

MAINE STATE LEGISLATURE

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December 13, 1968

Honorable Walter A. Birt
33 Pine Street
East Millinocket, Maine 04430

Re: Proposed Legislation to Amend 30 M.R.S.A. § 2251, 2.

Dear Representative Birt:

Your letter dated December 5, 1968 addressed to the Honorable Samuel Slosberg, Director of Legislative Research, has been forwarded to me, in copy form, for attention. This letter is intended only to apply to that portion of your correspondence dealing with proposed legislation regarding the legal issue recently decided in Dennett v. The City of Augusta, et als., Civil Docket #2374 in the Superior Court for the County of Kennebec, i.e., whether or not a teacher may simultaneously hold the office of either selectman or city council member in the municipality in which he holds such teaching position.

You ask the following question in your letter: "Can legislation be introduced to correct this situation, or is the conflict of interest so acute that this is not possible." My reading of Judge Webber's written findings and order for judgment leads me to the conclusion that legislation can be prepared to correct this situation wherein Judge Webber decreed that although the Augusta City Charter and the common law were not in opposition to a teacher simultaneously serving as a selectman or a city council member in the town wherein he performs the duties of his teaching contract, nevertheless the statutes of this State did contain language prohibiting such a teacher from renewing the teaching contract in the event that that person was elected

to and held the office of councilman during any part of the term of such contract. The applicable provision of the statutes is 30 M.R.S.A. § 2251, 2. I am enclosing a draft of proposed language for insertion as an added new sentence to the end of subparagraph 2 of the reference title and section.

With regard to your inquiry concerning the possible conflict of interest and its effect in this area, I draw your attention to particular language in Judge Webber's decree following the Judge's recital of particular language taken from the case entitled Bangor v. Ridley, 117 Me. 297, 299, wherein Judge Webber, after noting the meaning and intent of 30 M.R.S.A. § 2251, 2, stated that:

" * * * This language was undoubtedly used advisedly, for, from common knowledge, it is well known that there is a great temptation, and sometimes a positive inclination, on the part of a city government, to favor one of its members."

The Judge then notes that: "This rationale would apply equally to the situation in which a superintendent or board of education might be tempted or influenced to offer an advantageous contract to a teacher who happened also to be a member of the city council."

We can both envision the possibility of strong objection being voiced by segments of the community regarding the proposed legislation; and it is for that reason that I have chosen to quote a portion of Justice Webber's decree wherein he notes both the purpose and reason for the existence of section 2251, 2 in title 30.

I trust that this letter and its attached draft of proposed legislation is of assistance to you concerning your written request to the Director of Legislative Research.

Thank you for your attention.

Very truly yours,

JOHN W. BENOIT, JR.
Assistant Attorney General

JWBjr./eh

Amend 30 M.R.S.A. § 2251, 2, by adding a new sentence at the end of said subparagraph 2:

"This section shall not prohibit a member of a city council or board of selectmen from making or renewing a teaching contract with the municipality in which he holds such office."

City of Augusta, Maine

CHARTER

AS AMENDED OCT. 7, 1987

Chapter 169

AN ACT to Grant a Council-Manager Charter to the
City of Augusta.

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

ARTICLE I

Grant of Powers to the City

Sec. I. Corporate existence retained. The inhabitants of the city of Augusta shall continue to be a municipal corporation under the name of the city of Augusta and as such shall have, exercise and enjoy all the rights, immunities, powers and privileges, and shall be subject to all the duties, liabilities and obligations provided for herein, or otherwise pertaining to or incumbent upon said city as a municipal corporation; and may enact ordinances, by-laws and regulations not inconsistent with the Constitution and laws of the State of Maine.

ARTICLE II

City Council

Sec. I. Powers and duties. The administration of all the fiscal, prudential and municipal affairs of said city with the government thereof, except as otherwise provided by this charter, shall be and are vested in one body of 8 members and a mayor, which shall constitute and be called the city council, all of whom shall be qualified voters of said city, and shall be sworn in the manner hereinafter prescribed. Said city council shall exercise its powers in the manner hereinafter provided.

The members of the city council shall be and constitute the municipal officers of the city of Augusta for all purposes required by statute and except as otherwise herein specifically provided, shall have all the powers and authority given to and perform all duties required of municipal officers and mayors of cities under the laws of this State.

All the powers of establishing a watch and ward, now vested by the laws of the State in the justices of the peace and municipal officers or inhabitants of towns, are vested in the said city council so far as relates to said city; and they are authorized to unite the watch and police departments into one department and establish suitable regulations for the government of the same.

The said city shall be divided into 8 wards, except that it shall be the duty of the city council at least once in 10 years to review and, if alteration is deemed necessary, to alter the boundaries of said wards in such manner as to preserve as nearly as convenient an equal number of inhabitants in each ward.

