

MAINE STATE LEGISLATURE

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REPORT

of the

JUDICIAL COUNCIL

of the

STATE OF MAINE

December, 1932

JUDICIAL COUNCIL

The Association of Municipal Judges suggested the appointment of a Judicial Council to consider and recommend improvements in judicial procedure in the interests of increasing efficiency of the various courts and following the duties in general pertaining to those of Judicial Councils in other states. After consultation with the Chief Justice and others it seemed advisable to appoint such a Council and this was done in an informal manner, there being no provisions of law for the functioning of such a body.

On May 20, 1932, I appointed the following committee:

William R. Pattangall, Augusta,

Chief Justice of the Supreme Judicial Court

Sidney St. F. Thaxter, Portland,

Associate Justice of the Supreme Judicial Court

Arthur Chapman, Portland, Justice of the Superior Court

James H. Hudson, Guilford, Justice of the Superior Court

*Walter H. Butler, Rockland, Judge, Rockland Municipal Court

Wilford G. Chapman, Portland, Judge, Portland Municipal Court

Leonard A. Pierce, Esq., Portland

Hiram Willard, Esq., Sanford

Edwin M. Hamlin, Milo

Kenneth C. M. Sills, Brunswick

Walter V. Wentworth, Old Town

*Since deceased.

W. T. Gardiner

Governor.

December 28, 1932.

SUPREME JUDICIAL COURT
STATE OF MAINE

WILLIAM R. PATTANGALL
CHIEF JUSTICE
AUGUSTA

December 19, 1932

Hon. William Tudor Gardiner
Governor of Maine
State House
Augusta, Maine

My dear Governor:

The Judicial Council which you appointed has taken up several matters of interest and made some progress in connection with certain changes in judicial procedure, and I submit herewith a preliminary report of that work.

In the first place, we have thought it desirable that a Judicial Council should be given legal standing. Other states have found such organizations useful, and the expense connected with their maintenance is trivial. I submit herewith a suggested draft of act providing for the establishment of such a Council.

We have taken up, among other matters, the advisability of having a provision in our law by which a person accused of crime may waive jury trial, and I submit herewith a suggested copy of act providing for that arrangement.

We have felt that it would be wise for probation officers to be appointed by the Judges of the Superior Court rather than by the Governor, and I submit a suggested act embodying that proposition.

We have deemed it important that some arrangement should be made for holding special terms of the Superior Court when they seemed necessary, and I submit a suggested act covering that matter.

The most important subject discussed by us is a proposed re-organization of the municipal courts of Maine. We have not perfected any act accomplishing that purpose, but I submit herewith a report by a committee of the Council which might well be made the basis of legislation. We would be glad to co-operate with the legislative committee in working out definite law covering the subject.

I received word from Hancock County that a bill will be presented in the next legislature, doing away with their December term of court. I very much regret that Sagadahoc and Waldo are not willing to do away with their January terms and that Franklin is unwilling to do away with its February term. I believe those terms to be unnecessary and that it would result in material economy to abolish them. I am also of the opinion that the December term of the Superior Court for Kennebec County could be eliminated without detriment and at a considerable saving of expense to the county. We have not prepared any bills on these matters, but feel that they should be recommended to the incoming legislature.

Yours very truly,

W. R. PATTANGALL.

WRP:H

December 20, 1932

Hon. William R. Pattangall
Augusta, Maine

My dear Chief:

I wish to acknowledge receipt of your letter of December 19th transmitting report of the Judicial Council. May I extend thanks through you to the judges, members of the bar and laymen who have served on this informal committee. It seems that the study of our judicial system and procedure is a matter of importance and I am sure the suggestions advanced in the report will be helpful.

I concur with the Council in believing that such an organization can be most useful and that provision should be made for its permanence.

The suggested laws with reference to waiver of jury trial and special terms of Superior Court seem most wise.

Inasmuch as the function of probation officers is so closely related to the duties to be performed by the judges, I believe that the suggested law that such officials should be appointed by the bench is a very desirable change.

