

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 2053

S. P. 773

In Senate, February 29, 1972

Reported by 5 Members in Report "A" from Committee on State Government and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-TWO

AN ACT Providing for Full-time Elected District Attorneys.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, an increase in workload has substantially burdened the duties and responsibilities of the county attorneys within the State of Maine; and

Whereas, an expanding caseload and frequency of District and Superior Court sessions have given rise to the necessity of full-time district attorneys in Maine; and

Whereas, the present county attorney system is unable to cope with the responsibilities placed upon it; and

Whereas, a restructuring of the system to provide for greater flexibility and efficiency is in order; and

Whereas, the following legislation is vitally necessary for the protection of the people of the State of Maine who are entitled to a full-time prosecuting attorney system; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. R. S., T. 5, § 199, amended. The first and 4th sentences of section 199 of Title 5 of the Revised Statutes are amended to read as follows:

The Attorney General shall consult with and advise the ~~county~~ district attorneys in matters relating to their duties.

He may, in his discretion, act in place of or with the ~~county~~ district attorneys, or any of them, in instituting and conducting prosecutions for crime, and is invested, for that purpose, with all the rights, powers and privileges of each and all of them.

Sec. 2. R. S., T. 30, § 450, additional. Title 30 of the Revised Statutes is amended by adding a new section 450 to read as follows:

§ 450. Districts

The State is divided into district attorney districts. There shall be the same number of such districts, with the same geographical boundaries, as there are District Court Judicial Districts as specified in Title 4, section 154.

Sec. 3. R. S., T. 30, §§ 451-452, amended. Sections 451 and 452 of Title 30 of the Revised Statutes are amended to read as follows:

§ 451. Election; vacancies

~~County~~ District attorneys shall be elected and notified, their elections determined and vacancies filled in the same manner, and they shall enter upon the discharge of their duties at the same time as is provided respecting county commissioners, but they shall hold office for ~~2~~ 4 years. Only attorneys-at-law admitted to the general practice of law in this State and resident in the ~~county~~ district from which they are elected shall be elected or appointed as ~~county~~ district attorney, and removal therefrom vacates the office. Whenever the Governor and Council, upon complaint and due notice and hearing, shall find that a ~~county~~ district attorney has violated any statute or is not performing his duties faithfully and efficiently, they may remove him from office and appoint another attorney in his place for the remainder of the term for which he was elected.

§ 452. Military or naval service; substitutes

Whenever a ~~county~~ district attorney during his term of office shall, in time of war, contemplated war, emergency or limited emergency, enlist, enroll, be called or ordered or be drafted into the military or naval service of the United States or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office; nor shall he be removable therefrom during the period of his said military or naval service except that his term of office shall not be held to have been lengthened by reason of this section. From the time of his induction into such service he shall be regarded as on leave of absence without pay from his said office, and the Governor with the advice and consent of the Council shall appoint a competent attorney, a resident of the ~~county~~ district so affected, to fill said office while said ~~county~~ district attorney is in the federal service but not for a longer period than the remaining portion of the term of said ~~county~~ district attorney. During the period of said military or naval service, the Treasurer

of State shall pay to said substitute attorney a salary at the same rate as the rate of pay of the ~~county~~ district attorney and amounts so paid shall be deducted from the salary of said ~~county~~ district attorney. The attorney so appointed to fill the temporary vacancy shall have the title of "substitute ~~county~~ district attorney" and shall possess all the rights and powers and be subject to all the duties and obligations of the ~~county~~ district attorney for whom he is substituting.

Sec. 4. R. S., T. 30, § 453, repealed and replaced. Section 453 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 453. Salaries

Each district attorney shall receive an annual salary of \$19,500 and shall be reimbursed for his expenses actually and reasonably incurred by him in performing his duties.

Sec. 5. R. S., T. 30, §§ 455-456, additional. Title 30 of the Revised Statutes is amended by adding 2 new sections to read as follows:

§ 455. Full-time

A district attorney shall devote full time to the duties of his office as district attorney, and shall not appear as counsel in any civil or criminal case or controversy before any of the Superior or District Courts of the State of Maine or before the Supreme Judicial Court of Maine other than in his capacity as district attorney, during his term of office, nor shall he during such term be a partner or associate of any person in the private practice of law.

§ 456. Chief District Attorney

The Governor, with the advice and consent of the Council, shall designate one of the district attorneys as Chief District Attorney to serve at the pleasure of the Governor and Council. In addition to his duties as district attorney for the district to which he is elected, the Chief District Attorney shall:

1. Criminal cases before the Superior Court. Assign district attorneys to prosecute criminal cases before the various Superior Courts;

2. Other assignments. Assign district attorneys and assistant district attorneys to act for the State in any district, division or county where he determines they are needed by reason of illness, absence or disability of a district attorney or assistant district attorney regularly assigned, excessive case loads or for any other reason to insure the prompt and efficient prosecution of crimes.

The Chief District Attorney shall receive as additional compensation for the foregoing services the sum of \$1,000 annually. In the case of vacancy in the office of the Chief District Attorney, the Governor, with the advice and consent of the Council, shall appoint a person to fill the vacancy. A Chief District Attorney shall hold his position only so long as he continues in office as district attorney.