All other powers now or hereinafter vested in the inhabitants of said city, and all powers granted by this act, except as herein otherwise provided, shall be vested in said city council.

Sec. 2. Composition, election, tenure of office. The city council shall be composed of a mayor and 8 other members. The members shall be elected, one from each of the 8 voting wards provided for in section 1 of this article. The candidate from each ward receiving the largest number of votes cast in each ward shall be elected councilman from his ward and shall serve for a term of 2 years or until his successor is elected and qualified. At the 1960 regular municipal election the councilmen from wards 1, 3, 5, and 7 shall be elected to serve until the first Monday of January, 1963; the councilmen from wards 2, 4, 6, and 8 shall be elected to serve until the first Monday of January 1965, or until their successors are elected and qualified. Thereafter, the terms of all councilmen shall be for 4 years and until their successors are elected and qualified. Councilmen now in office shall serve until the first Monday of January, 1961 and until their successors are elected and qualified. Each member shall be a voter and a resident of the ward from which he is elected when elected. In the event a member shall cease to reside in the city, he shall forfeit his office, but there shall be no forfeiture if he moves to another ward. Each member, except the mayor, may receive as compensation such sum as shall be appropriated by the council, not to exceed the sum of \$400 per year, and no member shall be eligible while a member of the council to hold any office of emolument or profit under the city charter or ordinances, nor to hold the office of city manager, nor to act as city manager during the term for which he was elected.

Sec. 3. Vacancies, forfeiture of office. In case of a vacancy caused by the death, resignation, removal from the city, or removal from office, as hereinafter provided, of any member of the city council, the vacancy shall be filled from the ward in which such vacancy occurs at a ward election which may be specially called for the purpose by the city council. Any member of the city council who shall be convicted of a crime while in office, may, after due notice and hearing before the city council, be removed from office.

Sec. 4. Regular meetings and qualification. The council shall meet at the usual place for holding meetings, at 10 o'clock A.M. on the first Monday in January, biennially, or at such other time on said date as the previous council shall determine, at which time the mayor-elect and the councilmen-elect shall be sworn to the faithful discharge of their duties by a justice of the peace or by the city clerk. Thereafter the council shall meet at such time and place as may be prescribed by ordinance or resolution, except that it shall meet regularly each month.

Sec. 5. Special meetings. Special meetings may be called by the mayor and in case of his absence, disability or refusal may be called by a majority of the members of the city council. Notice of such meeting shall be served in person or left at the residence of each member of the city council at least 24 hours before the time for holding said special meetings.

Sec. 6. Quorum. A majority of the members of the city council shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. At least 24 hours' notice shall be given to all members who were not present at the meeting from which the adjournment was taken.

Sec. 7. Procedure. The council shall keep a record of its proceedings and shall be the judge of the qualification and election of its own members. The council may determine its own rules of procedure and punish members for misconduct. The meetings of the council shall be open to the public. The council shall act only by ordinance, order or resolve; and all ordinances, orders and resolves, except resolves making appropriations shall be confined to one subject. The appropriation resolves shall be confined to the subject of appropriations. No ordinance and no appropriation resolve shall be passed until it has been read on 2 separate days, except when the requirement of reading on 2 separate days has been dispensed with by a 3/4 vote of the members of the council present and voting. The yeas and nays shall be taken on the passage of all ordinances and entered on the record of the proceedings of the council by the clerk. The yeas and nays shall be recorded on the passage of any order or resolve when called for by any member of the

council. Every ordinance shall require on final passage the affirmative vote of a majority of the members of the council present and voting. Every ordinance before final passage shall be posted, marked "Proposed Ordinance," at the city hall and shall take effect and be in full force 30 days from and after it shall have received final passage by the city council. Within 15 days after final passage said ordinance shall be published in one or more of the newspapers circulated in Augusta.

No order or resolve shall take effect until 10 days after its passage except that the city council may by vote of 3/4ths of its members present and voting pass emergency orders or resolves to take effect at the time indicated therein but such emergency orders or resolves shall contain a section in which the emergency is set forth and defined.

ARTICLE III

The Mayor

Sec. 1. Eligibility, election and tenure of office. A mayor shall be elected by and from the qualified voters of the city. He shall hold office for a term of 2 years or until his successor is elected and qualified, except that when elected to fill a vacancy he shall hold office only for the unexpired term or until his successor is elected and qualified.

Sec. 2. Vacancy. In case of the death, resignation or removal from office of the mayor, the vacancy shall be filled from the council by a majority vote of the members, and the member so elected to the position of mayor shall serve until the next regular municipal election.

Sec. 3. Powers and duties. The mayor shall preside at all meetings of the council and shall perform such other duties not inconsistent with his office as the council may impose. He shall have no veto and no vote except in case of a tie. He shall be recognized as the official head of the city. The title of mayor shall not be considered as conferring upon him any power of a mayor under the general laws of the State inconsistent with the provisions of this charter.