I note with interest the suggestions as to reorganization of the municipal court system. It seems very desirable that immediate steps be taken to bring improvement to this activity of our government.

I will be pleased to see that the report is transmitted to the next administration and legislature for consideration and action.

Yours sincerely,

WM. TUDOR GARDINER.

The Judicial Council submits the following report on the Reorganization of the Municipal Courts.

The importance of a proper administration of the lower courts of the state can not be overestimated. It is here that in many instances the citizen receives his first and often his lasting impression of court methods and court procedure. When these tribunals function with efficiency and dignity, the credit attaches to all other courts of the state, and on the other hand the blame for any of their errors unquestionably is borne by the judicial system as a whole. The problem is an important one not only by reason of such factors, but also because the inferior courts are an integral part of the judicial machinery and defects in their procedure seriously interfere with the orderly conduct of the judicial business of the state. In suggesting changes in our present municipal courts, we must accordingly bear in mind the fact that we are dealing not with an isolated unit of our judicial structure but with the system itself. We now have 44 Municipal Courts in the state in all but 10 of which there is both a judge and a recorder. The salaries of these officers total \$71,150, and this does not take into consideration the expense of clerk hire and the incidental costs connected with the operation of a court.

There is no uniformity of jurisdiction or procedure, which are so diverse that an attorney must acquaint himself with the charter of each separate court before he can safely practice in it. Nor is he always secure with this knowledge, for he may find that the jurisdiction of the court, in which he may at the moment be interested, has been restricted by the granting of exclusive jurisdiction in some matters to another court within the same county. In other cases the jurisdiction of several courts within a county may be concurrent. The consequence of this, particularly in criminal cases, is unfortunate in that it permits prosecuting officials or administrative officers to determine where an offender shall be tried.

The small amount of business done in some of the Municipal Courts does not justify the expense required to maintain them. For example, taking the total number of civil and criminal cases entered in the different municipal courts we find that the cost per entry in some cases is less than one dollar, whereas in the case of other courts it runs as high as twelve dollars. Furthermore it should be borne in mind that this is not the cost of an actual trial for only a small proportion of the cases entered are really tried.

We are of the opinion that the present municipal court system in this state is archaic, wasteful, and inefficient, and that a change is imperatively demanded. We recommend the establishment of a system under which there shall be in each county a district court presided over by a judge with a sufficient number of associate judges, possibly resident in different parts of the county, to dispose of causes in an orderly and expeditious manner. The general control of each court and the assignment of cases among the different associate judges should be in the hands of the judge.

Experience with the operation of such a system may indicate that it is advisable that such districts should not be restricted to county lines; but it will in our opinion be better in the first instance to take counties as the geographical limits of each district and to make such modifications from time to time as circumstances seem to justify.

The Chief Justice of the Supreme Judicial Court should have general supervision of the work of the District Courts with the power to call the judges together from time to time for an exchange of ideas and to formu-

late definite rules governing procedure. The jurisdiction, the practice and the procedure in every court should be uniform.

The unrestricted right of appeal to the Superior Court in civil cases should be abolished. This reform was inaugurated some years ago in Massachusetts. To go through the form of a trial of a cause in the lower court with the intention of either party, if the decision shall be adverse, to appeal and retry the case again in the Superior Court serves no useful purpose. If the plaintiff selects the lower court as his forum, he should be bound by its decision; and if the defendant does not wish to be bound by it, he should be given the right to remove the case to the Superior Court without any formal hearing below. In this manner the right to a jury trial would be preserved to either party who might wish it. An appeal on questions of law directly to the Law Court should be provided for.

Such a change would in our opinion not only be important in saving the time and expense of two trials of the particular case involved, but it would be of material help to the Superior Court. If our experience should be the same as in Massachusetts, many more causes would not only end by the decision of the lower court but many more would start there, because a determinative hearing could be held promptly after entry of an action. The expense of jury sessions of the Superior Court, which may run as high as \$250 a day, should be reduced by this disposition of many cases in the lower courts.

