

MAINE STATE LEGISLATURE

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EIGHTY - SEVENTH LEGISLATURE

Legislative Document

No. 555

H. P. 1241

House of Representatives, February 12, 1935.

Referred to Committee on Judiciary and 500 copies ordered printed.
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Seabury of Yarmouth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-FIVE

AN ACT Relating to Towns and Town Officers.

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

Sec. 1. R. S., c. 5, §§ 2-17, amended. Sections 2 to 17, both inclusive, of chapter 5 of the revised statutes are hereby repealed and the following enacted in place thereof:

'Sec. 2. First meeting, how called; when no officers, called on application to justice of the peace. The first town meeting shall be called and notified in the manner prescribed in the act of incorporation; and if no mode is therein prescribed, by any justice of the peace in the same county. When a town, once organized, is destitute of officers, a meeting may be called on application to such justice for his warrant for the purpose, made in writing by any 3 inhabitants thereof.'

'Sec. 3. Meeting called by warrant. Every town meeting, except in the cases mentioned in sections 2 and 4 of this chapter, shall be called by a warrant signed by the selectmen, which shall notify and warn the inhabitants qualified by law to vote in town affairs, to meet at the time and place at which the meeting shall be held; and in distinct articles shall state the business to be acted upon at such meeting; and no other business shall be there acted upon. When, by reason of non-acceptance, death, resigna-

tion, removal, insanity, physical disability or other causes, a majority of the selectmen do not remain in office a majority of those remaining in office may call a town meeting.'

'Sec. 4. Selectmen refusing, meeting how called; 10 voters may have article inserted in warrant. If the selectmen unreasonably refuse to call a town meeting for any lawful purpose within the powers of towns, any 10 or more legal voters therein, certified as such by the selectmen or town clerk may apply to a justice of the peace in the county, who may issue his warrant for calling such meeting, who shall conform to all requirements prescribed for selectmen in calling a town meeting. When 10 or more legal voters in writing request the selectmen to insert a particular article for any lawful purpose within the powers of towns in a warrant, they shall insert it in the next warrant issued, or shall call a special meeting for the consideration thereof.'

'Sec. 5. Names of voters to be shown. When a town meeting is called by a justice of the peace or by the selectmen, or any article is inserted in a warrant pursuant to the preceding section, they shall state in the warrant, in parenthesis immediately under the article requested, that it has been requested by 10 or more legal voters and set forth their names.'

'Sec. 6. Warrant how directed. A warrant may be directed to any constable of the town, or any person by name, directing him to notify and warn the inhabitants qualified by law to vote in town affairs, to assemble at the time and place at which the meeting shall be held.'

'Sec. 7. Notice; return; warrant to be filed with clerk. Such meeting shall be notified by the person to whom the warrant is directed by posting an attested copy thereof in some public and conspicuous place in said town, 7 days before the meeting, unless the town has appointed by vote, in legal meeting, a different mode, which any town may do. In either case, the person who notifies the meeting shall make return on the warrant, stating the manner of notice, and the time when it was given, and file the same with the town clerk before the date of the meeting, and the clerk shall note thereon the date and time of day of such filing.'

'Sec. 8. Sections 4, 5, 6, and 7 apply to cities and their officers. Sections 4, 5, 6, and 7 apply to cities and the municipal officers of cities, the same as to towns and the selectmen of towns, and when any meeting thus provided for is called in cities, it shall be by warrants posted in each ward or voting precinct.'

