

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-FIFTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1856.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1839, February 26, 1840,  
and March 16, 1842.  
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1856.

RESOLVES

OF THE

STATE OF MAINE.

1856.

The joint select committee, to which was referred a communication from the governor in relation to the bills and expenses of the commissioners to revise the public laws of the state, under a resolve approved March 12, 1855, by leave,

REPORT :

By a provision of the resolve aforesaid, the governor, with the advice and consent of the council, was authorized to draw his warrant on the treasury of state, from time to time, for the amount of the expenses of said commissioners, and a reasonable compensation for their services. The committee has examined the several accounts of the said commissioners against the state for their services and expenses, as presented to the governor and council for allowance, and finds them as follows, to wit :

John B. Hill, one of the commissioners, charges for his services the sum of eighteen hundred dollars, and for his expenses and disbursements, the sum of one hundred and forty-seven dollars and twelve cents. Joseph Baker charges eighteen hundred dollars for services, and for expenses, office rent, books, stationery, fuel and lights, fifty dollars and forty-five cents. James Bell charges for services, eighteen hundred dollars, and for expenses and disbursements, the sum of one hundred and fifty-two dollars and fifteen cents—making the aggregate sum claimed by said commissioners, for services and expenses, five thousand seven hundred and forty-nine dollars and seventy-two cents.

It is to be remarked that each commissioner charges the same sum of eighteen hundred dollars for his services without any specification or particular statement of the amount of labor performed. Without expressing any opinion as to the justness of the accounts of the commissioners, the committee deems it proper to state that the practice of making claim for compensation for services rendered to the state in this general and unqualified manner, has become somewhat extensive and should not be continued. Every account against the state should be rendered as carefully and particularly as to items and amount of service performed as can be done ; and where such account or claim may be for services rendered of the character of the services of the aforesaid commissioners, the claimant should be entitled to a fair compensation per day for such service ; and with this view, the committee recommend the passage of the resolve accompanying this report.

The committee are instructed to inquire whether the appointment of any of said commissioners was in conflict with any provisions of the constitution of this state.

In section 10, part 3, article 4, of the constitution, it is provided that no senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under

this state, which shall have been created or the emoluments of which increased during such term, except such offices as may be filled by elections by the people. It appears that John B. Hill, Esq., one of the commissioners, was a member of the house of representatives at the time when the resolve aforesaid was passed, and that he received his appointment as commissioner under the resolve during the term for which he was elected as such member. The inquiry to which the committee has directed its attention, is whether this appointment of Mr. Hill was or not such as is prohibited by this provision of the constitution—or, in other words, what is a *civil office* in the sense in which the term is used in the constitution. For aid in answering this question, reference may be made to other parts of the constitution.

In section 11 of same article, the same phrase occurs in a connection which indicates the class of offices intended. The exception in this section may show what is the character of the class generally. They are all offices for which a commission is required and the officer required to take the oaths of office. In section 1, of article 9, it is provided that every person elected, appointed, or commissioned to any judicial, executive, or military, or other office under this state, shall, before he enters on the discharge of the duties of his place or office, take and subscribe the oaths of office there prescribed. This provision is without exception. And the term, other office under this state, embraces every office under the state except those already enumerated and particularly provided for, and such as should be afterwards created.

If, then, there is a class of employments to which, by authority of law, the governor, with the advice of council, may appoint persons who are not required to take the aforesaid oaths of office, but who may enter on the discharge of the duties imposed upon them, without a commission, and without an oath of office, it may be asserted that such appointments do not come within the disqualifying provisions of the section above referred to. Of this kind were the commissioners to build the Insane Hospital—to build the Reform School—to treat on the part of the state for the settlement of the northeastern boundary—to negotiate for the purchase of the Massachusetts lands—to locate grants under the treaty of Washington—to revise the statutes under a former resolve. The appointees to none of these places were required to be sworn under the provision of article 1, of section 9.

Again, the 5th section of article 9 provides that every person holding a civil office under this state may be removed by impeachment, &c. It has never been held that an appointee to any of the places referred to can be removed by impeachment or by address; and the better opinion may be that they cannot be so removed.

To the commissioners to revise the statutes under the resolve of 1855, no commission was required or issued. There was no appointment under the great seal of the state, and of them no oath of office was required. And it may therefore be affirmed that the appointment

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of Mr. Hill as one of said commissioners was not an appointment to such an office as is described in the section referred to.

The object of this provision, prohibiting the appointment to any office of any member of the legislature, which may have been created, or the emoluments of which may have been increased during the term for which such member was elected, is obvious. And, notwithstanding the committee determine that the appointment of Mr. Hill was not in conflict with the letter and proper construction of the aforesaid constitutional provision, still the committee is of the opinion that all such appointments of the members of the legislature to places or employments of profit which may have been created during the term of such members, is within the mischief and evil which the constitution intends to guard against, and that the practice of making such appointments should be discontinued.

The committee ask leave to report the accompanying resolve.

All of which is submitted.

H. J. SWASEY, *Chairman.*

Chapter 389.

Resolve authorizing the governor and council to audit and settle the claims of John B. Hill, Joseph Baker and James Bell, commissioners appointed to revise, collect and arrange all the public laws of this state.

Governor and council authorized to audit and settle the claim of commissioners to revise public laws.

Resolved, That the claims of John B. Hill, Joseph Baker and James Bell, for services as commissioners to revise, collect and arrange all the public laws of this state, be referred to the governor and council, who are hereby authorized to audit and settle the same, and that the governor, with advice of council, is authorized to draw his warrant upon the treasury of the state, in favor of each of said commissioners, for the amount which may be found due.

[Approved April 10, 1856.]

Chapter 390.

Resolve for procuring certain volumes of the publications of the Maine Historical Society.

Maine Historical Society, governor authorized to subscribe for the publications of

Resolved, That the governor, in execution of a resolve passed March twelfth, eighteen hundred and fifty-five, is hereby authorized to subscribe for such number of the volumes aforesaid, as the society may be able to furnish, not exceeding fifty of any volume.

[Approved April 10, 1856.]