It is difficult to raise the morale of a court which has but little important work to do, and it is the opinion of this committee that to increase the jurisdiction of the lower courts, to give them more authority will inevitably enhance their prestige. The judges of these courts will realize more fully than they now do that they are an important part of the judicial machinery of the state. With a properly organized District court system the groundwork is laid to take care of inevitable increases in the business of the courts at small extra expense. By providing for the prompt hearing of civil cases in the lower courts, without the expense entailed of a jury, and the entry there of a judgment which will be a final determination of issues of fact, expansion of the Superior Court can be for a much longer time deferred than would otherwise be the case. The bar of this country, in cooperation with courts and legislatures, is seeking for means whereby the administration of justice may be made more prompt and less expensive. Though we have not had in Maine the curse of congested dockets and the tardy administration of justice which have been problems in other states, there is yet no excuse for a failure on our part in this important particular to set our judicial house in order, and to provide a mechanism which has proven efficacious elsewhere to speed the work of the courts.

These are the ultimate and the permanent benefits of the change which we here advocate. In addition, however, to increasing efficiency, to preventing duplication of work, to the saving expense of unnecessary trials in the Superior Court, a substantial saving can be made in the expense now required to run the Municipal Courts.

A cursory examination of this question suggests that a careful study of the present system and the different legislative enactments under which the Municipal Courts now operate should be undertaken before an attempt should be made to formulate the details which such a change requires. It is primarily a matter for the legislature, which in our opinion could be best handled by the appointment of a committee to formulate a report for the legislature of 1935. In the interval between the two legis-

lative sessions ample time could be taken to draft intelligently the necessary legislation.

We are appending herewith marked "Appendix A" statistics showing the amount of work done during the last two years for which figures are available in the various Municipal Courts, "Appendix B" a list of salaries of judges and recorders in the various Municipal Courts.

Respectfully submitted,

SIDNEY ST. F. THAXTER
ARTHUR CHAPMAN
WILFORD G. CHAPMAN

Committee of Council.

"Appendix A"

Civil and Criminal Entries in Municipal Courts of State for Last Two
Years for Which Figures are Available.

COURT	CRIM.	CIVIL
ANDROSCOGGIN		
Auburn	550	290
	487	293
Lewiston	1697	616
	2000	568
Livermore Falls	70	32
	124	48
AROOSTOOK COUNTY		
Caribou	331	255
	398	268
Fort Fairfield	122	14
	81	53
Northern Aroostook	137	
	106	
	(two years)	248
Houlton	280	254
	262	272
Presque Isle	183	423
	187	324
CUMBERLAND COUNTY		
Portland	1791	3877
	1910	4160
Westbrook	215	63
	146	80
Brunswick (two years)	381	129
South Portland	212	6
	219	19
Northern Cumb.	59	62
	45	61
FRANKLIN COUNTY		
Farmington	164	81
	230	180
HANCOCK COUNTY		
Bar Harbor	135	178
	(two years)	33
Ellsworth	233	128
	224	163
Western Hancock	172	14
	113	150

COURT		CRIM.	CIVIL
KENNEBEC COUNTY			
Augusta		1088	654
		1163	679
Waterville		558	961
		537	929
Gardiner		217	355
		192	277
Winthrop	Cr. & Civ.	67	
		66	
Hallowell		35	
		25	
KNOX COUNTY			
Rockland		362	236
		361	384
LINCOLN COUNTY			
Wiscasset		139	86
		152	72
OXFORD COUNTY			
Norway		99	227
		172	187
Rumford		518	308
		507	266
PENOBSCOT COUNTY			
Bangor		2187	1389
		2126	1674
Dexter	Cr. & Civ.	138	
		119	
Millinocket		213	44
		233	55
Newport			
Old Town		268	118
		197	177
PISCATAQUIS COUNTY			
Piscataquis		277	110
		270	97
SAGADAHOC COUNTY			
Bath		327	123
		439	118
SOMERSET COUNTY			
Western Somerset		187	429
		202	411
Pittsfield		84	120
		96	118

