municipalities by statute and it doesn't need to be in the Constitution. He suggested that the Commission defer taking any action on Article IV, Part 3, Section 22 until it had had an opportunity to check on the background of the section. It was mentioned that the City Solicitor of Portland had been quite disturbed with some problem arising under the section during the last session of the Legislature.

The Commission asked Mr. Silsby to research Article IV, Part 3, Section 7 as amended by Amendment LXIV, proposed by Resolves, 1947, Chapter 153, to see if legislation fixing the pay of Representatives limited the compensation of Senators. The Commission noted that there was apparently nothing in the Constitution which provided that Senators should receive compensation for travel.

The Commission decided to recommond changing Article V, Part 1, Section 8 to provide that Judges of Probate should be appointed. Mr. Smith suggested that the Commission give serious consideration to abolishing the office of Notary Public as a constitutional office.

Article V, Part 2 was passed over. President Scribner commented that the Commission had discussed the question of the Council at some length during the morning session and that everyone was aware of the issues and arguments without further discussion. He indicated that he thought that a vote on the Commission's recommendation on the Council would be in order at the next meeting.

The Commission backstopped briefly to consideration of Article V, Part 1, Section 11. President Scribner pointed out that the matter of pardons had been discussed before and that he was particularly concerned about the necessity of communicating them to the Legislature. He said that as far as he was concerned he could see no useful purpose was served by retaining the provision in the Constitution; that if the Legislature felt that it was necessary, it could provide for it by law.

The President stated that the question in Article V, Parts 3 and 4 is whether there should be constitutional offices, particularly that of Treasurer of State. He said that he thought the Commission had enough problems without bothering with these. He pointed out that if the Commission were proposing an entirely new document it probably could

get away with leaving the two parts out. As it is, its a very political thing and probably the Commission ought to stay away from it. Mr. Varney questioned the need for the last clause of Article V, Part 4, Section 4 "and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the biennial session of the legislature." President Scribner said that the provision really hadn't come up to bother anyone, but that he would check with the Treasurer of State to see how he construes it, and whether or not it could be eliminated.

Article VI. President Scribner said that the courts feel that everything is in the article that needs to be there. Mr. Varney questioned Section 5 at we whether Justices of the Peace and Notaries Public need to be constitutional officers. Mr. Ward said that he thought that the Governor was much too free with the appointment of notaries and justices. No decision was made by the Commission.

Article VII. No suggestions were made.

Article VIII. President Scribner commented that if the Commission involved itself with this article it could get into a lot of trouble. He said that he had received a letter from Mr. William Dunn, Headmaster and member of the Independent School Association, who wants to keep the Article just as it is, since the article, as construed, has allowed funds to go to special schools. Maine has been particularly quiet on the issues covered by the article, and I'm not disposed to pulling out the twine to see what we can unravel. Mr. York suggested that the Commission might clean up the matter of seminaries and literary institutions. President Scribner said that he didn't for one want to touch it.

Article IX, Section 2. The Commission discussed Mr. Varney's suggestion that Article IX, Section 2 (incompatible offices) be combined with the provisions of Article IV, Part 3, Section 11 which disqualifies certain persons as members of the Legislature.

Article IX, Section 2 disqualifies the following officers as members of the Legislature or from accepting a seat in Congress:

Justices of the Supreme Judicial Court
Justices of any inferior court
Attorney General
County Attorney
Treasurer of State
Adjutant General
Judges of Probate
Registers of Probate
Registers of Deeds
Sheriffs
Deputy Sheriffs
Clerks of the judicial courts

Article IV, Part 3, Section 11 disqualifies the following officers as members of the Legislature:

Members of Congress
Officers under the United States (post officers excepted)
Offices of profit under the State

The section excepts Justices of the Peace, Notaries Public, Coroners and officers of the Militia.

Mr. Varney suggested the following wording:

"Section 2. No person holding any judicial office in this state, (justices of the peace or notaries public excepted) attorney general, county attorney, treasurer of state, adjutant general, register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be members of the legislature or have a seat in the congress of the United States, and no person shall be capable of holding at the same time more than one of the offices before mentioned. Any person holding either of the foregoing offices who becomes a member of the state legislature or of congress, thereby vacates said office."

No action was taken by the Commission on the proposed change.

Article IX, Section 5. Mr. Varney proposed Article IX, Section 5 be changed to read:

"Section 5. Every person holding any judicial office under this state, the governor and members of the governor's council may be removed only by impeachment; all other office holders may be removed by impeachment or by the governor with the advice of the council, on the address of both branches of the legislature, etc."

The proposal was briefly discussed by the Commission without any final action being taken.

Article IX, Section 7. Mr. Varney suggested striking out Article IX, Section 7 as not in force:

"Section 7. While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years."

President Scribner said that he thought there were still a number of things in the State which were based on a general valuation, for example, wild lands, and suggested that he check with the State Tax Assessor to see whother he felt the section was still necessary.

The President asked whether the Commission wanted to recommend a prohibition against the income tax as a part of its report to the Legislature. He said that he was not particularly disposed to limiting what the Legislature could do to raise money, but that he felt that something should be done to call a halt to increased public spending. Mr. Mardon indicated that he thought that a recommendation of this sort would be going far beyond the scope and purpose of the Commission. President Scribner rebutted this saying that it was no more so than suggesting that changes be made in the Executive Council or recommending the creation of the office of Lieutenant Governor. At his suggestion, it was decided to defer final decision for further discussion at the next meeting.

Article IX, Section 19. Part of the section now reads:

". . .under the direction and supervision of a state department having jurisdiction over such highways. . ."

Mr. Varney said that he believed that this was inconsistent with the present statutory provisions governing the town road improvement fund (R.S., 1954, C. 23, §§60-65) and suggested that Section 19 be reworded to read:

". . .under the supervision of a state department having jurisdiction over such highways. . ."

Mr. Varney commented that he had no idea how the change would affect the overall operations of the State Highway Commission.

At the President's suggestion, Mr. Silsby was asked to research the area of state income taxation, particularly background and status of the income tax in those states having it.

The Commission turned to the question of Lieutenant Governor. President Scribner summarized the matter saying that the Commission had had the research work done and that the only remaining question was whether the Commission wanted to recommend it. He commonted that each of the members was well aware of the arguments for and against creating the office and said that he thought that if Maine continued to grow and its government got bigger there would probably come a time when the State would have a Lieutenant Governor. He pointed out that in terms of money, it would mean a \$30,000 to \$40,000 office because of the staff, offices and salaries involved. Mr. Carey said that he thought that if the Commission rejected the idea it ought to furnish some valid reasons to support its decision. He remarked that some thought that the Covernor ought to have a cabinet, and that he personally felt that the idea had a great deal of merit. President Scribner said that he was not particularly impressed with the idea and would be against it from a financial standpoint if for no other reason. The Commission reached no decision as to whether it should recommend the office of Lieutenant Governor.

President Scribner asked the members present what they thought the Commission should do about annual sessions. He said that except for the matter of budgeting, he felt that it was better to have regular and special sessions where needed than annual sessions which would probably last several months each year and which would discourage many potential candidates from seeking office. Mr. Marden indicated that he agreed with President Scribner. Mr. Snow said that he didn't feel that annual sessions were needed. President Scribner commented that he didn't think the State should go into annual sessions until after it had exhausted the use of special sessions. Mr. Varney felt that annual sessions would come in time in view of the fact that the number of new problems faced by the Legislature becomes greater with each passing session. President Scribner summed up by saying that while the members of the Commission were apparently against annual sessions at the moment, and though there seemed to be a

little more interest in the matter of Lieutenant Governor than in annual sessions, it might be well to hold both open for further discussion at the next meeting.

The Commission discussed the matter of future procedure. President Scribner pointed out that so far the Commission had reviewed reapportionment, judges of probate, item veto, voting residence and wiretapping. He said that he hoped that the members of the Commission would be able to vote on these at the next meeting, with someone present to keep a record of the vote. Thereafter, he thought the Commission should release its findings to the public and hold a subsequent hearing to allow interested persons to appear and present their views with respect to the publicized decisions of the Commission. He suggested that following the public hearing, the Commission should move on to drafting its report, stating that while it wasn't necessary to submit the report to the Legislature on the date it convened, it should be presented as closely to that time as possible. He said that he hoped that the Commission could finish the report in time to get it to the printer by the middle of December, but said that he realized that it would mean almost a meeting a week in order to do this.

The President announced the following meeting schedule:

Friday, November 16, 1962, at 10 a.m. Tuesday, November 27, 1962, at 10 a.m. (May be scheduled as a public hearing)
Tuesday, December 11, 1962, at 10 a.m.

The meeting was adjourned at 3:00 p.m.

Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

FRIDAY, NOVEMBER 16, 1962

Eighth Meeting

President Scribner convened the eighth meeting of the Commission at 10:25 A.M. in the Judiciary Room, State House, with the following members present: Messrs. Carey, Edwards, Marden, Scribner, Smith and Ward.

President Scribner informed those present that Messrs. Varney and York had advised him that they would be unable to attend the meeting, but that he had heard nothing from the three other members absent. He said that he had thought of postponing the meeting, but that it was getting too near to the deadline to be called off. He indicated that he felt that the Commission should make every effort to submit the best report possible within the limitations of time and money available to the Commission. He referred the members to the recent report submitted by the Rhode Island Constitutional Commission and commented that this type of report costs a great deal of money which obviously the Commission just didn't have.

Turning to reapportionment, he pointed out that the Commission would have to reach a decision on the question of reapportionment and submit some sort of report on it to the Legislature. He reminded the members that he had sent out some drafts and materials on reapportionment to each one, and that he had spent a great deal of time on it following the recent court decisions. President Scribner stated that it was his opinion that Maine was not improperly apportioned even with the limitation of seven on the number of Representatives from cities. He felt, however, that if the Legislature didn't act at the next session, someone would move to test the State's reapportionment formula before the courts. He thought that the least that would have to be done would be to remove the seven limitation and the advantage of fractional excesses given to the smaller counties. As far as the Senate was concerned, though there is no substantial discrimination, he said that he believed that Maine had a special problem of its own in that the Senators from a number of counties were elected out of the larger cities. As to the question of whether the Legislature should continue to make the

reapportionment, he said that he felt that Maine has done a pretty good job, and that if it should be decided to take the power to reapportion away from the Legislature, it would have to be because of an anticipation of future problems. Practically and dollarwise, it would probably be better to let some smaller group do it. It would help to eliminate a number of other problems, such as "trading" where someone is going to lose a seat. He said that he thought that the Commission ought to try to come up with the best possible solution even though the Legislature doesn't buy it, because if it didn't, and there was a court test, the recommendations of the Commission might be something the courts would buy. He felt that the Commission ought to get something together and put it out for public discussion. He commented that Mr. Varney was opposed to this because he felt that it would only attract special pleaders. The success of the Commission, he pointed out, was not going to depend on how many changes it could get through, but on the fact that it was able to closely examine the Constitution and come up with some good recommendations. He said that he thought that the forthcoming Pre-Legislative Conference to be held at the University of Maine on December 6-8, 1962 might provide an excellent opportunity to talk the Constitution over. The President felt that if it were agreeable with the members, the Commission could schedule a discussion in the area of reapportionment during the conference. He suggested that once the Commission had reached a decision on reapportionment it could discuss drafts on the constitutional changes with Mr. Silsby. Mr. Carey called the Commission's attention to the preliminary report of the Commission for Constitutional Revision for Oregon, specifically to page 14 or the provisions for reapportionment. President Scribner commented that the Commission had apparently gone into a great deal of detail judging from the length of the document. Mr. Carey agreed that it had, and that a lot of it could be eliminated. President Scribner said that it appeared that the Oregon Commission provided for the Legislative Assembly to enact a reapportionment, but which was prepared by a reapportionment commission. Mr. Carey said that he didn't like to see reapportionment taken from the Legislature, indicating that he personally felt that the Maine Legislature had done a good job. President Scribner agreed and said that reapportionment was one thing he would like to see stay in the Legislature. He reminded the members that he had sent out materials to each one showing how each State accomplished its own reapportionment. and stated that the trend was in the direction of providing some other body than the Legislature do it, partly 1) to compel enforcement by the courts, and 2) because reapportionment is such a political thing it places a tremendous burden on the members of the Legislature to reapportion where population changes mean loss of seats. He went on to say that this was the trouble in Vermont, but that as far as

he was concerned, the Constitution could always provide for some other group to do it if the Legislature failed to within a certain length of time. He said that he thought that this was one of the areas which he would like to see resolved at the present meeting, but added that if the members felt that there were other matters more urgent, he was perfectly willing to see them taken up first. He then asked the sentiment of the members for basing the Senate on districts, saying that a provision for senatorial districts would tie in neatly with a recommendation for house districts if the Commission saw fit to adopt them. Mr. Marden asked whether the Commission felt that having senatorial districts was advisable. Mr. Smith said that he was disturbed as to whether the Commission would be recommending an ideal or a political reality, since if it were put into effect, some of the counties would immediately lose seats. He stated that he had read the Baker v. Carr case again last night. over a 100 pages, and that it said absolutely nothing about having the Senate reapportioned. President Scribner replied that this was perfectly true right now, but with county lines rapidly disappearing, it wasn't going to be possible to sit still and lot the unfairness of city control over the rural areas of a county continue. He said that he agreed with Mr. Smith that he didn't think that there was a chance of a snowball in hell of getting it through, but that if the Commission didn't reach out into some of the future problem areas no one else would. He felt that until the members of the Commission themselves studied some of these problems, it would be extremely difficult for them to defend any position which they might take as a Commission. He commented that two of the basic difficulties are that its very hard to get across county lines, and the fact that every Legislator tends to look at any change in the light of what its going to do to him. Mr. Marden said that the class town arrangement presented another real problem because they traded off the officer and by the time a man got his feet placed in the Legislature, it was time to swap off again. Mr. Smith observed that practical politics is not always a bad thing; that there have to be political organizations to have good government, and that good organization is necessary in order to have good political organization. President Scribner said that frankly speaking the Commission wouldn't get anywhere unless the Legislature wanted to act on its recommendations, regardless of what it recommended. He distributed copies of the reapportionment provision taken from the Arizona Constitution without comment. Mr. Ward pointed out that there had been several bills proposed in the Legislature to set up class towns for Senate apportionment. He said that Aroostook County by an unwritten law had some sort of senatorial districting. The President distributed copies of the reapportionment provisions for Hawaii. Tennessee and Massachusetts. He commented that Massachusetts formerly

based its House apportionment on the legal polls contained in every incorporated town, but that this was later changed by amendment. He said that if apportionment was going to be based on registration in Maine, it would have to be by strict direction. Actually, he commented, Portland is the only area in the State which is denied representation. Mr. Marden suggested that the House membership be increased from 151 to 155 to take care of Portland and decide the thing without hurting anyone by taking away their seat. President Scribner said that he didn't think that this would help since the total would still have to be proportionally divided. He suggested that any proposed change would have to be figured out to see how it applied which would probably mean taking the population of a county and then dividing the county up by some method into the appropriate number of legislative districts. Mr. Smith felt that the simple way to correct any discrimination as to Portland would be to eliminate the number seven limit which would change the apportionment of Cumberland County alone and not affect the rest of the State. President Scribner said that he thought the Commission ought to recommend striking out the provision on fractional excessos as well. He indicated that he couldn't see any reason why Portland should elect 13 or 14 Representatives, and that he thought that a voter in Portland would be much better served if he was represented by a single Representative elected from his own district. He said that personally he was willing to recede on the question of changing the method of reapportioning the Senate because he didn't think that any proposal which the Commission recommended on the Senate would stand very much chance of getting through. He added that he would like to see the adoption of representative districts.

Recess in the absence of President Scribner who was called out to speak with Mr. Steven D. Shaw, Administrative Assistant to the Governor.

The Commission, on the return of President Scribner, moved to a discussion of the draft of Article IV, Part 1, §2, relative to House of Representatives, sent out to the members by President Scribner. President Scribner said that the number of Representatives was fixed at 151 in the draft, but that it could be changed to 155 just as well to take care of anyone fussy about seats. Mr. Ward asked whether there was any merit in the Commission reporting alternative proposals on apportionment. President Scribner replied that to his own way of thinking it might be well to give an indication of the various things the Commission had thought about, but not to give alternatives because it would immediately line up all the different factions. He said that what he was concerned with was that the Legislature would feel that the courts

wouldn't do anything about apportionment, and the courts would, then there would be renewed agitation for a constitutional convention, and if there was, no one could tell what would happen. He suggested that the Commission tentatively move the limit to 155. Mr. Carey suggested adding the words "as equal as practicable" in the 7th line. Mr. Ward asked whether there would be any objection to setting up a schedule in any proposed change as to whon the actual apportionment would be done. President Scribner said that he didn't know; that Judge Gignoux (U.S. District Court) would probably go along with it if it was included in the amendment, but by the time it came up, he would have a lot of precedent, so it would be difficult to say just what he would do. He said that he was especially concerned with the seven limitation, and thought that the next Legislature ought to take it out if nothing else. Mr. Ward commented that the date for the Legislature to reapportion could be set just prior to December, 1963; that this would be pressurizing the Legislature, but it could do it then if it wanted to. Mr. Marden said that he felt that it was vital for the Legislature to get first crack at it. President Scribner pointed out that there would be little which the Commission recommended that the Legislature couldn't change. He suggested for draft purposes, that the limit be moved up to 155, and "prior to January first, 1964" set as the deadline for accomplishing the recommended apportionment. The President asked whether the members thought the Senate should be left alone. Mr. Ward said that he would ignore it simply because he didn't think the Commission would get anywhere with it. President Scribner then asked whether they thought that the Commission should use the number of votes cast for Governor as the basis for reapportionment. Mr. Ward said that he would go for that, and the others indicated their agreement. President Scribner asked what should be done if the Legislature fails to act -- whether some other body should have the responsibility if it fails to do so. The members agreed that the Legislature should have initial responsibility for apportionment, and where it failed to discharge it, then the Supreme Judicial Court should do it. President Scribner said that he would try to prepare something to accomplish this in time for the next meeting.

The Commission turned to the question of annual sessions. President Scribner asked for suggestions as to what action the members felt the Commission should take. Mr. Carey said that personally he liked Professor Dow's recommendation for special sessions called for January of every even numbered year rather than changing over to annual sessions. President Scribner said that he thought that special sessions have been useful, and that there seemed to be no great need yet to move back to annual sessions. Mr. Carey pointed out the reference

to Professor Dow's recommendation in the Sunday Tolegram reprint which he read aloud to the members. President Scribner summed up saying that it seemed to be the consensus that the Commission should report that it felt there was no need to change the Constitution to provide for annual sessions so long as special sessions could be effectively utilized for extraordinary business. He pointed out that Mr. York, when he phoned him to list his opinion and vote on the pending questions, stated that he was opposed to recommending annual sessions.

Prosident Scribner raised the question of recommending the office of Lieutenant Governor. Mr. Snow said that he didn't think the State needed one. Mr. Ward said that he had changed his mind: that when he thought of the amount of money needed to set up the office as against what he would have to do, he was inclined to be against it. Mr. Carey thought that the Lieutenant Governor would be a useful and worthwhile officer if the Legislature were particular about spelling out the duties of his office. President Scribner stated that creating the office of Lieutenant Governor would present many of the same problems existing between the President and Vice President of the United States. If both officers are compatible, a Vice President or Lieutenant Governor can be a lot of help. He said that he supposed that both should be run on a bracketed basis to be of the same party. He added that what bothered him the most was that he couldn't see why anyone who was any good would want to be Lieutenant Governor of the State of Maine, unless he wanted to be Governor and then he's got to wait. Mr. Marden said that he had protty well come to the conclusion that it was a good idea. He said that the Lieutenant Governor would be able to take care of the duties that the Administrative Assistant handles and provide liaison between the executive and the Legislature. If the Governor dies, his party should be entitled to a successor of the same political sentiment to continue the same administrative policies. President Scribner said from a practical standpoint price was an important factor. He estimated that a Lieutenant Governor would have to receive at least \$10,000 annually, plus several thousand dollars for personal expenses, offices, personnel and supplies, probably as much as \$25,000 a year which will inevitably go up as the office becomes more firmly entrenched. said that it would be a good deal if the Lieutenant Governor were congenial with the Governor, but that if they didn't get along, the value of the office would be highly questionable. He pointed out that politically it would mean another politician for the party. Mr. Ward commented that the Governor actually hadn't been tried out for a full four year term yet, so no one really

knows how it will work out. President Scribner stated that personally he didn't think that the Governor had much to do anyway, especially if he had good department heads. Mr. Carey commented that he was not going out for it. Mr. Ward said that the only good thing about having the office was if the Governor happened to die. Prosident Scribner asked if taking the office as a twenty year proposition was it going to be worth a half a million dollars. He said that actually Governor Clauson's death had meant only a two year loss to the Democrats. He pointed out that there was one argument which hadn't been discussed and that was that there weren't enough major political officers elected by the people. said that Maine was a strange State in this respect compared with the western States. He suggested that perhaps Maine needed more State-wide elective offices. Mr. Carey said that he thought that the members had adequately discussed the subject and that there probably weren't enough jobs for him to do to justify the expense. President Scribner stated that Mr. York had indicated over the phone that he was in favor of a Lieutenant Governor. He said that he thought that the members of the Commission should fully discuss each subject as they had that of Lieutenant Governor and give explicit reasons for each Commission recommendation.

The Executive Council was taken up. President Scribner suggested that the Commission could dispose of the Council issue very quickly. He said that he appreciated the political implications concorning the Council and the one thing that stuck in his mind and thoughts was that the people of the State were not ready to move to annual sessions, and he would be afraid again that if the Council was abolished, it would mean more and more expense. abolition of the Executive Council would require the substitution of some other body for confirming the Governor's appointments and, if it were the Senate, it would probably mean a serious lag in confirmations. He said that he knew that some groups like the League of Women Voters wouldn't mind seeing the necessity for approval of appointments removed. Mr. Smith mentioned that a point in favor of retention of the Council which had not been made was access by the average citizen through the seven Councillors to the Governor. Mr. Carey said that Attorney Joseph Campbell of Augusta thought it would be possible to redistribute some of the powers of the Council elsewhere. He called attention to Legislative Document No. 1125. AN ACT Conferring upon others the Powers now Vested in the Executive Council, prepared by Mr. Campbell, which was reintroduced at the regular session of the One-Hundredth Legislature. President Scribner pointed out that it happens once or twice a year that the Council thwarts the Governor, and that it didn't seem to make any difference whether they were of the same political party or not.

Mr. Carey said that he thought there were two things which should be considered: 1) Whether the Council should be elected; and 2) If it were elected, whether there should be a deletion of some of its statutory powers. President Scribner felt that the Council was a whipping boy which the State should have or something like it to take some of the heat off the Governor. He said that the Executive Council exists for a historic reason just as Maine still has the town meeting form of government. He said that he thought the idea in New England was essentially to keep government not too powerful and to keep it close to the people. Council, he felt served as a necessary deterrant and restraint on the executive power. Mr. Snow indicated that he thought that the Council had been helpful to the people. Mr. Carey said what he thought was that the Council should be considered important and necessary in the minds of the electorate.

The Commission recessed at 12:20 p.m. for lunch and was called to order at 1:40 p.m. by President Scribner.

Discussion of the Executive Council was resumed. Mr. Edwards stated that he could see no need whatscever for the Governor's Council. President Scribner replied that he understood. Mr. Edwards said that it had been his position for a long time. President Scribner asked him if he cared to expand on it. Mr. Edwards said that the only need for the Council, if any, was to confirm appointments, and that this could be handled by a Committee of the Senate. President Scribner said that there was nothing in the Constitution which said that the Council had to have all its present statutory duties. He added that by taking away the statutory duties of the Council there would be no real difference between a Committee of the Senate and the Council. Mr. Smith commented that all the Constitution said, as President Scribner had pointed out, was that the Governor shall have a Council, nothing else. President Scribner commented that he knew there was a lot of sentiment that the Governor should have a cabinet to advise him, but that he would gather from the discussion that the consensus did not favor abolishing the Council. He felt, however, that no vote should be taken because of the three absent members. He said there was nothing to prevent any member who cared to do so from filing a minority report, but that for the sake of effectiveness he hoped that the members could agree on most of the Commission recommendations. Mr. Carey said that it didn't make any difference to him whether it was the Council or a Committee of the Senate, the only important question was how it was elected. He pointed out that the Governor had said sometime ago that he felt that the Council ought to be elected. He said that personally he would like to see

a limitation on the powers of the Council and a change in how it was chosen. President Scribner said that it was his opinion that the Council was the whipping boy for several writers and was far different from the Council as they said it was. He indicated that he felt that it was not a major authority though it was able through its veto to influence executive action to some extent. He said the Democrats were upset because when they had Governor Clauson, he had to deal with a Republican Council which meant that he didn't have a free hand. Mr. Carey said that if there were annual sessions, he would go along with a Committee of the Legislature. He said that a confirmatory body was a necessity, but if there weren't annual sessions, a Committee of the Legislature would seem unnecessary. President Scribner said that he believed that the State civil service had had a considerable effect on eliminating some of the power of the Council. He remarked that it was interesting to see that in Massachusetts where the Council is completely Democrat, Governor Volpe had said that the Council was a good thing. President Scribner suggested leaving the subject of the Council for the moment and taking it up later. He said that he would have Mr. Silsby check into legislation and the possibility of electing the Council.

President Scribner was called out to speak with the Secretary of State. The proposal prohibiting the income tax was taken up in his absence.

Mr. Marden said that he was opposed to an income tax. but come what may, it might be needed some day and therefore he was against a constitutional prohibition of it as a demonstration of emotionalism. Mr. Smith said that the income tax was such an invasion and such a departure in State taxation that the people of the State ought to be entitled to vote on it. He said that he didn't particularly like to think of it being regarded as a display of immature omotionalism and stated that he had prepared a review of the history of State income taxation from materials furnished by Miss Hary. He pointed out that Mr. Varney contended that the Commission was not an appropriate body to raise the question, but that it was a statutory question and should be raised in the Legislature. He said that he didn't know but what Mr. Varney had a point. Mr. Carey said that he didn't think the subject had enough substance to include it in the report, but that it might be included as a tail end item for consideration. He said that he believed that it was Mr. Smith's idea to submit the question to a vote of the people to put the prohibition into the Constitution, and when pressure was such that the income tax was needed, the people would have to vote on it favorably to take it out of the Constitution before the Legislature could act. Mr. Smith said that he

wasn't inclined to push the proposal. Mr. Ward indicated that he thought that it was something which Mr. Smith should put in as an individual legislator. This view was supported by a vote of the members present not to sponsor the recommendation.

President Scribner resumed the chair, and upon being advised of the vote, asked Mr. Smith if he wished to have the proposal mentioned in the report without endorsement of the Commission. Mr. Smith replied that he would rather it wasn't discussed in the report at all. Mr. Carey indicated that he thought that it was not a structural amendment and that it had nothing to do with the machinery of government. President Scribner said that the Commission would leave it out of the report and let Mr. Smith pursue the matter as a legislator.

The Commission took up the proposal on wiretapping. Mr. Carcy asked President Scribner if he had adapted the proposal from the provision recommended in the report of the Commission on Revision of the Rhode Island Constitution. President Scribner said that he had, and that he thought it was very good. Mr. Carey said that it was the best he'd seen. Mr. Smith raised the question of what was an unreasonable interception. President Scribner explained that the term would undoubtedly have the same meaning as the prohibition against unreasonable searches and seizures since the abuses sought to be protected against and the prehibitory language were much the same. The Commission voted to adopt the proposal as a recommendation without change.

The appointment of Registers of Probate was discussed. President Scribner said that he hadn't thought about providing for the appointment of Registers of Probate. Mr. Carey said that he thought the time had come when the office should be appointive, rather than relying on political elections. President Scribner thought that the question of appointment of Registers of Probate ought to be kept separate from the proposal recommending appointment of Judges of Probate. He said that he felt that the two should be taken in parts rather than chance defeating the whole thing by making the recommended amendment all inclusive. It was voted to recommend the appointment of Judges of Probate and leave the method of selecting Registers of Probate as it was.

The question of item veto for the Governor was taken up. President Scribner said the veto would apply only to appropriation bills and that the Commission had discussed the matter already on several occasions. It was voted to recommend the adoption of the item veto.

The Commission discussed whether to recommend removal of the following provision from Article I, Section 4, relative to libel:

"and in all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their direction, the law and the fact"

Mr. Carey stated that the Supreme Judicial Court had interpreted the meaning of the provision in State v. Gould, 62 Maine 511. It was voted to leave the provision alone.

The question of reducing the voting age was discussed. President Scribner said that he thought the Commission ought to give serious consideration to recommending a reduction in the voting age. He said that he didn't think that it would make much difference as far as the overall political picture was concerned, but it was one of the things that the Commission could do approaching the question of constitutional changes from the other side. He stated that he didn't know whether the Legislature would buy the idea, let alone the people, but that it was a liberalizing provision which he felt the Commission should seriously consider. He indicated that he would not recommend going lower than twenty, following Hawaii's example. Mr. Ward said that he personally felt that the Commission should go along with the idea. It was so voted.

The Commission discussed recommending removal of the exception of paupers as electors under Article II. Section 1, and the question of residence. Mr. Carey read portions of an article from the New York Times on the removal of voters from towns within a State. President Scribner noted that the newly proposed constitution for Oregon provided that a person must reside for at least 6 months. except as otherwise provided by law, to vote for candidates for President and Vice President. Mr. Ward said that he thought that the provision governing the acquisition of voting residence from town to town within the State should be eliminated; and that a person should only be required to establish a State voting residence. President Scribner pointed out as the Constitution now stands a person has to reside in the State for 6 months. He suggested lowering this limitation to 3 months and leaving the 3 month change in residence requirement as is. He said that he thought that if the people wanted a person to continue to vote in his former town for the 3 months following his removal it should be in the Constitution. He pointed out that some of the registrars under the new election law take themselves pretty seriously and have removed voters from the voting lists if they merely move.

The matter of recount was considered. President Scribner said the Constitution provided that the Legislature shall be the judge of who is elected, and that the Governor shall hold office for 4 years from the first Wednesday of January. He asked what, as perhaps would happen at the present time, if the matter of gubernatorial vote was thrown to the Legislature and it should decide to count the votes itself. He said it was true that the President of the Senate would be the acting Governor, but that it would seem to be better procedure if the prior term continued until a successor qualified. He indicated that he felt that Article IX, Section 4 and Article V. Part 1, Section 3, dealing with the election of Governor, should receive some detailed study. He stated that he was concerned with whether the outgoing Governor's term should hold over 2 or 3 days until after the convening of the Legislature, and asked if anyone thought the Commission ought to do something to lengthen the term out. Mr. Ward pointed out if it was provided that the Governor's torm held over until his successor qualified, a Republican Legislature, for example in the present recount, even though Mr. Dolloff was the winner could, if it decided to count the gubernatorial vote, keep Governor Reed in office for months. President Scribner commented that as far as he could see no one seemed particularly concerned. Mr. Ward said as far as he was concerned, the procedure could be left as is. President Scribner suggested that he try to see what he could do with some language.

President Scribner brought up the problem of combining Article IV, Part 3, Section 11 and Article IX, Section 2, saying it was a minor problem, but since the two sections covered pretty much the same ground, it seemed to him that they should be cleaned up. He said that this raised the question of how the Commission should handle such minor changes and asked the members for suggestions. Mr. Ward said that he thought the more the Commission cluttered up its recommendations with minor matters the less chance it would have of getting anything through. He said that he felt that the Constitution was pretty clear as it was and that he didn't think the Commission should bother too much with minor changes.

President Scribner suggested that there should be more in the Constitution to say how a constitutional convention should be carried out. He pointed out that Article IV, Part 3, Section 15 authorizes the Legislature, by a two-thirds vote of both branches, to call constitutional conventions, and says nothing as to how it shall be conducted. He said that Mr. LaFleur during his campaign for Governor had proposed a constitutional amendment to take care of this. He stated that he felt that the Commission should recommend a provision which spelled out the method of holding and amending the Constitution through a convention. He suggested

that the section could perhaps be improved by adding some of the language from Article X, Section 4. President Scribner said that he felt that Mr. Silsby should do some research on the problem before the Commission reached any conclusions.

President Scribner noted Article V, Part 1, Section 3 for future study, specifically the last sentence which relates to ties. He said that there was some question in his own mind if the sentence couldn't just as well be deleted.

