

MAINE STATE LEGISLATURE

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FINAL REPORT

OF THE

Committee on Administrative Code

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of the 89th Legislature

TO

90th Legislature

January 14, 1941

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FINAL REPORT OF THE COMMITTEE ON ADMINISTRATIVE CODE

To the Honorable Senate and House of Representatives of
the Ninetieth Legislature:

The Eighty-ninth Legislature, at a special session held in response to executive proclamation and convened on May 23, 1940, by its resolve duly enacted, created a special recess committee designated for convenient reference as the "Committee on Administrative Code" and set up its duties in language following:

"Said committee shall study and consider the practical working of the administrative code and of those departments or agencies of the state government included within its provisions, and of all other departments and agencies of the state government not now operating under the statutes relative thereto, with a view to recommending such changes in the statutes creating the administrative code and providing for the operation of the other departments of the state as may be necessary to improve administration of the affairs of the State of Maine, and shall draft and present with its report such amendments to the present existing statutes as shall, in the judgment of the committee, be necessary or advisable, and said committee shall make a full and complete report to this special session or to the next regular session of the Legislature, or it may file its report with the Clerk of the House during any recess of this special session."

Upon recess of the special session of the Legislature, the Committee organized and undertook the performance of the duties assigned it.

We first directed our attention to matters connected with the financial administration of State affairs. Our inquiries involved a study of the report made to Governor Gardiner by the National Institute of Public Administration in 1930 and this led to a conference with Mr. A. E. Buck of the National Institute who at our request spent some days in the State House observing administrative practices and who gave us the benefit of his conclusions. We conferred with representatives of the auditing firm of Ernst & Ernst who had then just completed their audit of the State's books and

accounts and inquired at length of various state officials, of all in fact who had at all largely to do with financial administration.

Our study led us to the conclusion that the interests of the State would best be served by abolishing the office of State Treasurer as set up under the constitution and by re-establishing it as a bureau in the Department of Finance as now existing.

The Treasurer is now elected by the legislature and may not serve continuously for more than six years. But the Treasurer should be a man specially trained in accounting and finance, and his selection should be made with reference to his ability and his peculiar adaptability to the duties of the office. Of these qualifications, among candidates who might aspire to the office, the Legislature is in far less favorable position to judge than would be an appointing head of the department, who could make the necessary investigation into qualifications and under whose immediate supervision the duties of the office would be performed. Moreover, no one possessing the necessary qualifications, for the salary now provided, or indeed for a salary wholly adequate, would be willing to assume an office from which he must necessarily retire at the expiration of six years. The position should be filled by a man carefully selected with reference to his capabilities, who should be paid a salary adequate to the capabilities required and who should be retained so long as he proved himself a valuable public servant and no longer.

Again, under the existing set-up the Treasurer, elected as he is by the Legislature, becomes a purely political choice and is paid a salary wholly inadequate, viewed as compensation for the work and responsibility of the office while the major part of the duties which would naturally be supposed to fall upon the Treasurer are actually performed by the Deputy Treasurer whose salary is substantially greater than that of the Treasurer himself. Under the contemplated re-adjustment, the combined salaries now paid to the Treasurer and his deputy should furnish adequate, perhaps more than adequate, compensation for a Treasurer and the one additional office clerk who might be found necessary.

Influenced by these considerations, at the reconvening

of the special session on June 22, we offered a resolve submitting to the electorate an amendment to the constitution repealing the provisions relating to the Treasurer. The resolve passed the Senate but in the House of Representatives the necessary majority was not forthcoming and it consequently failed of passage.

With the resolve, a bill was introduced setting up the office of Treasurer as a bureau under the Department of Finance, but the failure of the resolve rendered passage of the act to no purpose and it was not enacted.

Our judgment as to the desirability of the proposed change remains unaltered and with this report is submitted for your consideration a resolve of similar purport, having in mind that if it is passed and approved by the people, the legislation recommended may then be enacted.

Upon adjournment of this session of the Legislature we resumed our studies and upon its reconvening on October 21 we made a further report accompanied by three bills designed to promote financial economy, one requiring the Treasurer to collect all taxes and assessments as well as all credits accruing to the State, the reasons for which may be found in our report which appears printed in the legislative record and to which you are referred; one authorizing payment of salaries and wages of state officers and employees fortnightly instead of weekly; and one providing that sums due and payable by the State to any person, firm, town, county or corporation may be applied to the extinguishment of sums due and payable to the State from such person, firm, town, county or corporation.

The first two of these bills were enacted into law; the subject matter of the third seemed to involve the interest of individuals and municipalities and with the approval of the Committee it was referred to this Legislature in order that, upon reference to a committee, public hearings might be had.