COURT	CRIM.	CIVIL
WALDO COUNTY		
Belfast	163	227
	224	269
WASHINGTON COUNTY		
Calais	131	68
	127	47
Eastport	61	12
	83	116
Western Wash. (two years)	372	168
YORK COUNTY		
Biddeford	329	341
	457	335
Kennebunk	174	34
	330	35
Yorkshire	56	25
	47	26
Saco	248	48
	155	53
Sanford	269	201
	262	216

"APPENDIX B"

STATEMENT OF SALARIES OF MUNICIPAL COURT JUDGES
AND RECORDERS

COURT	JUDGE RECORDER		COURT	JUDGE RECORDER	
ANDROSCOGGIN COUNTY			LINCOLN COUNTY		
Auburn	\$1500.	\$1200.	Wiscasset	\$700.	\$400.
Lewiston	2000.	2100.			
Livermore Falls	600.				
	<u>\$4100.</u>	<u>\$3300.</u>	OXFORD COUNTY		
			Norway	\$1000.	
			Rumford	2000.	\$500.
				<u>\$3000.</u>	<u>\$500.</u>
AROOSTOOK COUNTY			PENOBSCOT COUNTY		
Caribou	\$1500.	\$ 500.	Bangor	\$2300.	\$2100.
Fort Fairfield	1300.	400.	Dexter	800.	
Northern Aroos- took	1000.	200.	Millinocket	1200.	600.
Houlton	1500.	500.	Newport	600.	
Presque Isle	1300.	400.	Old Town	1000.	500.
	<u>\$6600.</u>	<u>\$2000.</u>		<u>\$5900.</u>	<u>\$3200.</u>
CUMBERLAND COUNTY			PISCATAQUIS COUNTY		
Portland	\$2200.	\$1500.	Piscataquis	\$1400	\$ 300.
Westbrook	1000.	300.			
Brunswick	1000.	150.	SAGadahoc COUNTY		
South Portland	800.		Bath	\$1750.	\$ 200.
Northern Cumberland	800.	100.			
	<u>\$5800.</u>	<u>\$2050.</u>	SOMERSET COUNTY		
			Western Somerset	\$1600.	
			Pittsfield	1000.	
				<u>\$2600.</u>	
FRANKLIN COUNTY			WALDO COUNTY		
Farmington	\$ 800.		Belfast	\$1200.	
HANCOCK COUNTY			WASHINGTON COUNTY		
Bar Harbor	\$1000.	\$ 600.	Calais	\$1200.	\$300.
Ellsworth	1000.	400.	Eastport	900.	100.
Western Hancock	750.	500.	Western Wash- ington	1000.	100.
	<u>\$2750.</u>	<u>\$1500.</u>		<u>\$3100.</u>	<u>\$500.</u>
KENNEBEC COUNTY			YORK COUNTY		
Augusta	\$1800.	\$ 600.	Biddeford	\$1600.	\$600.
Waterville	1800.	500.	Kennebunk	800.	400.
Gardiner	1200.	300.	Yorkshire	1000.	300.
Winthrop	600.		Saco	1000.	200.
Hallowell	200.		Sanford	1400.	800.
	<u>\$5600.</u>	<u>\$1400.</u>		<u>\$5800.</u>	<u>\$2300.</u>
KNOX COUNTY			Total		
Rockland	\$1400.	\$1000.		\$71,150.	

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED
AND THIRTY-THREE

AN ACT Providing for Waiver of Jury Trial by Persons Accused of Crime.

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

Section 1. The constitutional right of trial by jury may be waived by the accused as hereinafter provided, excepting in cases involving the crimes of treason, murder or judicial corruption. In case of such waiver, the Justice presiding at a term of the Superior Court shall hear and decide the case without the aid of a jury and exercise all of the powers now conferred upon juries by law.

Sec. 2. Any such waiver shall be evidenced by a writing signed by the respondent, filed with the Clerk of Courts, and entered on the Court docket. When two or more respondents are tried together, there shall be no such waiver unless all consent.

Sec. 3. Such waiver shall be received only when the consent of the accused thereto is approved by counsel for the State and sanctioned by the Court acting within the bounds of sound and advised discretion.