The Commission, after discussion, scheduled the next meeting for Thursday, November 29, 1962. President Scribner said that he had thought that the Commission might be able to hold its second public hearing on December 11th, but now he didn't know whether the Commission would have its material in shape by that time. He said that he would contact the various colleges in the State to see if there were possibly any faculty members and students who might be willing to get together with the Commission and help with the report writing.

The meeting was adjourned at 3:35 p.m.

Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

THURSDAY, NOVEMBER 29, 1962

Ninth Meeting

The Commission met at the University of Maine at the invitation of Professor Edward F. Dow, with the following members present: Messrs. Carey, Edwards, Scribner, Smith. Ward and York.

The following was the Commission's schedule:

- 2:30 P.M. Room 105, Stevens Hall. Meeting of members of Commission only, to be spent on Commission work unrelated to the University of Maine.
- 4:00 P.M. Room 137, Physics Building (large lecture hall). Open meeting with Professor Dow, students and others.
- 5:30 P.M. Supper Meeting, Ham Room, Student Union Building.

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Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

TUESDAY, DECEMBER 11, 1962
Tenth Meeting

Public hearing hold in the Judiciary Room, State House, at 10:30 A.M.

PRESIDENT SCRIBNER: I now ask the Commission to come to order and would like to indicate at this time that this is the Tenth Meeting that has been held by the Maine Constitutional Commistion since its appointment was enacted early in January.

As you know, a meeting was held in Rockland last August in conjunction with the Annual Meeting of the Maine State Bar Association. A meeting was also held two weeks prior to this meeting on the Campus at the University of Maine with the student body and the faculty present as they had indicated an interest in the purposes and problems of the Constitutional Commission. All meetings are open to the public and to the press. Further, all of the deliberations of the Commission have been in open meetings.

The Commission felt sure after their organization that the appropriation, while it seemed large in total, was quite inadequate to do a complete and thorough job with research and all related matters, because the funds so appropriated must be conserved to prepare their final report.

A very helpful meeting was held on March 21, 1962.

The Constitutional Commission has always made it clear, if there was a demand for any future public sessions, that they would be glad to call them, but there has been no demand. However, it was the feeling of the Commission that it would be advisable to advertise that the public hearing of this date, December 11th, was to be held. The proposed meeting of the Commission as planned was advertised two times in newspapers in general circulation in the various sections of the State. I feel that the news media could have been a little more effective, if it had been on a display basis.

The Commission is now in session and we are pleased to have those present in attendance. The Commission hopes that some of those present will desire to be heard before we end our meeting in order to acquaint those interested, at least in part, with the areas which we will cover at this meeting and we would like to hear from all those who desire to be heard on the subjects relating to the Constitutional Commission.

There are four particular matters which the Commission has previously indicated they would wish to cover; namely,

- 1. Redistricting.
- 2. Lowering of the Voting Age.
- 3. Appointment of the Judge of Probate.
- 4. Annual sessions of the Legislature.

Many other matters have been considered by the Commission, but these are the four that the Commission has taken a tentative position on and has given support to and the purpose of this meeting today is for those who are interested in the opportunity to hear the proceedings and be heard, if they desire.

The figures of the present election are not available as they are in the Secretary of State's Office where they are doing a break-down on them at this time. One interesting thing is that - first there is very little difference if taken on a county basis. In 1960 Cumberland County had 18.8% of the population - 18.1% of the registered voters and they cast 19.2% of the gubernatorial votes. Lincoln County had 1.9% of the population, 2.4% of the registered voters and they cast 2.4% of the gubernatorial votes.

Sagadahoc County had 2.3% of the population, 2.3% of the registered voters and they cast 2.5% of the gubernatorial votes. Waldo County had 2.3% of the population, 2.3% of the registered voters and they cast 2.5% of the gubernatorial votes.

It is the thinking of the Commission that whatever area is used for the measurement, it should be one which would give a fair representation to the voters and to the population in all sections of the State.

The first topic for discussion is redistricting. Does anyone wish to be heard on this subject? Our next subject

then is the lowering of the voting age. The feeling was expressed on the Campus at the University of Maine that it is very difficult to get people to vote on campus as it is and an overwhelming number were not interested in the lowering of the voting age.

(At this point Mr. William Chandler, a Senior Student at the University of Maine indicated that he wished to be heard.)

Our next topic for discussion will be the appointment of the Judge of Probate. Does anyone wish to be heard on this subject?

Our last subject, then will be annual sessions of the Legislature. Anyone wish to be heard on this subject?

The question has been raised as to whether or not the Commission should consider the office of a Lieutenant Governor and the Commission has taken no position as yet on this subject. It is felt that the power of that office, if established, would not be sufficiently challenging to obtain candidates that would add anything to the prestige of the State Government. However, it is very difficult to tell, never having had such an office. It would seem with a State of this size and the type of government that such an office would be merely that of one of standby to see if something happened to the Governor. Therefore, the Commission has not taken any position on that at this time.

Now we will hear from Mr. Chandler on the subject of the lowering of the voting age. MR. CHANDLER: Mr. Chairman. Gentlemen of the Commission. I'm sure all of you Gentlemen are familar with me - my name is William Chandler - I'm from Old Town - a student at the University. I prefer to - prefer to think of myself as an interested member of the electorate of the State of Maine. All of you know my particular stand on the voting age - I think I tried to make that purpose clear at the last public hearing, so that I would not like to stand too much on that at this time. I am glad to see that you are recommending lowering it; I would again prefer going to 18, but at least you - you're going. I think, in the right direction.

I would, with your permission - I've had a chance to examine the Constitution, in fact study it in some detail - with your permission, I'd like to kind of run through and pick out those points which I think, at least, I wish you Gentlemen would give some consideration to. I don't know whether this would work most convenient, but my first consideration, as I just said, would come in Article II, Section 1, which would - which now states at the age of 21 would be the minimum age for voting as you have recommended, and I would like to see this lowered to 20.

The next item comes from Article IV on page 8, and is Section 2. In some discussions we might temporary - I think we would like to see where the Governor would have, instead of 5 days with which to report bills back, a possible increase to 7 to 10 days. I think 7 days is

sufficient, but this is some area in which a little research might be made. I think a minimum of 7, and perhaps an outside figure of 10.

After Section 15 on page 9 - this is again in Article IV - my consideration would be not to do away necessarily with having more commissions like your's presently, but I would like to see a provision in our Constitution which would provide for the calling of a Constitutional Convention, or at least a question on the ballot, every 20 years. I'm thinking in terms of every generation - approximately 20 years - make a provision where the electors could decide whether or not they should have a Constitutional Convention or not. If the majority so decide, then one could be called into session to study the Constitution on a periodic basis. Some people consider this action an unnecessary expense, but I think that where we have such a changing world these days, our Constitution which is the very basis of our laws, as far as the State of Maine is concerned, should be re-evaluated, at least once every generation.

PRESIDENT SCRIBNER: This type of provision is, of course, not unusual in our Constitutions - New Hampshire, I understand, has it at least once every -

MR. CHANDLER: Every 7 years.

PRESIDENT SCRIBNER: and I think there its Constitutional Conventions are in a permanent session and are chosen from time to time. They have had a Constitutional Commission

which was authorized the last time the people were called upon to vote. The question is whether or not, if you have a provision for - this is an action which should be taken. The Constitution ideally seems to be to guarantee the rights of the people, particularly to protect the minority who ought, at any rate - to the rights which they have - because of the sufficient majority, and then the set-up which establishes, particularly, the continuity of State government.

Now if you have a Constitutional Convention called to office that goes way beyond that and gets into many of these areas that involve the Constitution and what they can do if there is no review there, and if you have a Constitutional Convention which is authorized to act without the State Legislature - but frankly our services here have been an attempt to get our people interested in the Constitution and to discover areas, particularly areas where people doubt whether their rights have been amply protected within the Constitution. There we have found there are a number of suggestions which have the effect of changing the form of government, for instance, strongthening the Governor and weakening the prerogatives of the Legislature, but I didn't know there was any recommendation - do you and your colleagues and those at the University and those who have studied it - do you find that our Constitution at the moment needs the kind of basic rehaul - redoing that we might expect from a Constitutional Convention

called to rewrite the whole Constitution?

MR. CHANDLER: In the first place, I don't think I'm qualified to speak for my colleagues or those at the University. I would like to speak as far as myself is concerned.

What you have said is true, and I am cognizant of the lack of interest in your work. I still feel that although a major overhaul is not necessary at this time, or perhaps every 20 years, we still are in a changing world - I think if our very basic practice in our present Constitution which do need to be overhauled - which I hope to get to eventually again. But I think its just the opportunity.

Now, as you said in New Hampshire, this seems to be rather a lack of initiative on their part, as far as you say, getting areas in their Constitution which should perhaps be in the Legislative body, but I think it varies every 20 years. Is - is this a suitable length of time in which this could be given consideration?

In the first place if no more interest other than what is developed as far as your work is concerned, then I doubt very much if the electors will want to go to the expense of calling a Constitutional Convention, even every 20 years, unless they thought there was sufficient interest. PRESIDENT SCRIBNER: Well, this is just the point. I think that if you went to any citizens and said "Don't you think we ought to redo the Constitution?" or "Don't you think we

ought to have a Constitutional Committee?" or "Don't you think we ought to have a Constitutional Convention?" the average voter is immediately going to say "Yes". and he hasn't read the Constitution itself and doesn't know very much about it - it seems like a good idea. I think that you're not going to have anybody campaigning against the Constitutional Convention because people will never follow through as to the reasons why this sort of thing is needed or this is just a conservative, reactionary sort of person. They don't want to have a good look at the stuff; but I think that if this is the sort of question goes on the ballot, I would assume that - I haven't a chance to examine, but I would assume that almost every time it was voted upon that it would be an affirmative vote even though just 10 years ago the whole Constitution might have been rewritten; even though there's not a single instance of the Constitution failing to properly protect the rights of the minority or individual citizens, which is after all the important thing that a Constitution is for: and frankly, in all the discussion which we've had. and in all of the correspondence which we've had, and all the comments. I haven't seen anything directed to the point that there is a failure in the Maine Constitution today to protect the basic rights of the people - to protect the rights which were guaranteed to them when this Constitution was adopted back in 1820.

MR. CHANDLER: I'm not disagreeing with you, Mr. Scribner.

PRESIDENT SCRIBNER: Well, I'm - I'm not trying

MR. CHANDLER: Yeah.

PRESIDENT SCRIENER: to get an argument, but I think that this is a point which if somebody says "Its time to have a Constitutional Convention," and somebody says "No," the comment immediately is "Well, they don't want any change." You can't get the people to look at the point that perhaps if you've a basic document that served you well, that by changing it - it might be a good idea not to just tinker with it, because somebody thinks its nice to have it a little different.

MR. CHANDLER: Well, in the first place, needless to say, this Commission alone which was alloted \$10,000, then certainly the cost of a Constitutional Convention, I would estimate, would run to at least \$100,000. I think this factor alone would with any rational person would give certain importance to the need for calling a Constitutional Convention. Now I'm sure that if the majority of people felt that the Constitution did not specifically need any change - that it was working and was of benefit for contemporary living - that they would weigh this factor and decide against calling a Constitutional Convention.

I think we should give due respect to the electorate of the State in this respect. Other than that, I - I must agree with you that perhaps we should leave good things

working alone. But I still maintain that I think maybee - maybee 20 - maybee 30 - I think every 20 years, because this approximates a generation. So I'm sure we can argue back and forth with this for a long time.

PRESIDENT SCRIBNER: Well, we made the point that - MR. CHANDLER: Yeah.

PRESIDENT SCRIBNER: the point was made quite generally, certainly by political scientists who feel that every generation perhaps ought to have a chance to look at the Constitution every number of years and not be governed by dead hands; but its a difficult thing to expect the electorate to face the issue of a Constitutional amendment now. Any proposal which is voted upon, because they feel that the Legislature has allowed it on the ballot, it must have been looked at pretty carefully and is alright.

MR. CHANDLER: Perhaps this next item will be even more controversal. I'm referring to page 13, Article V. At our discussion in the University on the campus

MR. CHANDLER: Article V, Section 2.

PRESIDENT SCRIBNER: What section?

PRESIDENT SCRIBNER: Article V, Part Second, the Council?
MR. CHANDLER: Yes. Yes.

PRESIDENT SCRIBNER: Are you going to discuss that? I thought I'd tell you that that's been pretty well talked about. Are you going to discuss the whole section?

MR. CHANDLER: No, just - well my basic consideration is

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that I think that we would be better off with the Councillors being popularly elected.

PRESIDENT SCRIBNER: Alright. Mr. Chandler is talking about Part Second, Article V of our Constitution which now provides that there shall be a Governor and Council of 7. to be elected by the Legislature and serve MR. CHANDLER: Two - there being only one other State which currently popularly elects its Councillors. But, if the Councillors are to act as watchdog on the executive power - to have - I would like to see a distinct a separation between the Legislative powers and Executive powers, and, as you say, if these people are to act as a watchdog, they would act as a watchdog more for the public - for the electorate than necessarily for the Legislature. Therefore, I would like to have you at least consider the fact that having them possibly popularly elected. There again, if we decide in a number of years to reconsider this factor, weighed from the later advantage, and there are a lot of people, including some of my colleagues, who have advocated this, that we abolish the Executive Council.

PRESIDENT SCRIBNER: Well

MR. SMITH: May I ask a question?

PRESIDENT SCRIBNER: Yes.

MR. SMITH: Have you considered the mechanics of popular election, assuming that we announce that we now - now have

a popularly elected Council - wouldn't the man from Bangor always win? Just as particularly, wouldn't the man from Portland always win? How are we going to get a fair popular election in the districts? I think we should consider that.

MR. CHANDLER: Well, I have given this some consideration, and I think my first consideration would be to reduce the number to five. Of course, we want an odd number naturally, and I think I would divide this - let's say 6 - if we go into the - there's going to be 31 Senatorial Districts.

In other words, my idea was to - your recommendation would - is going to be on 31. Is that right? Senatorial Districts?

PRESIDENT SCRIBNER: Are we going to come to Senatorial Districts? As a matter of fact we have enough trouble left over from the House with those who aren't going to be happy at all.

MR. CHANDLER: Well, I understood you - 155 districts, and this would be 31 Senators - 5 or 6.

PRESIDENT SCRIBNER: There has been no affirmative vote at all on the Senate.

MR. CHANDLER: Well this - this is my idea to have perhaps 5 Councillors and if, as you say, 30 or 31 Senatorial Districts, you'd take 6 of these. I mean theoretically these should be evenly divided and to elect the Councillors in the same districts by a combination of districts.

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MR. SMITH: They would be prearranged - the districting on these on the vote?

MR. CHANDLER: Yes.

MR. BEANE: Did I understand that you - Did I understand that you feel that it would be better to have a popular election of the Council than outright abolishment of the Council?

MR. CHANDLER: At the present time I feel that there is sufficiently listless or sufficient apathy with the State public or State Legislature and with electorate, or both, that we would never see the abolishment of the Council; and I'm one of these type of people who would like to, at least, work in that way; and I think that if we get away from the prerogative of the Legislature to the people, then the people can weigh the advantage more themselves; and perhaps we can stir up sufficient interest in this respect. Maybee they want to go back to giving it to the prerogative of the Legislature. Maybee they want to do away with the Council.

PRESIDENT SCRIBNER: Yes.

MR. CHANDLER: But I think we would see a more bipartisan attitude on the - the - under - on the part of the Council if they are popularly elected. After all we may have with the present urban or rather rural representation in the Legislature - you may not have a person who really represents the people of his district on the Council; but

if he is popularly elected, presumably by a majority, then theoretically he's representing his people. Turning to page 4

PRESIDENT SCRIBNER: May I interrupt you there MR. CHANDLER: Yes, Sir.

PRESIDENT SCRIBNER: just for a moment? We're very glad to have this group here with us and I want to give you a chance to ask questions without putting you on the spot. I hope you will be thinking about the questions that you might like to ask concerning the Constitution. There are some, not very many, but a few copies here, if anybody wanted to to refer to a particular section, and I just make this request: if you do ask the questions now so that if you have to go at least some of us here, if you could let us know, and we'll - the Chairman - would be glad to clear it up. In the meantime, I think that his presentation will perhaps supply us with questions to go on.

MR. CHANDLER: A true particular here - I would prefer to see the Secretary of State and the Treasurer appointed by the Governor; and I am sure all of you Gentlemen are familiar with this.

PRESIDENT SCRIBNER: Under the present Maine Constitution, the Secretary of State, who sees is elected to the State and whose aid to the Governor and Council is a double job which the Secretary may be called to do, and Treasurer are elected every 2 years by a joint ballot of the Senators

and Representatives in convention. Mr. Chandler suggested that - that I gather that they no longer need Constitutional officers, but in fact if they're provided for by legislation they could be appointed by the Governor.

MR. CHANDLER: That's right. I would like to see their appointments made by the Governor with, if we're going to consider the Council, of course, with the consent of the Council. In other words these positions would not be Constitutionally provided for. This would take care of Article V, Part 3 and Part 4; and in following your considerations, and your number third consideration, I believe, which would be Article VI on Judicial Power, Section 7, I think the time has come when Judges and Registers of Probate should be appointed by the Executive power instead of being popularly elected.

Going to Article VII on the very bottom of the page,
I don't know whether this is come across to your mind or
not, but this seems to be rather a hundred years old. On
Section 5, at the very last, it says that "unless he shall
pay an equivalent to be fixed by law." Now, I'm not sure I haven't checked into the Federal Constitution or the
requirements on this, but I'm wondering if this is not
unconstitutional that any person can pay - can pay to
PRESIDENT SCRIBNER: Mr. Chandler is now talking about
the - Article VII of the Constitution which has to do
with the military and which provides that certain people:

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quakers and shakers, judges, municipal officers and so forth, shall be exempt from military duty. No other able bodied person of the age of 18 and under the age of 45, except that officers of the militia with an honorable discharge shall be exempt unless he shall pay an equivalent to be fixed by law. I'm sure that all of you know that under your Civil War history this provision was observed, but this is no longer so, and the provision now has only an historical interest.

LR. CHANDLER: Under Article IX, General Provisions, Section 10, there's been a lot of question as to the feasibility of having county government in the State of Maine, as to its practically and - practicability and efficiency. The Constitution provides that the Sheriffs shall be elected by the people in the respective counties. I would certainly prefer that to get this from politics that they either be appointed by the County Commissioners or perhaps appointed by the Governor.

PRESIDENT SCRIBNER: You're not planning to run in any particular county for that body are you?

MR. CHANDLER: No, Sir.

PRESIDENT SCRIBNER: Well, as you know, the Constitution of Maine does not divide the State into counties; does not draw any lines; does not provide for county officers, except that it does direct the

MR. CHANDLER: Along with the Treasurer and the Secretary

of State on page - Section 11, and I believe that its my contention that the Attorney General also falls in this category along with the Secretary of State and Treasurer and should be, instead of appointed, rather selected by the Logislature, to be appointed by the Governor. In conjunction with these, I think I follow along with, I believe its Senator Lovell's proposals, that the terms of department heads be coterminous with that of the Executive or the Governor. With the - the only exception, I would - there would be, and I don't see any notation of it in the Constitution, is that of Audit. I believe that the post audit function is definitely a Legislative prerogative so I would still prefer to - that the Auditor be placed under - similar to the GAO of the United States Legislature. Perhaps this is an oversight and perhaps -I'm not sure exactly - referring to Article X in the traditional provisions on page 19. When they changed the voting date from the second Monday in November to September - to the Tuesday following the first Monday of November - Section 4 - according to my copy, this was not revised. I assume that the idea was to have any proposals in changing the - let's see, this refers to proposals to amend the Constitution. I would think that we should if we're going to hold to the date of the Tuesday following the first Monday in November that we should change this in Section 4 to be

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PRESIDENT SCRIBNER: I think you'll find that has been changed.

MR. CHANDLER: It has?

PRESIDENT SCRIBNER: I think that was amended when they made the other amendment. I think that if you look on page 33 - about the middle of the page.

MR. CHANDLER: I beg your pardon. Yes - I didn't follow it that closely. That completes the actual Constitution. I don't know how many of you Gentlemen have had a chance to

PRESIDENT SCRIBNER: Mr. Varney. Can I interrupt just a minute?

MR. VARNEY: Yes.

MR. SNOW: I'd like to ask the gentleman

PRESIDENT SCRIBNER: Mr. Chandler.

MR. SNOW: Mr. Chandler - if speaking in the light of this is - does he represent any one group or why is he there presenting these suggestions?

PRESIDENT SCRIBNER: Well, he can answer that himself, and I know one reason is that he is one of the very few groups - few citizens which are really interested. He's a student at the University of Maine - came before us last March with a very helpful presentation, and participated 2 weeks ago in what I thought was a very fruitful discussion; and we got interested in, and asked him to come down here today which he has done at his own expense and cutting

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class. Now he can add to that also.

MR. CHANDLER: That about covers it. No, I'm just representing an interested citizen of the electorate.

PRESIDENT SCRIBNER: Except you are. What are you - oxpect as a result - an article - extra culture?

MR. CHANDLER: No, I'm a Senior in the College of Arts and Sciences, majoring in public management.

PRESIDENT SCRIBNER: And what - what plans do you have on graduating?

MR. CHANDLER: I'm not exactly sure at this time. All the way from ranging from my applying for a Fulbright to study public administration in New Zealand to possible work in town and city government.

PRESIDENT SCRIBNER: Are you planning to come back to do town management?

MR. CHANDLER: Yes, this is the program which I'm in and, of course, I'm interested in this field, but I'm not limiting myself to this.

PRESIDENT SCRIBNER: I know that I speak for the Commission that when you will have finished the recommendation will be that we hope you are going to come back to Maine that - to take an active part here.

MR. CHANDLER: Well, I don't know how good my opportunities are of going to New Zealand, but I think it would be a valuable experience.

In line with my thinking on having the presently

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provided State department heads: Treasurer, Attorney General, Secretary of State, which are now provided by the Legislature be in the future provided by the Governor. or rather appointed. I refer you to - this is a summary of the President's Commission on Municipal Manpower. Granted that this applies primarily to the municipal or local level, but I'm certain that it has its counterpart in the State as well as the national level. And there is one section in here which I would just like to quote, the title to it being "The Chief Executive - Executive -Should be Given Clear Cut Authority for Personal Administration: "Government, like business, has moved beyond the stage where it can afford the uncertain performance of weak management. The extensive growth changing urban governments must have authority over the personnel upon whom they depend to get their work done. Mayors, city managers, department heads and others of like rank in urban counties must have greater authority to hire, to promote, to discipline and to fire." I think this pretty well covers my thoughts on that matter.

MR. SMITH: May I ask a question?

PRESIDENT SCRIBNER: Go ahead. Mr. Chandler.

MR. SMITH: Do you think that perhaps the validity of your quote - comment - applies there

MR. CHANDLER: Yes.

MR. SMITH: I mean with respect to the Governorship and

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the State setup.

MR. CHANDLER: If it is, its much more subtle than we realize. I will say on the open no, that things appear to be very peaceable and very calm, but what I would like to do is waylay and possibility, let's say, of an open conflict in the future; and I think the possibility could arise. I'm not saying that it will, perhaps the compromises are all made shead of time so that when these things come to a public meeting, as I say, the decisions have all been reached, and so its covered over.

MR. SMITH: I wasn't referring to whether it was peaceful and calm or not, but I was referring to the efficiency of State government. If the efficiency of State government - well - or the lack of it - centralized authority.

MR. CHANDLER: I don't think I'm qualified to speak on that at the present time. I must admit I'm speaking more on the theory aspect because I have not had a chance - I don't think that unless you are actually a department head or connected very closely with the State government that anyone can really tell; but what I'm getting at more - that I think that we would operate more efficiently if the department heads were appointed by the Governor; and if we would waylay any chance of something having a conflict in the future. But let's face it, if the Governor wants to do one thing and has - granted that most people when they elect a Governor - he proposes in his platform a

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particular program. Now the exact opposite may be proposed by his opponent and when, if the Governor by a mandate of the people gets elected, he wants to put his program into effect, well if some of the major department heads have no responsibility to him, and are appointed by a separate body, he has no control over them whatsoever and his program might be stalemated.

PRESIDENT SCRIBNER: Of course, this argument of your's cuts cuts against civil service. The argument which you're making
could be applied, not only to our department heads, but
certainly to those major officers in the Federal government,
who are more and more are moving in the direction of civil
service, so that, take for example, in the Treasury
Department of the United States when we've a change in
Presidents, you won't change more than 15 or 20 of the
people out of 70,000 employees.

I'd like to go back a minute to one of your suggestions about electing the Governor's Council. Now the argument against the Governor's Council comes from several sources, but one of the arguments is that the Executive should MR. CHANDLER: Should pick the people who get in.

PRESIDENT SCRIBNER: Yes.

MR. CHANDLER: My contention - well my basic contention is that we should abolish the Council, but being a realist, I have in my own mind considered this an impossibility.

MR. SNOW: Do we need a Lieutenant Governor?

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MR. CHANDLER: Well, I think, and I must agree with Mr. Scribner, that at the present time the State of Maine does not need a Lieutenant Governor; and I think this is why there are certain areas in which the possible retention of the Council is feasible for, let's say, a transitory period. Now, perhaps, as the activities and expenditures of the State government rise, that the need will develop for a Lieutenant Governor; for if you can recognize this in a transitory period, I would eventually, in other words, ultimately feel that the State should have a Governor and Lieutenant Governor popularly elected. Does this answer your question?

MR. SNOW: Well, I don't know, I don't think that it does - I mean who would consider the appointments that the Council now does - the appointments of the Governor? Who would the appointments go through?

MR. CHANDLER: Well, the Council.

MR. SNOW: But you said you wanted to abolish the Council.

MR. CHANDLER: Well, I said eventually. In other words,

I hope you can recognize this is a transitory period. In

other words, I'm trying to be a realist and a theorist at
the same time.

PRESIDENT SCRIBNER: If the Council was to be abolished, do you think there should be any other organization or any other entity in State government to take over some of its functions, for example, Governor's appointments?

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MR. CHANDLER: Yes. There again is a transitory period.

I think we should eventually go to an annual sessions of
the Legislature. If this be the case then either the
Senate could act as a confirming body for department heads
only, but any person now below the department heads should
be appointed, let's say, recommended by the department
head, to be approved by the Governor; but department heads
should be appointed by the Governor, subject to confirmation
by the Senate. This is going again on the assumption that
we have annual sessions or an interim committee selected
by the Senate for this specific purpose. This is similar
to our United States setup on the Federal level. May I have I reached you now?

PRESIDENT SCRIBNER: Yes.

MR. CHANDLER: Okay.

MR. SNOW: But I don't think so at all because you're just continuing the Council.

MR. CHANDLER: Eventually; those recommendations regarding the Council are more or less in passing. I really didn't come down here prepared too much to discuss them. I was speaking in terms of the others, but I wanted to cover the Constitution as closely as I have. Mostly I have put all the time I would have liked to have to be prepared for the presentation today, but I kind of felt obligated - I came down and I know, or have had an opportunity to meet most of you, so seeing there was no one else here to speak,

I thought I should at least get up and say something. PRESIDENT SCRIBNER: What do you want me to do have a record?

MR. CHANDLER: Well, I've probably some feelings for you Gentlemen, but tried to be at least be consistent throughout. Following the contemporary procedure at the municipal level as far as parlimentary procedure is concerned. department heads, in other words the people directly below the Manager, are appointed by the Manager, subject to confirmation by the Council. I believe this is the way it exists in the majority. For most places where the Manager has the direction. And now - so I am trying to follow this line of thinking that the Legislative body has the final confirmation of department heads only, but below that, its like a step down each place, the department head will select, say his subordinates - would make the initial appointments, subject to the confirmation of the Manager, and the division heads and department heads and so on down the line. So I've tried to follow this line of thinking, and that's why I'm trying to rationalize the having some body to make the final confirmation. PRESIDENT SCRIBNER: We know the best direction for the Council to work with the Governor is indicated today in the newspapers.

MR. CHANDLER: Thank you very much now.

PRESIDENT SCRIBNER: Any members of the Commission have

any questions? Then I will declare this public hearing closed. Thank you all very much.

President Scribner declared the hearing closed at 12:05 P.M., and excused the reporter, Mrs. Eleanor F. King. The Commission, at the President's suggestion, continued deliberation. President Scribner raised the question as to what would happen under Article V, Part 1, Section 14, if the President of the Senate died before the Governor or resigned as Senator Hillman had just done. He said that he thought the section should be clarified by taking this possibility into account.

President Scribner said that the Secretary of State had requested clarification of Article IX, Section 5, in order to make it easier to remove persons appointed by the Governor from office, and asked if anyone present could explain to him what was meant by an address. Mr. Varney said he recalled the address proceeding for removing Mr. Belmont A. Smith, the State Treasurer, brought at the second special session of the Legislature in 1940, and explained that the Legislature, as a part of the proceeding, had given Mr. Smith a trial and voted on whether it should address the Governor for his removal. President Scribner asked whether the Governor had to make the removal and whether the address had to come from the concurrent action of both branches. He suggested, as a possibility, that the Governor should be able to remove persons from office with the advise and consent of the Council, but said that if such a method were adopted, the section should be reworded so that the cause of removal would have to be set forth on the records of the Governor and Council. President Scribner felt that such a provision should apply to anyone appointed or elected to any office. Mr. Varney said that he would like to do some research on address procedure before he voted on any proposal to change the present constitutional provision. President Scribner referred to Mr. MacDonald's letter and said it indicated that there had been a recent situation which called for the removal of several persons from office and the only way apparently was by impeachment or address proceedings. Mr. MacDonald pointed out that both procedures were clumsy under the present provision, and that he hoped the Commission would recommend an easier procedure for removing minor officers.

President Scribner wanted to know the difference between civil, military and judicial officers, and asked if anyone had a definition which would show the difference. He said that he definitely felt that there should be a simplier method for removing appointed or elected officers. Mr. Beane wondered if a new method of removal were adopted whether it wouldn't abrogate something essential in the present law. Mr. Varney pointed out that an address proceeding for removing civil officers has to proceed from

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the Legislature to the Governor who makes the removal, while in case of impeachment, the proceeding is commenced in the House of Representatives and tried in the Senate. He said that he didn't think that officers having judicial powers should be removed by the Governor and Council or by the Legislature by a simple vote. President Scribner asked why it should be necessary to provide address or impeachment protection for Justices of the Peace and Notaries Public. He said that he couldn't see why it should have to be necessary to resort to such a complicated procedure to remove such minor officers. President Scribner asked if there was any feeling that the provision should be changed, as suggested by the Secretary of State, so that it wouldn't apply to minor officers. Mr. Varney said that he didn't want to see the provision changed to apply to judicial officers so that they could be removed by the Governor and Council. President Scribner said that he would have Mr. Silsby draft some language to send out. He told the members that the Commission had been asked by Mr. George C. West, the Deputy Attorney General, to look at the question of impeachment. He referred the members to Article IV, Part 1, Section 8, which provides that the House of Representatives shall have the sole power of impeachment; Article IV, Part 2, Section 6, which provides that the Senate shall have the sole power to try all impeachments and that no person shall be convicted without the concurrence of two thirds of the members present. He said that Mr. West suggested that these provisions should more closely follow the Federal provision. President Scribner said that he believed that improvement was needed in a very technical sense. Mr. Verney asked why change it. President Scribner replied saying that it was because there were problems in cases interpreting it.

The Commission recessed at 12:25 p.m. for lunch and was called to order at 1:15 p.m. by President Scribner.

President Scribner said that what he would like to propose, but had not discussed with all the members, was that the Commission report to the Legislature in perhaps four parts, so that it could get the simpler and noncomplicated ones ready immediately. He said that he thought that the Commission, as promptly as it could, should determine what it planned to propose on reapportionment in order to start writing the report. He felt that the Commission should make an effort to have the rules changed so that resolves coming from the Commission to implement its reports might be introduced during the session covering those areas in which there were recommendations. He thought that the Commission would be in a position to file its report on apportionment sometime in March. He said that to prepare and submit a report covering everything by the convening of the Legislature would mean

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working practically night and day during the next three weeks and then there was no assurance that the Commission would have sufficient time to devote to such important questions as implementation. He asked whether the members felt there was any merit in suggesting to the Legislature that a Joint Select Committee be created to handle the Commission's recommendations He felt that such a committee might be more opened-minded about any recommended changes than perhaps the Committee on State Government. He suggested that in such a committee were created that it might be well to ask both the Senate and House Chairmen to sponsor any proposed amendments. He said that he hoped that the members of the Commission would act unanimously in submitting the reports and to try to keep blind partisanship out of it. He said that he was aware that both the Republicans and Democrats were politically motivated, and there were probably plenty of areas in which there might be dissents, but that he was hoping for a consensus. He said that he hoped that the members would refrain from expressing any personal opinions before the reports were submitted. said that he thought the final report should cover such matters as constitutional background, kinds of amendments to date, the commission of 1875 and any sections not commented upon in previous reports. He said that he would like the suggestions of the members on content which he would see were passed around.