By this time it had become apparent that it would be impossible in the time at our disposal to give attention to all the major problems the attempted solution of which came fairly within the terms of the resolve under which we were working to say nothing of a plethora of minor defects, many of which presented themselves to us in the course of our inquiries and more of which were brought to our attention

by officials of State and interested parties. Impressed with the importance of the work in which we were engaged and the desirability of its continuance, we offered a bill creating a permanent legislative committee, designated a "Legislative Research Committee" whose duties should in general be similar to our own. This bill was enacted and the institution thus created should be of great and lasting value to the State.

Following the final adjournment of the special session, we addressed ourselves to two major problems both of which were the object of state-wide popular interest and that, not without good reason. These were the administration of the so-called motor vehicle laws and the duties and prerogatives of the Governor's Council. The first was found to involve a survey of the function and duties of the Secretary of State.

By constitutional provision this officer, elected by the Legislature, is charged with but few duties. He is first the keeper and custodian of the records of the State; he must attend the Governor and Council and the legislative bodies as required; and he must keep and preserve the records of the official acts of the Governor and Council and of the Senate and House of Representatives; and then by way of opening a wide door, it is provided that he shall perform such other duties as . . . shall be required by law.

The extent to which successive Legislatures have availed themselves of the privilege thus extended is interesting. In early times it was found convenient to impose certain duties upon the Secretary of State in connection with the conduct of elections and with the adoption of the Australian ballot, something more than a generation ago these duties were very substantially enlarged while with the advent of the direct primary system, they were well nigh, if not quite, doubled.

The recording of certificates of incorporation is another important duty which the Legislature has imposed upon the Secretary.

But the function with which we are now immediately concerned and which at its inception seemed simple enough and wholly innocuous, has assumed proportions overshadowing all the other duties of the office and involves the handling of funds constituting a major source of the revenue of State.

The administration of the motor vehicle laws, however, covers a much broader field than the mere collecting of revenue; there is occasion for the promulgation of rules and regulations, the formulating of which requires personal acumen and sagacity; the granting, withholding and revoking of operators' licenses calls for sound judgment and discretion and involves work of at least quasi-judicial character and the combination of capacities and skills which should be possessed by an administrative head charged with the execution of these laws is wholly out of line with those indicated for an acceptable secretary and recording officer.

Again while there is nothing in the character of the office of Secretary of State as contemplated by the constitution incompatible with his election by the Legislature, the same reasons which should indicate the appointment of State Treasurer would seem to apply to the position here under discussion.

We therefore recommend the creation of a Department of Motor Vehicles to be headed by a Commissioner to be appointed by the Governor with the advice and consent of the Council and herewith is submitted a bill designed to create such a department.

We are not unmindful of the popular and well-founded prejudice against the creating of new Departments of State, a prejudice in which we fully share, but we are satisfied that a Department of Motor Vehicles such as is contemplated would by having at its head one chosen solely with reference to the duties involved, and who should have no other responsibility than the act creates, would at an early day afford far more efficient service to the public than can possibly be provided under existing conditions.

Such a change would allow the Secretary whose time is now so largely absorbed by the work of the motor vehicle administration, to assume personal charge of the work pertaining to corporations and elections now being performed by his deputy, thereby reducing the overhead expense of his office. No increase in personnel would be entailed by the change and the opportunity is obvious for the accomplishment of actual economies.

We are moved to our recommendation by no lack of appreciation of the fidelity or ability of the present Secretary

or of his predecessors; in this respect the State has been most fortunate. We take our position on principle and our conclusions should not be construed as bearing implication of reflection upon any one. We believe too that the motoring public, and that is about everybody, will welcome the change.

You do not need to be told that there is a widespread belief throughout the State that the Executive Council has had conferred upon it powers and duties so extensive and far reaching as to be quite beyond the realm of activities which originally served as the motive and reason for its existence as a governmental agency. Indeed, there is a sentiment abroad of no small weight to the effect that the functions of the Council have been so greatly expanded and that in the performance of its duties it has so far transcended its legitimate sphere that the best interests of the State would be served by its abolishment.

We hesitate to endorse this view although we agree in concluding that there is room for much retrenchment which would be of advantage to the State, at least from its effect in reducing the cost of administration.

In addition to the constitutional duties imposed upon the Council, there are more than two hundred distinct provisions of statute imposing duties or conferring jurisdiction upon the Council; some of them we believe well-grounded in reason and which should not be disturbed; others bordering upon the absurd. As to just where and to what extent the knife should be applied is a matter upon which honest and well informed minds may well differ. Upon one thing we do agree: No sweeping proposal should be endorsed that does not come from sources pretty thoroughly informed.

