

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ACTS AND RESOLVES

PASSED BY THE

THIRTY-FOURTH LEGISLATURE

OF THE

STATE OF MAINE,

1855.

Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840, and March 16, 1842.

AUGUSTA:
STEVENS & BLAINE, PRINTERS TO THE STATE.

1855.

STATEMENT OF FACTS, AND QUESTIONS.

STATE OF MAINE.

COUNCIL CHAMBER,
Augusta, February 15, 1855. }

To the Honorable Justices of the Supreme Judicial Court:

THE opinion of the justices of the court is respectfully solicited upon certain questions arising out of the following statement of facts:—

The last governor and council, as required by the several acts to regulate the election of county officers, counted the votes which had been returned from the county of Sagadahoc for county commissioners for said county. Upon comparing and counting said votes, said governor and council declared William Hutchings, Alfred Cox, and Abel C. Dinslow, duly elected to said office, and issued commissions accordingly. At the proper time for said board to organize, but two of them, viz: Hutchings and Cox appeared to claim their places. It subsequently appeared that there was no such man in the county as Abel C. Dinslow, but there is one whose name is Abel E. Dinslow, and for whom, there is good reason to suppose, the voters intended to throw their votes instead of Abel C. Dinslow.

First, Upon the foregoing statement, is it competent for the present governor and council, so far to revise the doings of the last governor and council as to receive proof of the eligibility to said office of such a man as Abel C. Dinslow?

Second, If the present governor and council find there is no such man as Abel C. Dinslow, but that the voters intended their votes for Abel E. Dinslow, is it competent for them to issue a new commission to said Abel E. Dinslow?

Third, If not competent to issue a new commission to Abel E. Dinslow upon the supposition aforesaid, is it competent for the present governor and council to throw out the votes for Abel C. Dinslow, and issue a new commission to such person who is eligible to said office, as shall appear to have the highest number of votes?

Fourth, In case the second and third questions should be answered in the negative, is there a vacancy in said office so as to authorize the present Governor to make an appointment thereto?

ANSON P. MORRILL.

OPINION OF THE S. J. COURT.

THE undersigned justices of the supreme judicial court respectfully present their opinion on the facts stated in answer to the questions proposed to them by the governor in his communication bearing date on February 15, 1855.

By the first section of the act approved on February 22, 1842, it is provided that the votes for county commissioners "shall be received, sorted, counted, and declared in like manner as the votes for representatives; the names of the persons voted for, and the number each person had, shall be recorded by the clerk in the city, town, or plantation books; and true copies of said records, attested in the same manner as the returns of votes for senators shall be transmitted to the office of secretary of state." And by the second section, that the governor and council "shall open and compare the votes returned as specified in the first section."

No other duty is thereby confided to the governor and council than to "open and compare" the copies of the records of the votes given in the several cities, towns, and plantations of the county, and so attested and transmitted, and from such comparison to ascertain and determine who have been elected.

When this duty has been performed, and the persons thus determined to have been elected, have been commissioned, the whole power conferred upon the governor and council for this purpose has been exhausted. The persons commissioned have become legally entitled to their offices, and they cannot be deprived of them by a revision of the former comparison and decision, made by the same, or by any subsequent governor and council.

If this were not so, county commissioners duly commissioned and qualified, might at any time be deprived of their offices by a new comparison and decision, not made as the statute requires within a prescribed time, but at any subsequent time during their official term.

This would not be in accordance with the letter or spirit of the statute.

The governor and council are not authorized by the act to receive any other evidence of the number of votes, or of the names of the persons voted for, than what is contained in the copies of the records so attested and transmitted.

If they might enter upon such an investigation from other evidence, they might overrule or disregard the decisions of the officers presiding at the elections, and set aside all their records as erroneous; and might do this upon any such testimony as it might please them to receive and to act upon.

No such authority appears to have been intended to be conferred.

On November 6, 1845, the governor presented two questions having reference to a construction of the statute, to be answered by the justices of the supreme judicial court. Their answer to them was communicated in an opinion published in the Maine reports, volume 25, pages 568, 569, 570, to which for additional reasons reference is respectfully made.

It is not perceived that any subsequent legislation has in this respect materially enlarged or varied the power or duty of the governor and council. While by the act approved on February 22, 1844, they are authorized to fill any vacant office of a county commissioner, whether it happens "by death, resignation, or otherwise."

The undersigned, therefore, answer the first, second and third questions in the negative; and the fourth question in the affirmative.

ETHER SHEPLEY,
JOHN S. TENNEY,
J. W. HATHAWAY,
JOSEPH HOWARD,
RICHARD D. RICE,
JOHN APPLETON,
JONAS CUTTING.