President Scribner asked the members to turn to the reapportionment question, commenting that it was the one that really struck the sparks. He said that he was frankly quite disappointed that more people hadn't turned up at the morning hearing and attributed the fact that not more had done so because 1) they felt the Commission members had probably already made up their minds, and 2) that they didn't really care. He commented that it was interesting to him that the Commission hadn't received a single word for or against reducing the voting age. He said that he still thought it would be good to reduce it to twenty. He called the members' attention to the fact that there hadn't been a ripple on the proposal on Judges of Probate.

President Scribner discussed a chart which Mr. Silsby had prepared based on the 1960 census. He said that it was interesting in that it showed that there was not much difference between the gubernatorial vote and registered voters. He stated that if the Commission took the gubernatorial vote as the only test, it would probably be favoring the more populated areas. He indicated that he suspected that the registration in the rural areas was better kept up than in the more populated areas, saying that he couldn't prove it and that best it was only a guess. He said that the Commission's tentative thought about going to 155 voting districts hadn't brought a stir at the public hearing from

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any source. He stated that the faculty members at the University of Maine when the Commission was there thought the idea was a step in the right direction. He said that he hoped on whatever the Commission proposed that the members would appear before the committee to defend the President Scribner said in his opinion the Constitution would have to be amended in the following areas: elimination of the seven limit and the provision for throwing fractional excesses to the smaller counties. He pointed out that he felt that doing away with fractional excesses and letting the changes come where they may would be much fairer than having the members come from a larger district. Smith said that he had reservations on reapportionment based on the gubernatorial vote, and mentioned that one legislator had already come out with one based on the registered vote. It was his opinion that fluctuations in the gubernatorial vote were due to too many variable factors. President Scribner said that, of course, using the gubernatorial vote is basing apportionment on what takes place on a single day. and that such things as bad weather would influence the number of votes cast, perhaps materially in different parts of the State. He said the other thing was that there was a difference between the total number of votes cast for Governor and the total number of votes counted for Governor. and pointed to the example of Auburn during the recent recount. He cited the so-called "double voting ballots," as another example, indicating that there was little uniformity throughout the State on counting them or not counting them. He said that it was impossible to tell the extent of this because there was no record of the total number of voters in any election. He suggested that perhaps a report should be required on the number of President Scribner pointed out that Mr. spoiled ballots. York had made a statement to the press saying that he was in favor of population as the basis for apportionment. He said that he felt that this was an appropriate question for the Legislature to decide. He said that personally he was ready to go in any direction the Commission wanted to go on it, adding that he didn't think that registered vote was as good as population or gubernatorial vote, because the manner in which the voting lists are prepared varies so drastically. Mr. Ward said that he thought that the gubernatorial vote was the only steady vote and fluctuated much less than the registered vote. Mr. Varney asked whether unused ballots had to be returned following an election. President Scribner said that the Warden was supposed to send along a report with the ballot box, but unless there was an examination there was no assurance that this was done. He suggested that it could be based on the average gubernatorial vote cast at the previous two or three elections. He said that presumably this wasn't a major sort of thing, and probably wouldn't materially affect

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party strength in any particular area. He indicated that it was his hunch that the Legislature wouldn't buy it anyway. Mr. Carey said that was the question; that is, does the Commission do this thing so that it makes a report that is appropriate and precise or does it do it on the basis of what it thinks may be acceptable. He said that he felt that the people have a fixation on the census. He asked whether the Commission, as a matter of policy, should make a complete, factual examination and analysis of what would be just and equitable or should it decide these questions on the basis of acceptability. He pointed out that there were two different methods for apportionment presently in the Constitution: the lower House on the basis of population which it may ascertain itself, and the Senate on the population as determined by the Federal census. President Scribner said that he felt that both ought to be the same. and if it was decided to apportion on the basis of population, it ought to be done on the basis of the Federal census. He said that he thought a pretty good argument could be made against using the Federal census which purports to count people physically present on a certain date, and which includes military personnel and other factors. He said that it was his own feeling that if the Commission took the gubernatorial vote as the basis, and did so unanimously, the members should stand up and back the Commission recommendation. He repeated that it was his guess that the Legislature wouldn't buy it, because 1) the press would be against it, and 2) it was new. He said that he felt as thought there was little justification for the use of registered voters. Mr. Carey commented that it was possible that the Commission might be being lulled into a little false security because it thought that the Legislature wouldn't accept the proposal. President Scribner said this was perfectly true, adding that he didn't think that anyone was sitting up nights worrying about what the Commission was doing. Mr. Marden said that he thought there would be a great deal of interest in the Commission's work during the Legislative session. Mr. Varney said that he thought that it was important that the State went to legislative districts, and whether it was on the basis of gubernatorial vote or registered vote was of much lesser importance. He said that he would prefer gubernatorial vote. President Scribner said that it was definitely a problem area and suggested that the Commission could provide for both alternatives in its report. He added that if the Legislature didn't buy the gubernatorial vote proposal this time, some day it might. He said that he thought that the proposal for legislative districts was certainly important as far as getting rid of the seven limitation. Mr. Varney commented that he would like to see the thing brought to a head and made a motion that the Commission recommend legislative districts. It was so voted.

Mr. Marden asked if the Commission had considered making any changes in Article II, Section one, with reference to paupers and persons under guardianship, in recommending lowering the voting age to twenty. He pointed out that there are many persons under twenty who are under guardianship and suggested that unless some change was made in the guardianship provision that the Commission's recommendation, even though adopted as an amendment, still would not allow such persons to vote. He asked if there wasn't a distinction between guardianships for property and those for persons. Mr. Ward said that a petition for guardianship recites therein whether the guardianship is for persons, property or persons and property. President Scribner said that he thought the Commission ought to check the matter before preparing anything concrete. Mr. Ward suggested that it might be less confusing if the provision was taken out of the Constitution and handled by statute.

President Scribner said that it was his understanding that it was the consensus that the Commission wouldn't recommend annual sessions, but would suggest that the Governor use special sessions as a devise, if needed. said that it was also his understanding that the Commission wouldn't recommend for a Lieutenant Governor because it was an expensive office and there was apparently little necessity for having it. He asked whether there were any other general matters which the Commission wished to discuss. There was no response so he suggested that the Commission look at Article V. Part 1. Section 3 which provides that the votes for Governor be returned to the Secretary of State's office. and that he lay the lists before the Senate and House of Representatives. He noted that Article IV, Part 2, Section 2 says that copies of the list of votes for Senators shall be returned to the Secretary of State's office. He said that he thought that Section 3 should be clarified so that it would be the prerogative of the Legislature to decide who has the vote and to declare and publish that fact. President Scribner commented that under present practice each clerk. within ten days after an election, is suppose to send a list of votes cast to the Secretary of State which he compiles as his list. He said that there was no clear statutory authority for the Secretary of State to change the list. and that when he lays the list before the Governor and Council, it is the list until someone with authority, either the Legislature or the courts, changes it. President Scribner refered to the proposed constitutional changes which the Commission had received from the Secretary of State to resolve apparent inconsistencies between the Constitution and the election laws and asked if any of the members of the Commission had any comments. He pointed out that copies of the pamphlet on election laws, compiled by the Secretary of State. were available for those who wanted them.

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President Scribner said that the question was whether the Commission felt that the procedure for electing the Governor should be clarified. He asked if it wasn't the intent of Section 3 for the Legislature to determine whether the Governor was elected, and if the Legislature had the power to decide, whether it wouldn't also have the authority to examine the votes. Mr. Varney said that he would like to see the requirement eliminated from the Constitution and taken care of by legislation. President Scribner felt that someone ultimately has to make the decision as to who is elected, and that this provision should be in the Constitution. He said that he definitely felt that the present provision was unclear and should be clarified. He indicated that he thought that it would be a comparatively easy task to clarify the section, and suggested that he have something prepared and sent along before the next meeting.

President Scribner stated that there were some other details which the Commission should decide. He pointed out that Article IV, Part 2, Section 2 probably ought to be changed to take out selectmen since the section doesn't say a thing about cities. He said that it was an antiquated section and should be completely rewritten. He indicated that he thought that the last sentence should be deleted in its entirety.

The President directed the attention of the Commission to some of the suggestions made by Mr. George C. West in his letter of April 6, 1962. The first of these considered by the Commission reads:

"In Article I, Section 7, we find the phrase "or in such cases of offenses as are usually cognizable by a Justice of the Peace." It seems to me that under our present practice and laws that this should be either deleted or amended by substituting "District Court" for "Justice of the Peace."

President Scribner pointed out that Mr. West suggested the substitution of district courts for Justice of the Peace, and said that as far as he was concerned he didn't know what the words "cognizable by a Justice of the Peace" meant. Mr. Marden suggested that the term "misdemeanors" might properly be substituted. Mr. Smith asked why the exception was needed at all. President Scribner said he thought that it was because in those days it might have meant offenses, such as rioting, which broke the peace and of which the Justice of the Peace had jurisdiction; and if such an offense was within his province, it could be tried without an indictment. Mr. Carey suggested changing the words to "inferior courts." President Scribner said he thought the Commission ought to leave it alone. Mr. Varney concurred.

The second suggestion considered, reads:

"In Article IV, Part First, Section 5, there are many details which could more properly be left to legislation. I believe this is one of the suggestions made by the Office of the Secretary of State. I wish to call to your attention in the third sentence of the second paragraph the words "the alderman." These words assume a bicameral form of city government. As you are well aware, many cities now have a unicameral form of government and there are no aldermen. Whether or not this section is drafted, I believe that the word "aldermen" should be changed to conform with the present practice of a single city council now in use in so many cities."

President Scribner commented that this was a long section that ought to be cleaned up as to selectmen, and which implies a lot of things that aren't being necessarily done at the present time. He suggested that the Commission make a complete redraft of the section.

The third suggestion considered, reads:

"My last thought as of now relates to Article IV, Part Third, Section 11, and Article IX, Section 2. These pertain to the persons who may not be members of the legislature. I would suggest that the two sections be combined and some parts clarified. Recently it was necessary for this office to look into the phrase, "office of profit under this state" as appears in Article IV, Part Third, Section 11. This phrase may have had a definite meaning to the framers of the Constitution, but through the years this meaning has become lost and now could possibly be construed in several different methods."

President Scribner commented that the two sections obviously said pretty much the same thing and probably ought to be combined. He said that his only question was whether this was of sufficient consequence for the Commission to make a recommendation. The Commission voted to make the recommendation.

President Scribner said that Mr. Silsby had checked with the State Treasurer on the proviso in Article V, Part 4, Section 4, that money should not be drawn from the Treasury "but by warrant from the Governor and Council," and that the requirement is observed on a blanket basis rather than on each particular expenditure. He said that the State Treasurer had agreed to the deletion of the language "and a regular statement and account of the receipts and

expenditures of all public money, shall be published at the commencement of the biennial session of the legislature", and suggested that the section might be changed to read that "No money shall be drawn from the treasury, but in consequence of appropriations made by law." Mr. Varney objected to elimination of the proviso for warrants of the Governor and Council because he felt that the Legislature might for some reason want to provide that certain funds be drawn by warrant of the Governor and Council. President Scribner said that if the Legislature wished to do so, it could be done by statute. Mr. Ward raised the question of whether the Governor would be able to control departmental expenditures if the provision were eliminated, for instance, to tell department heads not to spend all their appropriations. President Scribner said that he would have Mr. Silsby check on this with the Commissioner of Finance and Administration and State Budget Officer before the next meeting.

The question of the next meeting was discussed and the date set for Thursday. December 27, 1962.

The meeting was adjourned at 3:00 p.m.

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

THURSDAY, DECEMBER 27, 1962

Eleventh Meeting

President Scribner convened the eleventh meeting of the Commission at 10:15 A.M. in Room 228-A, State House, with the following members present: Messrs. Beane, Carey, Edwards, Marden, Scribner, Smith, Snow, Varney, Ward and York.

The Commission took up the draft of Article VI, or judicial power, prepared by President Scribner. Section one of the present article, providing for the courts, remained the same. Section 2, on compensation of judges, was changed by inserting after "supreme judicial court" the words "and the judges of other courts". Section 3, providing for advisory opinions, was changed by substituting "The Justices of the Supreme Judicial Court" for "They" and by deleting the word "council,". Section 4, on judicial tenure, was left the same. Section 5, on Justices of the Peace and Notaries Public, was deleted. President Scribner pointed out that Article V, Part 1, Section 8. contained some relevant provisions. Section 6, prohibiting judges from holding other offices, was renumbered as Section 5, and changed by inserting after "supreme judicial court" the words "and the judges of other courts". Section 7, on Judges and Registers of Probate, was renumbered as Section 6, and changed by deleting the words "Judges and" in the first line. President Scribner commented that he thought it would be better to leave Registers of Probate in because of the previously unsuccessful attempts to remove the office as a constitutional office during past sessions. He said that the resolve originally prepared by Mr. Silsby took away both Judges and Registers of Probate, but that if the Commission were to recommend its adoption, it would mean antagonizing thirty-two people rather than sixteen. Mr. Ward noted that there was nothing said in the Constitution about Clerks of Court. President Scribner said this was right, and stated that the only county officers provided for in the Constitution are Registers and Judges of Probate and Sheriffs. He said that he had no objection to taking Registers of Probate out, but that he just didn't think that the practicality of the situation warranted it. Mr. Carey said that he didn't think that the Commission's recommendations should have to

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necessarily reflect a practical expediency. Mr. Marden asked whether in line with the report if the Commission was recommending that specific matters be taken care of by legislation. President Scribner said that he thought the Commission ought to recommend the adoption of specific legislation where it appeared necessary to implement its Section 8, on judges of municipal and police findings. courts, was dropped completely. President Scribner suggested that the members give some thought to the changes before taking another lock at the proposed draft and deciding on a report. Mr. Marden asked him if this meant that he was coming back to the judicial power later in the President Scribner replied that it did and suggested that the Commission look at senatorial districts as they now exist under Article IV, Part 2. He pointed out that Piscataguis County which had 17,379 population in 1960 had one Senator while Cumberland County, with a population of 182.751, had one Senator for 45,000 people. He said that he didn't think that the present system could be sustained under a court attack, and commented that he was satisfied that if the Commission did nothing, and the Legislature did nothing, there would be a court test, especially with the way the Gannett papers kept yapping. He distributed a table on senatorial apportionment for consideration indicating that it was confidential information and that he probably should have the copies back. The Commission discussed the table at some length, but reached no conclusions.

President Scribner said that he thought that the life of the Commission ought to be extended or another created, because the Commission had been at it only eleven months, and with the various inroads on its time had not really had time enough to give the Constitution the comprehensive review it needed. He felt that the question of continuance ought to be considered early in the session, and if the Legislature wouldn't go along with extending the Commission at least it might give it an extension in time to report. He said that he thought the Commission should report as follows: First report, Article I; Second report, Article VI; Third report, the less controversal changes; Fourth report, apportionment. He pointed out that this breakdown was only tentative and could be changed if the Commission was extended.

The Commission took up the draft of the first report mailed out by President Scribner on December 22, 1962. President Scribner distributed a redraft of the first paragraph, and said that he hoped that he would be able to file the report by the 4th of next week so that the Legislature could have it printed. He thought the final report should be of some length covering the whole study

with the various other reports attached. He mentioned that perhaps an explanation should be added after the second paragraph to the effect that the Commission would cover the historical aspects in its final report. He said that in the second mailing which went out December 24th, he had included a redraft of Article II, Section 1, in which he had tried to reflect the changes discussed at the previous meeting. The Commission shifted its attention for the moment to the redraft of Section one. Mr. Ward questioned the necessity of the provision that a person shall continue to be an elector for three months after he ceases to reside in a place, stating that there were plenty of instances where registrars struck voters from the voting lists without definitely determining whether they had in fact left the town or were merely away for more than three months. Mr. Smith suggested adding the words "or by a temporary absence of three months" at the end of the next to last sentence of the first paragraph. President Scribner suggested substituting the words "or by temporary absence from this State with no intention of ceasing to reside in this State" for Mr. Smith's proposal. It was so agreed. Mr. Smith suggested adjusting the section so that the use of "his" and "her" was consistent. This suggestion was approved, and the draft of Article II, Section 1. as amended. was accepted.

The Commission resumed consideration of the draft of the first report. President Scribner suggested adding a small paragraph to the effect that the Commission would discuss the history of the Constitution in its final report, and another to clarify the guardianship provision under Article II, Section one. Mr. Smith suggested that the style of the report be left to the discretion of the President. Each of these suggestions was adopted, and the President was authorized to complete the report making the necessary changes.

The Commission returned to President Scribner's draft of Article VI. President Scribner pointed out that there were no changes in Section one; that Section 2 was changed to the extent of adding the words "and the judges of other courts"; that Section 3 was the same except for the deletion of the authority of the Council to ask for advisory opinions. Mr. Marden commented that this was a gentle emasculation. Mr. Snow said that he thought the Council should be left in. President Scribner said that he didn't think it was a major point; that it certainly didn't have enough value to split on. It was voted to delete the word "Council" from Section 3. President Scribner indicated that there was no change in Section 4. He said that Article V, Part 1, Section 8, provides for appointments by the Governor and Council. so

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that the deletion of Section 5 from Article VI in the draft wouldn't preclude the appointment of Notaries Public under the Constitution. He said Section 6 would be renumbered as Section 5, and the words "and the judges of other courts" added. Section 7 would be renumbered as Section 6, and the words "Judges and" deleted so that Judges of Probate would be appointed. Mr. Ward suggested that the section, as amended, should be reallocated from the judicial article since Registers of Probate have no judicial duties. President Scribner said that he didn't think that this could be easily explained to the people. Mr. Carey moved to strike out Section 7 (Section 6 of the redraft) entirely. The motion was unanimously adopted. President Scribner said Section 8 had no present application and was omitted from the redraft. The consensus was that the first five sections of the redraft should be the Commission's recommendation on Article VI. President Scribner said that he would take the draft up with the Chief Justice and Attorney General for their comments. Mr. Ward asked whether it wouldn't be necessary to include some language to protect the terms of the incumbents. President Scribner replied that it was certainly something to think about.

The Commission recessed at 12:10 p.m. for lunch and was called to order at 1:20 p.m. by President Scribner.

President Scribner asked the members of the Commission to turn to the draft of Article IV, Part 1, which he had sent out on December 24th. He commented that the members had voted to submit alternative proposals as to whether apportionment should be by population or by the vote cast for Governor. He said that it was interesting to note that the 1961 Legislature changed the returns for Stoneham from 21, as reported by the Federal census, to 258. Mr. Ward pointed out that in 1953, the Legislature had quite a lot of difficulty in getting apportionment through, and the census figures for the House were adjusted. President Scribner said that he thought the Commission ought to go back to the question of 155 members. He said that Mr. Marden had thought that it would be helpful in correcting the situation in Cumberland County. He commented that the basis probably could be changed, but that he didn't think that the Commission would do much by adding four more representative districts. Mr. York said that actually there were a lot of inequities in the House representation. President Scribner agreed, and said that if the courts really looked into it, it would mean real trouble. He said that he thought that he would like to wait until Mr. Marden got back, but that he personally didn't like the idea of recommending four extra seats. He said that evidently it was Mr. Marden's idea that it would be easier to add four seats in the House than to cut some Representative out.

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President Scribner referred to the 15% limitation contained in Section 2 of the draft of Article IV, Part 1, and said that he wasn't sure when he added it whether it would give enough variation. Mr. York asked whether the Commission had voted on this at the last meeting. President Scribner said yes, but the report and recommendations were to be in the alternative. He suggested substituting 20% for 15%, adding that the language was pretty well cribbed out of the Rhode Island provision. He pointed out that one of the things which he included was to provide that the gubernatorial vote would be the average of the last three elections. Mr. Smith suggested changing the word "voters" on the 4th line, page 2, to "electors"; also in the last line of the same paragraph. President Scribner noted that Section 4 reflected the change from 21 to 20 years for the qualification of members of the House of Representatives in line with the Commission's recommendation for a change in the voting age. He said that Section 5 had a lot of boiler plate stuff about elections which should be taken out. Mr. Carey suggested substituting the word "elections" for "meetings." This was discussed as well as the meaning and necessity for the language "open meetings" found in the same section. President Scribner said that he agreed with Dr. Dow that there was a lot that could be left out of the section or taken care of by statute. He commented on Section 8, saying that he had added the words ", provided that the trial of all persons impeached shall be conducted by the Senate". Mr. York felt that the draft really streamlined Article IV, Part 1 quite a lot. President Scribner pointed out that he had left out all references to plantations.

The Commission turned to apportionment of the Senate. President Scribner pointed out that the Commission had had a long discussion on the Senate question at the morning session without taking any action, saying that apparently it was the feeling of some of the members that the Commission shouldn't face up to Senate apportionment at this time. Mr. Varney said that it was his view that the State would be much better off if county lines were completely ignored in the election process. President Scribner agreed that there was little logic to Maine counties but for practical purposes they were still an important influence in State government. He said that the Commission had had a long discussion on the Senate thing and that no one was happy with it. He stated that the steps in the present Constitution were purely arbitrary and didn't have too much logic--certainly none with respect to geographical considerations. It was his thought that the court might adopt any arrangement the Commission worked out if it felt that it made sense. He asked if there were other suggestions on Article IV, Part 1.

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Mr. Smith asked if the Commission couldn't take it out! Mr. Carey remarked that he supposed the matter of absentee voting was taken care of elsewhere. President Scribner answered that it was, and then asked if anyone wanted to talk some more about reapportionment. Mr. Ward observed that it was putting it in on the gubernatorial vote, but allowing consideration of the registered vote as well. President Scribner said that the Commission was reporting the recommendation out in the alternative as far as the basis was concerned.

The President called attention to the materials on the Council prepared by Mr. Carey which had been mimeographed and furnished by him to each member.

President Scribner explained to Mr. Varney that the Commission had approved the first report with a few minor changes during his absence at the morning session. Mr. Smith asked whether Mr. Varney's attention shouldn't be called to the fact that the Commission was recommending in the report that the authority of the Council to request advisory opinions be dropped. Mr. Varney said that he still thought the provision ought to be allowed to stand because the situation might arise where the Governor and Council might be in a hassle and the Governor wouldn't go along with sponsoring a request with the Council for an opinion. He said that he believed that the Council ought to have the authority to request advisory opinions separately. He mentioned the distinction between advisory opinions and opinions in litigated cases as further grounds for retaining the provision. President Scribner said that his opinion was discussed during the morning session and that he was voted down. Mr. Varney said that this was alright. President Scribner commented that he knew of no instance where the Council had requested an independent opinion. Mr. Varney said that he thought that the Commission should get a report in immediately on reapportionment and take care of any other recommendations later on. President Scribner pointed out that there might be legislation introduced to extend the life of the Commission so that it might have more time to report. He said that there wasn't any consensus on the part of the members of the Commission at the present time on the problem of redistricting the Senate. He stated that he thought it might be advisable to get an outside opinion as to what legal effect the decisions would have on the Senate or, in other words, what the present posture of the law was on reapportionment as it affected the Senate. Mr. Smith called President Scribner's attention to the advisory opinion in 132 Maine 519 (1933), indicating that legislation can't be enacted which is conditional on the adoption of a constitutional amendment.

President Scribner said that he had checked with Mr. Mudge. the Commissioner of Finance and Administration, and Mr. Berry, the State Budget Officer, and found that the Council apparently gives some formal sanction to the provisions of Article V, Part 4, Section 4. He said that both seemed to think that R.S., ć. 15-A provided a satisfactory alternative, and that the section could be changed to read: "No money shall be drawn from the Treasury, but in consequence of appropriations made by law." Mr. Carey pointed out that he had dealt with the question in his memorandum on Article V, Part 2, Council. Mr. Varney maintained that the warrant provision shouldn't be deleted. He said that he didn't think the question was too important and he didn't want anyone to think that he was trying to obstruct the feeling of the Commission, but that there might still be instances where it might be a pretty good thing to have the provision. President Scribner said that he would ask Mr. Mudge to the next meeting to see if he couldn't clarify the point.

The question of the next meeting was discussed and the following dates set:

Wednesday, January 9, 1963, at 10:00 a.m. Wednesday, January 16, 1963, at 10:00 a.m.

President Scribner said that the cloture date called for getting resolves in by January 18th, and unless this date were modified with respect to the Commission, it would have to plan on having those which it was recommending in by that time. He said that there would probably be a joint select committee appointed to consider the Commission's report and recommendations. He stated that he would get a draft together on Article VI which he would circularize for approval as soon as it was cleared with the Chief Justice.

The meeting was adjourned at 3:40 p.m.

Inaugural Address

of

GOVERNOR JOHN H. REED

January 3, 1963

STATE GOVERNMENT

Constitutional Commission

State government must maintain itself in accordance with contemporary needs. The 100th Legislature created the second Constitutional Commission in Maine history to study our basic law and report to the Legislature recommended changes and amendments to the Constitution of the State of Maine which appear to be necessary or desirable.

The Commission will report to you in the near future on the question of reapportionment upon which it has spent considerable time and study in recent months.

An extension of the work of the Commission beyond this Session of the Legislature would allow it to give additional attention to other important areas. Therefore, I recommend that you authorize the Constitutional Commission to continue its work through this biennium with its final report to be filed with the 102nd Legislature in January of 1965.

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STATE OF MAINE

In Senate January 3, 1963

ORDERED, the House concurring, that there be created a Joint Select Committee on Constitutional Amendments and Legislative Reapportionment, consisting of 5 members on the part of the Senate, to be appointed by the President of the Senate, and 10 members on the part of the House, to be appointed by the Speaker of the House; and be it further ORDERED, that Joint Rule 19-B shall not apply to bills and resolves originating from the reports of the Constitutional Commission created by Chapter 212 of the Private and Special Laws of 1961.

SP 26 Porteous Cumberland

Senate Read and passed January 3, 1963 Sent down for concurrence House of Representatives Read and passed in concurrence January 8, 1963 Journal of the House of Representatives, January 9, 1963

The Speaker announced the appointment of the following members to serve on the new Joint Select Committee on Constitutional Amendments and Legislative Reapportionment:

Messrs. BERMAN of Houlton
DENNETT of Kittery
WATKINS of Windham
SMITH of Strong
VILES of Anson
SMITH of Bar Harbor
PEASE of Wiscasset
PLANTE of Old Orchard Beach
COTTRELL of Portland
CARTIER of Biddeford

Journal of the Senate, January 10, 1963

The President then announced the members of the Joint Standing Committees: . . .

Constitutional Amendments and Legislative Reapportionment

Senate: Porteous of Cumberland
Jacques of Androscoggin
Edmunds of Aroostook
Farris of Kennebec
Noyes of Franklin

House: Berman of Houlton
Dennett of Kittery
Watkins of Windham
Smith of Strong
Viles of Anson
Smith of Bar Harbor
Pease of Wiscasset
Plante of Old Orchard Beach
Cottrell of Portland

Cottrell of Portland Cartier of Biddeford

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, JANUARY 9, 1963

Twelfth Meeting

President Scribner convened the twelfth meeting of the Commission at 10:15 A.M. in Room 228-A, State House, with the following members present: Messrs. Beane, Edwards, Scribner. Smith, Varney, Ward and York.

President Scribner stated a question had arisen under Article V. Part 4. Section 4, concerning the elimination of the provision which required the Treasurer of State to publish receipts and expenditures of public money. He said that because times have changed that the members of the Commission had thought the further retention of the provision seemed rather pointless. He pointed out that the suggestion had been made that the Commission, for the same reason, could just as well eliminate the warrant provision under the same section, and commented that as the Commission had understood it, there was some sort of order passed by the Governor and Council or at least some kind of formality was observed which amounted to a technical compliance with the section. He directed his remarks to Mr. Mudge, the Commissioner of Finance and Administration, who had been asked to appear. and said that what the Commission wanted to know was what functions were performed by the Governor and Council in drawing money from the Treasury. Mr. Mudge stated that about the time he came on as Commissioner there was a question concerning printing the warrant forms for the Governor and Council to approve payments by the Treasurer. He said that he questioned Mr. Abraham Breitbard, the Deputy Attorney General, to see if he felt they were needed, and that he had given an informal opinion that he saw no reason for them so long as the constitutional requirement of approval was observed somewhere in the disbursement procedure. He said that the approval of all claims before payment by the State Treasurer was a requirement which had been long since outgrown. He pointed out that if Governor Gardiner had gotten what he wanted the provision would have been stricken from the Constitution thirty years ago. Mr. Mudge stated that the procedure under R.S., c. 15-A is to make allotments of the

appropriation for each department by quarters for each fiscal year for specific amounts for personal services, capital expenditures and all other departmental expenses, and when this was approved by the Governor and Council would authorize all expenditures to be made from the appropriation on the basis of such allotment. He pointed out that the allotments were approved by the Governor and Council with the language "and this be our warrant." He said that Chapter 15-A contained similar language to the constitutional requirement to the effect that no money shall be drawn from the Treasury except in accordance with appropriations duly authorized by law. He commented that since warrants are no longer issued by the Governor and Council on an item by item basis and have become a mere formality, the Constitution could be changed to eliminate the requirement. President Scribner asked if he understood correctly that there was a statute which allowed the Governor and Council to allot departmental appropriations on a quarterly basis and that the warrant language was put into the allotment to authorize all departmental expenditures for the entire quarter. said as he understood it the constitutional requirement was not required because of the present controls built into Chapter 15-A. Mr. Mudge said that he thought that the word "allotment" supplants the word "warrant" in terms of present procedure. Mr. Varney suggested that if the warrant provision were taken out of the Constitution there was no guarantee that the Legislature wouldn't amend the statutes to eliminate allotments. He asked if the presence of the warrant requirement in the Constitution wasn't valuable from the standpoint of assuring the continuance of the allotment requirement. He said that he wanted to be sure that if the Commission recommended taking the provision out of the Constitution that the Legislature wouldn't take the allotment devise out of the statutes. He thought that by requiring in the Constitution that no money should be drawn from the Treasury but by warrant of the Governor and Council that there was more attention focussed on disbursements. President Scribner said that he thought that the constitutional provision was archaic and ought to be removed. Mr. Varney said that according to his thinking if the Legislature made an appropriation none of the money would be expended without an order or warrant by the Governor and Council approving the expenditure of money. The thing is set up by quarters and approved by the Governor and Council. He felt that this was an approval and would be in compliance with the Constitution. He said the only question was whether it should be required in the Constitution. Mr. Mudge said that the present provision wasn't a difficult requirement to live with and wasn't too costly. He said that the entire cost under the warrant requirement

probably wouldn't be over \$200 or \$300 a year. Mr. Mudge said that if it were not for the warrant provision and the allotment law there would be no approval necessary for spending appropriations. He explained that if the allotment law were repealed, expenditures would have to be approved by the Governor and Council under the constitutional provision before any part of an appropriation could be spent.