It so happened that our earlier inquiries into this field centered around those duties of the Governor and Council having to do with the highway department; we are aware of a popular feeling, in which we share, that the Highway Commission should be free from restraint or control on the part of the Council if not of the Governor so far as it may relate to their general policy or to the distribution of the work and of funds, but it has been made to appear that situations may arise where the Commission is unable to agree upon a position to be taken or a course to be pursued, in which it would be of real importance to have available some

board to which appeal might be made and for such a purpose, the Governor and Council would naturally be indicated.

The result of our deliberations upon this and certain other matters having to do with the highway department has been a bill which is submitted herewith which if enacted would relieve the Governor and Council from responsibility in connection with the places where and the purposes for which highway funds should be expended, provisions of law being the sole guide of the Commission in those respects, save that in case of disagreement a minority member of the Commission may if he deems the matter of sufficient import cause it to be laid before the Governor and Council for their determination.

In line with other recommendations, the bill would do away with Executive approval of the appointments which by statute are made by the Commission. The bill also provides, and that with the approval of the Commission, that purchases for the department with certain minor exceptions be made through the State Purchasing Agent.

Pursuing further the matter of the functions of the Executive Council, examination of the lengthy list of duties assigned to that body by statute disclosed that they fall into but few general classes, such as the confirmation of appointments, the approval in conjunction with the Governor of a host of appointments of subordinates and employees made by heads of departments and the fixing of their compensation, the approval of official bonds, the approval of rules and regulations made by the heads of certain departments and advising with the Governor upon the removal of certain officials, special provision for whose removal is made by statute.

We have prepared and submit herewith a bill which would do away with the major portion of these statutory duties and functions, viewed numerically.

If enacted into law the bill would relieve the Council from a vast amount of routine work. They would no longer go through the form of approving official bonds which are necessarily prepared under the supervision of the Attorney General and should require no further approval than that of the Governor. But chiefly they would no longer have to do with approving departmental rules and regulations and the appointment of departmental subordinates and employees

and the fixing of their compensation. The Personnel Department was created for the purpose of taking these appointments out of politics, but so long as the Council can control the rules and regulations of the department and must approve appointments and employments throughout the several departments, it is obvious that they are thereby hopelessly back into politics. If it be thought that the Personnel Department cannot efficiently handle the situation, its arm should be strengthened.

These and a few other relatively insignificant prerogatives the bill seeks to abolish, but certain other statutory powers, few in number, we believe should be retained. The Council should advise and consent with the Governor in the appointment of all major officers whether so required by the constitution or not; they should also share with the Governor the responsibility of determining upon the removal of officials and they should participate with the Governor in matters having to do with the disbursement of funds. These necessities, if no other considerations, we believe to be sufficient reasons for the retention of the Council as an effective arm of the government.

Having in mind the language of the resolve creating the Committee, so far as it relates to the duties imposed upon us, we have endeavored to concentrate upon those matters which appeared to have been responsible for or related to the unfortunate defalcation which came to light last spring and upon such other matters as were more generally engaging the public attention with substantial evidence of public dissatisfaction or suspicion, and that, regardless of their relation to the Code enactments of 1933.

The Code has been very widely held responsible for the defalcation but it should be borne in mind that it was by reason of lax methods in the Treasurer's office, an office wholly omitted from inclusion in the Code enactment and one over which the Commissioner of Finance had no control, that the major part of the peculations effected by the Controller were made possible.

We are convinced that the control of the entire, not the partial, financial administration should be lodged in the executive department under the direct supervision of the Commissioner of Finance to whom all subordinates should be directly responsible and who in turn should be responsible to

the Governor. The changes which we recommend are intended to realize such a condition.

We have thus, wisely or unwisely, because of the limited time at our disposal undertaken but four major objectives, namely: the strengthening of the financial administration of the State, definite lodgment of both power and responsibility with the Highway Commission without interference by the Governor and Council, the divorcement of the Council from the selection and fixing the compensation of minor State officials and employees and the creation of a Department of Motor Vehicles.

Our work has involved the necessity of extensive examination of existing legislative enactments and study of current practices by the various departments in their administration as well as of securing information as to legislation and methods of administration in other states. This labor, obviously, could not be performed by the individual members of the Committee, and being by the resolve so authorized, we employed Charles P. Nelson, Esquire, of Augusta, to serve in that capacity. Mr. Nelson has proved to be most thorough, painstaking and efficient and his fidelity and accuracy in providing us with the multitude of facts, obtainable only at the expense of industry well nigh infinite in extent, have been of inestimable service to us.

And in this connection it is a tribute wholly due, to say that State officials whom we have had occasion to consult have without exception disclosed a purpose to be helpful and have uniformly given evidence of a sincere desire to serve the State to the best of their ability.

Respectfully submitted,

Lauren W. Sanborn
Francis H. Friend
Alden C. Stilphen
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E. Sam Farwell
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Augusta, Maine
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