

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1825

H. P. 1721

House of Representatives, January 18, 1980

On Motion of Mrs. Kany of Waterville, referred to the Committee on State Government. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mrs. Masterton of Cape Elizabeth.

Cosponsors: Mr. Silsby of Ellsworth, Mr. Hughes of Auburn and Ms. Benoit of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

RESOLUTION, Proposing an Amendment to the Constitution of Maine to Delete from the Constitution all References to Justices of the Peace and to Clarify the Status of Notaries Public.

Constitutional amendment. RESOLVED: Two-thirds of each branch of the Legislature concurring, that the following amendments to the Constitution of this State be proposed:

Constitution, Art. I, § 7, first sentence is amended to read:

No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offenses, ~~as are usually cognizable by a justice of the peace, or in cases~~ arising in the army or navy, or in the militia when in actual service in time of war or public danger.

Constitution, Art. IV, Pt. Third, § 11 is amended to read:

Section 11. Persons disqualified to be members. No member of Congress, nor person holding any office under the United States (post officers excepted) nor office of profit under this State, ~~justice of the peace~~ notaries public, coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office.

Constitution, Art. V, Pt. First, § 8, first ¶, as repealed and replaced by CR 1975, c. 4, is amended to read:

He shall nominate, and, subject to confirmation as provided herein, appoint all judicial officers except judges of probate ~~and justices of the peace~~, and all other civil and military officers whose appointment is not by this Constitution, or shall not by law be otherwise provided for.

Constitution, Art. VI, § 4, as amended by CR 1975, c. 7, is further amended to read:

Section 4. Tenure of judicial officers. All judicial officers shall hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the Legislature to the executive, ~~provided further that justices of the peace may be removed from office in such manner as the Legislature may provide~~); provided, however, that a judicial officer whose term of office has expired or who has reached mandatory retirement age, as provided by statute, may continue to hold office until the expiration of an additional period not to exceed six months or until his successor is appointed, whichever occurs first in time.

Constitutional referendum procedure; form of question; effective date. Resolved: That the city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, at the next general election in the month of November following passage of this resolution, to vote upon the ratification of the amendments proposed in this resolution by voting upon the following question:

“Shall the Constitution of Maine be amended to Delete from the Constitution all References to Justices of the Peace and to Clarify the Status of Notaries Public?”

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the word “Yes” or “No.” The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns and, if it appears that a majority of the legal votes are in favor of the amendments, the Governor shall proclaim that fact without delay and the amendments shall become part of the Constitution on the date of the proclamation.

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purposes of this referendum.

STATEMENT OF FACT

The purpose of this Constitutional Resolution is to delete from the Constitution

all references to justices of the peace. The offices of justice of the peace and notary public are to be statutorily merged into one office, that of notary public. Therefore, the Constitution must be corrected to be consistent with this statutory change.

Article I, Section 7 has been amended to remove any reference to "offenses cognizable by a justice of the peace," since there appears to be no such offenses left today. Maine has followed the pattern of most of the states in the United States of gradually replacing the judicial function of justices of the peace with a comprehensive lower court system, which has left the office of justice of the peace with virtually none of its judicial power. The same holds true of the office of notary public. With the 2 offices merged, there will be no need of including any reference to the new office in this section of the Constitution.

Article IV, Section 11 merely strikes the reference to justices of the peace. It leaves in reference to the new office of notary public because to do otherwise would raise the question of whether or not a notary public could serve in the Legislature. There is no policy reason to exclude notaries public from serving in the Legislature.

Art. V, Part First, Section 8, first paragraph, simply removes all reference to justices of the peace.

Article VI, Section 4, strikes the reference to justices of the peace.