President Scribner commented on the fact that several members were absent. He said that he was disappointed that more weren't there because it was getting down to a nutcracking situation where he wanted to report a number of things for action. He called attention to the copy of the first report before each member, commenting that getting it together was much more than he had bargained for. He said that the report had been ordered printed by the Legislature, but that the press release for tomorrow had been jumped. Mr. Varney said that as a matter of policy he thought that the Commission shouldn't send any matter to the press before submitting it to the Legislature. He pointed out that once something is delivered to the Legislature through the Speaker or the President from that point on it could be considered public information. President Scribner said that he agreed but that he thought that the Commission had a responsibility to the press, and especially to the weeklies, to let them have it for use in time for the release date. He said that he didn't think there was any disagreement, but that he didn't have a staff and, with the mails being what they were, he couldn't get a report out to the press in time for them to make use of it unless he sent it out with a release date. President Scribner said that this raised a question concerning the three amendments proposed in the first report and whether the Commission ought to see what it could do to make sure that they were introduced. Mr. Varney felt that the Commission should do nothing. President Scribner replied that he hadn't worked a whole year to file just a report. Mr. Smith said that he didn't think that Senator Marden was going to let the things lie around. Mr. Ward said that the Governor was interested in seeing that these things got in, and suggested the possibility that the Commission could perhaps try to get an order passed directing a joint committee to bring in bills. Mr. Varney said that he didn't know that the Commission had recommended that a special committee be set up to consider recommendations of the Commission. said that he had just found out about it while driving up with Representative Dennett. Mr. Varney indicated that he felt that the Legislature would resent it. President Scribner said that he had just written to Senator Marden and Representative Smith on the question of extending the Commission, and if it were to be done, when and how should it be done. He said that the pressure was off now that

the Commission had the order. He said that he would assume that when the legislative committee held its hearing it would probably want the members of the Commission present to answer questions according to their interest. He added that he didn't want it to look as if he was doing all the talking. Mr. Ward said that it would seem that the Commission had some sort of obligation to get their resolves out. President Scribner asked whether there would be any harm in talking with Representative Kennedy and Senator Marden about procedure. Mr. Ward suggested that it could be done by an order directing the Committee to consider the Commission's report and resolves and after hearing to report in resolves. President Scribner suggested taking the matter up the following week, stating that he had several things which he wanted to report. He reported that Mr. York had called after the last meeting and asked if he had meant what he had said that he wanted help in writing the report. President Scribner said that he had offered to help him, but that fortunately he didn't have to have the report for today. He stated that he had contacted the University of Maine Law School about getting someone to bring the Carr Case down as to any further developments. He said that he didn't know whether Judge Carey had written to all the members about the reapportionment article appearing in the latest issue of Look Magazine. that the President of Bowdoin College had written saying that they would be glad to help within the limit of their funds. He stated that he had assigned them two problems: the first to determine whether the Constitution needed an amendment as to its amending provisions, the second to be available to test whatever the Commission should decide on reapportionment. He pointed out that this would not involve policy, but only a technical examination to determine whether the proposals recommended by the Commission could be practically applied. He noted that Miss Hary was going to get something together on reapportionment by counties, and stated that he had copies of the drafts from Mr. Silsby of the various resolves which the Commission would probably want to recommend and have introduced. He said that he had sent out copies of the second report to the Chief Justice and Attorney He told the Commission that the Chief Justice General. had called to say that he appreciated being sent the material and asked to be allowed to take it up at the judges conference being held today. He said that the Chief Justice questioned him as to why the Commission had taken out the authority of the Council to request advisory opinions. President Scribner said that he wished to apologize for the way some of the material was mailed. He said that the members had been sent the second report but that what went to the Chief Justice was only the proposed amendments to Article VI with a memo. He stated

that the tentative draft of the second report sent out to the Commission had not been released. He said that he would like to get the second report cleared today and if the Chief Justice approved the draft of proposed changes to get the whole thing out to the Legislature sometime next week. He pointed out that the third report of the Commission would include any recommended amendments dealing with item veto, warrants, reports by the Governor on pardons, the Governor's authority as Commander in Chief and other matters. President Scribner stated that the fourth report dealing with reapportionment would be the last report to the Legislature. Mr. Varney said that he thought that the report on reapportionment should be the Commission's next report rather than the one on Article VI. President Scribner said that it was just physically impossible to get the reapportionment report done any earlier: that it would have to have a supporting brief and anyone who wanted to do it as far as he was concerned was welcome to it. He commented that the members of the Commission had been over Article VI several times and that he had thought that they had tentatively approved it at the last meeting. He said that he would hope by next week when the Commission had the material from the University of Maine and Miss Hary that it could begin to write the report on reapportionment.

President Scribner suggested looking at the draft of the second report, dated December 31, 1962. Mr. Varney moved to strike out the first paragraph. Mr. York seconded his President Scribner said that the reason the paragraph had been included was that when Judge Carey had taken up Article VI with the Justices they all thought it was alright as it was and needed no change. Mr. Smith said that he was inclined to agree with Mr. Varney. It was voted to delete the first paragraph. President Scribner asked that the members look at the article itself which had been mailed out at the same time as the report. He stated that it was substantially the same as it was when they looked at it before except for a slight change. said that the Commission had discussed it the last time and he only wanted to call the member's attention to the changes made in Section 6 to take care of those judges now in office.

The question of submission was discussed. President Scribner said that it seemed to him that the Legislature was constitutionally required to submit amendments to the Constitution in November either at a special election or at the regular general election. He said that he didn't know how the question of election dates was handled where the resolve authorized alternative dates. He stated that he thought the best way to do it would be to use an exact

date in the resolve. He suggested that Mr. Silsby could check on this for further information as to how it should be done.

President Scribner informed the Commission that he would have to leave for Boston at noon, and said that he hoped the members of the Commission would remain and discuss the matter of apportionment. Mr. York asked if the next meeting would be in Room 228-A, next Wednesday, at the same time. President Scribner without answering, stated that he didn't think that the House would take too kindly to tinkering with reapportionment since it just recently done it. He said that the problem in the House was two fold according to the decisions: the first. was the absolute limit of seven; the second, the proviso that in the allocation of seats that the major fractions be in favor of the smaller counties. He commented that one of the problems with the present provision was that only a few persons like former Governor Robert N. Haskell understand it. He said that it was his thought that if the Commission were to come up with a strong report on reapportionment, then in the event that the Federal court decided that the present provision had to be changed, the Commission's plan would be a tremendous help. Mr. York said that it seemed to him that the Commission had a responsibility to come up with something just a little bit more than what laymen would think up after giving it a little study. Mr. Ward pointed out that the act creating the Commission said such changes and amendments "as may appear to be necessary or desirable". He said that he thought that the Commission ought to recommend what would be desirable. President Scribner said that frankly he would like to have a smaller house, but that the Commission would have to be practical about these things. Mr. Ward said that he was in favor of 155 representative districts and 31 senatorial districts. Mr. York said so was he. Mr. Varney thought that the Commission was being overafraid that the Legislature was not going to come up with something, and said that he felt if the Commission wanted something, it ought to recommend it. He indicated that he thought that the Commission ought to recommend doing away with county lines. Mr. York asked whether Professors Athern P. Daggett and David B. Walker, of Bowdoin, had copies of the Commission's material. President Scribner said no. that he hadn't sent them a thing. Mr. York asked if there was any chance that they could have it so that they could shoot their holes in it before the next meeting. was a consensus of those members of the Commission present that the Commission recommend a plan on reapportionment. President Scribner said that from the talking on the reapportionment business that he would take it that the members were in accord that the suggested plan should be submitted to the Bowdoin people to see what they thought of it from a technical aspect.

Mr. Smith acted as President pro tem. in the absence of President Scribner who was temporarily called from the meeting.

Mr. Smith said that he thought there was a second draft of Article IV, Part 1, Section 2. Mr. York asked if the section was worked on at the last meeting. He said that he thought that if the members of the Commission were more or less in agreement, there would be no harm in submitting it to the Bowdoin people to get the benefit of their thoughts. President Scribner returned and, noting Mr. York's question, stated that he had made another draft to clean up the previous draft, but that he hadn't mailed it Mr. York asked what had prompted President Scribner to prepare his "Comment on Reapportionment of Lower House." President Scribner replied saying that he had started to get something together on paper and thought it would be a good idea to send it out. He said that he thought that the members had discussed the subject of reapportionment all that they could for the day. He added that Professor Cornelius F. Murphy, Jr., of the University of Maine School of Law, was getting the material together on the Carr Case, and that the political departments at Bowdoin and Colby were standing by to review the Commission's proposals from a technical viewpoint.

The Commission turned to the six proposed amendments sent out by President Scribner on January 3, 1963. Mr. Ward asked the purpose of the amendment proposed to Article IV. Part 2. Section 4. President Scribner said that it was to take out the archaic language concerning the election of Senators by joint ballot. Mr. Smith objected to the words "the same" in the draft of Article V, Part 1, Section 7. dealing with the Governor as Commander in Chief. on the grounds that he didn't know what was meant. The members of the Commission started to take up the draft to Article V. Part 4. Section 4, but President Scribner pointed out that the Commission had already discussed the section earlier and suggested that they move on to Article V, Part 1, Section 3. He said that he wanted to make it entirely clear what happened in the event of a tie vote for Governor. He stated that the draft required that the ultimate determination be made by the Legislature in joint session, and in tie cases for the joint session to elect one of the two persons having the largest number of votes. No comments were made on Article V, Part 1, Section 8, concerning the power of the Governor to appoint civil and judicial officers. President Scribner asked whether the members had received the two proposed drafts of the amendment to permit the Governor the item veto. He said that the form of the second draft was taken from the Rhode Island Constitution and that both were sent out during the

past week. President Scribner commented that he rather liked the second form because it was much more succinct.

The Commission recessed at 12:25 p.m. for lunch and was called to order at 1:20 p.m. by President Scribner.

The Commission discussed a confidential chart prepared by President Scribner showing the largest and smallest representative district for each county under the present (1961) apportionment act. President Scribner said that he would have another chart for the next meeting showing the number of districts with respect to the people represented. He said that what he thought it would show was that most of it was pretty fair with the exception of some extremes. He stated that at lunch he had learned that the Democrats were thinking of moving to ask for an advisory opinion of the Supreme Judicial Court on the seven limitation affecting Portland. He said that he didn't think that the Supreme Judicial Court ought to be bothered with the question any more than the Commission should be obliged to report on a certain date. He said his hope was that the Commission could get the report on reapportionment in by the end of January. Mr. Ward pointed out that the Legislature could do anything it wanted to with any of the proposals, whether they were orders, amendments or what have you. Mr. Smith said that he didn't think that the Commission should be particularly concerned with Portland because it was only a part of the problem. Mr. Ward said that he agreed with President Scribner that an order directing the Commission to report before a certain date shouldn't be permitted. President Scribner started to say that what he would like to do about the reapportionment report but was interrupted by Mr. Smith who commented that the report would have to have some direction and someone to head the thing up. President Scribner resumed saying that that was what he thought and that for the past several weeks he had been sending out material which could be eventually be incorporated as a part of the final report.

President Scribner asked if the Commission would take a look at the draft of the report on the Judiciary of December 31, 1962. Mr. Ward said that he felt that Justice of the Peace and Notary Public appointments were handed out too freely and that they shouldn't be sent out to everyone who sends in \$5. The Commission turned to the proposed changes in the draft to Article VI and discussed them again briefly. President Scribner then requested the members to take another look at the draft of the second report, suggesting that they proceed by going over each paragraph for any changes. Mr. Varney commented that he had learned at lunch that the members of the Joint Select Committee on Constitutional Amendments and Legislative

Reapportionment had already been appointed and would be chairmaned by Senator Porteous of Portland. President Scribner said that he supposed it would mean making slight changes in the wording of the report if the Commission was talked out of recommending removal of the Council's right to request advisory opinions of the Supreme Judicial Court. Mr. Varney, after pointing out that the third change in that part of the report recommending other changes indicated that the Commission was for doing away with Justices of the Peace and Notaries and that they should be covered by statute, said that he thought that the Commission ought to check to see if there was any statutory language which provided for the election of Judges of Probate in certain instances. Mr. Smith suggested that it might be a good idea if the Commission prepared a list of any implementing legislation which would be needed in the event recommendations of this kind were adopted. President Scribner said that there were several things he wanted to discuss which the Commission hadn't had time to take up that morning. He said that he would like to go to the drafts of the two sections which he had mailed out; first to that of Article V, Part 1, Section 14, relating to a vacancy in the office of Governor. He pointed out that the intent of the section was to make it entirely clear what happened if the office of Governor became vacant. He said that he had left out the ninety day business for the time being, but that he planned to put it in later. He stated that the question here was what happened if the Governorship was vacant with a vacancy in the office of the President of the Senate. If the Speaker of the House assumed office as President of the Senate could be convene the Senate to elect a President. He commented that it seemed like a pretty good time to iron out the problem while it was clear in everyone's mind. President Scribner advised the members that they had each received a redraft of Article IV. Part 1, Section 3 in the same mail, relative to reapportionment if the Legislature failed to act. He said that a draft of Section 3 was sent out on December 24th and discussed at the meeting on December 27th; and that he had redrafted the section as a result of the discussion. He stated that he gathered that the members of the Commission were pretty well jelled on the question of reapportionment and that he would like to get the thing cleaned up for a vote at the next meeting. He noted that the Commission had voted at the last meeting to propose its recommendation on reapportionment of the House in the alternative.

President Scribner directed the Commission's attention to what Mr. Robert N. Haskell had brought up at the public hearing on March 21st when he pointed out there was a need to clarify the question of bond indebtedness arising through initiated legislation. He said that Mr. Haskell's point was that the initiated procedure could be used to create a debt if revenues were provided in the initiated legislation. President Scribner said that he thought the matter could be corrected by amending Article IV, Part 3, Section 18, to exclude bills, resolves or resolutions which authorized the issuance of bonds on behalf of the State from being proposed by initiated legislation, and Article IX, Section 14, to the effect that legislation to authorize the issuance of bonds on behalf of the State should not be initiated.

The question of the next meeting was discussed and the following dates selected:

Wednesday, January 16, 1963, at 10:00 a.m. Wednesday, January 23, 1963, at 10:00 a.m.

President Scribner asked that if any of the members should have any further thoughts or suggestions on the amendments which the Commission had discussed that they send them to him before the next meeting.

The meeting was adjourned at 2:50 p.m.

Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

WEDNESDAY, JANUARY 23, 1963

Thirteenth Meeting

President Scribner convened the thirteenth meeting of the Commission at 10:15 A.M. in Room 228-A, State House, with the following members present: Messrs. Beane, Carey, Edwards, Scribner, Smith, Snow, Varney, Ward and York.

President Scribner asked the members of the Commission to examine and approve the mimeograph copies of the second report which he had distributed, explaining that it was the same as the one which he had sent out to each member with a request for suggestions, except for a few minor changes in style. He advised the Commission that the resolve appended to the report was the same except for Section 5 which had been redrafted by Mr. Silsby for clarity. He said that a draft of the resolve had been sent to the Chief Justice for his comment prior to the last meeting and that he had indicated that he would like to take it up at his conference with the Justices on January 9th. Thereupon, he read Chief Justice Williamson's reply. President Scribner said that when he had written to the Chief Justice he had not referred to the powers and duties of the Justices with reference to the Judicial Council, but when he wrote back to him after receiving his reply that he put in an exception under Section 5 allowing the Justices to be members. He said that the Chief Justice had reviewed this exception and thought that it solved the problem. President Scribner said that Mr. Varney had asked whether it was a good idea to allow the Justices to serve on the Judicial Council in view of their possible domination of it. He said that the sole intent of the exception was to let the Justices serve on the Council and that anyway they would have to be appointed by the Governor. He asked if anyone had any questions about the report and if not, he would release it and get it out today. Mr. Carey questioned the continuance of advise and consent of the Council under Article VI in view of the Commission's earlier discussions on the Council. President Scribner said that he thought that the time to move in on the Council was when the Commission took up the question of annual sessions. He commented that he didn't think that the

retention or abandonment of the Council was of any particular consequence anyway and that if the life of the Commission was extended it could make its report on the Council at a later He said that he was confident that the Commission wouldn't get a unanimous report on it anyway and that as far as he was concerned he thought the Commission ought to concentrate on the problem of reapportionment. Mr. Carey said that he thought reapportionment would be shelved in any case because the Legislature was going to do it their own way. President Scribner stated that he just didn't think that this was so, but that when the Legislature saw the decisions coming down and that they were going to have to do something they were going to have to come back for guidance. Mr. Carey said that he didn't think that they were going to come back to the Commission for it. He said that the Governor's Council was not a political issue to anyone who thought seriously about it. He thought that the people of the State wanted a strong executive and were waiting for a chance to vote on it if the Legislature would let them. He indicated that he felt that the issue of Lieutenant Governor was a political issue. He said that he didn't think that the State needed one, nor did it need annual sessions, but that he thought that the people ought to be allowed to decide on the Governor's Council. President Scribner said that he suspected that the Commission would get a negative decision from the Committee on Constitutional Amendments if it recommended abolishing the Council and that it would only stir up a political controversy. Mr. Carey said that this was his point; that he didn't think that the Commission should do just what it thought the Legislature thought it ought to do. President Scribner commented that he thought that it would do a disservice to the Commission if it reported next on the Governor's Council rather than on reapportionment. Mr. Carey said that he was not interested in what the Legislature did; that he was interested in what the Commission did here. He said that he thought the people ought to be allowed to make the decision and that there was no better time than now to report out on the Council and let the Legislature refer the question to the people. Mr. Ward stated that Representative Childs of Portland had put in a resolve relating to reapportionment and presented an order which would ask for an advisory opinion of the Supreme Judicial Court. He said that the order was deleted yesterday and set aside in favor of waiting for the report of the Commission on apportionment. President Scribner said that he thought that the Commission had got to move, pointing out that the members had a report in front of each of them which had been considered on three different occasions. He said that he understood that Judge Carey wished to discuss Section 6 again, and commented that he didn't share his philosophy. He indicated that he thought

that the Commission should act in areas where the members were in accord first and leave the controversal matters to later. He told the members of the Commission that he felt that he could say quite frankly that the further they got into reapportionment the less easy it seemed. Mr. Carey commented that all the Commission had to play around with was the meaning of the word "invidious." He said that he thought that the present method of reapportionment was alright, but that the limitation of seven might need to be removed. President Scribner said that he thought that the Commission ought to make a decision on the second report then move on to reapportionment. He pointed out that it was Mr. Carey's opinion that the Commission ought to report on the Governor's Council. He said that he also had in mind that everything which the Commission did from now on would go to the Committee on Constitutional Amendments, and that what the Commission submitted would have to go through the Committee and the Legislature before it went to the people. Mr. Carey stated that he thought the report was O.K. spelled out as the Commission had it. Mr. Ward said that he had a question under Section 6 where it said that Judges of Probate shall be appointed by the Governor with the advice and consent of the Council. President Scribner answered saying that the only reason Section 6 was there was because some people would be concerned as to what happened to the Judges of Probate in office if the amendment were adopted. He said that this had been discussed and sent out, and that all the section was intended to do was to show how any vacancies which occurred should be filled. He added that the Legislature was perfectly at liberty to say how such vacancies should be filled. Mr. Smith noted that there was a bill already in to say how they should be elected. Mr. Carey suggested that the Commission might refer to the Massachusetts provision on the Governor's Council. President Scribner said that he thought that the Mass. thing was much worse because it was only a political stepping stone. "Again, Gentlemen," he said, "I don't want to keep pushing, but we're on dead center and have got to do something. I'm willing to change the report, and report. but we've got to do something!" Mr. Ward said that he thought that on any of these things which the Commission was reporting on that it would have to avoid the question of the Governor's Council until it made a decision on whether it should be eliminated or not; that the Commission shouldn't refer to the Council in amending any section as though it had been eliminated. President Scribner pointed out that the Commission had an amendment already incorporated in the resolve amending Article VI which removed the power of the Council to ask the Supreme Judicial Court for advisory opinions. He said that the Commission had another report coming up on vacancies in the Governorship which he would

be willing to draft without reference to the Council. Carey said that this was alright just so long as the people got the idea that the Commission was considering the Governor's Council. It was thereupon voted to accept the second report. Mr. Smith asked if under Section 4 the Commission wasn't getting into trouble on the problem of appointment of associate judges. He said that he realized that it was transition problem, but wondered whether Section 4 was the proper approach. President Scribner said that any of the recommended amendments wouldn't be voted on until fall, and that the Commission didn't know whether there would be any more associate judges appointed. He commented that he didn't think that this was something that the Commission should have to worry about. Mr. Ward stated that he thought that once the district courts were established the associate judges would resign. Mr. Smith asked whether a recorder of a municipal court was considered as a judicial officer like Judges of Probate. He said that he felt that the decisions indicated that recorders were not. President Scribner commented that all the Constitution said was that the judicial powers were established in such a court and in such courts as the Legislature might establish. Smith remarked that recorders were an example of where a man decides cases and was not a judicial officer.

President Scribner said that he had asked Miss Hary, as he had everyone else, to help with the work of the Commission. He said that what he wanted her to do, and he wasn't sure that he was too specific as in what form it should be, was to prepare a breakdown of the 1961 reapportionment figures in relation to the 1960 census. He pointed out that there were several districts with 200-300 inhabitants and several others with 10,000-11,000. He said that constitutionally speaking the actual average or mean was 6,419, which might mean a 40-50% variation. He then asked Miss Hary if she would care to report.

Miss Hary stated that it was her understanding that she was to take the report "How Representative is the House of Representatives?" by Francis M. Kinnelly, and apply the current figures. She indicated that in doing this she had used the figures of the Apportionment Committee which excluded those inhabitants residing on military bases. President Scribner said that this was fine so long as it was clear, commenting that it was one of the problems that not only decided how many inhabitants there were per seat, but decided them by counties, and then as to districts within the counties, with the eight smaller counties getting the extra seats. He stated that some cases had indicated that a 50% variation was alright, and said as the members could see that the Legislature had not done too bad

a job since there was only about a 15% variation on either the high or low side.

President Scribner said that another problem was whether the Legislature should continue to make the reapportionment or whether some outside authority should do it. He said the question basically was whether the Legislature hadn't done a pretty good job in discharging the responsibility. He called the member's attention to the fact that the 1820 Constitution set up the first apportionment, further providing that the Legislature should act in 1821 and then in every tenth year. He said that Miss Hary's second assignment was to prepare a report on the history of Maine's reapportionment which she had done and which he would now read.

HISTORY OF APPORTIONMENT IN MAINE

From the beginning Maine has consistently faced the problems of apportionment promptly, noting but two general exceptions in its history from 1819 to 1963.

The Constitution adopted in 1819 as the basis for our government contained a formula for representation based on population apportioned according to a flexible, though limited, number of seats. In the Senate membership was set at not less than 20 nor more than 31, the districts to conform "as near as may be" to county lines. In the House the number of seats ranged from 100 to 200, divided first among the counties and then governed by a scale allowing each town having 1500 inhabitants, 1 representative; 3750 inhabitants, 2; 6750 inhabitants, 3; 10,500 inhabitants, 4; 15,000 inhabitants, 5; 22,250 inhabitants, 6 and each town having 26,260 inhabitants, 7, with no town ever to be entitled to more than seven. Small towns were to be classed in districts to achieve the required minimum.

The Schedule (Article X) contained in the 1819 Constitution applied these provisions by specifying the actual apportionment of the first legislature which was to continue in force through 1821. Thereafter the Legislature itself was to act in 1821 and within every subsequent period of not more than ten nor less than five years. Resolves were passed in 1821, 1831 and 1841. The relative increase in population brought both houses to the maximum membership envisioned in 1841. The Senate thereafter stayed at 31 members through 1931. The House found 200 so unwieldy a body that the Constitution was immediately amended to limit the number forever to 151. The amendment becoming effective in 1842, a new House apportionment was adopted that year.

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The regular apportionment of 1851 was not made until 1852, due to an amendment to the Constitution changing

the time for holding legislative sessions from May back to January, elimination of the general election of 1851, and the continuation in office of the 31st Legislature from May 1851 to January 1853.

Some questions were presented to the Justices of the Supreme Judicial Court in 1842 relating to the action of the Legislature in creating Senate districts which strayed across county boundaries but the practice was found unobjectionable and may be noted in the apportionments of 1831, 1841 and 1851. Since 1861 county bounds have been uniformly observed in senatorial districts.

In 1881 occurred the first real delay in apportionment and not because of legislative inaction. The resolves were presented to the Governor on the next to the last day of the session and returned by him the following day without his approval. Among other objections he found the strict limitation of senatorial districts to counties an arbitrary disregard of the number of inhabitants and he stated that the House was not based on population exclusive of foreigners and Indians not taxed and that the districts were "equally arbitrary, unfair, unjust and unduly partisan." Time being insufficient to overcome these objections, the matter was put off until 1883.

From 1891 through 1941 regular apportionments were made every ten years. It should be noted that the Senate was increased in size from 31 to 33 members in 1933 by a constitutional amendment which instituted a new population formula for allocation of seats to counties; 1961 brought a further increase to 34 members. Neither increase caused any deviation from the usual apportionment of the Senate in 1941, 1951 and 1961.

The House found so little basis for agreement in its attempts to apply the new formula specified in the 69th amendment to the Maine Constitution to the 1950 census figures that no redistricting was accomplished in 1951, nor indeed until 1955. No trouble was encountered in 1961.

Inaction in 1951 marks the one real failure of the Legislature. If some apportionments were found to be wholly perfunctory, at least the matter was presented and passed in the regular decennial periods.

Mr. Carey said that in view of this record of reapportionment it would seem that there was no need for recommending any alterations. President Scribner stated that he thought that one reason for doing so was that the Legislature never had had to cut down in the past as it certainly would as the State expanded. Mr. Ward said he understood that on several occasions the Legislature had merely readjusted the previous reapportionment. President Scribner said that that was true,

pointing out as an example that the Legislature at the last reapportionment in several instances had made the same reapportionment as it had made ten years before. He then asked the members of the Commission whether there was any further need for Miss Hary. They indicated that there was no further need for her services then, and she withdrew.

President Scribner stated that he had two documents which Professor Murphy of the University of Maine School of Law had prepared. He said that Professor Murphy taught constitutional law at the law school and had agreed to do the work for the Commission. He stated that the first was a review of court decisions on the State level since Baker vs. Carr so that the Commission would know what was acceptable or not, and that he had two available copies. He said that Professor Murphy had also prepared a memorandum which he had asked him to put together which was a judicial review of State reapportionment plans under the equal protection clause. He explained that the memorandum was divided into three parts: 1) the right of a citizen to challenge State apportionment in a Federal court; 2) legal norms and inequalities; and 3) remedial action by the Federal courts. He said that the cases fell into four categories: 1) the comparative inequality of representation; 2) practical control of the Legislature; 3) population increases and shifts; 4) State constitutional requirements. After reading portions of the memorandum, President Scribner said that all that anyone could get out of it was that the law was still in a pretty formative stage.

President Scribner said that he had sent out two drafts which he had made of a proposed report to each member. said that he was not satisfied with them and that a lot would have to be added. He pointed out that the drafts raised several basic questions, and called the member's attention to the suggestion made by Mr. Carey that the Commission ought to stay away from a recommendation on the Senate until a decision was reached as to what the House decided. President Scribner said that he was not sure that the Commission could do this, but that he thought there was real merit in waiting to see what the House decided first before making any recommendation affecting the Senate. He stated that the report which he had been working on was a consideration of the House side that he wanted to try out on the members to find out their thinking. He said that he felt that the present Senate arrangement would ... t stand a constitutional test because the steps involved were too broad. The President commented that the cases all indicated that there had to be some logical measure even though both houses may not have to be on a representative basis. He said that he thought that a formular based on such factors as geography and history

would be satisfactory. President Scribner stated that his suggestion called for the Senate to be made up of one Senator from each county chosen by a vote at large. Then instead of a Senator from each five legislative districts to have one chosen from each ten districts. He said that his own feeling was that the Commission or the State would have a much better chance of putting this through than the first plan. Prosident said that in the event there were less than five senatorial districts in a county that they could be combined with districts in other counties. He pointed out that under the first plan both Knox and Lincoln Counties would be hard pressed to get a single Senator. He added that the plan recognized both geography as well as people. Mr. Ward said that if he correctly understood the plan it would mean starting with sixteen Senators elected from each county at large with the remainder chosen from each ten legislative districts. President Scribner said that he thought that this was a much more saleable thing because it wouldn't mean having to go to a county and saying that it would have to give up a Senator. Mr. Carey commonted that the approach was certainly one of equality. President Scribner said that it was his observation that you got better government by people coming from smaller areas, stating that it might not be quite as progressive, but has given Maine good government. He went on to say that this would have to be given up to a certain extent because any citizen claiming his Federal rights could go into a Federal court and the court could reapportion the Legislature. He said that he just threw this out for the members to think about and for them to bear in mind that the Commission could report in the alternative.

President Scribner distributed a six page report which he had prepared on House reapportionment and commented that writing out the Edward Chase formula so that anyone could understand it was a formidable task. He said that he was Lure he didn't understand it until he started to write it out. He stated that he was not sure in what final order it would appear and that the whole thing would have to be adjusted to reflect Miss Hary's figures. He explained that for the purposes of the first draft he took 20% as the variation and while the chart which the Commission had was not based on the same figures, he felt that there was an indication that at least one-half the seats were outside the 20% variation. President Scribner said that the reasons for the discrepancy were: 1) the limitation that no city or town should have more than seven; pointing out that Portland was the only municipality affected at the present time which meant taking four seats from it and giving them to the rest of the county; 2) fractional excesses computed in favor of smaller counties; and 3) other factors which are difficult to name but which relate to the base. He stated that another reason might be the practice within a county that the local

delegation from the county decides how to make the allocation within the county. He told the members that he had tried to take the various limiting factors and discuss the effect of each in the report.

President Scribner said that Professors Daggett and Walker at Bowdoin were lined up in the event that the Commission decided to recommend changes in the amending process, and that they were also going to look at the material which the Commission was getting together on reapportionment. Mr. Ward said that Senator Wyman was putting in what Mr. Haskell had in mind concerning bond indebtedness created by initiated legislation. President Scribner said that what he wanted to know was whether the Commission would go along with the idea of getting out a report on reapportionment of the House. He said that he wanted to discuss the new Senate proposal with Mr. Marden; that being from Waterville he would probably run into great difficulty in trying to get back to the Senate from only five districts, whereas if he could run at large from the county, he could probably make it. President Scribner said there were several changes which needed to be made in the material on the House of Representatives mailed out on January 11th, commenting that Mr. Marden had suggested the initial changes thinking that there was magic in having four extra Representatives. He indicated that he wanted to talk with him about restoring the number of Representatives to 150 so that it would be divisible by ten, so that the Senate districts would be a multiple for the fifteen Senators left under the new Senate plan where each county would have one Senator. President Scribner said that the first change needed to be made in the January 11th draft of Article IV, Part 1, was in Section 4 on page 3, and involved substituting the words "of the" for "in the town or" in the next to last line of the section. Mr. Smith wanted to know the reason for including the provision permitting any five qualified electors to make application to the Supreme Judicial Court for a review of reapportionment under Section 3 at page 2. He also questioned whether the provisions of Article V, Part 1, Section 8 wouldn't have to be cleaned up to be made consistent with the report.

President Scribner asked the members to turn to Article V, Part 4, Section 4 of the Constitution. He stated that the Commission had talked about taking out the provision relating to warrants of the Governor and Council, saying that at the last meeting the Commission had had Mr. Mudge in and that he had said that under the code reorganization the Governor and Council didn't pay any attention to specific appropriations, but had a technical compliance by passing a work order which governed expenditures for each quarter. He commented that Mr. Varney thought that

the provision should be retained and said that the Commission ought to decide once and for all whether it was going to take it out or not. Mr. Snow asked what the harm was in leaving the provision in the way it was. President Scribner replied saying that it was because it was a nullity and that he didn't think the Constitution should be cluttered up with a useless provision. He said that the reason why the Commission got to Section 4 was because it wanted to take out the report of accounts of ruceipts and expenditures required of the Treasurer. Mr. Carey pointed out that he had done something on this back in 1941 for Governor Sewall. President Scribner commented that they got around it by passing a blanket thing each quarter. Mr. Carey said that all the Council gave was tacit approval. President Scribner indicated as he had said that Mr. Varney was a strong advocate of keeping the provision as it was, because in the event the Legislature repealed the present law, the constitutional requirement would still be there to fall back on. On motion of Mr. Carey, it was voted to recommend the deletion of the requirement.

The Commission, after discussion, scheduled the next meeting for Tuesday, February 5, 1963, at 11:00 a.m.

The Commission recessed at 12:30 p.m. for lunch and was called to order at 2:05 p.m. by President Scribner.

President Scribner said that he had spoke with Mr. Marden who was quite enthusiastic with the idea of the new Senate proposal and seemed to go along with the idea of having 150 Representatives rather than 155. He said that Mr. Marden thought that it was a good idea to put in both the House and Senate proposals at once on the theory that if only the House plan were put in that the House would wait around to see what the Commission would do with the Senate. Mr. Carey said that he wondered if the Supreme Judicial Court would go along with the Maryland case, adding that that was his reason for forestalling his opinion. President Scribner said that the Commission had to have some sort of logical formula and that the present plan was based on historical chance and had only history to recommend it. Mr. Carey stated that his attitude was that county government was a useless thing and had very little to recommend continuing it as a system of Maine government. President Scribner said that that was the reason for trying to come up with the new formula.