Sec. 4. Salary. The salary of the mayor shall be fixed at \$1,500 annually.

Sec. 5. Chairman of City Council. Annually, on the first meeting of the council in January, it shall elect from among its members a chairman of the city council, who may not serve more than 2 consecutive years and who shall preside at all meetings of the council in the absence of the mayor. While presiding, he shall have no vote except in case of a tie.

ARTICLE IV

Board of Education

Sec. 1. Composition. A board of education is created in said city, to consist of 8 members, one from each of the 8 wards of said City, elected as hereinafter provided.

Sec. 2. Election, tenure of office. On the first Monday in June, 1959 at 7:30 o'clock P. M., the voters of the several wards in said city, qualified to vote at municipal elections therein, and without regard to their political affiliations, shall meet in such place in the ward as the city council may designate in its warrants, for the purpose of electing, in each ward, one member of the board of education. Said meeting shall be called by the city council by a warrant for each ward under the hands of its members, stating the time, place and purposes of the meeting, true and attested copies of which shall be posted by the chief of police or any constable of the said city at least 7 days before the day of the meeting and in at least 2 public and conspicuous places in the ward.

The chief of police or said constable shall cause the original warrants, with a return of his doings thereon, to be delivered to the chairman of said respective ward meetings, on the date thereof. The City Clerk shall also cause a notice of such meeting to be published in one or more of the newspapers circulated in Augusta, between the time of issuing the warrants and the time appointed for said meetings. Said ward meetings

shall be respectively organized by the choice of a chairman and a secretary by ballot or otherwise as may be determined at the meeting, proceed to the election of a member of said board of education, who shall be a resident of the ward where elected.

The members elected on the first Monday in June, 1959 shall serve until the first Monday of January 1961 and until their successors are elected and qualified. At the 1960 regular municipal election the members from wards 1, 3, 5 and 7 shall be elected to serve until the first Monday of January, 1963; the members from wards 2, 4, 6 and 8 shall be elected and qualified. At the 1966 regular municipal election the members from wards 1, 3, 5 and 7 shall be elected to serve until the first Monday of January, 1969 or until their successors are elected and qualified; at the 1969 regular municipal election the members from wards 2, 4, 6 and 8 shall be elected to serve until the first Monday of January, 1971 or until their successors are elected and qualified. Thereafter, the terms of all members shall be for 4 years and until their successors are elected and qualified. They shall be nominated and elected, commencing with the 1960 regular municipal election, under the provisions of Article V. Their qualifications as to residency in a ward and the effect of removal therefrom shall be the same as in the case of councilmen hereinbefore set forth.

Sec. 3. Powers, duties, organization. The board of education shall perform all the duties and be invested with all the rights and powers of superintending school committees of town, including the right to direct the expenditure of all school moneys. The board shall elect a chairman annually, and appoint some suitable person, not a member of the board, superintendent of schools, and may adopt such rules and regulations for the management of the schools and the conduct of the business of the board as are not inconsistent with the laws of the State. The superintendent shall be the secretary and executive agent of the board, which shall fix his salary, to be paid from the city treasury as salaries of teachers are paid, and may remove him and appoint a successor. The members of the board shall receive \$200 a year compensation for their services as such. The members elected by the several wards shall not be members of the city council.

Sec. 4. School budget, hearings, appropriations, audit of accounts. The board of education shall annually prepare a report of the affairs and condition of the city schools for the year ending on the 31st day of December preceding and a detailed estimate in the form of a budget of the amount needed for school purposes for the current year and shall submit a copy of said report and estimate to the city manager and to each member of the city council by the first day of March of each year. There shall be held at such time as shall be fixed by the city manager a joint meeting of the board of education and the city manager and the city council, due notice of which meeting shall be given jointly by the city manager and the superintendent of schools to each member of the board of education and city council, to consider such estimate, and said board of education shall give full information with reference to said estimate and their reasons for fixing the items thereof at the amounts therein stated. It shall be the duty of the city manager and the members of the board of education and city council to be present at said meeting. The city manager and city council, or any member thereof, or of the board of education, who do not concur in said estimate or any item thereof shall, unless said item or items are changed by said board of education, present their reasons for their non-concurrence at the meeting, or meetings, of the city council at which the appropriations of school moneys are made. The city council shall have the power to raise moneys for the support of public schools in said city and shall appropriate for the current year ending on the 31st day of December such sum, not less than the amount required by the general laws of the State, as they may deem necessary for that purpose, which sum may be divided into not more than 6 major budget categories. Such sum shall be included with and assessed like other city taxes, and all the provisions of law relating to the assessment and collection of taxes shall be applicable to such tax. All salaries, wages and bills contracted by the board of education in the usual and regular course during the period between the said 31st day of December and the raising of said money for the then current year, and for the payment of which school funds are not available, shall be paid by the city treasurer and charged up against the school appropriation for said current year. It shall be the duty of the city auditor, under the direction of the city manager and city council, to audit the books of the board of education from time to time and as directed by the city

council. The city council shall have the power to raise or borrow money for the building and reconstruction of school buildings and the purchase of lots therefor.