Sec. 6. R. S., T. 30, § 502, amended. Section 502 of Title 30 of the Revised Statutes is amended to read as follows:

§ 502. Criminal proceedings

The ~~county~~ district attorney shall attend all criminal terms held in his ~~county~~ district and act for the State in all cases in which the State or a county within his district is a party or interested, and unless he makes an order of dismissal as provided shall diligently and without delay prosecute to final judgment and sentence all criminal cases before the Superior Court of ~~his~~ a county within his district, and in the absence of the Attorney General from a term in ~~the~~ a county within his district, shall perform his duties in state cases under directions from him, in ~~the~~ a county within his district, and he shall appear and act for the State with the Attorney General in the law court in all state cases coming into said court from ~~his~~ a county within his district. No additional compensation shall accrue to the ~~county~~ district attorney by the discharge of such duties.

A district attorney shall appear before the grand jury or the Superior Court in all cases which originally arose in his district.

District attorneys and assistant district attorneys shall have state-wide jurisdiction for the exercise of their powers and duties. Their principal and primary duties shall be in the District to which they are elected or appointed.

Sec. 7. R. S., T. 30, § 503-A, additional. Title 30 of the Revised Statutes is amended by adding a new section 503-A to read as follows:

§ 503-A. Powers

On the effective date of this Act, district attorneys shall have the same duties and powers, whether criminal or civil, which county attorneys are required by law to perform.

Sec. 8. R. S., T. 30, §§ 551-552, amended. Sections 551 to 552 of Title 30 of the Revised Statutes are amended to read as follows:

§ 551. Appointment of temporary substitutes

When the ~~county~~ district attorney does not attend a criminal session or the office is vacant, the court may appoint an attorney to perform his duties during the session and allow him a reasonable compensation to be paid from the ~~county treasury~~ State Treasury, and the justice shall notify the Attorney General who shall deduct the same from the salary of such ~~county~~ district attorney and ~~forwarded the same to such county treasurer~~ such amount shall be credited to the General Fund.

§ 552. Appointment of substitute on death or removal

Whenever the office of ~~county~~ district attorney becomes vacant by reason of the death, permanent incapacity or removal from the county of the incumbent of the office, except as provided for in section 452, the Governor with the advice and consent of the Council shall appoint ~~a~~ an competent attorney, a resident of the ~~county~~ district affected, to fill out the term of

office of said incumbent, who shall serve until a successor has been elected and qualified.

Sec. 9. R. S., T. 30, § 552-A, additional. Title 30 of the Revised Statutes is amended by adding a new section 552-A to read as follows:

§ 552-A. Assistants; salary

Each district attorney may appoint an assistant district attorney with the approval of a resident Superior Court Justice or the Chief Justice of the Supreme Judicial Court. Said assistant shall assist the district attorney in the ordinary duties of his office, in the drawing of indictments, in the hearing of complaints before the grand jury and in the preparation and trial of criminal causes and who shall serve as full-time assistant district attorney as defined in section 455 or as a part-time assistant district attorney. The assistant district attorney shall act as counsel for the State in the trial of complaints before Judges of the District Court. He shall hold his office during the term of the district attorney by whom he was appointed, subject to removal for cause shown at any time by the Chief Justice of the Supreme Judicial Court.

Each full-time assistant district attorney shall receive an annual salary of \$16,500 and each part-time assistant district attorney shall serve at compensation to be determined by the district attorney with the approval of a resident Superior Court Justice or the Chief Justice of the Supreme Judicial Court and each shall be reimbursed for his expenses actually and reasonably incurred by him in performing his duties.

Sec. 10. R. S., T. 30, §§ 553-560, repealed. Sections 553 to 557, as amended, section 558 as repealed and replaced by section 14 of chapter 573 of the public laws of 1969 and sections 559 and 560, as enacted by section 2 of chapter 530 of the public laws of 1967, of Title 30 of the Revised Statutes, are repealed.

Sec. 11. Repealing clause. The salaries of county attorneys and their assistants as specified in the Revised Statutes, Title 30, section 2, are repealed.

Sec. 12. Amending clause. Whenever in the Revised Statutes and the public laws the words "county attorney" appear they shall mean "district attorney."

Sec. 13. Transitional provisions. The present terms of office of all county attorneys and assistant county attorneys shall continue and shall not expire until successors have been elected and qualified. In any event, the terms of county attorneys and assistant county attorneys shall expire on December 31, 1972.

Upon termination of an office of county attorney or assistant county attorney, or upon the office otherwise becoming vacant after such establishment and appointment, all cases pending before the county attorney, whether criminal or civil, together with his records shall be transferred to the district attorney.

Sec. 14. Appropriation. There is appropriated from the General Fund to

the Department of Attorney General the sum of \$61,500 to carry out the purposes of this Act. The breakdown shall be as follows:

1972-73

ATTORNEY GENERAL, DEPARTMENT OF

District Attorneys—salaries
 Personal Services

\$61,500

All unencumbered and unexpended funds or appropriations previously belonging to or allocated for the use of the Department of the Attorney General for the purpose of county attorney and assistant county attorney salaries shall be considered appropriated to or allocated to that department for salaries of district and assistant district attorneys.

Sec. 15. Effective date. The effective date of this Act is January 1, 1973, except that this Act shall determine the term of office of the district attorneys to be elected at the general election in November, 1972, as well as the terms of district attorneys to be elected thereafter. Notwithstanding any other provision of law, candidates for the office of district attorney shall have until **April 8, 1972 to file nomination papers** with the Secretary of State for said office.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.