'Sec. 9. Annual meetings; auditor may be chosen; treasurer or collector of taxes not to be selectman or assessor; may be same person; towns over 4,000 inhabitants elect candidate having greatest number of votes. Annual town meetings shall be held in March and the voters shall then choose, by a majority vote, a moderator to preside at such meeting, a clerk, 3, 5, or 7 inhabitants of the town to be selectmen, 3 or more overseers of the poor, 3 or more assessors, a treasurer, road commissioner, superintending school committee, constable, collector of taxes, 2 or more fence viewers, surveyors of lumber, measurers of wood and bark, sealers of leather, and other usual town officers to serve for the ensuing year; and if $\frac{1}{3}$ of the voters present are in favor thereof, they shall choose by a majority vote, 1 auditor of accounts to serve for the ensuing year or authorize the selectmen to employ a competent accountant to perform the duties of auditor. All persons chosen as above required shall be duly sworn. In towns of over 4,000 inhabitants the candidates receiving the greatest number of votes for any of the above mentioned offices shall be deemed elected to such offices. Treasurer and collectors of taxes of towns shall not be selectmen or assessors, until they have completed their duties as treasurer or collector of taxes and had a final settlement with the town. The treasurer and collector of taxes of cities and towns may be one and the same person. Any town neglecting to choose selectmen or assessors forfeits to the state not less than \$100, nor more than \$300, as the superior court orders.'

'Sec. 10. Elections for more than 1 year. Any town electing 3 selectmen, 3 overseers of the poor, and 3 assessors, may, pursuant to an appropriate article in the warrant, provide for the election of 1 member of each board to hold office for 1 year, 1 for 2 years, and 1 for 3 years, and at each annual meeting thereafter 1 member of each of the said boards shall be elected for a term of 3 years, and annually thereafter the member serving the short term shall be designated chairman; towns electing more than 3 selectmen, 3 overseers of the poor and 3 assessors, may, pursuant to an appropriate article in the warrant, provide how many of each of said boards shall be elected annually and the tenure of their office and how the chairman shall be designated. Any town at its annual meeting, may, pursuant to appropriate article in the warrant, elect more than 1, but not more than 3 road commissioners, and fix their term of office at a longer period than 1 year, but not exceeding 3 years, or instruct the selectmen to appoint 1 or more road commissioners to serve for such designated term or terms. Selectmen may serve as road commissioners. This section shall not apply to cities and towns which choose road commissioners under special acts of the legislature.'

'Sec. 11. Officers chosen by ballot; office vacated. The moderator, clerk, selectmen, overseers of poor, assessors, treasurer, road commissioner, auditor and superintending school committee, shall be chosen by ballot; the other officers may be chosen by ballot, or if not so chosen they shall be appointed by the selectmen. Whenever any of the officers provided for in section 9, either elected or appointed, cease to be an inhabitant of the town, their office is thereby vacated.'

'Sec. 12. Vacancies in elective or appointive offices, how filled. Whenever by reason of non-acceptance, resignation, death, insanity, physical disability, or other cause, there is a vacancy in the office of selectmen, overseer of poor, assessor, town clerk or superintending school committee such vacancy shall be filled by election for the unexpired term in a special town meeting or the annual meeting, and such meeting may be called by the person or persons legally elected and qualified as selectman or selectmen although less than a full board.

Whenever, for any cause, there is a vacancy in any other elective or appointive office it shall be filled by appointment for the unexpired term by the selectmen, who shall certify such appointment to the town clerk for entry in the town records. Such appointee shall be sworn, if an oath is required, and have the same powers as if elected at the annual meeting. No person shall be so appointed without their consent.'

'Sec. 13. Removal of officers in town meeting. Any town may in town meeting, pursuant to an appropriate article in the warrant peremptorily remove from office any selectman, overseer of the poor, assessor, town clerk or member of superintending school committee, for defalcation, larceny, embezzlement, misappropriation, or fraudulent conversion of town funds or corrupt practice, whenever their continuance in office shall be deemed hazardous to the public interest. Any town may in town meeting, pursuant to an appropriate article in the warrant remove any such officer upon presentment of charges and hearing after 7 days' notice of such presentment to the accused, for neglect of duty, inefficiency, dishonesty, conviction of crime, habitual drunkenness, conduct unbecoming such officer, making false entry in any town book with intent to deceive, destruction of any book, document, record, certificate, bond, receipt, order, check, draft, note, deed, contract, map, plan, or other valuable paper or property of the town or any officer or employe thereof, refusal or failure to pay over any funds in his hands belonging to the town to the town treasurer as provided by law, when demanded, or any other cause, whenever their continuance in such office shall be deemed detrimental to the good order and welfare of the