ARTICLE V

Nominations and Elections

Sec. 1. Date of elections and procedure to determine results. The regular municipal elections under the provisions of this charter will be held biennially on the 2nd Monday in December. At these biennial elections the qualified voters of the city shall ballot within their regular wards and at their respective polling places for members of the city council, the mayor and such other elective offices as are otherwise provided for in this charter. The candidates for these offices shall be duly qualified under the nomination regulations contained herein.

As provided in section 2 of Article II, at the first municipal election to be held under the provisions of this charter, the qualified voters of the various wards and polling places shall vote for 8 members of the city council and the mayor, and such other elective officers as herewithin prescribed, all of whom shall have been nominated under the provisions of this charter.

Sec. 2. Warden and ward clerk; eligibility; tenure; qualification; powers and duties; vacancies; ward meetings, how called. The warden and the ward clerk appointed as hereinafter provided shall be qualified voters of the wards for which they are appointed and shall hold their offices for 2 years, or until others have been chosen and qualified in their stead; the warden and the ward clerk shall be sworn to the faithful performance of their duties by the city clerk, or by a justice of the peace, and a certificate of such oath shall be entered by the clerk on the records.

Sec. 3. Nominations for elective offices to be made by petition. The nominations of all candidates for elective offices provided for by this charter shall be by petitions. The petition of candidates for mayor shall be signed by not less than 200 qualified voters of the city. The petition for a candidate for the city council or other elective offices shall be signed by not less than 50 of the qualified voters of the respective ward. No voter shall sign petitions for more than one candidate for each office.

Sec. 4. Form of nomination paper. The signatures to nomination papers need not all be affixed to one nomination petition, but to each separate petition there shall be attached an affidavit of the circulator thereof stating the number of signers of each petition, and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer giving the street and number of the street, or their description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

To the city clerk of the city of Augusta:

We, the undersigned voters of the city of Augusta, hereby nominate.....whose residence is.....for the office of..... to be voted for at the election to be held in the city of Augusta on theday of....., 19.....; and we individually certify that we are qualified to vote for a candidate for the above office and that we have not signed more nomination petitions of candidates for this office than there are vacancies to be filled.

Name.....Street and number.....being duly sworn, deposes and says that he is the circulator of the foregoing nominating petition containing.....signatures, and that the signatures appended thereto were made in his presence and are the signatures of the persons whose names they purport to be.

(Signed).....

Subscribed and sworn to before me thisday of..... 19.....

.....
(Justice of the Peace)
(Or Notary Public)

If this petition is deemed insufficient by the city clerk he shall forthwith notify by mail.....at No.....Street.

Sec. 5. Filing nomination papers; acceptances of nominations

must be filed. The nomination petitions for any one candidate shall be assembled and united into one petition and filed with the city clerk not earlier than the first Monday in November nor later than the 3rd Monday in November. No nomination shall be valid unless the candidate shall file with the city clerk in writing not later than the 3rd Monday in November his consent, accepting the nomination, agreeing not to withdraw, and, if elected, to qualify.

Sec. 6. List of candidates to be published. The city clerk shall certify the list of candidates and shall cause to be published in one or more of the daily newspapers circulating in the city the names, the residences and offices to which nominated, of the candidates who have duly filed the above described petitions and acceptances.

Sec. 7. Ballots, etc., to be prepared by the city clerk. Specimen ballots and official ballots for use in all city elections shall be prepared by the city clerk and furnished by the city.

Sec. 8. Form of ballot. Ballots for use in elections under this charter shall contain the names of the various candidates with their residence and the office for which they are a candidate, and shall be furnished with one column for crosses or check marks at the right of the candidate's name and residence. Such ballots shall be without party mark or designation and shall be in form as prescribed by board of registration and city clerk.

Sec. 9. Count of ballots. All votes cast for the several officers shall be sorted, counted, declared and registered in open ward meetings as provided by statute. The ward clerk shall forthwith deliver to the city clerk a certified copy of the records of such election.

The city council shall examine copies of the records of the several wards, certified as aforesaid, and shall cause the persons who shall have been elected mayor and members of the city council to be notified in writing of their election. If it shall appear that at the first election, or at any subsequent election, one or more of the offices to be filled by said election has not been so filled, or if at any election the person elected shall refuse to accept the office for which he has been elected, warrants for another and special election to fill such vacancy or vacancies shall be issued forthwith.