Sec. 4. No such waiver shall affect in any way the right of appeal or of exceptions now granted a respondent, and such rights shall remain the same as if the trial were by jury.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED
AND THIRTY-THREE

AN ACT Providing for the Establishment of a Judicial Council to Make a Continuous Study of the Organization, Procedure and Practice of the Courts and to Consider and Recommend Improvements in Judicial Procedure.

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

Chapter 96 of Revised Statutes is hereby amended by inserting after Section 175, under the heading "judicial council" the following three new sections:

Sec. 176. There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the State, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the Chief Justice of the Supreme Judicial Court and one other Justice thereof to be appointed from time to time by the Governor; two Justices of the Superior Court; two Judges of the Municipal or Police Court of the State; one Judge of a Probate Court in this State; two members of the Bar and three laymen, all to be appointed by the Governor with the advice and consent of the executive council. The appointments by the Governor shall be for such periods, not exceeding four years, as he shall determine.

Sec. 177. The judicial council shall report annually on or before the first day of December to the Governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts, such suggestions in regard to rules of practice and procedure as it may deem advisable.

Sec. 178. No member of said council, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose of such expenses for clerical and other services, travel and incidentals as the Governor and Council shall approve. The Chief Justice shall be ex officio chairman of said council, and said council may appoint one of its members or some other suitable person to act as secretary for said council.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED
AND THIRTY-THREE

AN ACT Providing for Special Terms of the Superior Court.

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

R. S, c. 91, sec. 22; relating to simultaneous sessions, amended. Section twenty-two of chapter ninety-one of the revised statutes is hereby amended by adding thereto the following, 'Special sessions of the Superior Court for the transaction of civil or criminal business or both may be held in any county at any time whenever the Chief Justice of the Supreme Judicial Court determines that public convenience and necessity so require.' so that said section as amended shall read as follows:

'Sec. 22. Simultaneous and special sessions. Two or more simultaneous sessions of the superior court may be held in the same county, whenever the chief justice of the supreme judicial court determines that public convenience so requires; and the business may be so divided as to secure its speedy and convenient disposal. Special sessions of the superior court for the transaction of civil or criminal business or both may be held in any county at any time whenever the chief justice of the supreme judicial court determines that public convenience and necessity so require.'

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED
AND THIRTY-THREE

AN ACT Relating to the Appointment of Probation Officers.

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

Section ten of chapter one hundred forty-seven of the revised statutes is hereby amended by striking out from the first three lines thereof the words "The governor, by and with the consent of the council, shall appoint in any county of the state where in his judgment such appointment is advisable, one probation officer, who shall be a citizen" and substituting therefor the following: "The judges of the superior court by majority vote shall appoint in any county of the state, where in their judgment such appointment is advisable, one or more probation officers, resident"

And by striking from the fifth line thereof the words "governor and council" and substituting therefor the words "superior court"

And by striking from the eighth line thereof the words "by the" and from the ninth line thereof the word "governor"

And by striking out all of the sixteenth line after the word "expenditures" and all of the seventeenth, eighteenth, nineteenth, twentieth and twenty-first lines thereof

So that said section as amended shall read as follows:

"Sec. 10. The judges of the superior court by majority vote shall appoint in any county of the state, where in their judgment such appointment is advisable, one or more probation officers, resident in the county for which said appointment is made, and of good moral character, and who shall hold office during the pleasure of the superior court, receiving as compensation therefor such sums as the county commissioners shall fix, which shall be paid from the county treasury in equal monthly instalments. The county commissioners of such county shall at their next session after such appointment determine and fix the amount of such compensation, which shall not be diminished during the term of office of the probation officer, but may be increased if it seems just to the county commissioners so to do. In addition to such compensation, each probation officer shall receive monthly such sums as are reasonably and properly paid for expenses incurred in the performance of the officer's duty. Each probation officer shall on or before the last day of each month submit under oath to the county commissioners of such county an itemized statement of such expenditures.