public interest. The person directed in the warrant to notify and warn the inhabitants of any such town meeting, shall, in addition to posting notice thereof as required by law, serve an attested copy thereof upon the accused 7 days before the meeting by giving in hand or leaving at his last and usual place of abode, and make return of such service upon the warrant, and such service shall be deemed sufficient notice to the accused of presentment of charges and hearing at the time and place set forth in the warrant.'

'Sec. 14. Removal of town officers by selectmen. Any town officer, elective or appointive, excepting selectman, overseer of poor, assessor, town clerk and superintending school committee, may be removed from office or employment by the selectmen peremptorily for defalcation, larceny, embezzlement, misappropriation or fraudulent conversion of town funds or corrupt practice, when in their opinion further continuance in office would be hazardous to the public interest. Any such officer may be removed from office by the selectmen upon presentment of charges and hearing after 7 days' notice of such presentment to the accused, for any other cause set forth in the preceding section when in their opinion further continuance in such office would be detrimental to the good order and welfare of the public interest. Any person falsely representing himself to be such officer, after such removal, shall be punished by fine of not more than \$100 or by imprisonment for not more than 6 months; or by both such fine and imprisonment in the discretion of the court. Any such removal of an officer or employe by the selectmen shall be certified by them to the town clerk who shall record the same in the town records.'

'Sec. 15. Village corporation meetings, how called. The meetings of any village corporation may be notified by the person to whom the warrant is directed, by posting attested copies in 2 or more public and conspicuous places within the corporation limits 7 days before the meeting instead of the manner provided by the act creating such corporation: provided, that such corporation shall first, at a legal meeting, designate at what and how many places such notices shall be posted.'

'Sec. 16. Errors in records, tax lists, and returns, how amended. When omissions or errors exist in the records or tax lists of a town or school district, or in returns of warrants for meetings thereof they shall be amended, on oath according to the fact, while in or after he ceases to be in office, by the officer whose duty it was to make them correctly. If the original warrant is lost or destroyed, the return, or an amendment of it, may be made upon a copy thereof.'

‘Sec. 17. Who are legal voters. Every person qualified to vote for governor, senators and representatives, in the town in which he resides, may vote in the election of all town officers, and in all the affairs thereof.’

Sec. 2. R. S., c. 5, § 21, amended. Section 21 of chapter 5 of the revised statutes is hereby amended to read as follows :

‘Sec. 21. Treasurer to give bond; amount; conditions of bond; office of treasurer vacant if bond not filed seasonably; vacancy; approval of bond and record; municipal officers may accept bond of a surety company, at expense of town. The treasurer before entering upon the discharge of his official duties, shall give bond to the inhabitants of his town with such sureties and for such sum as shall be designated by the municipal officers, not exceeding, however, twice the amount of the taxes to be collected during the year for which he is treasurer, conditioned ~~for the faithful discharge of all the duties and obligations of his office~~ that if the said treasurer shall not well and faithfully and honestly perform and discharge all the duties devolving upon him as such officer, and render a just and true account for all moneys, property, books, papers, and appurtenances of his said office and pay or deliver the same or any balance thereof to his successor in office or any person or persons designated by the selectmen of said town to receive the same, then in that event the said principal, his heirs, executors or administrators, and the said sureties, their heirs, executors or administrators, successors or assigns, are holden and firmly bound to reimburse the said town within 60 days from the date of demand, for all loss, cost, interest, damage or expense of every description, not in excess of the principal sum of the bond, resulting or arising from the said treasurer’s failure to perform his duties as above set forth or as required by law. Such bond shall not run for a longer period than the incumbency of the treasurer under the election or appointment mentioned in the bond and shall not be renewed upon renewal receipt for payment of the premium. In the event of re-election a new bond shall be required. If such a bond cannot be procured within the time required to enable the treasurer to qualify as such, it shall be permissible for the selectmen to accept a binder, so called, from any reputable surety company or its agent. If such bond is not furnished and delivered to the municipal officers, within 10 days after written demand by the municipal officers on the treasurer therefor, the office of treasurer shall be deemed vacant, and the town or plantation, at any meeting of its inhabitants legally called, may elect a treasurer to fill the vacancy, or the municipal officers may fill the vacancy by written appointment which shall be recorded by the clerk in the town records. The municipal officers shall be