Sec. 10. Returns; canvass. Upon receipt of the returns, after the first election under this charter, the then municipal officers and thereafter the city council shall determine the successful candidates as has been the customary practice of canvassing returns of municipal elections in Augusta.

Sec. 11. Specimen ballots to be published and posted. The city clerk shall cause specimen ballots to be posted in public places in each ward and at city hall. Such specimen ballots shall be printed on colored paper and marked specimen ballots, and shall contain the names of the certified candidates with the residence of each, instructions to voters, and such measures as may be submitted to the voters by the legislature or by the city council. Such ballots shall be without party mark or designation.

Sec. 12. State laws not inconsistent applicable. The provisions of the laws of the State of Maine relating to the qualifications of electors, registration, the manner of voting, the duties of election officers, and all other particulars in respect to preparation for, conducting and management of elections, so far as they may be applicable, shall govern all municipal elections of Augusta, except as otherwise provided in this charter.

ARTICLE VI

Administrative Officers

Sec. 1. Titles and appointments. There shall be the following administrative officers and boards:

(a) The following officers and boards, except as herein otherwise provided, shall be appointed by the city council:

1. City Manager
2. Wardens, Ward Clerks, and Ward Constables.

3. Assessors of taxes.

(b) The following officers and boards shall be appointed by the city manager with the advice and consent of the council:

1. Chief of the Fire Department.
2. City Auditor.
3. City Clerk.
4. City Physician.
5. City Treasurer.
6. Corporation Counsel.
7. Director of Civil Defense.
8. Health Officer.
9. Overseer of Poor.
10. Street Commissioner.
11. Street Engineer.
12. Superintendent of Burying Grounds.
13. Tax Collector.
14. All other department heads and boards now existing, or which may be appointed, established through ordinance and resolve.

Except as hereafter provided, these various department heads may hire their own subordinate clerks and employees as needed, subject to the approval of the city manager.

Sec. 2. Power of council with regard to appointive officers and boards. The council shall have power by ordinance or resolve to create new appointive office or to abolish any existing office or board excepting that of city manager.

Sec. 3. Appointive officers; tenure; removal. All appointive officers and boards, whose terms are not specified in this charter, shall hold office at the pleasure of the appointing power, except that the city manager, in case the city council proceeds to remove him, after 6 months of service, may demand and be entitled to written charges and a public hearing before the council, upon the question, prior to the date of his removal, but pending such hearing the council may suspend him from office. Appointive officers and boards, whose terms are specified in this charter, may be suspended and removed by the council; except that any such person may demand written charges and a public hearing prior to such removal.

Sec. 4. Salaries. Salaries of the appointees and all subordinate employees of the city manager shall be fixed by the city manager, subject to the approval of the city council.

Sec. 5. Appointment and qualification of the city manager. The city manager shall be chosen by the city council on the basis of his character and his executive and administrative ability and qualifications. He shall give bond to the city of Augusta for the faithful performance of his duties in such sum as the city council shall determine and direct, and with surety or sureties to be approved by the city council. The premium on his bond shall be paid by the city. The city council shall fix the salary of the city manager.

Sec. 6. Powers and duties of the city manager. The city manager shall be the administrative head of the city and shall be responsible to the mayor and city council for the administrative management of all departments of the city. The powers and duties of the city manager shall be as follows:

1. To act as purchasing agent for the whole city. Each department head shall make requisitions to the purchasing agent for their several needs and he shall be the only person authorized to make contracts of purchase for the city.
2. To make appointments as provided for in this charter.

3. To assign the duties of two or more officers to one officer.

4. To divide the duties of any officer between two or more officers.

5. To attend meetings of the city council (except when his removal is being considered) and recommend for adoption such measures as he may deem expedient.

6. To keep the city council fully advised as to the business and financial condition of the city as well as the future needs of the city and to furnish the city council with all the available facts, figures and data connected therewith when requested.

7. To perform such other duties as may be prescribed by this charter or required by ordinance of the city council.

Sec. 7. Substitute. During any vacancy in the office of city manager and during the absence or disability of the city manager, the city council may designate a properly qualified person to serve and perform the duties of city manager and fix his compensation; while so acting he shall have the same powers and duties as those given to and imposed upon the city manager. Before entering upon his duties, he shall give bond to the city of Augusta in a sum and with surety to be approved by the city council. The premium on such bond is to be paid by the city.

Sec. 8. Duties of administrative officers other than city manager. Duties of administrative officers other than the city manager shall be those prescribed by the city manager except that such duties shall not be inconsistent with any of the provisions of this charter.