President Scribner said that going back to the thing which Dr. Dow had written in his article in which he went along with pretty much with what the Commission had covered concerning students and inmates of penal hospitals and institutions, that it seemed to him that students ought to be limited to those at educational institutions not having

a legal residence in the State. He said that the problem was that you might have a student at the University of Maine who had a legal residence in Portland, so that probably it would be necessary to come up with some language there as to where you were going to count him. He stated that this was one of the troubles with taking the Federal Census, because you had to take them where they were as of a certain day. He commented that he didn't know just how the Commission could approach this one, but that since the Commission was going to put in both plans that it was going to have to work out some solution. Mr. Carey said that he supposed that only those should be counted in the census who were eligible to President Scribner said that that was the point, and that as long as he kept his residence in Portland he could vote there even though he might not be physically present to vote. He said that this was one of the problems of using the actual population figures rather than the number of registered voters or gubernatorial vote as the basis. Mr. Carey commented that the average vote from election to election was generally the same. President Scribner said that by using the figures from the three preceding elections it would take you back eight years and give you a very good average; that actually all it would mean would be getting three sets of figures from the Secretary of State and taking the average. He said that he felt that the gubernatorial vote was much superior to the census or the number of registered voters.

President Scribner said the next question he would like to ask concerned Article IX, Section 14 and whether the people could initiate a bond issue. He stated that the specific question was whether there was anything under Section 14 which would prevent the initiation of legislation creating a bond issue. He said that there was an example right now involving the Chebeague Island Bridge and the question was whether they could do it. He pointed out that formerly each bond issue had been authorized by an amendment to the Constitution and that this had been changed so that bond issues could be authorized by the Legislature on referendum. He said that this didn't specifically cover the problem of initiation of bond issues, but that he thought that you could make out an argument based on constitutional history that this was the only way bonds could be authorized. Mr. Carey said that what he was thinking about was that the Legislature had the right to issue bonds and that no one else could do what the Legislature couldn't do. President Scribner said that he didn't believe that there was any inherent power to do it by initiation. He commented that Senator Wyman has already proposed an amendment which would take care of it.

President Scribner called attention to the six proposed amendments which he sent out on January 3rd, as Mr. Ward took his seat. The President informed him that the Commission had been talking about what Mr. Haskell had mentioned on whether you could raise a bond issue by initiation. He said that the Commission had concluded that a bond issue couldn't be initiated under Article IX, Section 14. pointing out that the people under the initiative provisions may propose acts, resolves and resolutions to the Legislature, but that since the Legislature couldn't issue a bond issue without submitting it to the people, it could be argued that you couldn't initiate one. He told Mr. Ward that he had talked with Mr. Marden who thought the new reapportionment proposals had merit and that it would be just as well if both were put in at once. President Scribner turned again to the amendments of January 3rd, saying that they weren't particularly controversal, but that he would like to get them cleared by the Commission. He said that the first wouldn't require much time, since Sections 3 and 4 of Article IV, Part 2 were incorporated into the materials on the Senate. The next change replaced Section 3 of Article V. Part 1. concerning who is elected as Governor. He stated that the major change here provided that the Secretary of State would not only lay lists before the Sonate and House of Representatives, but also the ballots if the Legislature wanted them, so that it could determine who was elected Governor. He said that the section left the final determination with the Legislature, but that the Legislature could ask the court for instructions as to what to do if it found it necessary. The President said that the question had been raised as to why this particular change was thought necessary and the answer was that the plurality provision had to be changed, so since it was an easy thing to put it in, it would be better to do it, rather than having another election. He commented that in the event of a tie vote that both the House and Senate would elect the Governor. Mr. Carey suggested amending the second sentence of Section 3 by inserting the word "authenticated" before the words "copies of lists." President Scribner said that it would perhaps be better if it said "attested" copies of such lists. Mr. Ward suggested that the section provide that the vote be returned to the "Secretary of State," rather than to the "Secretary's office." and that the words "lay the lists returned" be changed to "lay such lists." President Scribner noted that Mr. Carey had suggested that "No money be drawn from the treasury except in accordance with law." Mr. Ward said that he questioned the language in the draft of Article V, Part 4, Section 4, since a lot of Health and Welfare, Highway and Fish and Game Department funds came from the Federal Government and woren't appropriated at all. President Scribner asked whether the wording "No money shall be drawn from the

treasury unless an appropriation had been made in accordance to law" was any improvement. Mr. Snow said that he thought the matter ought to be looked into. The Commission examined P. & S.L., 1961, c. 182, which made the allocations from the General Highway Fund for fiscal years 1962 and 1963, for information on the handling of State allocations. President Scribner turned to the draft of Article V, Part 1, Section 8, commenting that it took out the authority of the Governor to appoint Notaries Public in conjunction with the changes in Article VI, Section 5. He said the next change dealt with Article IX, Section 1, which would permit the administering of oaths to Senators and Representatives by the Senior Associate Justice of the Supreme Judicial Court present at the State Capital, in the event that the Governor or Chief Justice were unavailable to do so.

President Scribner suggested that the Commission take a lock at some of the other matters discussed at the last meeting. The first was the draft of the provision providing for the Governor's item veto. President Scribner said that he had made the changes suggested at the last meeting and thought that the provision as it now read met with everyone's approval. The second matter concerned the draft of changes to Article V, Part 1, Section 14, to take care of a vacancy in the office of Governor; and the draft was approved. President Scribner said that it was all that he had by way of an agenda unless there was something else which someone wished to put before the Commission.

The meeting was adjourned at 3:00 p.m.

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Proceedings of the SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

TUESDAY, FEBRUARY 5, 1963

Fourteenth Meeting

President Scribner convened the fourteenth meeting of the Commission at 10:30 A.M. in Room 228-A, State House, with the following members present: Messrs. Scribner, Smith, Varney and Ward.

President Scribner stated that he had cleared the proposal on Senate reapportionment with Senator Marden who seemed to feel that it had a possible chance of passage. The President indicated that he thought that the proposition give reasonable validity to both geographical and population factors as well as history. He pointed out that the courts have said that they would go along with such considerations if they were reasonable and had some logical basis; and that they have even said that they could give recognization to rural as against urban considerations. President Scribner said that he didn't know how the Commission would want to proceed; whether it would want to take up the third report or not. He said that the resolves had been prepared to accompany the third report and suggested that where the Commission was so shorthanded, it might want to take them up first. He advised those members present that Miss Hary had been asked to prepare some additional charts on reapportionment which he hoped to have included as a part of the report. Mr. Ward said that he thought that the Commission had approved the third report the last time. President Scribner replied that it had, but that it might be well to check over the resolves. President Scribner said that he didn't know where Mr. Edwards was and asked if anyone knew whether he was in the House. Mr. Smith said that he didn't know. President Scribner said that he thought he would clear the provision for issuing bonds with Mr. Haskell, commenting that he didn't want to include anything in the report which would possibly suggest that it could be done by initiation. . He called the attention of the members to the fact that Senator Wyman already had in a resolve calling for an amendment to the Constitution on the initiation question. He said that he thought as a matter of courtesy where Mr. Haskell had raised the question that the Commission ought

to send him a copy of the draft to see if he approved. Mr. Smith said that he didn't think that the Commission ought to raise the question of the validity of bonds. President Scribner remarked that bond counsel were a leary bunch anyway and that if anyone said boo, chances were that they wouldn't approve them for issue. It was decided to strike out the language concerning validity.

The Commission discussed Legislative Document No. 472: RESOLVE. Proposing an Amendment to the Constitution Providing for Legislative Approval for the Issuance of Bonds of the State of Maine, introduced by Senator Wyman. Scribner said that he thought that the amendment had been prepared by Mr. Roger Putnam for Senator Wyman, and mentioned that it probably reflected the thinking of Mr. Haskell. He said that the amendment which the Commission proposed to clarify the question differed in the respect that L.D. 472 included the issuance of notes and other evidences of indebtedness. He pointed out that notes and other evidences of indebtedness wasn't mentioned in the present provision and that even though it had been incorporated into Senator Wyman's resolve, he didn't think that the Commission should recommend the language or include it as a part of its resolve. He stated that he thought that the amendment ought to be limited strictly to bonds. He went on to say that he didn't think if Senator Wyman's version were adopted that it would hamstring the State, because a bond was a technical thing and not the same as an everyday transaction involving indebtedness. Mr. Ward specified that it only tied it down to initiated bills. President Scribner said that any rate he thought the Commission ought to limit its suggestion to bonds. Mr. Ward said that he supposed the thought of the Putnam draft was to prevent circumvention of the bond provision by other means of indebtedness. Mr. Smith commented that he thought that the Commission's report ought to include citations as to references to the parts of the Constitution to which the report related or made changes.

President Scribner said that he wanted to go to the fourth report and apologized for not getting the material to the members before the meeting. He stated that each of members now had a complete first draft of the fourth report, and said that he had had Mr. Silsby redraft the sections on reapportionment for the House and Senate under Article IV, Parts 1 and 2. He started to say something on the method of presenting the fourth report, but changed his mind, saying that in the first place as you studied the problem more, the less there appeared to be any real discrimination. President Scribner said that it was his thought that the court would be reluctant to upset even the Portland

situation; further that the State had done a good job as to counties, but that the trouble arose where you got into counties. He stated that he thought that the greatest discrimination was the awarding of fractional excesses to the smaller counties. He commented that he was quite interested in reading the University of Virginia Study on the value of the urban vote referred to by Professor Murphy, but that the best thing which he had seen was the report on apportionment of State legislatures prepared by the Advisory Commission on Intergovernmental Relations, issued in December, 1962. He stated that Maine had received favorable mention in the report, and quoted a passage from page 18 to the effect that it had complied with its constitutional provisions. President Scribner pointed out that Senator Muskie was a member of the Commission and had dissented from the majority report. He said that he thought that it might be well if he were to read it aloud, and thereupon did so. indicating that Senator Muskie's views were printed on pages 74-75 of the report. Mr. Ward asked if the Commission could obtain copies. President Scribner replied that it Turning to the draft of the fourth report, President could. Scribner said that he had started off by saying that Maine had done a pretty good job on reapportionment. Mr. Ward said that he thought it was waving a red flag with too much reference to Portland and to urban rather than rural interests. Mr. Varney asked if it wasn't discriminatory for a voter in a city such as Portland to vote for 12 Representatives while he could only vote for one. President Scribner said that this was in the second part of the report which he hadn't sent out. He went on saying that after paying the compliment which as far as he was concerned, the Legislature was entitled to, he discussed the ramifications of Baker v. Carr and treated of the three provisions which point up the enequity. He remarked that the members could see on these bases that it would be well to look to the gubernatorial vote rather than to population. He stated that he had checked with what the Apportionment Committee had done and found that they had written to the various military commanders and schools and on that basis tried to make the best judgment as to the correct population figures. Mr. Ward said that he thought that President Scribner had torn the problem apart and put it together very well, suggesting a slight change in the language "but has resulted in favoritism by use of fractional excesses" under the part concerning discrimination among cities. Mr. Smith felt that this didn't really deal with the real problem which was the apportionment of Representatives among the classes within the counties. President Scribner suggested going on to the third provision that provides if there are excesses in cities that the fractions shall be thrown into the county to determine how many Representatives the county

has and then dropped. He said that Miss Hary had put a new chart (cresent) together which he thought was quite signifi-President Scribner stated that the report concluded that the three built in restrictions in the Constitution ought to be removed with districts recommended which should be based on either population or gubernatorial vote. He pointed out that the Commission had two charts which showed the county representation based on both the gubernatorial and registered vote. He said that he didn't think the Commission ought to call attention to it in its report, but that the gubernatorial vote would tend to favor the rural over the urban areas. The Commission then spent several minutes discussing import of the several charts. President Scribner mentioned that the Republican Party had just completed a study of the percentage of registered voters which voted during the last election. He indicated that Aroostock and Penobscot Counties had done the worst job.

The President stated that one of the things he wanted to take up were the resolves to the report. He noted that the Commission had agreed to submit its recommendations in the alternative on House apportionment and that Mr. Marden had given his approval to setting the number of Representatives at 150 rather than 155. He commented that if population were used that the Legislature should be authorized to take it rather than being obliged to use the census; as well as being allowed to exclude certain elements of population such as foreigners and students. He stated that the idea was to let the Legislature do it the way it was now where it was not required to use the Federal figures. Mr. Varney said that if the Constitution allows the Legislature to determine legal residence why couldn't it stop right there. Mr. Ward said that as far as he could see it wouldn't be a too difficult proposition to require or have the University of Maine submit a breakdown of its students, or for that matter. Pownal or any other institution. President Scribner agreed. saying that it wouldn't be much of a job and that if would be a whole lot better than having to take the figures out of Washington. He said that he felt that even today that the smaller counties would fare much better using the gubernatorial vote over the census. Mr. Smith referred to the fact that the report mentioned maneuvering in Penobscot County with reference to students and military personnel and said that he didn't think it ought to be in the report. President Scribner told him that students and military personnel were taken out on the House side and left in on the Senate side to give Penobscot County an extra Senator, stating that the Senate provision requires the use of the Federal census and the House doesn't. President Scribner resummed his discussion of the report, stating that it followed through on the matters of responsibility for

reapportionment, first by the Legislature, and, in the event that it should fail to act, then by the Governor and the Supreme Judicial Court; constitutional conventions; and then talked about the apportionment of the Maine Senate, the difficulties there and what they amounted to, and went on to a new formula for the Senate, indicating that no requirement had been determined by the courts yet as to whether both houses must be apportioned according to population. President Seribner pointed out that so long as the standard adopted was a reasonable one and wasn't obviously calculated to favor one area against another, it was probably possible to use other factors besides population in establishing an apportionment formula. Here he read selected passages from the Report of the Advisory Commission on Intergovernmental Relations appearing at pages 36 and 37. The language on page 26 of the fourth report was changed to read: "There may be other fair elements of measurement which could be included in a formula." President Scribner moved on. saying that the report came up with a new Senate formula and that he had started to set out what happened when the formula was applied, but drew back thinking that it was better to leave any explanation out. Mr. Smith asked if President Scribner was changing his views as to what a court might do if it were brought in on the reapportionment question. President Scribner said that what he was concerned about in the Senate wasn't the counties with one or two Senators. but those with three or four. He commented that he thought the trouble with the present formula was the big gap when it goes from 30,000 to 60,000 then to 120,000, and stated that the Democrats didn't want the district thing. Mr. Varney said that he didn't like the idea of having one Senator elected at large in each county; that he thought it was political. and the fact that Mr. Marden was on the Commission shouldn't make any difference so far as its recommendations were President Scribner said that he didn't think that concerned. Mr. Marden was in favor of the new plan for political purposes. Mr. Varney stated that he didn't think the Commission ought to make the compromise in its recommendations, and that he felt that it ought to stick to strict redistricting and not to try to anticipate what either the Legislature or the people would buy. President Scribner said that he thought that there was something to be said for saving a Senator for each county, and that if it wasn't done by an amendment sooner or later with the people moving out of certain counties, that ultimately some would lose all representation which would become concentrated in the souther counties. Mr. Smith asked Mr. Varney if he didn't think there was any validity to geographical considerations. Mr. Varney replied that he didn't. President Scribner said that he didn't know what sort of a time schedule the Commission could set up, but that he would like to get an approval

on it next week. He said that Professor Murphy was putting some of it together for him on the cases, specifically what they decide as to what is good and what is bad apportionment. Mr. Ward said that he would like to see a recommendation for straight redistricting, but that you couldn't get it through. Failing that, he said, he would prefer the present proposal; stating that he thought the Commission was going a long way toward redistricting with the recommendation for 16 Senators at large and 15 from districts. President Scribnor stated that Mr. Smith had said that he would like to have a vote, commenting that the problem was in getting all the members to the meetings. Mr. Ward said that he thought that if the Commission was going to have another meeting on the report it ought to be hold next week, because the people were waiting for it. Mr. Varney said that he supposed that he could file a minority report. President Scribner said that he would hate to see a divided report on a question of philosophy, but since it was report in the alternative, if he wanted to make a minority report, it would be alright.

Mr. Ward suggested that the Commission hold the meeting the following Tuesday at 11:00 a.m., notifying those absent that the Commission would meet then to report out the fourth report. President Scribner indicated his approval, and stated that the third report would be released. He told the members that each had copies of the accompanying resolves included in their materials.

Mr. Varney mentioned the hearing before the Joint Standing Committee on State Government to be held in the afternoon on the continuance of the Commission. President Scribner said that he was going down to say a few words in favor of it and not in favor of it. He pointed out that there were still a number of things to complete, such as home rule and the amending process; also that there wasn't time in the next few months to make a good final report. He said that the final report should cover things which the Commission wanted to include, but make no recommendations on, such as the question of the Governor's Council; as well as to show what's been done. He stated that something like this shouldn't have to be written against a deadline. He pointed out that there were going to be a lot of things which the Commission recommended which weren't going to be acted upon, and that it might be well to have the Commission in existence to act on them for purposes of clarification. He said that the Governor had recommended the continuance of the Commission in his inaugural, and that he felt a certain obligation to follow the thing up. Mr. Ward said that he thought that the Commission ought to make every effort to put out a good final report.

The meeting was adjourned at 1:20 p.m.

Proceedings of the

SECOND CONSTITUTIONAL COMMISSION

OF THE

STATE OF MAINE

TUESDAY, FEBRUARY 19. 1963

Fifteenth Meeting

President Scribner convened the fifteenth meeting of the Commission at 11:50 A.M. in Room 228-A, State House, with the following members present: Messrs. Beane, Carey, Edwards, Scribner, Smith, Varney and Ward.

President Scribner stated that what he was hopeful of getting today was a decision of the Commission on the fourth report, indicating that he had talked with Mr. Marden who had thought that the report was good, both from the standpoint of approach as well as the use of alternatives. He mentioned that Professor Murphy had been helping him with the drafting of the report, but that he had had the flu the last several days so that he hadn't had a chance to discuss the present draft with him. Here. President Scribner distributed pages 14-27 of the second draft and asked the members to make the necessary substitution to the first draft of the report. President Scribner said that in reading the report of the Advisory Commission on Intergovernmental Relations he had been impressed with the Commission's discussion on the use of actual voters as a factor in a reapportionment formula and that it might be well to specifically mention it in the report. Here, the President distributed copies of this discussion, appearing at page 31 of the Advisory Commission's report. President Scribner said that what he hoped to do today was to go over the resolves first, stating that he had had Mr. Silsby redraft them as to form from copies which he had sent to him without making any substantive changes. He noted that the purpose of this review was to get the resolves in order so that the report could be revised to comply with the resolves and alternatives which the Commission was recommending. The Commission, thereupon, reviewed and discussed Resolves A through D to the fourth report distributed by President Scribner to each member.

Resolve A. Mr. Varney suggested increasing the figure of twenty percent in Section 2 to fifty percent to avoid splitting a lot of towns. President Scribner discussed the need for this kind of limitation basing his explanation on

the report of the Advisory Commission, concluding that if the Legislature was going to have discretion in the matter of apportionment, it should be specifically spelled out in the Constitution. Mr. Varmey said that he would like to see the Commission throughly discuss all the alternatives to get an expression of opinion, pointing out that he was perfectly willing to abide by the decision of the members. President Scribner said that he didn't know of a single study which had gone as far or as high as twenty persent, though most had gone as high as ten or fifteen percent. He said that the larger the percentage allowed, the greater the inequality in representation; thereafter discussing the various methods of determining such variations. Mr. Varney stated again that he was perfectly willing to abide by what the majority wanted. Mr. Smith said that if it would help that he would be willing to raise the percentage to twentyfive percent. Mr. Ward said that he was inclined to think that the Legislature might not be willing to take the twenty percent; that they might want to change it in order that they wouldn't be tied down too much. Mr. Varney said that apparently the rest of the members were in agreement on the twenty percent figure and that he was willing to Mr. Carey asked if it were needed in there anyway. President Scribner said that he thought the Commission ought to have some figure there and not leave it open end. He said that if it were ever tested the courts would arrive at some figure, so that he thought it would be much better to leave it in. The President said that as a matter of fact the Supreme Court had knocked out the percentage figure in the Michigan Constitution as being invedious. The Commission thereupon voted on the question, with all except Messrs. Edwards and Varney in favor of recommending twenty percent. Messrs. Edwards and Varney thereupon withdrew their objection.

The Commission took up Section 3 which President Scribner explained in some detail.

Resolve B. President Scribner stated that Resolve B was the form which would be used if the apportionment of the House were based on population. He pointed out that Section 2 provided the only difference between Resolve A and Resolve B, and that as now drafted would exclude foreigners not naturalized, persons in mental hospitals and penal institutions, students without a legal residence in the district and military personnel and their families. He said the resolve continued the present constitutional provision and allowed the Apportionment Committee to adjust population figures without being forced to take just the Federal census. Mr. Smith said that he thought that military personnel having a legal residence should be allowed to vote.

Resolve C. President Scribner said that the real question on Resolve C was whether the Commission wanted to propose changes in the Senate; and if so, whether it wanted it to be made up of thirty or thirty-one districts divided among the counties. Mr. Ward said that he wanted thirty-one districts; sixteen from the counties and fifteen from the representative districts. He said that he thought the Commission might include Resolve D as an alternative. Mr. Smith stated that he thought that Resolve C had an element of genius in it, and provided an excellent compromise. Mr. Carey stated that he favored Resolve C. The Commission discussed the differences in the provisions for filling vacancies in the House and Senate at some length, concluding that the reason for them was probably because the loss of a Senator would mean a greater loss with reference to the size of the Senate than the loss of a Representative would mean to the House. Here. President Scribner read from the Report of the Advisory Commission on Intergovernmental Relations that part concerning the proposed provision to the Michigan Constitution which based the apportionment of the Michigan Senate on a combination of population and square miles. The members of the Commission voted to accept Resolve C as the Commission's recommendation, with the exception of Mr. Varney who favored the adoption of Resolve D. President Scribner noted that he believed that Mr. York was also in accord with Mr. Varney on Resolve D. and that this could be put into the report.

The Commission turned to the draft of the report on reapportionment. President Scribner mentioned again that Mr. Marden had thought that the approach was excellent and that it didn't seem that the Commission was trying to ram the material down the Legislature's throat. The members reviewed the report for clarity and style. President Scribner stated that he hoped to file the final report next week. explained that he wanted Professor Murphy to have a chance to review it, and also Professor Daggett of Bowdoin College. before sending it along. He pointed out that the resolves were now all set up, but that he thought that the report ought to go through another draft. He said that he hoped that this could be circulated to each member for their approval in time to get it out to the Legislature by next week. Mr. Smith suggested that all the members sign the report for future purposes. President Scribner agreed, and said that this could be done by sending an original and carbon to each member. Mr. Varney said that he disagreed with the last paragraph on page 27 of the report, but that otherwise he would go along with it. President Scribner said that he agreed with Mr. Varney that the paragraph should probably be deleted, and the members so agreed. It was the consensus that the report should be reviewed by President Scribner for necessary alterations, corrections

and changes, and that the final report incorporate Professor Murphy's material and the statement on the use of actual voters from the Report of the Advisory Commission on Intergovernmental Relations.

The meeting was adjourned at 1:30 p.m.

JOINT SELECT COMMITTEE

ON

STATE GOVERNMENT

Public Hearing

February 5, 1963

Room 114

State Office Building

Hearing on Legislative Document 190, Bill: AN ACT Providing for a Continuance of the Constitutional Commission, presented by Senator Whittaker of Penobscot, held at 3:48 p.m.

Proponents

Senator Whittaker. Mr. Scribner.

Opponents

None.

The hearing was declared closed by the Chairman at 4:05 p.m.

JOINT SELECT COMMITTEE

ON

CONSTITUTIONAL AMENDMENTS AND LEGISLATIVE REAPPORTIONMENT

Public Hearing

March 21. 1963

Room 317

State Office Building

Called to order by Chairman Porteous at 9:30 a.m.

Committee members present: Senators Edmunds, Farris and Porteous; and Representatives Berman, Cottrell, Pease, Smith. Viles and Watkins.

Commission members present: Messrs. Beane, Scribner and Smith.

Legislative Document 1432, RESOLVE, Proposing an Amendment to the Constitution Relating to Power of Governor to Nominate and Appoint Civil and Judicial Officers, presented by Mr. Pease of Wiscasset (III-C).

Proponents

Mr. Pease: Thought that this resolve should be combined with L.D. 1450, RESOLVE, Proposing an Amendment to the Constitution to Revise Article VI Relating to the Judicial Power.

Opponents

None.

Legislative Document 1433, RESOLVE, Proposing an Amendment to the Constitution Relative to Examination of Returns for Senators and to Provide for Election of Senators to Fill Vacancies, presented by Mr. Smith of Bar Harbor (Not specifically recommended by the Commission).

Proponents

Mr. Smith: Pointed out that the language in Article IV, Part 2, Section 4 was a hold over from the old days when Senators were elected by a plurality vote. He said that the changes proposed by this resolve were in the

nature of clean up language primarily to this section of the Constitution.

Mr. Scribner: Stated that after the Civil War the Constitution was amended by striking out "majority" and substituting the word "plurality" without following through as to what the impact would be if there were a tie.

Opponents

None.

Legislative Document 1435, RESOLVE, Proposing an Amendment to the Constitution Clarifying Provisions Governing Assumption of Office of Governor by the President of the Senate or the Speaker of the House, presented by Mr. Watkins of Windham (III-I).

Proponents

Mr. Watkins: Stated that the purpose of this resolve was to clarify the procedure when the office of Governor became vacant.

Mr. Scribner: Stated that the recent recount situation had brought the provisions of Article V, Part 1, Section 14 to the Commission's attention because it was a situation in which there was no President of the Senate. He said that the purpose of the resolve was to make the language clear.

Opponents |

None.

Legislative Document 1430, RESOLVE, Proposing an Amendment to the Constitution Eliminating the Requirement that the Governor Communicate Pardons to the Legislature, presented by Mr. Berman of Houlton (III-E).

Proponents

Mr. Scribner: Stated that the provision's purpose was to assure publicity in cases of pardons, but with the advances which have been made in news media, the function no longer seemed necessary.

Opponents

None.

Legislative Document 1431, RESOLVE, Proposing an Amendment to the Constitution to Provide for Taking Oaths of Senators and Representatives in Absence of Governor and Council, presented by Mr. Dennett of Kittery (III-H).

Proponents

Mr. Scribner: Stated that the purpose of the amendment was to avoid delay in taking the oaths of Senators and Representatives due to the unavailability of the Governor.

Opponents

None.

Legislative Document 1434, RESOLVE, Proposing an Amendment to the Constitution Eliminating Requirements Relating to Warrants for Public Money and Publication of Receipts and Expenditures, presented by Mr. Smith of Strong (III-D).

Proponents

Mr. Scribner: Stated that the amendment proposed by this resolve was pretty much self-explanatory.

Opponents

None.

The hearing was declared closed by the Chairman at 10:07 a.m.

Mr. Scribner remained after the hearing to discuss the question of submission. He stressed the need for reapportionment and the need for it to go to the people, suggesting that the proposals recommended by the Commission be submitted to the people in November, 1963. He also discussed the matter of initiated bond issues, indicating that it was his opinion that bond issues couldn't be initiated. The session ended with a short discussion of the Commission's proposal on Judges of Probate, specifically whether it shouldn't be extended to Registers of Probate.

JOINT SELECT COMMITTEE

ON

CONSTITUTIONAL AMENDMENTS AND LEGISLATIVE REAPPORTIONMENT

Public Hearing

April 4, 1963

Room 120-A

State Office Building

Called to order by Representative Berman at 10:06 a.m.

Committee members present: Senators Edmunds, Farris and Jacques; and Representatives Berman, Cottrell, Pease, Smith of Bar Harbor. Smith of Strong and Watkins.

Commission members present: Messrs. Beane, Scribner, Smith and Ward.

Legislative Document 1443, RESOLVE, Proposing an Amendment to the Constitution to Prohibit the Unreasonable Interception of Telephone, Telegraph and Other Electronic Communications, presented by Senator Campbell of Kennebec (I-B).

Proponents

Senator Campbell: Prefaced his remarks with references to the Communications Act of 1934, 48 Stat 1105 and the case of Olmstead v. U.S., 19 Fed 2d 842. He stated that the proposed resolve followed the provision in the New York Constitution, indicating that while there was perhaps no present need for the provision, it would be essential in the event of any future threat. He stated that he thought that interception could be made in Maine without a warrant and that perhaps it could be used in court. He indicated that with the amendment such interceptions couldn't be introduced in court and would provide a definite safeguard to personal communications.

Opponents

None.

Legislative Document 1449, RESOLVE, Proposing an Amendment to the Constitution Relating to Authority of Governor as

Commander in Chief, presented by Senator Boardman of Washington (III-B).

Proponents

Senator Campbell: Stated that he was interested in this resolve because of his relationship with the Adjutant General's Department. He said that the purpose of the amendment was to modernize the Constitutional provision in accordance with State practices. He stated that Maine and New Hampshire were the only States having such a provision regarding the use of militia outside the State. He indicated that the original intent of the provision was to prevent one State from making war on another. He pointed out that military training exercises involving State personnel are conducted over large geographical areas and that the provision as it now stands imposes an unreasonable limitation on the military.

Opponents

None.

Legislative Document 33, First Report of Maine Constitutional Commission.

Representative Pease: Indicated that he didn't think there was any merit in the Committee holding a hearing on this report.

Mr. Scribner: Said that he thought that the Committee should focus its attention primarily on the resolves recommended by the Commission.

Legislative Document 1441, RESOLVE, Proposing an Amendment to the Constitution Clarifying the Manner of Authorizing the Issuance of Bonds on Behalf of the State, presented by Representative Berman of Houlton (III-F).

Proponents

Mr. Scribner: Stated that the bond provision as originally set up required a separate authorization of each bond issue each time by a constitutional amendment; that then the suggestion was made that instead of an amendment each time that the Constitution be amended to require the same kind of vote required for making an amendment to the Constitution. He said that the purpose of the present provision was not to change this requirement of authorization, but to eliminate the necessity of making a separate amendment to the Constitution each time there was a bond issue.

He stated that the present Constitutional provisions prohibit amending it by initiation, and though he personally believed that a bond issue couldn't be raised by initiation, the question has arisen. He said that the purpose of the resolve was to put to rest any possible doubt in anyone's mind that it could not be done.

Opponents

None.

Legislative Document 1448, RESOLVE, Proposing an Amendment to the Constitution Forbidding Discrimination Against Any Person because of Race, Religion, Sex or Ancestry, presented by Senator Whittaker of Penobscot (I-A).

Proponents

Mr. Scribner: Stated that this particular recommendation as well as the provision on wiretapping had been brought to the Commission's attention by the Dow articles. He pointed out as the Commission had said in its first report covering these two, that the bill of rights still reads pretty well even against the problems of present day. He stated that the Commission hadn't found in either case situations which made an emergency for the adoption of either amendment. stated that he thought it could be contended that these protections could be found to be substantially already there, but that he felt that it was a good statement of principles which it would be well to include. Representative Pease asked Mr. Scribner what he thought would be a good one line definition of civil rights. Mr. Scribner said that a possible definition was any right which was not in the area of the military. Representative Pease asked whether the provision would affect normal business relations between individuals. Mr. Scribner replied that he would think it would mean that an employer couldn't provide a job discription which cut out persons because of sex or color, adding that the provision might make it necessary to have some implementing legislation. Representative Pease asked what provision of the Federal Constitution went as far as this amendment with respect to civil rights. Mr. Scribner said that he thought it would be the fourteenth amendment. Mr. Scribner stated that he thought the protection did exist, but that the Commission thought it would be well for the Maine Constitution to sum up the policy of the State succinctly in one place. Mr. Smith noted that the

wording in the first part of the amendment was similar to the wording of the fourteenth amendment, and said that he wondered if the resolve wasn't going beyond the Federal provision. Mr. Scribner said that he thought that this was correct, stating that if the Legislature thought that there was an area where a person should be denied because of sex or color then it shouldn't recommend the adoption of the amendment. Representative Berman asked whether the Federal Government on the adoption of the 14th, 15th and 16th amendments, didn't adopt implementing legislation. Mr. Scribner said that he thought that it had.

