

# MAINE STATE LEGISLATURE

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**PUBLIC DOCUMENTS**

OF THE

**STATE OF MAINE**

BEING THE

**REPORTS**

OF THE VARIOUS

**PUBLIC OFFICERS  
DEPARTMENTS AND  
INSTITUTIONS**

FOR THE TWO YEARS

**JULY 1, 1926 - JUNE 30, 1928**

PUBLIC DOCUMENTS, 1926-28

(Explanatory Note)

Three reports in this volume cover periods in variance with the given biennium. They are as follows:

1. The report of the Attorney General covers the period from 1924 to 1928.
2. The report of the Bangor State Hospital covers the period from 1919 to 1928.
3. The report of the department of Inland Fisheries and Game covers the fiscal year ending June 30, 1928. No printed report was made for the fiscal year ending in 1927.

# STATE OF MAINE

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## REPORT

OF THE

# ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

JUNE 30, 1926

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PRESS OF MERRILL & WEBBER CO.  
AUBURN, MAINE

that the relief sought cannot be lawfully granted except by act of the legislature.

Very respectfully,

SANFORD L. FOGG,

*Deputy Attorney General.*

October 5th, 1925.

*To Honorable Ralph O. Brewster, Governor of Maine, Augusta, Maine.*

MY DEAR GOVERNOR: The legislature of Maine at its last session duly proposed by resolve to amend Section 17 of Article 9 of the State Constitution, as follows:

"The legislature may authorize, in addition to the bonds hereinbefore mentioned, the issuance of bonds not exceeding three million dollars in amount at any one time payable within fifty-one years at a rate of interest not exceeding four per centum per annum, payable semi-annually, which bonds or their proceeds shall be devoted solely to the building of a highway or combination highway and railroad bridge across the Kennebec River, between the city of Bath, and the town of Woolwich," so that said section, as amended, shall read as follows:

"Sec. 17. The legislature may authorize the issuing of bonds not exceeding ten million dollars in amount at any one time, payable within forty-one years, at a rate of interest not exceeding five per centum per annum, payable semi-annually, which bonds or their proceeds shall be devoted solely to the building of state highways, and intrastate, interstate and international bridges; provided, however, that bonds issued and outstanding under the authority of this section shall never, in the aggregate, exceed ten million dollars; the expenditure of said money to be divided equitably among the several counties of the State. The legislature may authorize, in addition to the bonds hereinbefore mentioned, the issuance of bonds not exceeding three million dollars in amount at any one time, payable within fifty-one years, at a rate of interest not exceeding four per centum per annum, payable semi-annually, which bonds or their proceeds shall be devoted solely to the building of a highway or combination highway and railroad bridge across the Kennebec River between the city of Bath and the town of Woolwich."

See Chapter 71, Resolves of 1925.

During the same session, two thirds of the legislature concurring, the following amendment to Section 17 of Article 9 of the Constitution was also proposed by resolution.

"Section seventeen of article nine of the constitution, as amended

by article forty-three of the constitution, is further amended by striking out all of said section and inserting in the place thereof the following, so that said section, as amended, shall read as follows:

Sec. 17. The legislature may authorize the issuing of bonds not exceeding sixteen million dollars in amount at any one time, payable within forty-one years, except that all bonds issued under authority of this resolve during and after the years nineteen hundred twenty-five shall be payable within fifteen years, at a rate of interest not exceeding five per centum per annum, payable semi-annually, which bonds or their proceeds, shall be devoted solely to the building of state highways and interstate, intrastate and international bridges; provided, however, that bonds issued and outstanding under the authority of this section shall never, in the aggregate, exceed sixteen million dollars, which bonds issued during or after the year nineteen hundred twenty-five shall be serial and when paid at maturity, or otherwise retired, shall not be re-issued; the expenditure of said money to be divided equitably among the several counties of the state."

See Chapter 118, Resolves of 1925.

Each of these resolves provided that the inhabitants of the state should give in their votes upon the amendment proposed on the second Monday in September next following the passage, and each of the resolves provided that the amendment, if approved by a majority of the inhabitants voting, should become a part of the constitution on the date of the proclamation by the governor. In accordance with these two resolves, a special election was held upon September 14, 1925, on which date the inhabitants of Maine overwhelmingly adopted and approved each of the two foregoing proposed constitutional amendments. The fact that each of the amendments were so favored by the citizens of Maine, was made known by the Governor in his proclamation dated October 1, 1925, on which date each became "a part of the constitution".