Sec. 9. Assessors of taxes. The assessors of taxes shall be 3 in number, appointed by the city council. The chairman shall be designated by the city council. They shall hold office for a term of 3 years, or until their successors are appointed and qualified; except that at the first appointment, one assessor shall be appointed for 3 years. The 2 members whose terms have not expired shall serve out the term for which they were originally chosen, and thereafter one assessor shall be appointed each year for a term of 3 years, and each shall hold office until his successor is appointed and qualified. If for any reason a vacancy shall exist in the membership of the board of assessors, the vacancy shall be filled forthwith by the city council for the unexpired term. The assessors appointed as above provided shall exercise the same powers and be subject to the same duties and liabilities that similar officers of the several towns and cities in the State may exercise, and may now or hereafter be subject to under the laws of the State. The majority of the whole number appointed shall be a quorum. The council may appoint one or more persons in each ward whose duty it shall be to furnish the assessors with all necessary information relative to persons and property taxable in his ward and who shall be sworn to the faithful performance of his duty.

ARTICLE VII

Business and Financial Provisions

Sec. 1. Accounts and records. Accounts shall be kept by the auditor, showing the financial transactions of all departments of the city. Forms for all such accounts shall be prescribed by the auditor, with the approval of the city manager. Accounts shall be kept in such a manner as to show fully at all times the financial condition of the city. The auditor shall furnish to the city manager, prior to the first regular meeting of the city council in each month, a report containing in detail the receipts and disbursements of the city on all accounts, the expenditures made and the obligations incurred during the preceding calendar month, and a balance sheet showing the financial condition of the city, of the several funds, and the total unexpended balance to the credit of each department or appropriation account.

Sec. 2. Approving of bills. The auditor shall check and furnish to the city council on or before the first regular meeting of each month the bills which have been incurred for the preceding calendar month. The council shall approve these bills and such approval shall be by majority vote of the council. Payment of all bills shall be made in accordance with the provisions of section 11 of this article.

Sec. 3. Audit. All the accounts of the city shall be audited

annually by a certified public accountant or State Department of Audit to be chosen by the city council and the council at its discretion shall have included in any year an audit of the uncollected taxes.

Sec. 4. Reports. The auditor shall publish each month a statement of the financial condition of the city. Each of the administrative officers and boards shall annually, on such date as may be fixed by the city council, render to the city manager a full report of the transactions of his or their department for the year. The city manager shall thereafter prepare and publish an annual report for general distribution. In addition to a summary of the services rendered by the various departments, the report shall show:

(a) Receipts classified according to sources.

(b) Expenditures classified according to objects. The classification of receipts and expenditures in the report shall conform in general to the classification employed in the city's accounting system.

(c) Balance sheets.

(d) Such other financial information as may be required by the city council.

Sec. 5. Annual budget. Not later than the first Monday in February, the city manager shall submit to the city council budget estimates for the ensuing fiscal year. This budget shall be compiled from detailed information furnished by the administrative officers and boards on blanks the forms for which shall be designated by the city manager and shall contain:

(a) Exact statement of the financial condition of the city.

(b) Itemized statement of appropriations recommended for current expenses and for permanent improvements; with comparative statements in parallel columns of expenditures for the current and next preceding fiscal year. Any increases or decreases in any item or items shall be indicated.

(c) Itemized statement of estimated revenue from all sources other than taxation; and a statement of taxes required, with comparative figures from the current and next preceding year.

(d) Such other information as the city council may require. The budget shall be posted not later than 2 weeks after its submission to the city council. The city council shall fix a time and place for holding a public hearing upon the budget and shall give a public notice of such hearing, which shall be at least 10 days before the final passage of the appropriation resolve.

Sec. 6. Appropriation resolve. As early as possible after the beginning of the fiscal year, the city council shall pass an annual appropriation resolve, which shall be based upon the budget submitted by the city manager and the board of education. The total amount appropriated shall not exceed the estimated revenue of the city. Before the annual appropriation resolve has been passed, the city council may make appropriation for current departmental expenses, chargeable to the appropriation for the year, when passed, to an amount sufficient to cover the necessary expenses of the various departments until the annual appropriation resolve is in force.

There shall be included in the annual appropriation resolve an appropriation to provide for tax abatements and uncollectible taxes in such amount, not less than 2% of said annual appropriation, as shall be recommended by the city manager and approved by the council. All abatements and uncollectible taxes shall be charged to this reserve, and if at any time such reserve should be in excess of the total uncollected taxes, tax deeds and tax liens, then such excess shall be transferred to the reserve fund.

Sec. 7. Borrowing. The borrowing of money by and for the city shall be limited as to form and purpose by the provisions of sections 8 and 9 of this Article. The credit of the city shall in no manner be loaned to any individual or corporation.