Opponents

Mr. Charles F. Adams, Auburn: Stated that he wouldn't say that he was opposed to the amendment and that some of his arguments had been anticipated by Representative Pease. He said that his primary question was whether the provision was self enforcing and whether it would affect such institutions as the Maine Maritime Academy and Bowdoin College and their policy against the admission of women; cases involving non-support, trusts, etc. He said that he thought the provision was bad from the standpoint of testimentary disposition, since these must be enforced by the courts which would be bound to look to the Federal law or Constitution and decline to enforce them because of the provision. He stated that he felt that a person ought to be able to leave his property to whomever he chooses.

Legislative Document 1452, RESOLVE, Proposing an Amendment to the Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money, presented by Senator Edmunds of Aroostook (III-A).

Proponents

Senator Edmunds: Stated that in preparing for his presentation he had read the Commission's report on the recommendation and since he couldn't add anything to it he would read it to the Committee. He concluded by saying that he was fairly familiar with the budget process of the State and with the Appropriations Committee and that he felt that the Governor should be given the item veto power.

Opponents

None.

Legislative Document 1450, RESOLVE, Proposing an Amendment to the Constitution to Revise Article VI Relating to the Judicial Power, presented by Senator Farris of Kennebec (II).

Proponents

Mr. Scribner: Stated that this particular recommendation calling for changes in Article VI contained major proposals made by the Commission. He said that the amendment when implemented would provide for the appointment of Judges of Probate by the Governor, permitting the present incumbents to complete their tenure. He stated that he wanted to point out that if the proposal were acted upon favorably by the Committee that the resolve should be accompanied by sufficient legislation to allow the Governor to make the appointments involved.

Opponents

None.

Legislative Document 1451, RESOLVE, Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor, presented by Senator Farris of Kennebec (III-G).

Proponents

Mr. Scribner: Stated that the proposed change would do away with the present plurality provision and make it clear without any doubt that it was the responsibility of the Legislature to make the determination as to who was elected Governor.

Opponents

None.

Legislative Document 1457, RESOLVE, Proposing an Amendment to the Constitution to Provide Revised Qualifications for Electors, presented by Senator Brooks of Cumberland (I-C).

Proponents

Mr. Ward: Stated that with respect to the proposal the Commission had received various arguments and objections regarding Article II and had had lengthly discussions on the questions of voting age and student sufferage at its public hearings and at its meeting held at the University of Maine; concluding that although there was actually no particular demand for

it. that perhaps the voting age should be reduced to twenty, and perhaps also because Hawaii had just done so. He said that the Commission felt that the present provision which prohibited paupers from being allowed to vote reflected the attitude which was no longer prevalent and should be removed. He stated that the provision prohibiting persons under guardianship from being allowed to vote, in the event that the voting age were lowered, would raise the question as to whether twenty year olds under guardianship would be allowed to vote. He said that this question had been clarified under the resolve so that those under a property guardianship would be permitted to vote. He indicated that the amendment clarified the provisions for establishing voting residence and retention where a person changes his residence either within the State or goes out of State; also the matter of voting residence for students. He stated that he thought that the fact that a person was a student shouldn't alone deny him the right to vote, not if he wants to become a resident. Representative Pease asked about persons under a guardianship for wasting assets. Mr. Ward questioned whether he wasn't thinking about conservators.

Opponents

None.

The hearing was closed by Representative Berman at 11:17 a.m.

Mr. Scribner held over at Representative Berman's request to discuss the Commission's fourth report, and the session ended at 12:05 p.m.

President Scribner and Messrs. Beane, Smith and Ward met briefly following President Scribner's presentation to discuss the future role of the Commission. President Scribner wanted to know if those present thought that the Commission should turn to new matters, such as home rule, dispose of such old matters as the Governor's Council, or wait. He said that he didn't think that the Commission should lobby its proposals, stating that a lot of course whould depend on whether or not the Commission was continued. He said that if it wasn't, then about all it could do would be to wind things up as best it could; on the other hand, if it were, then it could take a breather, perhaps putting some of the college people to

work on municipal home rule and other problems. Mr. Smith said that he wondered if possibly President Scribner couldn't address a meeting of the entire Legislature as in a joint convention. He stated that Representative Berman had commented during the presentation that it was too bad that the Legislature couldn't have the benefit of President Scribner's remarks. Mr. Smith said that he felt that the Legislature was considering the Commission's recommendations from a low level as to how each proposal would individually affect them as members, rather than as matters of principle. He stated that he thought that the full impact of the court decisions in the field of reapportionment hadn't been brought home yet, and that perhaps a meeting with President Scribner, conducted with formality and with his presence, might give the issue an added prestige. No decision was reached by the members as to what should be done. consensus seemed to be that Mr. Smith with other members of the Joint Select Committee on Constitutional Amendments and Legislative Reapportionment might try to arrange such a meeting in order to promote a full consideration of the various problems involved in reapportionment by the present Legislature. President Scribner indicated that if such a convention were held that he would feel that it should be attended by all the members of the Commission.

JOINT SELECT COMMITTEE

ON

CONSTITUTIONAL AMENDMENTS AND LEGISLATIVE REAPPORTIONMENT

Public Hearing

· April 18, 1963

Room 228 State House

Called to order by Chairman Porteous at 2:30 p.m.

Committee members present: Senators Edmunds, Farris and Porteous; and Representatives Berman, Cartier, Cottrell, Dennett, Pease, Smith (Bar Harbor), Smith (Strong), Viles and Watkins.

Commission members present: Messrs. Ward and Smith.

Mr. Ward: After announcing that President Scribner would be unable to be present at the hearing, made a general presentation of the Fourth Report of the Constitutional Commission (L.D. 1476), apportionment, indicating that it expressed the full information discussed by the Commission during its study. He noted that the report pointed out that the Legislature had done an excellent job in the past in reapportioning, but that there were constitutional discriminations:

- 1. That no city shall have more than 7 representatives;
- 2. The arbitrary award of fractional excesses to the smaller counties; and
- 3. The unfair intra-county apportionment.

He said it was the Commission's recommendation that the House should be changed to 150 representative districts, using either 1) the gubernatorial vote average for the last 3 elections, or 2) population. Mr. Ward noted that the use of population as the basis was uncertain because the House determined it, and that this had resulted in some monkeying with the census figures. He felt that the Commission recommendation for the use of the average gubernatorial vote of the 3 preceeding elections would lend

greater certainty to the figures used. Mr. Ward discussed Senate reapportionment, mentioning that the Senate was constitutionally required to use the Federal Census, but discriminated by jumps in the figures determining the number of Senators. The Commission recommendation would eliminate that by dividing the State into 31 Senatorial districts with each county constituting a single Senatorial district and the remaining 15 based on combining groups of 10 Representative districts. Mr. Ward stated that there was discrimination, not because of Legislative action, but because of present constitutional requirements.

Senator Edmunds: The House must, because of the court decisions, be reapportioned, but not the Senate?

Mr. Ward: Yes.

Representative Plante: 46% now controls the Senate. How would it be under the Commission's proposal?

Mr. Ward: The Commission hasn't figured it out yet.

Legislative Document 1493, RESOLVE, Proposing an Amendment to the Constitution Relating to the Apportionment, Election and Powers of the Senate, presented by Senator Brooks of Cumberland (IV-C).

Mr. Ward outlined the resolve.

Representative Smith (Strong): Franklin County would get one Senator--would it create a problem as to whether he ran from the county or district? Would he have to specify what he was running for, that is, indicate the number of the district he was running for?

Representative Plante: No time problem is involved in taking the figures of the 3 preceding gubernatorial elections, but what would happen if L.D. 1493 is passed and L.D. 1495 on House reapportionment is not?

Senator Farris: When will the amendment be voted on? Is the intent simply to call the Legislature into session in 90 days or to compel the Legislature to reapportion then as well?

Mr. Ward: Said that he personally felt that the gubernatorial vote was the most accurate because if you used the population figure you would be bothered a great deal in trying to accurately determine the figures for educational institutions and military

He pointed out that the average of 3 elections does away with a lot of the factors influencing any one election.

Senator Farris: Why just 5 qualified voters to challenge reapportionment?

Representative Smith (Bar Harbor): Replied, saying that only one was needed to go into court today. He pointed out that ward and town lines would be a governing factor in making an apportionment, and that the first apportionment undoubtedly would be the most difficult.

Representative Cartier: Asked just how bad the present apportionment formula was.

Mr. Ward: Answered, calling his attention to the 3 areas of discrimination previously mentioned.

Representative Viles: Is the House the only problem?

Mr. Ward: If one House is O.K. based on population, then the Senate would probably not be challenged.

Representative Viles: Then why not have 2 Senators from each county?

Representative Cottrell: Pointed out that the chart in the Commission's report showed great variations.

Mr. Ward: Said that this was the reason the Commission advocated changing the present formula.

Representative Childs: Made the following comments:

- 1. That Senators should come from counties.
- 2. That L.D. 1493 should not be based on passage of L.D.'s 1494 or 1495.
- 3. That there would be problems in trying to represent several counties.
- 4. If the Senate were reapportioned under this resolve, inequalities would be emphasized, small counties would gain unduly and the whole thing would probably go to the courts.

He disagreed with the proposition that if one house was O.K. on population, the Senate probably wouldn't

be challenged, saying that he thought that both the Senate and House must have the same equality. He said that going over county lines ignores the governmental facts of life, maintaining that the creation of districts would call for cumbersome and expensive changes from apportionment to apportionment.

Senator Pike: Asked if it would be constitutional to reapportion under the present provision which provides that once an apportionment has been made another may not be made in less than 5, nor more than 10 years.

Representative Berman: Said that it was alright if the Constitution were amended as it would be here, but that the members of the Legislature might not like campaigning in unfamiliar territory.

Representative Smith (Bar Harbor): Asked Representative Childs if he would like straight apportionment of the Senate by districts, 5 Representative districts to each.

Representative Childs: Replied that he would and that it would meet the Baker v. Carr problem.

Legislative Document 1494, RESOLVE, Proposing an Amendment to the Constitution Relating to the Apportionment, Election and Powers of the House of Representatives, presented by Mr. Pease of Wiscasset (IV-A).

Representative Pease: Said that he felt that Baker v. Carr called for at least one equal house, and that he felt that the use of the gubernatorial vote would be a good incentive to get out the vote.

Representative Dennett: Asked if Baker v. Carr emphasized the use of population as the basis for apportionment.

Representative Pease: Said that he personally felt that the vote cast for Governor was the most accurate known figure.

Representative Berman: Questioned whether it wouldn't be better to apportion every 8 or every 12 years to fit the gubernatorial election rather than every 10 years.

Representative Childs: Commented that the Supreme Court has never considered voters as the base; that many Representatives would not fit into one town;

that one Representative would often have to cover more than one town locally; that Portland couldn't possibly comply with the requirements of this resolve.

Mathmatical application of the formula was discussed here.

Representative Childs: Suggested that the resolve should:

- 1. Eliminate the Portland restriction.
- 2. Give the fractional excesses to the counties having the largest fraction.
- 3. Make the other towns within a district reflect the guide of not more than 20% variation.

Representative Smith (Bar Harbor): Asked Representative Childs if a larger percentage of variation would solve the problem.

Representative Childs: Said that it wouldn't--that he thought that the percentage choosen was 0.K.

Representative Dudley: Registered his opposition to the use of voters as the base.

Mrs. William G. Whitney: Stated that she thought that population should be used as the base.

The hearing was declared closed by the Chairman at 4:10 p.m.

SUMMARY OF ACTION TAKEN BY 101ST LEGISLATURE

ON

COMMISSION RECOMMENDATIONS

FIRST REPORT (L.D. 33)

RECOMMENDATION A. Introduced as S.P. 527, L.D. 1448,
RESOLVE, Proposing an Amendment to the
Constitution Forbidding Discrimination
Against Any Person because of Race,
Religion, Sex or Ancestry (Whittaker,
Penobscot).

Hearing: April 4, 1963. Amendments: Minority Report, CA (S-275), title changed. Signed by Governor, June 25, 1963. Resolves, 1963, Chapter 110.

House Action

3-12-63 Referred in concurrence. 6-7-63 Plante tabled pending motion

7-63 Plante tabled pending motion by Pease for indefinite postponement--later today assigned.

6-11-63 Plante retabled -- later today assigned, 76-26.

6-12-63 Indefinite postponement--lost on roll call, 4-125.
Minority Report accepted in non-concurrence.
Committee "A" adopted--tomorrow assigned.
Indefinite postponement--lost on division, 31-98.

6-13-63 Engrossed as amended by CA, in non-concurrence. 6-18-63 Constitutional amendment, two-thirds vote required, finally passed, 87-35.

Senate Action

- 3- 6-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 6-5-63 Majority Report, Ought Not To Pass.
 Minority Report, Ought To Pass With Com. "A".
 Tabled pending acceptance of either report
 by Edmunds, 6-6-63 assigned.
- 6-6-63 Whittaker moved Minority Report be accepted.
 Porteous moved indefinite postponement, 19-7.
- 6-14-63 Farris tabled pending motion by Whittaker to

recede from indefinite postponement, 6-17-63 assigned.

6-17-63 Motion to recede from indefinite postponement prevailed.

Minority Report accepted -- Com. "A" adopted. Engrossed as amended. Sent for engrossment.

- 6-19-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.
- 6-22-63 Finally passed, 28-0.

RECOMMENDATION B. Introduced as S.P. 532, L.D. 1443, RESOLVE, Proposing an Amendment to the Constitution to Prohibit the Unreasonable Interception of Telephone, Telegraph and Other Electronic Communications (Campbell, Kennebec).

Hearing: April 4, 1963.

House Action

3-12-63 Referred in concurrence.

5- 3-63 Report accepted -- referred to Judiciary.

5-27-63 Report accepted.

Senate Action

- 3- 6-63 Referred to Committee on Constitutional
 Amendments and Legislative Reapportionment.
 Ordered printed.
- 5- 2-63 Committee Report referring to Judiciary.

5-24-63 Leave to withdraw.

RECOMMENDATION C. Introduced as S.P. 536, L.D. 1457, RESOLVE, Proposing an Amendment to the Constitution to Provide Revised Qualifications for Electors (Brooks, Cumberland).

Hearing: April 4, 1963.

House Action

3-14-63 Referred in concurrence. 5- 3-63 Report accepted.

Senate Action

3-13-63 Referred to Committee on Constitutional

Amendments and Legislative Reapportionment. Ordered printed.

5- 2-63 Committee Reports Ought Not To Pass.

SECOND REPORT (L.D. 631)

RECOMMENDATION. Introduced as S.P. 529, L.D. 1450, RESOLVE, Proposing an Amendment to the Constitution to Revise Article VI Relating to the Judicial Power (Farris, Kennebec).

Hearing: April 4, 1963. Amendments: CA (S-292); HA (H-460), Wellman, withdrawn. Signed by Governor, June 25, 1963. Resolves, 1963. Chapter 111.

House Action

3-12-63 Referred in concurrence.

6-14-63 Report accepted.

Committee "A" adopted -- tomorrow assigned.

6-17-63 Wellman tabled pending engrossment as amended-later today assigned.
Subsequently Wellman offered HA, but withdrew amendment.

Jalbert tabled pending engrossment--later today assigned; subsequently engrossed as amended.

6-19-63 Constitutional amendment, two-thirds vote required, finally passed, 104-0.

Senate Action

- 3- 6-63 Referred to Committee on Constitutional
 Amendments and Legislative Reapportionment.
 Ordered printed.
- 6-13-63 Committee Reports Ought To Pass With Com. "A". Committee "A" adopted.
- Engrossed as amended--Sent to House. 6-20-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.
- 6-22-63 Finally passed, 26-0.

THIRD REPORT (L.D. 1394)

RECOMMENDATION A. Introduced as S.P. 531, L.D. 1452, RESOLVE, Proposing an Amendment to the

Constitution to Permit the Governor to Veto Items Contained in Bills Appropriating Money (Edmunds, Aroostook).

Hearing: April 4, 1963.

House Action

3-12-63 Referred in concurrence.

5-29-63 Majority Report accepted in concurrence.

Senate Action

- 3- 6-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 5-17-63 Majority Report Ought Not To Pass.
 Minority Report Ought To Pass.
 Stilphen tabled pending motion by Porteous
 for acceptance of Majority Report.
- 5-23-63 Retabled by Stilphen--5-28-63 assigned.
- 5-28-63 Majority Report accepted (O.N.T.P.).

RECOMMENDATION B. Introduced as S.P. 528, L.D. 1449, RESOLVE, Proposing an Amendment to the Constitution Relating to Authority of Governor as Commander in Chief (Boardman, Washington).

Hearing: April 4, 1963. Amendments: CA (S-197). Signed by Governor, June 27, 1963. Resolves, 1963, Chapter 117.

House Action

- 3-12-63 Referred in concurrence.
- 5- 7-63 Report accepted.
 - Committee "A" adopted -- tomorrow assigned.
- 5- 8-63 Engrossed as amended.
- 5-10-63 Constitutional amendment, two-thirds vote required, finally passed, 105-0.

Senate Action

- 3- 6-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 5- 2-63 Committee Reports Ought To Pass With Com. "A".

Committee "A" adopted -- tomorrow assigned.

5- 3-63 Engrossed as amended.

5-14-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.

6-22-63 Finally passed, 27-0.

RECOMMENDATION C. Introduced as H.P. 989, L.D. 1432,
RESOLVE, Proposing an Amendment to the
Constitution Relating to Power of
Governor to Nominate and Appoint Civil
and Judicial Officers (Pease, Wiscassett).

Hearing: March 21, 1963.

House Action

1-28-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.

6- 6-63 Leave to withdraw.

Senate Action

3- 5-63 Referred in concurrence. 6- 7-63 Report accepted.

RECOMMENDATION D. Introduced as H.P. 991, L.D. 1434,
RESOLVE, Proposing an Amendment to the
Constitution Eliminating Requirements
Relating to Warrants for Public Money
and Publication of Receipts and
Expenditures (Smith, Strong).

Hearing: March 21, 1963. Amendments: CA (H-316); HA (H-333), Rust. Signed by Governor, June 25, 1963. Resolves, 1963, Chapter 105.

House Action

- 1-28-63 Referred to Committee on Constitutional
 Amendments and Legislative Reapportionment.
 Ordered printed.
- 5- 2-63 Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned.
- 5- 3-63 Engrossed as amended. Subsequently Rust moves for reconsideration—tabled pending engross—ment, 5-7-63 assigned.
- 5- 7-63 House Amendment "A" adopted Engrossed as amended by CA and HA.

> Tabled pending final passage by Berry, 5-15-63 assigned.

Wellman retabled.

5-15-63 5-16-63 Constitutional amendment, two-thirds vote required, finally passed, 109-4.

Senate Action

3- 5-63 Referred in concurrence. 5- 8-63 Report accepted.

Committee "A" adopted; House Amendment "A" adopted -- tomorrow assigned.

5- 9-63 Engrossed as amended by CA and HA.

5-17-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.

6-22-63 Finally passed, 28-0.

Introduced as H.P. 987, L.D. 1430, RECOMMENDATION E. RESOLVE, Proposing an Amendment to the Constitution Eliminating the Requirement that the Governor Communicate Pardons to the Legislature (Berman. Houlton).

Hearing: March 21, 1963. Amendments: CA (H-315). Signed by Governor, June 25, 1963. Resolves, 1963, Chapter 102.

House Action

- 1-28-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 5- 2-63 Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned.

5- 3-63 Engrossed as amended.

5-10-63 Constitutional amendment, two-thirds vote required, finally passed, 103-0.

Senate Action

Referred in concurrence.

Committee Reports Ought To Pass With Com. "A".

Committee "A" adopted -- tomorrow assigned.

5- 8-63 Engrossed as amended.

5-14-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.

6-22-63 Finally passed, 28-0.

RECOMMENDATION F. Introduced as H.P. 994, L.D. 141, RESOLVE, Proposing an Amendment to the Constitution Clarifying the Manner of Authorizing the Issuance of Bonds on Behalf of the State (Berman, Houlton).

Hearing: April 4, 1963.

House Action

3-5-63 Referred to Committee on Constitutional
Amendments and Legislative Reapportionment.
Ordered printed.

6-6-63 Leave to withdraw.

Senate Action

3- 7-63 Referred in concurrence. 6- 7-63 Report accepted.

RECOMMENDATION G. Introduced as S.P. 530, L.D. 1451, RESOLVE, Proposing an Amendment to the Constitution Designating Procedure for Determining the Election of Governor (Farris, Kennebec).

Hearing: April 4, 1963.

Amendments: CA (S-199); HA (H-358), Childs, indefinitely postponed.

Signed by Governor, June 27, 1963.

Resolves, 1963, Chapter 118.

House Action

3-12-63 Referred in concurrence. 5- 7-63 Tabled pending acceptance of report, 5-14-63 assigned.

5-14-63 Rust moved indefinite postponement but withdrew motion.

Report accepted; Committee "A" adopted.

HA indefinitely postponed on roll call, 98-39, tomorrow assigned.

5-15-63 Engrossed as amended by Com. "A".

5-17-63 Constitutional amendment, two-thirds vote required: on division, 80-31; on roll call finally passed, 82-34.

Senate Action

3- 6-63 Referred to Committee on Constitutional

Amendments and Legislative Reapportionment. Ordered printed.

- Committee Reports Ought To Pass With Com. "A". 5- 2-63 Committee "A" adopted -- tomorrow assigned.
- Engrossed as amended.
- 5- 3-63 5-21-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.
- 6-22-63 Finally passed, 24-0.
- RECOMMENDATION H. Introduced as H.P. 988, L.D. 1431, RESOLVE, Proposing an Amendment to the Constitution to Provide for Taking Oaths of Senators and Representatives in Absence of Governor and Council (Dennett. Kittery).

Hearing: March 21, 1963. Amendments: CA (H-317). Signed by Governor, June 25, 1963. Resolves, 1963, Chapter 103.

House Action

- 1-28-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 5- 2-63 Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned.
- 5-3-63 Engrossed as amended. 5-10-63 Constitutional amendment, two-thirds vote required, finally passed, 101-0.

Senate Action

- 3- 5-63 Referred in concurrence.
- Committee Reports Ought To Pass With Com. "A".
- Committee "A" adopted -- tomorrow assigned.
- Engrossed as amended.
- Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.
- 6-22-63 Finally passed, 28-0.
- RECOMMENDATION I. Introduced as H.P. 992, L.D. 1435, RESOLVE. Proposing an Amendment to the Constitution Clarifying Provisions Governing Assumption of Office of Governor by the President of the Senate or the Speaker of the House (Watkins, Windham).

Hearing: March 21, 1963.

Amendments: CA (H-319); HA (H-366), Birt; HB (H-371), Smith, Bar Harbor.

To N.D. of H.P. 992, L.D. 1435,

SA (S-310), Porteous. Signed by Governor, June 27, 1963. Resolves, 1963. Chapter 119.

House Action

- 1-28-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 5- 2-63 Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned.
- 5- 3-63 Engrossed as amended.
- 5-10-63 Tabled pending passage by Birt, 5-16-63 assigned.
- 5-17-63 Retabled by Birt, 5-22-63 assigned.
- 5-22-63 Birt moves reconsideration -- recommitted to Committee on Constitutional Amendments and Legislative Reapportionment in non-concurrence.

Senate Action

- Referred in concurrence.
- Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned.
- Engrossed as amended.
- Reconsidered engrossment--recommitted to Committee on Constitutional Amendments and Legislative Reapportionment.

N.D. of H.P. 992, L.D. 1435

House Action

- 6-14-63 Committee Reports Ought To Pass in New Draft, H.P. 1110, L.D. 1592. Ordered printed.
- Report accepted, 6-17-63 assigned,
- 6-17-63 Engrossed.
- 6-19-63 Receded and concurred on motion by Berman -engrossed as amended by SA.
- 6-21-63 Constitutional amendment, two-thirds vote required, finally passed, 94-0.

Senate Action

6-17-63 Tabled by Porteous pending acceptance of report, 6-18-63 assigned.

6-18-63 Report accepted.
Senate "A" adopted.
Engrossed as amended by SA in non-concurrence.

6-21-63 Tabled pending final passage by Edmunds, Appropriations and Financial Affairs.

6-22-63 Finally passed, 30-0.

FOURTH REPORT (L.D. 1476)

RECOMMENDATION A. Introduced as H.P. 1029, L.D. 1494, RESOLVE, Proposing an Amendment to the Constitution Relating to the Apportionment, Election and Powers of the House of Representatives (Pease, Wiscasset).

Hearing: April 18, 1963.

House Action

3-29-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.

6-6-63 Leave to withdraw--other legislation.

Senate Action

4- 3-63 Referred in concurrence. 6- 7-63 Report accepted.

RECOMMENDATION B. Introduced as H.P. 1030, L.D. 1495,
RESOLVE, Proposing an Amendment to the
Constitution Affecting the Election,
Powers and Apportionment of the House
of Representatives (Smith, Bar Harbor).

Hearing: April 18, 1963.

Amendments: To Majority Report (N.D. "A", H.P. 1116, L.D. 1599 of H.P. 1030, L.D. 1495): HA (H-488), Smith, Bar Harbor; HB (H-489), Smith, Bar Harbor; HC (H-493) Brown, So. Portland.

To Minority Report (N.D. "B", H.P. 1117, L.D. 1600 of H.P. 1030, L.D. 1495): HA (H-485), Cartier; HB (H-502), Smith, Bar Harbor.

Signed by Governor, June 22, 1963. Resolves, 1963, Chapter 75.

House Action

- 3-29-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 6-19-63 Majority Report Ought To Pass -- New Draft "A". H.P. 1116, L.D. 1599. Printed. Minority Report Ought To Pass -- New Draft "B", H.P. 1117, L.D. 1600. Printed.

Majority Report (N.D. "A", H.P. 1116, L.D. 1599 of H.P. 1030, L.D. 1495)

House Action

- 6-19-63 Berman moved acceptance of Majority Report. Tabled by Wellman--later today assigned.
- 6-20-63 Retabled by Wellman, 6-21-63 assigned.
- Majority Report acceptance lost on roll call. 6-21-63 43-91.

Minority Report
(N.D. "B", H.P. 1117, L.D. 1600
of H.P. 1030, L.D. 1495)

House Action

- 6-21-63 Minority Report accepted -- read twice. Pease's motion to indefinitely postpone lost 31-88. Engrossed.
 - Cartier's motion to reconsider engrossment lost. Second reconsideration granted.

- House Amendment "A" adopted. House Amendment "B" indefinitely postponed, 67-59; indefinitely postponed on roll call 71-61.
- Engrossed as amended by HA.
- 6-22-63 Constitutional amendment, two-thirds vote required, finally passed on roll call, 89-LO.
 - Rust's motion to reconsider first roll call lost on roll call, 41-89.

Senate Action

6-21-63 Edmunds moved acceptance of Minority Report. Lovell's motion to indefinitely postpone lost, 3-28. Minority Report accepted.

House Amendment "A" adopted. Engrossed as amended by HA. Finally passed 24-2.

RECOMMENDATION C. Introduced as S.P. 557, L.D. 1493, RESOLVE, Proposing an Amendment to the Constitution Relating to the Apportionment, Election and Powers of the Senate (Brooks, Cumberland).

Hearing: April 18, 1963.

House Action

4- 3-63 Referred in concurrence. 6- 6-63 Report accepted.

Senate Action

- 3-29-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 6- 5-63 Committee Reports Ought Not To Pass.
- NO RECOMMENDATION. Introduced as H.P. 990, L.D. 1433,
 RESOLVE, Proposing an Amendment to the
 Constitution Relative to Examination
 of Returns for Senators and to Provide
 for Election of Senators to Fill
 Vacancies (Smith, Bar Harbor).

Hearing: March 21, 1963. Amendments: CA (H-318). Signed by Governor, June 25, 1963 Resolves, 1963. Chapter 104.

House Action

- 1-28-63 Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Ordered printed.
- 5- 2-63 Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned.
- 5- 3-63 Engrossed as amended.
- 5-10-63 Constitutional amendment, two-thirds vote required, finally passed, 102-0.

Senate Action

3- 5-63 Referred in concurrence.

Committee Reports Ought To Pass With Com. "A". Committee "A" adopted -- tomorrow assigned. 5- 7-63

Engrossed as amended.
Tabled pending final passage by Edmunds,
Appropriations and Financial Affairs.
Finally passed, 28-0. 5- 8-63 5-14-63

6-22-63

SECOND CONSTITUTIONAL COMMISSION

Bibliography

of

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- 2. Lost Opportunity (PEE 12-23-61)
- 3. Constitutional Commission Members Named By Reed (PPH 12-23-61)
- 4. Governor Selects 10 Men For Constitutional Study (KJ 12-23-61)
- 5. Naming Of Commission May Not Be Best Way To Revise Constitution (PPH 12-28-61)
- 6. Constitutional Commission (State Government News J'62)
- 7. Maine's Constitution (LDS 1-1-62)
- 8. To Revise Constitution (LDS 1-11-62)
- 9. Panel To Meet Thursday On Constitutional Changes (PPH 1-24-62)
- 10. Scribner Named Constitution Commission Chairman; Hearing March 21 (KJ 1-26-62)
- 11. Maine Constitutional Panel Elects Scribner President (PPH 1-26-62)
- 12. Constitutional Changes (LDS 1-29-62)
- 13. Inspecting The Foundation Stone (BDN 1-31-62)
- 14. Maine Constitutional Commission May Find Changes Are Needed (PPH 2-5-62)
- 15. Making The Constitution Live. By Mrs. Norton H. Lamb. (PST 2-25-62)
- 16. A Job For All Of Us (BDN 2-28-62)
- 17. Maine Constitutional Commission Public Hearing (BDN 2-28-62)

18. Maine Constitutional Commission Public Hearing (KJ 3-1-62)

- 19. Maine Constitutional Commission Public Hearing (KJ 3-7-62)
- 20. Maine Constitutional Commission Public Hearing (BDN 3-7-62)
- 21. Cur Unknown Constitution. By Edward F. Dow. (Series of 10 articles)

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Nobody Bothers To Read It (PST 3-25-62)

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Streamlining The Legislature (PST 4-15-62)

Legislative Apportionment (PST 4-22-62)

Executive Or Figurehead--I (PST 4-29-62)

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- 22. Our Unknown Constitution. By Edward F. Dow. (The same series of articles reprinted in pamphlet form by the Sunday Telegram)
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- 24. Freeing Maine's Governor (PST 3-18-62)
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- 212. 101st Separated Men From Boys (PST 6-23-63)
- 213. 4 PC Sales Tax Bill Signed Into Law (PST 6-23-63)
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- 215. 101st Maine Legislature's Record Termed Surprisingly Good One (PEE 6-24-63)
- 216. Legislature Adjourns Record Session. In Review: What Did 101st Do? (BDN 6-24-63)
- 217. \$19 Million In New Revenue Seen From Sales Tax Hike (KJ 6-24-63)
- 218. Maine Legislature Leaves Several Issues To Voters (PEE 6-24-63)
- 219. 'Reasonably Good Job' Of 101st Praised; Solons Likely To Return (KJ 6-25-63)
- 220. Special Session Likely (BDN 6-25-63)
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- 222. Reed Signs 81 Measures (BDN 6-26-63)
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- 226. Only Four Unsigned Bills Remain On Governor's Desk (KJ 6-28-63)
- 227. Fate Of Reapportionment Now Up To Voters (PST 6-30-63)
- 228. Maine Politics (PST 7-7-63)
- 229. Session For Reapportionment Needs Planning (PST 7-7-63)

Maine State Library

SELECTED MATERIALS ON STATE CONSTITUTIONS

January, 1962

- Graves, W. Brooke, ed. Major problems in state constitutional revision. Chicago, Public Administration Service, 1960. 306p.
- Kauper, Paul G. The state constitution: its nature and purpose. Lansing, Michigan, Citizens Research Council of Michigan, Oct. 1961. 29p.
- National Municipal League. Model state constitution with explanatory articles. 5th ed. 1948. 57p. (New edition in preparation)
- National Municipal League. State Constitutional Studies Project.

<u>Series I</u>

- 1. The model state constitution.
- 2. Salient issues of constitutional revision.
- 3. The future role of the states.
- 4. The constitutional convention: a manual on its planning, organization and operation. 1961.
- 5. How to study a state constitution.

Series II

- 1. State constitutions: the shape of the document, by Robert B. Dishman. 1960.
- 2. State constitutions: reapportionment, by Gordon E. Baker. 1960.
- 3. State constitutions: the governor, by Bennett M. Rich. 1960.
- 4. State constitutions: the structure of administration, by Ferrel Heady. 1961.
- 5. State constitutions: the bill of rights, by Robert S. Rankin. 1960.