In answer to your inquiry relative to the construction of these two amendments, this department makes the following reply:

An amendment is *proposed* by the legislature and *adopted* by the people. The legislature can only propose. The people adopt or reject the amendments as proposed by the legislature. The question is, what is the effect of these two proposals so adopted by the people? These proposals have two distinct purposes. First, an increase in the limitation of the borrowing capacity of the state for the construction of roads and bridges in general;

and second, the issuing of bonds for the construction of a particular bridge across the Kennebec River at Bath, Maine. One of the adopted paragraphs provided for no increase in the general borrowing capacity but was proposed solely to permit an issue of bonds for the construction of the Kennebec Bridge, so-called. The other proposal related only to the increase of the borrowing capacity for general highway and bridge purposes.

It is obvious that the legislature proposed and the people adopted changes in the constitution, permitting the legislature to increase from ten million to sixteen million of dollars the bonded debt for the construction of highways and bridges; and in addition thereto to provide specifically for the issuance of bonds not exceeding three million dollars, the proceeds from the sale of which to be used in the construction of a bridge at Bath. The intent of both the legislature and the people becomes plainly apparent when it is remembered that Section 17 of the constitution, as it existed prior to the date of the proposed changes by the legislature, provided only for the issuance of bonds not exceeding ten million dollars for the building of state highways and bridges. It was desired to increase this amount by one resolve, and to add to it the right of the legislature to issue bonds for the building of a specific bridge by the other. From a legal standpoint there is nothing inconsistent in these two amendments to Section 17, thus proposed at the same session of the legislature, adopted by the people on the same day, and simultaneously proclaimed by the Governor to have become a part of the constitution.

The objection raised in the public press, that the resolution printed as Chapter 118 of the Resolves of 1926 struck out all of the matter contained in resolution printed as Chapter 71 of the Resolves of 1925, is groundless, because both resolves were adopted by the people at identically the same time. "A constitution is to be interpreted by the spirit which vivified and not by the letter which killeth", and it should be construed in the same manner and spirit in which it was produced. The effect of the adoption of Chapter 118 could not be to strike out Chapter 71 because the people by their votes then adopted Chapter 71. In the one instance the only matter adopted was the authorization of three million for the Kennebec Bridge, and in the other the

change from ten million to sixteen million. The clause "striking out" appearing in Chapter 118 of the Resolves of 1925 necessarily refers to Section 17 as it existed previous to the day of adoption of Chapters 118 and 71, and which had fixed a limit of ten million for general highway construction.

The clear and apparent reason for the form of these separate resolves is that the legislature did not desire to unfairly present to the people one resolve containing both proposed constitutional changes, and therefore, made the two proposals in such a manner that the people might adopt or reject either or both. If any evidence were needed, beyond the resolves themselves, to establish this fact, one has to turn to Chapter 89 of the Special Acts of 1925, which provides for building a bridge between Bath and Woolwich,—the act being contingently effective on adoption by the people of the resolve authorizing bonds for the same,—and to Chapter 203 of the Public Laws of 1925, which provides for an additional issue of bonds for general highway construction,—if the people shall approve the proposed constitutional change of "ten to sixteen".

It is true that the resolution printed as Chapter 118, in proposing the amendment of ten to sixteen used the words "further amended", but this phrase was never used or adopted by the people as referring to Chapter 71 providing for the bridge bonds, because under our system of voting, it is humanly possible to determine only that Resolution 71 and Resolution 118, voted on together and on the same ballot, were adopted by the voters at one and the same time.

It is the unqualified opinion of this department, for the reasons above stated, that when the polls closed on the date of the special election, the people intended to adopt the two legislative proposals to amend Section 17 of Article 9 of the constitution. These two proposals thus adopted increased the authority for general highway bond issues from ten million to sixteen million, and in addition thereto provided three million for the Bath Bridge,—an authorized total of nineteen millions of dollars for both purposes.

Respectfully,

RAYMOND FELLOWS,

*Attorney General.*