Sec. 8. Bond Issues. Money may be borrowed, within the limits fixed by the Constitution and statutes of the State now or hereafter applying to said Augusta, by the issue and sale of bonds or notes pledged on the credit of the city, the proceeds

to be used for the acquisition of land, the construction and equipment of buildings and other permanent public improvements, the acquisition of equipment of a lasting character, and the payment or refunding of bonds, notes and certificates of indebtedness previously issued or for any other purpose for which municipalities are or hereafter may be authorized to borrow money by general law. No order providing for the issue of bonds shall be passed without public notice given by posting notice of the same in 2 public places in the City of Augusta, and publishing said notice in at least one daily newspaper circulated in said Augusta at least 2 weeks before final action by the city council, and the approval of 3/4 of all the members of the city council present and voting thereon. Every issue of bonds shall be payable within a fixed term of years; if said bonds are issued in payment of indebtedness incurred for a permanent improvement, the term of such bonds shall not exceed the estimated period of utility of said improvement, but the declaration of the city council embodied in the order authorizing the issue shall be a conclusive determination of the estimated period of utility thereof; and the term within which all bonds shall be made payable shall in no case exceed 30 years. Bonds issued after the adoption of this charter shall be made payable in annual, serial and approximately equal installments as pertains to principal, and interest shall be made payable semiannually. Every order for the issue of bonds shall provide for a tax levy for each year of an amount necessary to meet the payment of the annual, serial installment of principal and interest; and such amounts shall be included in the tax levy for each year until the debt is extinguished; provided, however, that bonds issued to refund any indebtedness of the city of Augusta existing prior to the adoption of this charter or bonds issued to refund such bonds shall not be subject to the aforesaid requirement of being made payable in annual, serial and approximately equal installments.

Sec. 9. Temporary loans. Money may be borrowed in anticipation of receipts from taxes during any fiscal year but the aggregate amount of such loans outstanding at any one time shall not exceed 80% of the revenue received from taxes during the preceding fiscal year. All such loans shall be paid within the year out of receipts from taxes for the fiscal year in which said loans are made. Money may be borrowed in anticipation of money to be received from the sale of bonds to be issued, in case such bond issue has been authorized; all such loans shall be paid within one year and are subject to the provisions of laws of the State of Maine in relation thereto.

Sec. 10. Liquidation of indebtedness. There shall be included in the annual appropriation resolve an appropriation for the liquidation of municipal indebtedness in the amount of not less than 2% of the total appropriation for that year, such amount to be used for the payment of serial notes and bonds maturing within the year and the balance to be deposited in a sinking fund. This provision shall remain in force so long as there remain outstanding bonds or notes, exclusive of temporary loans in anticipation of taxes, the payment of which has not been provided for by payments in serial installments.

This sinking fund shall be applied to the payment of the bonded indebtedness of the city at such times as such bonds become due, the payment of which has not been provided for by payments in serial installments. Any balance remaining in the sinking fund after such bonded indebtedness is completely retired may be used for the payment of serial bonds. This sinking fund shall be invested as provided by the Revised Statutes of the State of Maine and all acts in addition thereto or in amendment thereof.

Sec. 11. Payments. Money shall be paid out only on warrants on the city treasury issued by the auditor and countersigned by the city manager, the mayor and a member of the city council to be designated from time to time by said city council.

The auditor shall examine all payrolls, bills and other claims and demands against the city, and shall issue no warrant for payment until he finds that the claim is in proper form, correctly computed, duly certified and legally due and payable.

The auditor may require any claimant to make oath to the validity of his claim, may investigate any claim, and for such purpose or purposes may examine witnesses under oath.

Sec. 12. Bonds of officers. The city council shall require a bond with sufficient surety or sureties, satisfactory to the city council, from all persons trusted with the collection, custody or disbursement of any of the public moneys; and may require such bond from such other officials as it may deem advisable; the premium charges for said bonds to be paid by the city.

Sec. 13. Collection and custody of city moneys. All moneys received by any officer, employee or agent of the city belonging to the city, or for or in connection with the business of the city, shall forthwith be paid by the officer, employee or agent receiving the same into the city treasury, and shall then be deposited by the city treasurer with some responsible banking institution to be chosen by said city council. All interest from all deposits of money belonging to the city shall accrue to the benefit of the city.

Sec. 14. Purchasing of supplies. The purchasing agent shall purchase all supplies according to subsection 1 of section 6 of Article VI. No purchase of supplies exceeding an amount set by the city council shall be made except through authorization of city council.

The purchasing agent shall see to the delivery of supplies to each officer and department to whom they belong, and take and file receipts therefor. He shall conduct all sales of property belonging to the city which are unfit or unnecessary for the city's use, but only after such sale has been authorized by the city council, and subject to such restrictions as the city council may by ordinance provide.

The city manager shall act as purchasing agent.

ARTICLE VIII

Miscellaneous Provisions

Sec. 1. Referendum; date of meeting; form of question; procedure. This act shall be submitted for approval or rejection to the qualified voters of the city of Augusta at an election to be held the same day as the next general or special state-wide election, and warrants shall be issued for such election in the manner now provided by law for the holding of municipal elections, notifying and warning the qualified voters of said city to meet in the several ward meetings of said city, there to cast their ballot on the approval or rejection of this act.