"The county of Cumberland is expressly exempted from the preceding provisions of this section and nothing in this section shall affect or modify any law pertaining to the appointment of probation officers and their duties within and for the county of Cumberland, except as follows: at the expiration of the terms of office of the probation officer and assistant probation officer of the county of Cumberland, their successors shall be appointed by the judge of the municipal court for the city of Portland, and said appointments shall be approved by a judge of the superior court resident in Cumberland county or by the chief justice of the supreme judicial court."

SUPREME JUDICIAL COURT
STATE OF MAINE

December 22, 1932

WILLIAM R. PATTANGALL
CHIEF JUSTICE
AUGUSTA

My dear Governor:

The Judges of the Superior Court co-operated with the Judicial Council in certain matters and have submitted an act relative to trial terms of the Superior Court, which, if adopted, would assist in facilitating the work of the Court. I enclose it herewith, and would suggest submitting it along with the report of the Judicial Council.

Yours very truly,

W. R. PATTANGALL.

WRP:H
Hon. William Tudor Gardiner
Governor of Maine
State House
Augusta, Maine

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED
AND THIRTY-THREE.

AN ACT to Amend Chapter 91 of the Revised Statutes Relative to the
Trial Terms of the Superior Court.

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

Section twenty-one of Chapter ninety-one of the revised statutes, as amended by chapter ninety-six of the public laws of 1931, is hereby further amended as follows:

A. In the subdivision relating to Franklin county, by striking out the word "first" next preceding the words "Tuesday of February" and substituting therefor the word 'second' so that said subdivision, so far as it relates to the February term, shall read 'on the second Tuesday of February.'

B. In the subdivision relating to Knox county, by striking out the word "first" next preceding the words "Tuesday of February" and substituting therefor the word 'second', so that said subdivision, so far as it relates to the February term, shall read 'on the second Tuesday of February.'

C. In the subdivision relating to Lincoln county, by striking out the word "first" as it appears twice in the first line and substituting therefor the word 'second,' so that said subdivision as amended shall read as follows: 'At Wiscasset on the second Tuesday of May and the second Tuesday of November.'

D. In the subdivision relating to Oxford county, by striking out the word "first" next preceding the words "Tuesday of November" and substituting therefor the word 'second' so that said subdivision so far as it relates to the November term, shall read 'on the second Tuesday of November.'

E. In the subdivision relating to Sagadahoc county, by striking out the word "first" next preceding the words "Tuesday of June" and substituting therefor the word 'second' so that said subdivision, so far as it relates to the June term, shall read 'on the second Tuesday of June.'

F. In the subdivision relating to Somerset county, by striking out the word "first" next preceding the words "Tuesday of May" and substituting therefor the word 'second,' so that said subdivision, so far as it relates to the May term, shall read 'on the second Tuesday of May.'

G. In the subdivision relating to Waldo county, by striking out the word "first" next preceding the words "Tuesday of October" and substituting therefor the word 'second' so that said subdivision, so far as it relates to the October term, shall read 'on the second Tuesday of October.'

H. In the subdivision relating to Washington county, by striking out the word "first" next preceding the words "Tuesday of February" and the word "first" next preceding the words "Tuesday of June," and substituting

therefor the word 'second' so that said subdivision shall read as follows: 'At Machias on the second Tuesday of February and the second Tuesday of October, and at Calais on the second Tuesday of June.'

I. In the subdivision relating to Kennebec county, by striking out in the second line thereof the words "and at Waterville on the first Tuesday of December," so that said subdivision so far as it relates to terms of court, shall read 'at Augusta on the first Tuesdays of February, April, June and October', and also by striking out the last paragraph of said subdivision relating to continuances of cases.

J. In the subdivision relating to Hancock county by striking out the words "and December" and inserting after the word "April" the word 'and' so that said subdivision shall read as follows: 'At Ellsworth on the second Tuesdays of April and September.'

K. All writs, processes and precepts issued, and recognizances taken, before this act shall take effect and returnable into said superior court shall have day and date in said court in the respective terms of said superior court provided for by this act.