

# 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, 1928

the same shall go into effect, the Governor and Council have the power and authority to lease the rights to gather kelp on the submerged lands and reefs within the jurisdiction of this state, namely, to a point not exceeding a marine league from the shore. Leases, however, shall not be executed for a period of more than thirty years at an annual rental of not less than \$3., per annum per square mile. The prospective lessee should file a petition together with plan showing the location of the territory desired, upon which the Governor and Council should order notice and hold hearing.

Respectfully yours,

RAYMOND FELLOWS,  
*Attorney General.*

July 20, 1927.

*Hon. Ralph O. Brewster, Governor of Maine, Augusta, Maine.*

DEAR GOVERNOR BREWSTER: Under Article XXXI, Section 16 of the Constitution of Maine, popularly known as the Referendum, it is provided that no act or resolve, except emergency legislation, shall take effect "until ninety days after the recess of the legislature passing it"; and Section 17 of the same Article provides that a non-emergency act or resolve shall not take effect at the end of this ninety-day period, if ten thousand electors of the state within the ninety days lawfully petition for a reference of the law to the whole electorate. Then if the people at an election approve of the law as passed by the legislature, it takes effect thirty days "after the governor shall have announced by public proclamation that the same has been ratified by a majority."

Article XXXI, Section 17, says: "As soon as it *appears* that the effect of any act \* \* \* \* *has been suspended* by petition \* \* \* \* , the governor by public proclamation shall give notice thereof, and of the time when such measure is to be voted on."

Ten thousand electors, by filing petitions, may prevent any law from *taking effect* until after a general or special election. If petitions duly signed and verified by not less than the constitutional number are filed, the law is suspended and does not go into effect at the end of the ninety day period. *Kehail v.*

Tarbox 112 Me. 328. The Governor alone has the power to determine and declare whether the petitions filed are valid and bear the necessary number. Opinion of the Justices, 116 Me. 581. It is not, however, the Governor's proclamation that suspends the law. If in fact ten thousand electors properly petition, the law is suspended until after an election, although the Governor may require a reasonable time to satisfy himself of that fact.

In reference to the pending proposition in regard to Chapter 251 of the Public Laws of 1927, relating to an increased tax on gasoline, where petitions purporting and appearing to bear a sufficient number of signers have been filed in the office of the Secretary of State asking for reference to the people the only question to be decided is the question of fact, and the fact must, under the constitution, be found by the Governor.

There has not been sufficient time to determine, in the manner authorized in the Opinion of the Justices reported in 116 Maine 557, the validity and sufficiency of the petitions, and the ninety days have expired. The Secretary of State, however, reports that more than twelve thousand persons whose names are certified by various clerks of cities and towns in Maine, have apparently signed the petitions on file, and that the petitions ask for a reference of said act to the people under Article XXXI of the Constitution.

The extra one cent per gallon assessed as an excise tax under Chapter 251, is important to the State, as the revenue would be increased thereby approximately, \$500,000. annually. On the other hand, individual rights of countless residents of our own State, as well as the rights of persons temporarily here, would be seriously violated if attempts were made to collect an unauthorized and therefore illegal tax.

This department sees no reason why, under the circumstances, Your Excellency may not issue a proclamation, if the incomplete examination you have made satisfies you that *prima facie* "It appears that the act in question has been suspended." You may desire further investigation as to the validity and sufficiency of some of the petitions, which investigation might change your first impressions, and it would, therefore, be well to state this in your proclamation. In other words, your proclamation would

temporarily at least announce the suspension of the law and give notice of the time when the measure is to be voted on.

Respectfully yours,

RAYMOND FELLOWS,  
*Attorney General.*

October 3, 1927.

*Hon. Ralph O. Brewster, Governor of Maine, Augusta, Maine.*

MY DEAR GOVERNOR: The Eighty-second legislature, by Chapter 191 of the Public Laws of 1925, repealed Chapter 217 of the Public Laws for the year 1919, which law provided for upkeep and extensions of the several normal schools "for which purpose there shall be appropriated the sum of sixty thousand dollars beginning with the year 1921, and the same amount annually thereafter to be expended under the direction of the Board of State Normal School Trustees for extensions in buildings, repairs and equipment."

This general law of 1919 thus provided that each succeeding legislature after 1921 should appropriate sixty thousand dollars annually for the extensions in buildings at the normal schools. The legislature of 1925 repealed this general law.

The Eighty-third legislature in 1927, by "an act to appropriate money for the expenditures of the Government and for other purposes" appropriated "For normal school upkeep and extensions sixty thousand dollars, 60,000."

The question is (1) whether or not a provision in an appropriation bill has the effect of law, and (2) whether under this appropriation bill the Governor and Council are authorized to give authority to the Trustees of the State Normal Schools to make a contract for an extension at Castine to be used in connection with the State Normal School conducted there.

In answer to the first proposition, it is universally understood that unless there is a constitutional prohibition, as in some states, an appropriation bill may contain any form of legislation. 36 Cyc. 967; *Mathews v. People*, 202 Ill. 389, 63 L. R. A. 73. See also Vol. 4, *Hinds Precedents*, 382-463, Par. 3578-3916, where the history, authorities and rules of the National House