The city clerk shall prepare the required ballots on which he shall reduce the subject matter of this act to the following question: "Shall 'An Act To Grant a Council Manager Charter to the City of Augusta,' passed by the 98th Legislature, be accepted?" Otherwise said ballot shall be in form provided by law when a constitutional amendment is submitted to the vote of the people. The provisions of law relating to the preparation of voting lists for municipal elections shall apply to such election and said election shall in all other respects be conducted as municipal elections in said city are now conducted by law, and the results thereof shall be determined in the manner now provided by law, for the determination of the election of mayor. If a majority of the ballots deposited as aforesaid shall reject, this act shall not go into effect, but if a majority of the electors voting at said ward meetings shall approve, then this act shall take effect as herein provided; but only if the total number of votes cast for and against the acceptance of this act at said election equaled or exceeded 20% of the total vote for all candidates for Governor cast in said city at the next previous gubernatorial election. The result of said vote shall be determined as above provided and due certificate thereof filed by the city clerk with the Secretary of State.

Sec. 2. Date when effective. So much of this act as authorized the submission of the acceptance of this charter to the voters of the city of Augusta shall take effect as provided in the Constitution of the State, but it shall not take further effect unless adopted by the voters of the city of Augusta as hereinbefore provided. If adopted by the voters of the city, then this act for the purpose of nominating and electing officers hereunder shall take effect on the 2nd Monday in September, 1959, and for all other purposes this act shall take effect on the first Monday of January immediately following the first election held under provisions of this charter.

Sec. 3. Ordinances not inconsistent continued in force. All ordinances in force at the time when this charter takes effect, not inconsistent with the provisions of this charter, shall continue in force until amended or repealed.

All rules and regulations of the municipal officers and offices of the city of Augusta in force at the time when this charter takes effect, not inconsistent with the provisions hereof, shall continue in force until amended or repealed.

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Sec. 4. Existing contracts not invalidated, unless inconsistent. All rights, actions, proceedings, prosecutions and contracts of the city or any of its departments, pending or unexecuted when this charter goes into effect and not inconsistent therewith shall be enforced, continued or completed in all respects as though begun or executed hereunder.

Sec. 5. Term of office, officers, boards. All officials, officers, trustees, members of commissions or departments now in office holding positions hereafter to be filled under the provisions of this charter by the city council or the city manager shall not serve out their present terms but shall continue in office only until their successors are appointed or elected and qualified as provided in this act. No provision of this act shall be held to modify the method of appointment or terms of office of the trustees of the Augusta Water District, the members of the Augusta Parking District, the commissioners of the Augusta Sewerage District and the board of commissioners of police of said city, including present incumbents and their successors in office, the charters and functions of said districts and board being hereby confirmed.

Sec. 6. Repealing clause. In event this act is approved in the manner hereinbefore provided, all acts and parts of acts inconsistent herewith are hereby repealed.

Sec. 7. Civil service commission. The city council may establish regulations for the appointment, training, service, promotion, demotion, layoff, suspension, reinstatement and removal of members of the police, fire, highway and other departments of the city, which may provide that the heads of such departments are subject to such regulations. The council may establish the Augusta Civil Service Commission to administer such regulations, to consist of 3 members serving without compensation. Such members shall be appointed by the mayor, with the advice and consent of the council. Initially, one shall be appointed for a 3-year term, one for 2 years and one for one year, with the terms thereafter to be for 3 years. Vacancies shall be filled for the unexpired balance of the term. Any member of the commission may be removed for cause by a vote of not less than 2/3 of the members of the city council, following hearing thereon. Every member shall be a voter of the city, shall during his term of office neither hold nor be a candidate for any other public office or position, and shall not be a member of any local, state or national committee of a political party. There shall be no more than 2 members from any one political party at any time. The commission shall furnish an annual report to the city council. The regulations provided herefor and said commission shall not govern school teachers or administrators, members of the non-salaried boards or commissions, special police, call men of the fire department, temporary employees or the city manager.

The commission shall have the power and authority to demote, lay off, suspend and remove employees for just cause and for reasons specifically given in writing to such employees within 24 hours of his demotion, layoff, suspension or removal. In all cases such employee, should he request such in writing from said commission, shall be furnished with written specifications of the charges against him, and may request a public hearing, in which event a public hearing shall be granted by said commission to be held at such time and place as the commission shall designate, and said employee shall have the right of representation by counsel, if he desires, at said hearing. Said hearing shall be held upon written charges made by said commission. Any such employee aggrieved by the decision of the commission after such public hearing may, within 20 days thereof, appeal to the city council of the City of Augusta who, after reviewing the finding of said commission, shall lay off, suspend, remove, demote or reinstate him. Review of the administrative action of the city council may be taken by the employee to a Justice of the Superior Court or Supreme Judicial Court.