These series were undertaken to provide a base for the preparation of a general study of state constitutional problems and for revision of the Model State Constitution.

- Hawaii. Constitution.
- Maine. 94th Legislature. Report of the Joint Select Committee to Consider the Need for Revision of the Constitution. 1949. 5p.
- New Hampshire. University. Public Administration Service of the Department of Government. A new constitution for New Hampshire? by Robert B. Dishman. 1956. 114p.
- North Carolina. Constitutional Commission. Report. 1959. 146p.

The Commission outlines its methods and procedures, style, content and purpose of its report, objectives and important aspects of its work and then presents its findings and recommendations.

West Virginia. University. Bureau for Government Research. Major constitutional issues in West Virginia, by Albert L. Sturm. 1961. 154p.

Chapter one considers the "Nature of state constitutions." Nearly all other chapters contain useful general discussion as well as specific details for West Virginia.

Source Books

Constitutions of the states and United States. Being volume 3 of the Reports of the New York Constitutional Convention of 1938.

The Columbia University Legislative Drafting Research Fund is preparing a new, two volume compilation of state constitutions which will be published shortly.

Index Digest of state constitutions. 2d ed. Legislative Drafting Research Fund of Columbia University. 1959.

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CONSTITUTION

OF THE

STATE OF MAINE



Codification of 1955 with Supplemental Amendments

Constitution of the State of Maine, as amended.

(JANUARY 1, 1955)

PREAMBLE.

WE the people of Maine, in order to establish justice, insure tranquility, Objects of provide for our mutual defence, promote our common welfare, and secure government. to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and, imploring His aid and direction in its accomplishment, do agree to form ourselves into a free and independent State, by the style and title of the STATE OF MAINE, and do ordain and establish the following Constitution for the government of the same.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are born equally free and independent, and have Natural rights. certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

SECTION 2. All power is inherent in the people; all free governments Power inherent in are founded in their authority and instituted for their benefit; they have people therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it.

SECTION 3. All men have a natural and unalienable right to worship Religious freedom. Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others Proviso. in their religious worship; - and all persons demeaning themselves peaceably, as good members of the state, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or de- Sects equal. nomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under Religious tests prohibited. this state; and all religious societies in this state, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and main-Religious teachers.

Freedom of speech and publication.

SECTION 4. Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of men in public capacity, or the qualifications of those who are candidates for the suffrages of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels, the jury, after having received the direction Libel. of the court, shall have a right to determine, at their discretion, the law Truth may be and the fact.

Unreasonable searches prohibited.

Section 5. The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause — supported by oath or affirmation.

Rights of persons

SECTION 6. In all criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at his election;

To demand the nature and cause of the accusation, and have a copy thereof:

To be confronted by the witnesses against him;

To have compulsory process for obtaining witnesses in his favor;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land.

No person to answer to certain crimes but on indictment.

Exceptions.

Section 7. No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offences, as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger. The legislature shall provide by law a suitable and impartial mode of selecting juries, and their usual number and unanimity, in indictments and convictions, shall be held indispensable.

Juries.

No double jeopardy.

Section 8. No person, for the same offence, shall be twice put in jeopardy of life or limb.

Sanguinary laws

Section 9. Sanguinary laws shall not be passed: all penalties and punishments shall be proportioned to the offence: excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

(Amended by Amendment ii.)

Bailable offences.

Habeas corpus.

Section 10. No person before conviction shall be bailable for any of the crimes which now are, or have been denominated capital offences since the adoption of the constitution, when the proof is evident or the presumption great, whatever the punishment of the crimes may be. And the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Bills of attainder, etc. Section 11. The legislature shall pass no bill of attainder, ex post facto law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.

Treason.

Testimony of two witnesses.

Section 12. Treason against this state shall consist only in levying war against it, adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

Suspension of laws.

Section 13. The laws shall not be suspended but by the legislature or its authority.

Corporal punishment under military law. Section 14. No person shall be subject to corporal punishment under military law, except such as are employed in the army or navy, or in the militia when in actual service in time of war or public danger.

SECTION 15. The people have a right at all times in an orderly and Right of petition. peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Section 16. Every citizen has a right to keep and bear arms for the To keep and bear common defence; and this right shall never be questioned.

Section 17. No standing army shall be kept up in time of peace without the consent of the legislature, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Standing armies shall not be kept.

Section 18. No soldier shall in time of peace be quartered in any house without the consent of the owner or occupant, nor in time of war, but in a manner to be prescribed by law.

No soldier to be quartered on citi-zens in time of

Section 19. Every person, for an injury done him in his person, reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

Right of redress

Section 20. In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced: the party claiming the right may be heard by himself and his counsel, or either, at his election.

Trial by jury.

Section 21. Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.

Private property, when to be taken.

Section 22. No tax or duty shall be imposed without the consent of Taxes. the people or of their representatives in the legislature.

Section 23. No title of nobility or hereditary distinction, privilege, honor or emolument, shall ever be granted or confirmed, nor shall any office be created, the appointment to which shall be for a longer time than Tenure of offices. during good behavior.

Title of nobility prohibited.

Section 24. The enumeration of certain rights shall not impair nor deny others retained by the people.

Other rights not

ARTICLE II.

ELECTORS.

SECTION 1. Every citizen of the United States of the age of twenty-one years and upwards, excepting paupers and persons under guardianship, having his or her residence established in this state for the term of six months next preceding any election, shall be an elector for governor, senators and representatives, in the city, town or plantation where his or her residence has been established for the term of three months next preceding such election, and he or she shall continue to be an elector in such city, town or plantation for the period of three months after his or her removal therefrom, if he or she continues to reside in this state during such period, unless barred by the provisions of the second paragraph of this section; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this state, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack or military place, in any city, town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the city, town or plantation where such seminary is established. No person, however, shall be deemed to have lost his residence by reason of his absence from the state in the military service of the United States, or of this state.

(Amended by Amended by Amendments x, xxix, xliv, lvii, lxi, lxxvii.)

Qualifications of

Written ballot.

Soldiers or seamen in U. S. service.

Students at colleges

Educational qualification.

No person shall have the right to vote or be eligible to office under the constitution of this state, who shall not be able to read the constitution in the English language, and write his name; provided, however, that this shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who had the right to vote on the fourth day of January in the year one thousand eight hundred and ninety-three.

Every Indian, residing on tribal reservations and otherwise qualified, shall be an elector in all county, state and national elections.

Electors exempt from arrest on election days.

SECTION 2. Electors shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest on the days of election, during their attendance at, going to, and returning therefrom.

Exemption from military duty.

Section 3. No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

(Amended by Amendments x,

xxiii, lxxiv.) Time of State

Absentee voting.

Section 4. The election of governor, senators and representatives, shall be on the second Monday of September biennially forever. The legislature under proper enactment shall authorize and provide for voting by citizens of the state absent therefrom in the armed forces of the United States or of this state and for voting by other citizens absent or physically incapacitated for reasons deemed sufficient.

(Added by Amend-ment lix.)

Voting machines.

Section 5. Voting machines, or other mechanical devices for voting, may be used at all elections under such regulations as may be prescribed by law; provided, however, the right of secret voting shall be preserved.

ARTICLE III.

DISTRIBUTION OF POWERS.

Powers distributed.

Section 1. The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.

To be kept

Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

ARTICLE IV.

PART FIRST.

House of Representatives.

(Amended by Amendment xxxi.)

Legislative depart-

Style of acts.

Section 1. The legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be styled the Legislature of Maine, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be, "Be it enacted by the people of the state of Maine."

(Amended by Amendments iv, xxiii, xxv, lxxvii.)

Number of representatives. Biennial terms.

Section 2. The house of representatives shall consist of one hundred and fifty-one members, to be elected by the qualified electors, and hold their office two years from the day next preceding the biennial meeting of the legislature. The legislature shall, within every period of at most ten years and at least five, cause the number of the inhabitants of the state to be ascertained, exclusive of foreigners not naturalized. The number of Legislature to representatives shall, at the several periods of making such enumeration, ascertain number of inhabitants. be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population.

Section 3. Each county shall be entitled to that number of representatives which is in the same proportion to the total number as the number of inhabitants of the county bears to the number of inhabitants of the state, fractional excesses over whole numbers to be computed in favor of the smaller counties. No city or town shall ever be entitled to more than Apportionment seven representatives, except that in the event of merger of towns or cities, the new town or city shall be allowed the combined representation of the former units, which number if exceeding seven shall thereupon and thereafter become the maximum number to which any city or town shall thereafter be entitled in later apportionments. Apportionment of representatives within each county shall be made by deducting from the number of inhabitants of the county the number of inhabitants of such cities and towns as may be entitled to the maximum number of representatives permitted to any city or town by reason of the numerical proportion of its inhabitants to the inhabitants of the county and by deducting from the total number of representatives to which the county is entitled the number to which such cities and towns of maximum representation are entitled, the remaining inhabitants being entitled to the remaining representatives; and in the allocation of the remainder within the county each city or town having a number of inhabitants greater than a unit base number obtained by dividing such remaining inhabitants by such remaining representatives shall be entitled to as many representatives as the number of times the number of its inhabitants fully contains the unit base number of representation; and the remaining cities, towns and plantations within the county which have inhabitants in number less than such unit base number shall be formed into representative class districts in number equal to the remainder of county representatives unallocated under the foregoing procedure by grouping whole cities, towns and plantations as equitably as possible with consideration for population and for geographical contiguity.

SECTION 4. No person shall be a member of the house of representa- Qualifications. tives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty-one years, have been a resident in this state one year; and for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.

Section 5. The meetings within this state for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof xlvii.) shall preside impartially at such meetings, receive the votes of all the quali- Election. fied electors, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted Absent voting. for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the selectinen, and in open town Meetings of classed meeting. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be

Apportionment.

(Amended by Amendments xxxix, lxix.)

(Amended by Amendments i, v vii, viii, x, xxiii,

Lists of votes shall be examined by governor and council.

Governor and council shall summon persons who appear to be elected.

Lists shall be laid before the house of representatives.

Manner of electing representatives and other civil officers in cities. subject to all the duties, which selectmen and town clerks have, and are subject to by this constitution. And fair copies of the lists of votes shall be attested by the selectmen and town clerks of towns, and the assessors of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January biennially. And the governor and council shall examine the returned copies of such lists, and also all lists of votes of citizens in the military service, returned to the secretary's office as provided in article second, section four, of this constitution; and twenty days before the said first Wednesday of January biennially, shall issue a summons to such persons as shall appear to be elected by a plurality of all votes returned, to attend and take their seats. But all such lists shall be laid before the house of representatives on the first Wednesday of January biennially, and they shall finally determine who are elected.

The electors resident in any city may at any meeting duly notified for the choice of representatives, vote for such representatives in their respective ward meetings and the warden in said wards shall preside impartially at such meetings, receive the votes of all qualified electors, sort, count and declare them in open ward meeting and in the presence of the ward clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the warden, and in open ward meeting: and a fair copy of this list shall be attested by the warden and ward clerk, sealed up in open ward meeting, and delivered to the city clerk within twenty-four hours after the close of the polls. And the electors resident in any city may at any meetings duly notified and holden for the choice of any other civil officers, for whom they have been required heretofore to vote in town meeting, vote for such officers in their respective wards, and the same proceedings shall be had by the warden and the ward clerk in each ward as in the case of votes for representatives. And the aldermen of any city shall be in session within twenty-four hours after the close of the polls in such meetings, and in the presence of the city clerk shall open, examine and compare the copies from the lists of votes given in the several wards, of which the city clerk shall make a record, and return thereof shall be made into the secretary of state's office in the same manner as selectmen of towns are required to do.

Vacancies.

Section 6. Whenever the seat of a member shall be vacated by death, resignation, or otherwise the vacancy may be filled by a new election.

To choose own officers.

SECTION 7. The house of representatives shall choose their speaker, clerk and other officers.

Power of impeachment.

Section 8. The house of representatives shall have the sole power of impeachment.

ARTICLE IV.

PART SECOND.

SENATE.

(Amended by Amendment liii,)

Number of senators.

Section 1. The senate shall consist of the members to which the several counties are entitled, on the following basis of representation according to the Federal Census: each county having a population of thirty thousand inhabitants or less shall have one senator; each county having a population of more than thirty thousand inhabitants and less than sixty thousand inhabitants shall have two senators; each county having a population of more than sixty thousand inhabitants and less than one

hundred and twenty thousand inhabitants shall have three senators; each county having a population of more than one hundred twenty thousand and less than two hundred forty thousand inhabitants shall have four senators; and each county having a population of more than two hundred forty thousand inhabitants shall have five senators. For the purpose of representation, foreigners not naturalized and Indians not taxed shall not be counted as inhabitants. The members of the senate shall be elected at the same time and for the same term as the representatives by the qualified electors of the counties which they shall respectively represent.

Section 2. The meetings within this state for the election of senators shall be notified, held and regulated, and the votes received, sorted, counted, declared and recorded, in the same manner as those for representatives. And fair copies of the lists of votes shall be attested by the Election. selectmen and town clerks of towns, and the assessors and clerks of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the secretary's office thirty days at least before the first Wednesday of January. All other qualified electors, living in places unincorporated, who believes in unincorporated places. shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of voting for senators, representatives and governor in such town; and shall be notified by the selectmen thereof for that purpose accordingly.

Section 3. The governor and council shall, as soon as may be, examine the returned copies of such lists, and also the lists of votes of citizens in the military service, returned into the secretary's office, and, twenty days x, xiii.) before the said first Wednesday of January, issue a summons to such persons, as shall appear to be elected by a plurality of the votes in each district, to attend that day and take their seats.

SECTION 4. The senate shall, on the said first Wednesday of January, biennially, determine who are elected by a plurality of votes to be senators in each county; and in case the full number of senators to be elected from each county shall not have been so elected, the members of the house of representatives and such senators, as shall have been elected, shall, from number not elected. the highest numbers of the persons voted for, on said lists, equal to twice the number of senators deficient, in every county, if there be so many voted for, elect by joint ballot the number of senators required; but all vacancies in the senate, arising from death, resignation, removal from the state, or like causes, shall be filled by an immediate election in the unrepresented county. The governor shall issue his proclamation therefor and therein fix the time of such election.

SECTION 5. The senators shall be twenty-five years of age at the com- (Originally Sec. 6) mencement of the term, for which they are elected, and in all other Qualifications. respects their qualifications shall be the same, as those of the representatives.

SECTION 6. The senate shall have the sole power to try all impeach- (Originally Sec. 7) ments, and when sitting for that purpose shall be on oath or affirmation, To try impeachand no person shall be convicted without the concurrence of two thirds ments. of the members present. Their judgment, however, shall not extend Limitation of farther than to removal from office, and disqualification to hold or enjoy judgment. any office of honor, trust or profit under this state. But the party, whether Party liable to be convicted or acquitted, shall nevertheless be liable to indictment, trial, in court. judgment and punishment according to law.

SECTION 7. The senate shall choose their president, secretary and other (Originally Sec. 8) officers.

(Originally Sec. 3) Amended by Amendments v,

(Originally Sec. 4) (Amended by Amendments v, viii,

Examination of

(Originally Sec. 5) (Amended by Amendments v, viii, xiii, xxiii, xxx, liii.)

Procedure when full

tried and punished

ARTICLE IV.

PART THIRD.

LEGISLATIVE POWER.

(Amended by Amendments v, viii, xxiii, xxxi.)

To meet biennially.

Section 1. The legislature shall convene on the first Wednesday of January biennially, and, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution, nor to that of the United States.

Bills to be signed by the governor.

Proceedings, in case he disapproves.

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Bills shall be returned by him within five days.

Each house to judge of its elections.

Majority, a quorum.

May punish and expel members.

Shall keep a journal.

Yeas and nays.

May punish for contempt.

Proviso.

(Amended by Amendment Ixiv.)
Compensation.

Traveling expenses.

Section 2. Every bill or resolution, having the force of law, to which the concurrence of both houses may be necessary, except on a question of adjournment, which shall have passed both houses, shall be presented to the governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the house, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If after such reconsideration, two thirds of that house shall agree to pass it, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and, if approved by two thirds of that house, it shall have the same effect, as if it had been signed by the governor: but in all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both houses respectively. If the bill or resolution shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it unless the legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting.

Section 3. Each house shall be the judge of the elections and qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house shall provide.

Section 4. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member, but not a second time for the same cause.

Section 5. Each house shall keep a journal, and from time to time publish its proceedings, except such parts as in their judgment may require secrecy; and the yeas and nays of the members of either house on any question, shall, at the desire of one fifth of those present, be entered on the journals.

Section 6. Each house, during its session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for anything said, done, or doing in either house: *provided*, that no imprisonment shall extend beyond the period of the same session.

Section 7. The senators and representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the legislature, which enacted it. The expenses of the members of the house of representatives in traveling to the legislature, and returning therefrom, once in each week of each session and no more, shall be paid by the state out of the public treasury to every member, who shall seasonably attend, in the judgment of the house, and does not depart therefrom without leave.

SECTION 8. The senators and representatives shall, in all cases except Members exempt treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the legislature, and no member shall be liable to answer for anything spoken Freedom of debate. in debate in either house, in any court or place elsewhere.

Section 9. Bills, orders or resolutions, may originate in either house, Either house may originate bills for originate bills. and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the house of representatives, but the Revenue bills. senate may propose amendments as in other cases: provided, that they Proviso. shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.

SECTION 10. No senator or representative shall, during the term for Members not to be which he shall have been elected, be appointed to any civil office of profit appointed to certain offices. under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people.

SECTION 11. No member of Congress, nor person holding any office Persons disqualified under the United States (post officers excepted) nor office of profit under this state, justices of the peace, notaries public, coroners and officers of the militia excepted, shall have a seat in either house during his being such member of Congress, or his continuing in such office.

SECTION 12. Neither house shall during the session, without the con- Adjournments. sent of the other, adjourn for more than two days, nor to any other place than that in which the houses shall be sitting.

SECTION 13. The legislature shall, from time to time, provide, as far (Added by Amendas practicable, by general laws, for all matters usually appertaining to special or private legislation.

ment xiv.)

Special legislation.

Section 14. Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the state.

(Added by Amendment xiv.) Corporations, formed under general laws.

SECTION 15. The legislature shall, by a two-thirds concurrent vote (Added by Amendof both branches, have the power to call constitutional conventions, for the purpose of amending this constitution.

ment xix.) Constitutional conventions.

Section 16. No act or joint resolution of the legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed by law, shall take effect until ninety days after the recess of the legislature passing it, unless in case of emergency, (which with the facts constituting the emergency shall be expressed in the preamble of the act), the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.

(Added by Amendment xxxi.)

Acts become effective in ninety days after recess.

Exception.

Emergency bill defined.

(Added by Amendment xxxi. Amended by Amendment lxiii.)

Proceedings for referendum.

Proclamation by governor.

(Added by Amendment xxxi. Amended by Amendments lxvi, lxxi.)

Direct initiative of legislation.

Number signatures necessary on direct initiative petitions.

Section 17. Upon written petition of electors, the number of which shall not be less than ten per cent of the total vote for governor cast in the last gubernatorial election preceding the filing of such petition, and addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, requesting that one or more acts, bills, resolves or resolutions, or part or parts thereof, passed by the legislature, but not then in effect by reason of the provisions of the preceding section, be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. As soon as it appears that the effect of any act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in case of no general election within six months thereafter the governor may, and if so requested in said written petition therefore, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof.

Section 18. The electors may propose to the legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the state constitution, by written petition addressed to the legislature or to either branch thereof and filed in the office of the secretary of state or presented to either branch of the legislature within forty-five days after the date of convening of the legislature in regular session. Any measure thus proposed by electors, the number of which shall not be less than ten percent of the total vote for governor cast in the last gubernatorial election preceding the filing of such petition, unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by itself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The legislature may order a special election on any measure that is subject to a vote of the people. The governor may, and if so requested in the written petitions addressed to the legislature, shall, by proclamation, order any measure proposed to the legislature as herein provided, and not enacted by the legislature without change, referred to the people at a special election to be held not less than four nor more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the legislature, to which such measure was proposed.

(Added by Amendments xxxi, lxxii.)

Measures approved by people become effective thirty days after proclamation. Section 19. Any measure referred to the people and approved by a majority of the votes given thereon shall, unless a later date is specified in said measure, take effect and become a law in thirty days after the governor has made public proclamation of the result of the vote on said measure, which he shall do within ten days after the vote thereon has been canvassed

and determined; provided, however, that any such measure which entails Veto power limited. expenditure in an amount in excess of available and unappropriated state funds shall remain inoperative until forty-five days after the next convening of the legislature in regular session, unless the measure provides for raising new revenues adequate for its operation. The veto power of the governor shall not extend to any measure approved by vote of the people, and any measure initiated by the people and passed by the legislature without change, if vetoed by the governor and if his veto is sustained by the legislature shall be referred to the people to be voted on at the next general election. The legislature may enact measures expressly conditioned upon the people's ratification by a referendum vote.

ment xxxi.) "electors",
"people", "recess
of legislature", "general election", "measure", and "written petition".

SECTION 20. As used in either of the three preceding sections the (Added by Amendwords "electors" and "people" mean the electors of the state qualified to vote for governor; "recess of the legislature" means the adjournment Meaning of words without day of a session of the legislature; "general election" means the November election for choice of presidential electors or the September election for choice of governor and other state and county officers; "measure" means an act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor. The petitions shall set forth the full text of the measure requested or proposed. The full text of a measure submitted to a vote of the people under the provisions of the constitution need not be printed on the official ballots, but, until otherwise provided by the legislature, the secretary of state shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.

Section 21. The city council of any city may establish the initiative and referendum for the electors of such city in regard to its municipal affairs, provided that the ordinance establishing and providing the method of exercising such initiative and referendum shall not take effect until ratified by vote of a majority of the electors of said city, voting thereon at a municipal election. Provided, however, that the legislature may at any time provide a uniform method for the exercise of the initiative and referendum in municipal affairs.

Section 22. Until the legislature shall enact further regulations not (Added by Amendinconsistent with the constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this constitution and of the general law, supplemented governed. by such reasonable action as may be necessary to render the preceding sections self executing.

(Added by Amendment xxxi.)

City council of any city may establish initiative and

ARTICLE V.

PART FIRST.

EXECUTIVE POWER.

SECTION 1. The supreme executive power of this state shall be vest- Governor. ed in a Governor.

Section 2. The governor shall be elected by the qualified electors, and shall hold his office for two years from the first Wednesday of January next following the election.

(Amended by Amendments v, viii, xxiii.) Term of office.

Election.

Votes to be returned to secretary of

Provision in case there is no choice.

(Amended by Amendments v, viii, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time as those for senators. And the secretary of state for the time being shall, on the first Wednesday of January, then next, lay the lists before the senate and house of representatives, and also the lists of votes of citizens in the military service, returned into the secretary's office, to be by them examined, and, in case of a choice by a plurality of all the votes returned, they shall declare and publish the same. But, if no person shall have a plurality of votes, the house of representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect two persons, and make return of their names to the senate, of whom the senate shall, by ballot, elect one, who shall be declared the governor.

Qualification.

Section 4. The governor shall, at the commencement of his term, be not less than thirty years of age; a natural born citizen of the United States, have been five years a resident of the state; and at the time of his election and during the term for which he is elected, be a resident of said state.

Disqualifications.

Section 5. No person holding any office or place under the United States, this state, or any other power, shall exercise the office of governor.

Compensation.

Section 6. The governor shall, at stated times, receive for his services a compensation, which shall not be increased or diminished during his continuance in office.

Commander in chief of the militia.

Not to march the militia out of the state.

Section 7. He shall be commander in chief of the army and navy of the state, and of the militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the state without their consent, or that of the legislature, unless it shall become necessary, in order to march or transport them from one part of the state to another for the defence thereof.

(Amended by Amendments ix,

To nominate officers.

Section 8. He shall nominate, and, with the advice and consent of the council, appoint all judicial officers (except judges of probate), coroners, and notaries public; and he shall also nominate, and with the advice and consent of the council, appoint all other civil and military officers, whose appointment is not by this constitution, or shall not by law be otherwise provided for, except the land agent; and every such nomination shall be made seven days, at least, prior to such appointment.

To give information and recommend measures.

Section 9. He shall from time to time give the legislature information of the condition of the state, and recommend to their consideration such measures, as he may judge expedient.

May require information of any officer,

Section 10. He may require information from any military officer, or any officer in the executive department, upon any subject relating to the duties of their respective offices.

(Amended by Amendment xv.)

Power to pardon and remit penalties,

Conditions.

Shall report to legislature.

Section 11. He shall have power, with the advice and consent of the council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions, and with such restrictions and limitations as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. And he shall communicate to the legislature, at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating

the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation, or pardon, and the conditions, if any, upon which the same was granted.

SECTION 12. He shall take care that the laws be faithfully executed.

Section 13. He may, on extraordinary occasions, convene the legislature; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time, as he shall think proper, not beyond the day of the next biennial meeeting; and if, since the last adjournment, the place where the legislature were next to convene shall have become dangerous from an enemy or contagious sickness, may direct the session to be held at some other convenient place within the

Section 14. Whenever the office of governor shall become vacant by vacancy, how death, resignation, removal from office or otherwise, the president of the senate shall exercise the office of governor until another governor shall be duly qualified; and in case of the death, resignation, removal from office or other disqualification of the president of the senate, so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person, acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. And whenever either the president of the senate, or speaker of the house shall so exercise said office, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended; and the senate or house, shall fill the vacancy, until his duties as governor shall cease.

Shall enforce the

(Amended by Amendment xxiii.)

Convene the legis-lature on extraordi-nary occasions, and adjourn it in case of disagreement.

May change the place of meeting.

ARTICLE V.

PART SECOND.

COUNCIL.

SECTION 1. There shall be a council, to consist of seven persons, Constitution of citizens of the United States, and residents of this state, to advise the governor in the executive part of government, whom the governor shall have full power, at his discretion, to assemble; and he with the counsellors, or a majority of them may from time to time, hold and keep a council, for ordering and directing the affairs of state according to law.

SECTION 2. The counsellors shall be chosen biennially, on the first Wednesday of January, by joint ballot of the senators and representatives in convention; and vacancies, which shall afterwards happen, shall be filled in the following manner: the governor with the advice and consent of the council shall appoint within thirty days from said vacancy a counsellor from the same district in which the vacancy occurred, and the oath of office shall be administered by the governor; said counsellor shall hold office until the next convening of the legislature; but not more than one counsellor shall be elected or appointed from any district prescribed for the election of senators; they shall be privileged from arrest in the same Privileged from manner as senators and representatives.

Section 3. The resolutions and advice of council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either house of the legislature; and any counsellor may enter his dissent to the resolution of the majority.

(Amended by Amendments viii, xxiii, 1.)

Election.

Vacancies.

Persons disqualified,

Not to be appointed to any office.

SECTION 4. No member of Congress, or of the legislature of this state, nor any person holding any office under the United States, (post officers excepted) nor any civil officers under this state (justices of the peace and notaries public excepted) shall be counsellors. And no counsellor shall be appointed to any office during the time, for which he shall have been elected.

ARTICLE V.

PART THIRD.

SECRETARY.

(Amended by Amendment xxiii.)
Election.

SECTION 1. The secretary of state shall be chosen biennially at the first session of the legislature, by joint ballot of the senators and representatives in convention.

Records of state.

Deputies.

SECTION 2. The records of the state shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable.

Attend the governor and council.

SECTION 3. He shall attend the governor and council, senate and house of representatives, in person or by his deputies as they shall respectively require.

Records of executive and legislative departments. SECTION 4. He shall carefully keep and preserve the records of all the official acts and proceedings of the governor and council, senate and house of representatives, and, when required, lay the same before either branch of the legislature, and perform such other duties as are enjoined by this constitution, or shall be required by law.

ARTICLE V. PART FOURTH. TREASURER.

(Amended by Amendments xxiii, xxvii, lxx.) Election. SECTION 1. The treasurer shall be chosen biennially, at the first session of the legislature, by joint ballot of the senators, and representatives in convention.

Bond.

SECTION 2. The treasurer shall, before entering on the duties of his office, give bond to the state with sureties, to the satisfaction of the legislature, for the faithful discharge of his trust.

Not to engage in trade.

SECTION 3. The treasurer shall not, during his continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader.

(Amended by Amendment xxiii.) Not to draw money but by warrant. Account of receipts and expenditures to be published.

Section 4. No money shall be drawn from the treasury, but by warrant from the governor and council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the biennial session of the legislature.

ARTICLE VI. JUDICIAL POWER.

Courts.

SECTION 1. The judicial power of this state shall be vested in a Supreme Judicial Court, and such other courts as the legislature shall from time to time establish.

Compensation.

SECTION 2. The justices of the supreme judicial court shall, at stated times receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

Section 3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the governor, council, senate or house of representatives.

Section 4. All judicial officers shall hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the legislature to the executive) and no longer, unless reappointed thereto.

SECTION 5. Justices of the peace and notaries public, shall hold their Justices of the offices during seven years, if they so long behave themselves well, at the expiration of which term, they may be reappointed or others appointed, as the public interest may require.

SECTION 6. The justices of the supreme judicial court shall hold no office under the United States, nor any state, nor any other office under this state, except that of justice of the peace.

Section 7. Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the second Monday of September, and shall hold their offices for four years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the September election, next after their occurrence; and in the meantime, the governor, with the advice and consent of the council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid.

Section 8. Judges of municipal and police courts shall be appointed by the executive power, in the same manner as other judicial officers, and shall hold their offices for the term of four years.

ARTICLE VII.

MILITARY.

Section I. All commissioned officers of the militia shall be appointed and commissioned by the governor, from such persons as are qualified by law to hold such offices.

Section 2. The legislature shall, by law, designate the qualifications necessary for holding a commission in the militia and shall prescribe the mode of selection of officers for the several grades.

Section 3. The adjutant general shall be appointed by the governor. But the adjutant general shall also perform the duties of quartermaster general and paymaster general until otherwise directed by law.

Section 4. The organization, armament and discipline of the militia and of the military and naval units thereof shall be the same as that which is now or may hereafter be prescribed by the laws and regulations of the United States; and it shall be the duty of the governor to issue from time to time such orders and regulations and to adopt such other means of administration, as shall maintain the prescribed standard of Standard of organiorganization, armament and discipline; and such orders, regulations and and discipline. means adopted shall have the full force and effect of the law.

Section 5. Persons of the denominations of quakers and shakers, justices of the supreme judicial court, ministers of the gospel and persons exempted by the laws of the United States may be exempted from military duty, but no other able-bodied person of the age of eighteen and from military duty. under the age of forty-five years, excepting officers of the militia who have been honorably discharged, shall be so exempted unless he shall pay an equivalent to be fixed by law.

To give opinion when required by either branch of government.

(Amended by

Tenure of judicial offices.

peace and notaries.

Justices of the S. J. C. can hold no other office.

(Added by Amendment ix. Amended by Amendment xxiii.)

Judges and registers of probate, election and tenure.

Vacancies.

(Added by Amend-(Added by Amendment ix.
Amended by
Amendment xvi.)
Judges of municipal
and police courts.
Tenure.

(Amended by Amendment xl.) Officers, how appointed.

(Amended by Amendment xl.)
Qualifications and selection.

(Amended by Amended by Amendments ix, xxiii, xxviii, xl.) Adjutant general, appointment and duties.

(Amended by Amendment xl.)

(Amended by Amendment xl.)

ARTICLE VIII.

LITERATURE.

Legislature shall require towns to support public schools.

Shall endow colleges

Proviso.

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the state: provided, that no donation, grant or endowment shall at any time be made by the legislature to any literary institution now established, or which may hereafter be established, unless, at the time of making such endowment, the legislature of the state shall have the right to grant any further powers to, alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof.

ARTICLE IX.

GENERAL PROVISIONS.

Oaths and subscriptions.

Section 1. Every person elected or appointed to either of the places or offices provided in this constitution, and every person elected, appointed, or commissioned to any judicial, executive, military or other office under this state, shall, before he enter on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation: "I,--do swear, that I will support the Constitution of the United States and of this State, so long as I shall continue a citizen thereof. So help me God. "

Proviso.

"I --- do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as ---- according to the Constitution and laws of the State. So help me God." Provided, that an affirmation in the above forms may be substituted, when the person shall be conscientiously scrupulous of taking and subscribing an oath.

Before whom to be taken.