the sole judges of the sufficiency of such bond and sureties. Such bond, after its approval and acceptance by the municipal officers, shall be recorded by the clerk, and such record shall be prima facie evidence of the contents of such bond, but a failure to so record shall be no defense in any action upon such bond. The municipal officers may accept any surety company authorized to do business in the state, as surety on such bond, and dispense with any further surety or sureties thereon. Any town or plantation may lawfully vote, at its annual meeting, to raise money to be expended by its treasurer, under the direction of the municipal officers, for the purpose of purchasing from any surety company authorized to do business as aforesaid, the bond required by this section.'

Sec. 3. R. S., c. 5, § 25, amended. Section 25 of chapter 5 of the revised statutes is hereby repealed and the following enacted in place thereof:

'Sec. 25. Appropriations and accretions not to be overexpended; penalty; may be recovered of officer. No selectman, or other town officer, charged with the expenditure of town moneys, shall hereafter sign or issue any warrant, order, check, draft, or credit, or otherwise pay or obligate the town to pay out any sum in excess of the amount appropriated therefor together with any further sum or sums lawfully to be credited or allocated to the appropriation for expenditure for the same purpose except for reduction of town debt. For any violation of this section such selectman, or other town officer, may be removed from office, and such excess expenditure may be recovered from such officer for the use of the town on complaint of any town officer or taxpayer thereof.'

Sec. 4. R. S., c. 5, § 26, amended. Section 26 of chapter 5 of the revised statutes is hereby repealed and the following enacted in place thereof:

'Sec. 26. Appropriations for ensuing year; exceptions. All appropriations made by towns shall be for the ensuing year or until the next annual meeting, unless they are by vote of the inhabitants for special reasons made available until expended or the work completed. Appropriations made for winter roads, so called, shall be made available only from May 1st each year to April 30th of the following year. Any town may charge any appropriation or account properly chargeable with such an expense, or any state department, or other town, or state or town contractor, a per diem rate for the use of any town road equipment, not exceeding the rate charged or allowed by any state department for the use of similar equipment, and may credit the proceeds of such charges to an account or accounts which shall be

charged with the upkeep, supplies, repairs, renewals or purchase of similar equipment, and any unexpended balance of such account or accounts shall be carried forward to the following year to be expended for the same purposes.'

Sec. 5. R. S., c. 5, § 30, amended. Section 30 of chapter 5 of the revised statutes is hereby repealed and the following enacted in place thereof:

'Sec. 30. Duty of selectmen to prosecute; collection of bond; civil action against principal. It shall be the duty of every selectman, who is cognizant of any official misconduct, defalcation, misappropriation of funds, larceny, embezzlement, or other unfaithful discharge of his duty by any town officer, which may be subject to a penalty of fine or imprisonment, or both, to report the facts to the county attorney, or apply to any trial justice or judge of a municipal court for warrant to apprehend such officer. It shall also be the duty of such selectmen by proper process to institute proceedings to recover upon any bond of such officer or in civil action on behalf of the town recover from such officer all loss, cost, interest, damage or expense arising or resulting from such unfaithful discharge of duty, and no town by vote of its inhabitants or otherwise shall have any power to discontinue, interrupt, interfere, or abate such proceedings until such town has been reimbursed for all such loss, cost, interest, damage or expense as above set forth.'