The oaths or affirmations shall be taken and subscribed by the governor and counsellors before the presiding officer of the senate, in the presence of both houses of the legislature, and by the senators and representatives before the governor and council, and by the residue of said officers before such persons as shall be prescribed by the legislature; and whenever the governor or any counsellor shall not be able to attend during the session of the legislature to take and subscribe said oaths or affirmations, such oaths or affirmations may be taken and subscribed in the recess of the legislature before any justice of the supreme judicial court.

Offices incompatible with each other.

judicial court, or of any inferior court, attorney general, county attorney, treasurer of the state, adjutant general, judge of probate, register of probate, register of deeds, sheriffs or their deputies, clerks of the judicial courts, shall be a member of the legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the Congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising at the same time within this

Section 2. No person holding the office of justice of the supreme

Election to congress disqualifies.

Section 3. All commissions shall be in the name of the state, signed by the governor, attested by the secretary or his deputy and have the

state, more than one of the offices before mentioned.

seal of the state thereto affixed,

Commissions.

Section 4. And in case the elections, required by this constitution on (Amended by the first Wednesday of January biennially, by the two houses of the legislature, shall not be completed on that day, the same may be adjourned from day to day, until completed, in the following order: the vacancies in the senate shall first be filled; the governor shall then be elected, if there be no choice by the people; and afterwards the two houses shall elect a council.

Elections on the January may be adjourned from day to day.

Section 5. Every person holding any civil office under this state, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the governor with the advice of the council, on the address of both branches of the legislature. But before such address shall pass either house, the causes of removal shall be stated and entered on the journal of the house in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defence.

Removal by

SECTION 6. The tenure of all offices, which are not or shall not be Tenure of office. otherwise provided for, shall be during the pleasure of the governor and council.

SECTION 7. While the public expenses shall be assessed on polls and valuation. estates, a general valuation shall be taken at least once in ten years.

Section 8. All taxes upon real and personal estate, assessed by authority of this state, shall be apportioned and assessed equally, according to the just value thereof; but the legislature shall have power to levy a tax upon intangible personal property at such rate as it deems wise and equitable without regard to the rate applied to other classes of Intangible property. property.

(Amended by Amendments xvii, xxxvi.)

SECTION 9. The legislature shall never, in any manner, suspend or (Added by Amendment xvii.)

Power of taxation. surrender the power of taxation.

Section 10. Sheriffs shall be elected by the people of their respective counties, by a plurality of the votes given in on the second Monday of September, and shall hold their offices for two years from the first day Amendment of January next after their election, unless sooner removed as hereinafter their election. provided.

(Added by Amend-

Whenever the governor and council upon complaint, due notice and hearing shall find that a sheriff is not faithfully or efficiently performing any duty imposed upon him by law, the governor may remove such sheriff from office and with the advice and consent of the council appoint another sheriff in his place for the remainder of the term for which such removed sheriff was elected. All vacancies in the office of sheriff, other than those caused by removal in the manner aforesaid shall be filled in the same manner as is provided in the case of judges and registers of probate.

SECTION 11. The attorney general shall be chosen biennially by joint ballot of the senators and representatives in convention. Vacancy in said office occurring when the legislature is not in session, may be filled by appointment by the governor, with the advice and consent of the council.

Section 12. But citizens of this state, absent therefrom in the military service of the United States, or of this state, and not in the regular army of the United States, being otherwise qualified electors, shall be allowed to vote for judges and registers of probate, sheriffs, and all other county officers, on the second Monday in September biennially forever. And the votes shall be given at the same time and in the same manner, and the names of the several candidates shall be printed or written on the same ballots with those for governor, senators, and representatives, as provided in section four of article second of this constitution.

(Added by Amend-ment ix as Sec. 10. Amended by Amendments xviii, Attorney General.

(Added by Amend-ment x as Sec. 11. Amended by Amendment xxiii.)
Citizens who may
be allowed to vote
for county officers. (Added by Amendment xx.) Bribery at elections. SECTION 13. The legislature may enact laws excluding from the right of suffrage, for a term not exceeding ten years, all persons convicted of bribery at any election, or of voting at any election, under the influence of a bribe.

(Added by Amendment vi. Amended by Amendments xxxv, xli, xlii, xliii, xlv, lv, lxvii, lxxv.)

State debt limit.

Section 14. The credit of the state shall not be directly or indirectly loaned in any case. The legislature shall not create any debt or debts, liability or liabilities, on behalf of the state, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed two million dollars, except to suppress insurrection, to repel invasion, or for purposes of war; and excepting also that whenever two-thirds of both houses shall deem it necessary, by proper enactment ratified by a majority of the electors voting thereon at a general or special election, the legislature may authorize the issuance of bonds on behalf of the state at such times and in such amounts and for such purposes as approved by such action; but this shall not be construed to refer to any money that has been, or may be deposited with this state by the government of the United States, or to any fund which the state shall hold in trust for any Indian tribe. Whenever ratification by the electors is essential to the validity of bonds to be issued on behalf of the state, the question submitted to the electors shall be accompanied by a statement setting forth the total amount of bonds of the state outstanding and unpaid, the total amount of bonds of the state authorized and unissued, and the total amount of bonds of the state contemplated to be issued if the enactment submitted to the electors be ratified.

(Added by Amendment xxii.
Amended by
Amendments xxxiv,
lxxiii, lxxvi.)

Municipal indebtedness limited.

(Added by Amendment xii.
Amended by
Amendment xlvi.)
Voting districts.

Section 15. No city or town shall hereafter create any debt or liability, which singly, or in the aggregate with previous debts or liabilities, shall exceed seven and one-half per cent of the last regular valuation of said city or town; provided, however, that the adoption of this article shall not be construed as applying to any fund received in trust by said city or town, nor to any loan for the purpose of renewing existing loans or for war, or to temporary loans to be paid out of money raised by taxation, during the year in which they are made.

Section 16. The legislature may by law authorize the dividing of towns into voting districts for all state and national elections, and prescribe the manner in which the votes shall be received, counted, and the result of the election declared.

SECTION 17. (Repealed by Amendment LXXV.)

SECTION 18. (Repealed by Amendment LXXV.)

(Added by Amendment lxii as Sec. 22.)

Limitation on expenditure of motor vehicle and motor vehicle fuel revenues. Section 19. All revenues derived from fees, excises and license taxes relating to registration, operation and use of vehicles on public highways, and to fuels used for the propulsion of such vehicles shall be expended solely for cost of administration, statutory refunds and adjustments, payment of debts and liabilities incurred in construction and reconstruction of highways and bridges, the cost of construction, reconstruction, maintenance and repair of public highways and bridges under the direction and supervision of a state department having jurisdiction over such highways and bridges and expense for state enforcement of traffic laws and shall not be diverted for any purpose, provided that these limitations shall not apply to revenue from an excise tax on motor vehicles imposed in lieu of personal property tax.

(Added by Amendment xxxiii.) Seat of government.

Section 20. Augusta is hereby declared to be the seat of government of this state.

ARTICLE X.

ADDITIONAL PROVISIONS.

Section 1. (See Section 7 and Note.)

Section 2. (See Section 7 and Note.)

SECTION 3. All laws now in force in this state, and not repugnant Laws now in force to this constitution, shall remain, and be in force, until altered or repealed continue until repealed. by the legislature, or shall expire by their own limitation.

Section 4. The legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors constitution. of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at the next biennial meetings in the month of September, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives, on the second Monday in September following the passage of said resolve, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this constitution.

(Amended by Amendments xxiii, xxxii, xxxvii.)

Amendments to

Section 5. (See Section 7 and Note.)

SECTION 6. The chief justice of the supreme judicial court shall (Amended by arrange the constitution, as amended, under appropriate titles and in America, proper articles, parts and sections, omitting all sections, clauses and words not in force and making no other changes in the provisions or language thereof, and shall submit the same to the legislature; and such arrangement of the constitution shall be made and submitted whenever a new revision of the public laws of the state is authorized; and the draft and Constitution to be arrangement, when approved by the legislature, shall be enrolled on parchjustice of S. J. C. ment and deposited in the office of the secretary of state; and printed copies thereof shall be prefixed to the books containing the revised statutes of the state. And the constitution, with the amendments made thereto, in accordance with the provisions thereof, shall be the supreme law of the state.

Constitution to be enrolled and printed with laws.

Supreme law of the state.

Section 7. Sections one, two and five, of article ten of the constitu- (Added by Amendtion, shall hereafter be omitted in any printed copies thereof prefixed to ment xxi.) the laws of the state; but this shall not impair the validity of acts under Original Bections those sections; and said section five shall remain in full force, as part of not to be printed. the constitution, according to the stipulations of said section, with the Section 5 in full same effect as if contained in said printed copies.

Note: The omitted sections may be found in the text of the constitution prefixed to the official publication of the laws passed by the first legislature of the state, which convened May 31, 1820, pages xxiv-xxvii, and pages xxviii-xxxi; in the text of the constitution prefixed to the publication of the Laws of Maine, authorized by Resolve of March 8, 1821, Volume 1, pages 41-50, and in such text prefixed to the Revised Statutes of 1840, 1857 and 1871.

Amendments

Note: Each article of the amendments is identified by the date on which the legislative resolve proposing its submission for adoption was approved and by the chapter number of such resolve. The placement of each in the Constitution identifies it in the arrangement made pursuant to Article LXV of the Amendments, new sections being identified by an asterisk. Parentheses are used to indicate that the section identified has been repealed, or omitted as not in force.

It should be noted that the repeal of Article IV, Part Second, Section 2, by Article LIII of the Amendments has required the renumbering of all sections therein except Section 1, and that all sections in Article IX after Section 17 have been renumbered because Sections 18, 19 and 20 of said Article as originally adopted have been omitted as not in force. To preserve the numbering of sections once adopted, the provisions of Article XXII of the Amendments, as amended, have been inserted as Section 15 of Article IX, replacing the provision authorizing the issue of bonds adopted by Article XI of the Amendments.

I	March	7, 1834	43	Article	IV, Part First,	Section	5.
II	March	30, 1837	74	Article	I,	Section	10.
III	March	14, 1839	69	Article	VI,	Section	4.
IV	April	16, 1841	181	Article	IV, Part First,	Section	2.
V	March	19, 1844	281	Article	IV, Part First,	Section	5,
		ŕ		Article	IV, Part Second,	Section	2,
				Article	IV, Part Second,	Section	3,
				Article	IV, Part Second,	Section	4,
				Article	IV, Part Third,	Section	1,
				Article	V, Part First,	Section	2,
				Article	V, Part First,	Section	3,
				Article	V, Part Second,	Section	2,
				Article	IX,	Section	4.
VI	July	26, 1847	29	Article	IX,	Section	14.
,VII	August	2, 1847	45	Article	IV, Part First,	Section	5.
VIII	August	2, 1850	274	Amends	each section amend	ed by Ar	ticle V
VIII	August	2, 1850	274	of th	e Amendments by	,	_
VIII	August	2, 1850	274	of th	_	,	_
VIII	August March	2, 1850 17, 1855	274 273	of th	e Amendments by	,	the 8,
	O	,		of the	e Amendments by al language.	restoring	the 8, 7°,
	O	,		of the origin Article	e Amendments by al language. V, Part First,	restoring Section	the 8,
	O	,		of the origin Article Article Article Article	e Amendments by al language. V, Part First, VI,	restoring Section Section	8, 7°, 8°, 3,
	O	,		of the origin Article Article Article	e Amendments by al language. V, Part First, VI, VI, VII, IX,	Section Section Section Section Section	the 8, 7°, 8°, 3, 10°,
	O	,		of the origin Article Article Article Article	e Amendments by al language. V, Part First, VI, VI, VII,	Section Section Section Section	8, 7°, 8°, 3,
	O	,		of the origin Article Article Article Article Article	e Amendments by al language. V, Part First, VI, VI, VII, IX,	Section Section Section Section Section	the 8, 7°, 8°, 3, 10°,
IX	March	17, 1855	273	of the origin Article Article Article Article Article Article Article	e Amendments by al language. V, Part First, VI, VI, VII, IX, IX,	Section Section Section Section Section Section	the 8, 7°, 8°, 3, 10°, 11°. 1, 4,
IX	March	17, 1855	273	of the origin Article Article Article Article Article Article Article Article Article	e Amendments by al language. V, Part First, VI, VI, VII, IX, IX, II,	Section Section Section Section Section Section Section	the 8, 7°, 8°, 3, 10°, 11°. 1, 4, 5,
IX	March	17, 1855	273	of the origin Article	e Amendments by al language. V, Part First, VI, VI, VII, IX, IX, II, II,	Section Section Section Section Section Section Section Section	the 8, 7°, 8°, 3, 10°, 11°. 1, 4,
IX	March	17, 1855	273	of the origin Article	e Amendments by al language. V, Part First, VI, VI, VII, IX, IX, II, II, IV, Part First,	Section Section Section Section Section Section Section Section Section Section	the 8, 7°, 8°, 3, 10°, 11°. 1, 4, 5,
IX	March	17, 1855	273	of the origin Article	e Amendments by al language. V, Part First, VI, VII, IX, IX, IX, II, II, IV, Part First, IV, Part Second,	Section Section Section Section Section Section Section Section Section Section Section	the 8, 7°, 8°, 3, 10°, 11°. 1, 4, 5, 2,

XI	March	7, 1868	276	Article	IX,	Section	(15°).
XII	March	13, 1869	91	Article	1X,	Section	16°.
XIII	February	24, 1875	98	Article	IV, Part Second,	Section	3,
	•			Article	1V, Part Second,	Section	4.
XIV	February	24, 1875	98	Article	1V, Part Third,	Section	13°,
				Article	1V, Part Third,	Section	14°.
XV	February	24, 1875	98	Article	V, Part First,	Section	11.
XVI	February	24, 1875	98	Article	V, Part First,	Section	8,
				Article	VI,	Section	8.
XVII	February	24, 1875	98	Article	IX,	Section	8,
				Article	IX,	Section	9°.
XVIII	February	24, 1875	98	Article	IX,	Section	11.
XIX	February	24, 1875	98	Article	1V, Part Third,	Section	15°.
XX	February	24, 1875	98	Article	IX,	Section	13°.
XXI	February	24, 1875	98	Article	Х,	Section	6,
				Article	Χ,	Section	7°.
XXII	February	9, 1877	279	Article	IX,	Section	15°.
XXIII	Marelı	4, 1879	151	Article	II,	Section	4,
				Article Article	IV, Part First, IV, Part First,	Section Section	2, 5,
				Article	IV, Part Second,	Section	4,
				Article	IV, Part Third,	Section	1,
				Article	V, Part First,	Section	2,
				Article	V, Part First,	Section	13,
				Article	V, Part Second,	Section	2,
				Article	V, Part Third,	Section	1,
				Article	V, Part Fourth,	Section	1,
				Article Article	V, Part Fourth,	Section	4,
				Article	VI, VII,	Section Section	7, 3,
				Article	IX,	Section	4,
				Article	IX,	Section	11,
				Article	IX,	Section	12,
	r			Article	Χ,	Section	4.
XXIV	January	27, 1880	159	Article	V, Part First,	Section	3.
XXV	March	18, 1880	217	Article	IV, Part First,	Section	2.
XXVI	February	21, 1883	93		l an Amendment led by Amendment	(Prohibiti LIV.	ion),
XXVII	March	10, 1887	80	Article	V, Part Fourth,	Section	1.
XXVIII	March	31, 1891	100	Article	VII,	Section	3.
XXIX	April	3, 1891	109	Article	II,	Section	1.
XXX	March	27, 1897	259	Article	IV, Part Second,	Section	4.
XXXI	March	20, 1907	121	Article	IV, Part First,	Section	1,
		·		Article	IV, Part Third,	Section	1,
				Article	IV, Part Third,	Section	16°,
				Article	IV, Part Third,	Section	17°,
				Article Article	IV, Part Third,	Section	18*,
				Article Article	IV, Part Third, IV, Part Third,	Section Section	19°, 20°,
				Article	IV, Part Third,	Section	20°, 21°,
				Article	IV, Part Third,	Section	22°.
XXXII	March	28, 1907	238	Article	Χ,	Section	4.
XXXIII	March	31, 1911	210	Article	IX,	Section	20.
		•			,		•

XXXIV	March	31,	1911	221	Article	IX,			Section	15.
XXXV	March	25,	1912	1	Article	IX,			Section	14,
					Article	IX,			Section	17*.
XXXVI	April	4,	1913	264	Article	IX,			Section	8.
XXXVII	April		1913	354	Article	Χ,			Section	4.
XXXVIII	March		1917	30	Article	IX,			Section	10,
XXXIX	April		1917	116	Article		Part	First,	Section	3.
XL	March	8,	1919	24	Article	VII,			Section	1,
					Article Article	VII, VII,			Section Section	2, 3,
					Article	VII,			Section	4,
					Article	VII,			Section	5.
XLI	March	28,	1919	110	Article	IX,			Section	14,
					Article	IX,			Section	(18).
XLII	April	4,	1919	155	Article	IX,			Section	14.
XLIII	April	4,	1919	168	Article	IX,			Section	14,
					Article	IX,			Section	17.
XLIV	March		1919	108	Article	II,			Section	1.
XLV	November	.7,	1919	173	Article Article	IX, IX,			Section Section	14,
XLVI	March	Q	1919	22	Article	IX,			Section	16.
XLVII	April		1921	22 87	Article		Part	First,	Section	5.
XLVIII	April		1925	71	Article	IX,	Lart	r not,	Section	17.
XLIX	April		1925	118	Article	IX,			Section	17.
L	April		1929	141	Article	•	Part	Second,	Section	2.
LI	April		1929	147	Article	IX,	I ait	occond,	Section	2. 17.
LII	April		1929	177	Article	IX,			Section	17.
LIII	April		1931	133	Article		Part	Second,	Section	1,
2111	'ipiii	Ο,	1001	100	Article			Second,	Section	(2),
					Article			Second,	Section	4.
LIV	December	16,	1933	219	Repealed	d (Pr	ohibi	tion) Am	endment	XXVI.
LV	December	16,	1933	222	Article	IX,			Section	14.
LVI	December	16,	1933	223	Article	IX,			Section	(20).
LVII	March	30,	1935	81	Article	II,			Section	1.
LVIII	March	30,	1935	96	Article	IX,			Section	17.
LIX	April	6,	1935	110	Article	II,			Section	5°.
LX	April	6,	1935	133	Article	IX,			Section	18*.
LXI	February		1937	4	Article	II,			Section	1.
LXII	April		1943	53	Article	IX,			Section	19*.
LXIII	March	13,	1947	37	Article	IV,	Part	Third,	Section	17.
LXIV	May	13,	1947	153	Article	IV,	Part	Third,	Section	7.
LXV	March	18,	1949	29	Article	Χ,			Section	6.
LXVI	April	4,	1949	61	Article	IV,	Part	Third,	Section	18.
LXVII	April	25,	1949	99	Article	IX,			Section	14.
LXVIII	May	7,	1949	184	Article	IX,			Section	17.
LXIX	May		1949	211	Article	IV,	Part	First,	Section	3.
LXX	May		1951	102	Article			Fourth,	Section	1.
LXXI	May		1951	110	Article			Third,	Section	18.
LXXII	May		1951	126	Article		Part	•	Section	19.
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LXXIII	May	19, 1951	127	Article	IX,	Section	15.
LXXIV	May	19, 1951	130	Article	II,	Section	4.
LXXV	May	21, 1951	179	Article	IX,	Section	14,
	,	·		Article	IX,	Section	17,
				Article	IX,	Section	18.
LXXVI	April	27, 1953	78	Article	IX,	Section	15.
LXXVII	Mav	2, 1953	97	Article	II,	Section	1,
		,		Article	IV, Part First,	Section	2.

Sections 15, 18, 19 and 20 of Article IX of the Constitution as adopted by Amendments XI, XLI, XLV and LV1 have been omitted from the codified text because all bonds therein authorized, having been duly issued, have been paid or otherwise retired. See also LXXV.

The provisions of Amendment XXII, as amended by Amendment XXXIV, have been placed in the codified text as Section 15 of Article IX to retain the Section numbers as heretofore in effect as far as reasonably possible.

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CONSTITUTIONAL AMENDMENTS ADOPTED SUBSEQUENT TO THE REVISION OF **JANUARY 1955**

ARTICLE LXXVIII.

EXTENDING PARDON POWERS OF THE GOVERNOR AND COUNCIL TO OFFENSES OF JUVENILE DELINQUENCY.

Section 11 of Part First of Article V of the Constitution is hereby amended Art. V, Part 1, Sec. 11. by inserting after the first sentence a new sentence to read as follows:

'Such power to grant reprieves, commutations and pardons shall include rejuvenile delinquency.' offenses of juvenile delinquency.'

(The seventy-eighth amendment was proposed to the people by Chapter 97 of the Resolves of the Ninety-seventh Legislature, approved May 20, 1955, and having been favorably voted upon by the people at the Special Election held September 12, 1955, was proclaimed by the governor September 26, 1955, and the amendment became a part of the constitution.)

ARTICLE LXXIX.

CHANGING THE QUALIFICATIONS OF CITIZENSHIP OF THE GOVERNOR. Section 4 of Part First of Article V of the Constitution is hereby amended Sec. 4. Sec. 4. to read as follows:

SECTION 4. QUALIFICATIONS. The governor shall, at the commence-Citizenship qualifications of the cations of governor. ment of his term, be not less than thirty years of age; a citizen of the United States for at least fifteen years, have been five years a resident of the state; and at the time of his election and during the term for which he is elected, be a resident of said state.'

(The seventy-ninth amendment was proposed to the people by Chapter 100 of the Resolves of the Ninety-seventh Legislature, approved May 20, 1955, and having been favorably voted upon by the people at the Special Election held September 12, 1955, was proclaimed by the governor September 26, 1955, and the amendment became a part of the constitution.)

ARTIOLE LXXX.

EXEMPTING RENTAL AGREEMENTS WITH THE MAINE SCHOOL BUILDING AUTHORITY FROM THE LIMITATIONS OF MUNICIPAL INDEBTEDNESS.

Section 15 of Article IX of the Constitution is hereby amended by adding Art. 9, Sec. 15. at the end thereof a new sentence, to read as follows:

'Long term rental agreements not exceeding forty years under contracts with the Maine School Building Authority shall not be debts or liabilities within the provisions of this section,'

(The eightieth amendment was proposed to the people by Chapter 101 of the Resolves of the Ninety-seventh Legislature, approved May 20, 1955, and having been favorably voted upon by the people at the Special Election held September 12, 1955, was proclaimed by the governor September 26, 1955, and the amendment became a part of the constitution.)

Rental contracts with Maine School Building Authority not included in

ARTICLE LXXXI.

CLARIFYING VOTING BY PERSONS IN MILITARY SERVICE.

Section 12 of Article IX of the Constitution is hereby repealed.

(The eighty-first amendment was proposed to the people by Chapter 102 the Resolves of the Ninety-seventh Legislature, approved May 20, 1955, armed forces to vote of the Resolves of the Ninety-seventh Legislature, approved May 20, 1955, and having been favorably voted upon by the people at the Special Election held September 12, 1955, was proclaimed by the governor September 26, 1955, and the amendment became a part of the constitution.)

Art. 9, Sec. 12.

by absentce ballot.

CONSTITUTIONAL AMENDMENTS ADOPTED 1957

ARTICLE LXXXII.

PLEDGING CREDIT OF THE STATE FOR GUARANTEED LOANS FOR INDUSTRIAL PURPOSES.

The 1st sentence of Section 14 of Article IX of the Constitution is hereby amended to read as follows:

Art. IX, Sec. 14.

ception.

'The credit of the state shall not be directly or indirectly loaned in any State debt limit, ex- case, except as provided in section 14-A.

> Article IX of the Constitution is hereby amended by adding thereto a new section to be numbered 14-A, to read as follows:

Art. IX, Sec. 14-A. payment of industrial loans by legislative act.

'Section 14-A. For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the state, the legislature by proper enactment insuring may insure the payment of mortgage loans on the real estate within the state of such industrial and manufacturing enterprises not exceeding in the aggregate \$20,000,000 in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the state at such times and in such amounts as it may determine to make payments insured as aforesaid."

(The eighty-second amendment was proposed to the people by Chapter 159 of the Resolves of the Ninety-eighth Legislature, approved May 29, 1957, and having been favorably voted upon by the people at the Special Election held September 9, 1957, was proclaimed by the Governor September 19, 1957, and the amendment became a part of the Constitution.)

ARTICLE LXXXIII.

CHANGING THE DATE OF THE GENERAL ELECTION.

The 1st sentence of section 4 of Article II of the Constitution is hereby amended to read as follows:

Art. II, Sec. 4.

Time of Election.

Art. IV, Part 3, Sec. 20.

Meaning of words "electors", "people", "recess of legislature", "genlegislature", "general election", "measure" and "measure" and "written petition".

'The election of governor, senators and representatives shall be on the General Tuesday following the first Monday of November biennially forever.'

The 1st sentence of section 20 of Part Third of Article IV of the Constitution is hereby amended to read as follows:

'As used in either of the three preceding sections the words "electors" and "people" mean the electors of the state qualified to vote for governor; "recess of the legislature" means the adjournment without day of a session of the legislature; "general election" means the November election for choice of presidential electors, governor and other state and county officers; "measure" means an act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor,'

Section 7 of Article VI of the Constitution is hereby amended to read as follows:

'Section 7. Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the Tuesday following the first Monday of November, and shall hold their offices for four years, commencing on the first day and tenure. of January next after their election. Vacancies occurring in said offices by Vacancies. death, resignation or otherwise, shall be filled by election in manner aforesaid at the November election, next after their occurrence; and in the meantime, the governor, with the advice and consent of the council, may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid."

The 1st paragraph of section 10 of Article IX of the Constitution is hereby amended to read as follows:

'Sheriffs shall be elected by the people of their respective counties, by a Art. IX, Sec. 10. plurality of the votes given in on the Tuesday following the first Monday of Tenure of sheriffs. November, and shall hold their offices for two years from the first day of January next after their election, unless sooner removed as hereinafter provided.

Section 4 of Article X of the Constitution is hereby amended to read as follows:

'Section 4. The legislature, whenever two-thirds of both houses shall deem it necessary, may propose amendments to this constitution; and when Art. X. Sec. 4. any amendments shall be so agreed upon, a resolution shall be passed and Amendments to consent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at the next biennial meetings in the month of November, or to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of senators and representatives, on the Tuesday following the first Monday of November following the passage of said resolve, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this Constitution,'

(The eighty-third amendment was proposed to the people by Chapter 94 of the Resolves of the Ninety-eighth Legislature, approved May 22, 1957, and having been favorably voted upon by the people at the Special Election held September 9, 1957, was proclaimed by the Governor September 19, 1957, and the amendment became a part of the Constitution.)

Note: The effective date for the first election shall be in 1960.

ARTICLE LXXXIV.

CHANGING THE TENURE OF OFFICE OF THE GOVERNOR TO FOUR-YEAR TERMS.

The first sentence of Section 4 of Article II of the Constitution is hereby amended to read as follows:

'The election of senators and representatives shall be on the second Monday of September biennially forever and the election of governor shall election. be on the second Monday of September every four years.'

Section 2 of Part First of Article V of the Constitution is hereby amended to read as follows:

Art. VI, Sec. 7.

Judges and registers

Art. II. Sec. 4.

Time of general

Term of Governor.

Art. V, Part 1, Sec. 2.

Term of office.

Re-election eligibility.

'SECTION 2. The governor shall be elected by the qualified electors, and shall hold his office for four years from the first Wednesday of January next following the election. The person who has served two consecutive popular elective four-year terms of office as governor shall be ineligible to succeed himself.'

The first and second sentences of Section 3 of Part First of Article V of the Constitution are hereby amended to read as follows:

Art. V, Part 1, Sec. 3.

Election.

Votes to be returned to secretary of state.

'The meetings for election of governor every four years shall be notified, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for senators and representatives. They shall be sealed and returned into the secretary's office in the same manner, and at the same time every four years as those for senators.'

Section 14 of Part First of Article V of the Constitution is hereby amended to read as follows:

Art. V, Part 1, Sec. 14.

Vacancy, how supplied.

'Section 14. Whenever the office of governor shall become vacant by death, resignation, removal from office or otherwise, the president of the senate shall assume the office of governor until another governor shall be duly qualified; in the event such vacancy occurs not less than 90 days immediately preceding the date of the primaries for nominating candidates to be voted for at the biennial election next succeeding, the president of the senate shall exercise the office of governor until the first Wednesday of January following such biennial election. At such biennial election, a governor shall be elected to fill the unexpired term created by such vacancy, unless the vacancy shall have occurred less than 90 days immediately preceding the date of, or after, such primaries, in which case the then president of the senate shall fill the unexpired term; and in case of the death, resignation, removal from office or other disqualification of the president of the senate, so exercising the office of governor, the speaker of the house of representatives shall exercise the office, until a president of the senate shall have been chosen; and when the office of governor, president of the senate, and speaker of the house shall become vacant, in the recess of the senate, the person, acting as secretary of state for the time being, shall by proclamation convene the senate, that a president may be chosen to exercise the office of governor. And whenever either the president of the senate, or speaker of the house shall so exercise said office, he shall receive only the compensation of governor, but his duties as president or speaker shall be suspended; and the senate or house, shall fill the vacancy, until his duties as governor shall cease.'

(The eighty-fourth amendment was proposed to the people by Chapter 95 of the Resolves of the Ninety-eighth Legislature, approved May 22, 1957, and having been favorably voted upon by the people at the Special Election held September 9, 1957, was proclaimed by the Governor September 19, 1957, and the amendment became a part of the Constitution.)

Note: The effective date for the 4-year term will be for the Governor elected in 1958,

CONSTITUTIONAL AMENDMENT **ADOPTED** 1960

ARTICLE LXXXV.

Providing Continuity of Government IN CASE OF ENEMY ATTACK.

Article IX of the Constitution is amended by adding a new section to be numbered 21, to read as follows:

'SECTION 21. Continuity of government in case of enemy attack. Not- Art. IX, Sec. 21 withstanding any general or special provision of this Constitution, the Legis- Continuity of lature, in order to insure continuity of state and local governmental operations government. in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations including but not limited to the financing thereof. In the exercise of the powers hereby conferred the Legislature shall in all respects conform to the requirements of this Constitution except to the extent that in the judgment of the Legislature so to do would be impracticable or would admit of undue delay."

(The eighty-fifth amendment was proposed to the people by Chapter 52 of the Resolves of the Ninety-ninth Legislature, approved March 26, 1959, subsequently amended with reference to the date for submission to the voters by Chapter 90 of the Resolves of 1959, approved June 11, 1959, and having been favorably voted upon by the people at the General Election held November 8, 1960, was proclaimed by the Governor November 30, 1960, and the amendment became a part of the Constitution.)

CONSTITUTIONAL AMENDMENTS ADOPTED 1962

ARTICLE LXXXVI.

LIMITING TO RETIREMENT PURPOSES THE USE OF FUNDS OF THE MAINE STATE RETIREMENT SYSTEM.

Article IX of the Constitution is amended by adding thereto a new section, to be numbered 19-A, to read as follows:

'Section 19-A. Limitation on use of funds of the Maine State Retirement System. All of the assets, and proceeds or income therefrom, of the Maine State Retirement System or any successor system and all contributions and payments made to the system to provide for retirement and related benefits shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, other purposes.'

(The eighty-sixth amendment was proposed to the people by Chapter 95 of the Resolves of the One-hundredth Legislature, approved June 17, 1961, and having been favorably voted upon by the people at the General Election held November 6, 1962, was proclaimed by the Governor November 21, 1962, and the amendment became a part of the Constitution.)

ARTICLE LXXXVII.

AUTHORIZING MUNICIPALITIES TO ISSUE BONDS FOR CONSTRUCTION OF INDUSTRIAL BUILDINGS.

Article IX of the Constitution is amended by adding thereto a new section, to be numbered 8-A, to read as follows:

'SECTION 8-A. Industrial building construction. For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the physical boundaries of any municipality, the registered voters of that municipality may, by majority vote, authorize the issuance of notes or bonds in the name of the municipality for the purpose of constructing buildings for industrial use, to be leased or sold by the municipality to any responsible industrial firm or corporation.'

(The eighty-seventh amendment was proposed to the people by Chapter 106 of the Resolves of the One-hundredth Legislature, approved June 17, 1961, and having been favorably voted upon by the people at the General Election held November 6, 1962, was proclaimed by the Governor November 21, 1962, and the amendment became a part of the Constitution.)