

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FIFTY-EIGHTH LEGISLATURE

OF THE

STATE OF MAINE.

1879.

Published by the Secretary of State, agreeably to Resolves of June 28,
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GOVERNOR GARCELON'S MESSAGES.

EXECUTIVE DEPARTMENT, }
Augusta, March 4, 1879. }

To the President of the Senate:

In compliance with the constitution of the State I herewith return without my approval the Resolve on the pay roll of the Senate, which originated in the body over which you preside, endorsed by you as having finally passed the same on this day and by the Speaker of the House of Representatives on the first instant, and for the following reasons, to wit:

The constitution of the State, article four, section seven, provides "that the Senators and Representatives shall receive such compensation as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature which enacted it." Chapter 115 section 6 of the revised statutes provides that "each member of the Senate and House of Representatives shall be paid a salary of one hundred and fifty dollars for the regular annual session of the Legislature and two dollars for every ten miles travel from his place of abode once in each session. He is entitled to mileage on the first day of the session and fifty dollars of his salary on the first day of each month thereafter during the session, and the balance at the end thereof." An examination of this roll exhibits the fact that against the name of each and every member his mileage is reckoned at four dollars for each and every ten miles travel, instead of two dollars as expressly limited by law.

Article five, section twelve of the constitution of the State enjoins upon the Executive the duty to take care that the laws be faithfully executed, and in the discharge of this duty I cannot consent to approve an act or resolve so openly and manifestly a violation of the law, the spirit and letter of the constitution, as well as the usages not only of the framers of that instrument, but of all subsequent Legislatures for a period of more than fifty years.

ALONZO GARCELON.

EXECUTIVE DEPARTMENT, }
 Augusta, March 5, 1879. }

To J. M. Haynes, President of the Senate:

I herewith return to your honorable body the "Resolve on the pay roll of the Senate" submitted to me for approval at a late hour last evening, but entirely too late to make a reply, a circumstance I exceedingly regret. My reasons for with-holding my approval are substantially the same as those I appended to the Resolve returned to your honorable body yesterday, but inasmuch as the Resolve comes to me in another form, I submit the following considerations:

The construction of the law in relation to the question of mileage in my judgment is clear and explicit. The language of the statute is, "each member of the Senate and House of Representatives shall be paid two dollars for every ten miles travel from his place of abode once in each session. He is entitled to mileage on the first day of the session." Nothing can be more explicit. The distance *from* his place of abode to the place where the Legislature assembles is the measure of his claim, and for every ten miles of that distance he is entitled to receive the sum of two dollars, as a reasonable commutation for his travelling expenses in getting to and returning from the place where the Legislature convenes. If there be any doubt upon this subject after candid reflection upon the language of the statute, the history of the legislation of the State settles the question beyond all controversy.

The Convention for forming a Constitution for the State of Maine convened in the city of Portland on the 11th day of October, 1819, and after mature deliberation and discussion, submitted to a vote of the people a document, which was adopted on the first Monday of the following December, as the Constitution of the State of Maine. The question of the traveling expenses of the members of the Senate and House of Representatives was one of the topics which elicited a long debate, participated in by such men as Judge Dana, John Holmes, Judge Thatcher, Judge Ames, Judge Bridge, Judge Whitman, Mr. Herrick, and men of that character; and section seven, article four of the Constitution, as it now stands, was adopted almost unanimously, and which provides that "Senators and Representatives shall receive such compensation as shall be established by law, but no law increasing their compensation shall take effect during the existence of the Legislature, which enacted it. The expenses of the members of the House of Representatives in traveling to the Legislature and returning therefrom, once in each session and no more shall be paid by the State out of the public Treasury to every member who shall reasonably attend, in the judgment of the House, and does not depart therefrom without leave."

The first session of the Legislature of the new State was holden in the city of Portland in the summer of 1820. At that session I find no detailed statement of the amount paid to each individual member, but at the second session holden in the winter of 1821, the pay roll of the Senate and the House of Representatives was made up upon the same basis as is now the law to wit: *two dollars* for every ten miles' travel *from* the abode of the member to the place of holding the session.

The mode of compensation, however, was different in the different branches. The Senate estimating the mileage to and from, charging ten cents per mile, and the House reckoning the mileage only one way and charging twenty cents, the result being the same in either case.

An act fixing the compensation of the Council, Senate, and House of Representatives at "two dollars for each and every day he shall have attended, and two dollars for every ten miles' travel from their respective places of abode," "and all pay rolls hereafter made up shall be in conformity to the rates thereby established" was approved on the 23d of January, 1823, and has remained without verbal alterations to the present day. The pay roll of that session was made up upon the same basis, the Senate still adhering to the practice of placing its mileage to and from, but charging ten cents; while the House reckoned only single mileage, but reckoned at twenty cents, the result being the same in both cases, and in strict compliance with the law it had just enacted. In 1840, the first revision of the statutes was made, and the same provision as to compensation and travel was re-enacted.

The pay roll of that and all subsequent sessions was made up upon the same basis, and for thirty years thereafter no departure was ever attempted from the provisions of the law, save that in 1859 a salary of one hundred and fifty dollars was substituted for the per diem pay, and making the mileage payable on the first day of the session.

In 1871 the statutes were again revised and the same provision re-enacted.

The pay roll of that year was made upon the same basis, as also of that of 1872 and from the organization of the State government to that date, a period of more than fifty years, no one had ever been bold enough to trample upon the Constitution or the law by proposing any new departure. On the 29th of February, 1872, the day upon which the Legislature of that year adjourned *sine die*, a resolve was introduced and passed after the pay roll had been made up under the direction of the committee on pay roll. "That the State Treasurer be and hereby is directed to pay to each member and officer of *this* Legislature double the amount of *compensation* for travel allowed by the committee on pay roll and Secretary of the Senate, they having allowed compensation but one way."

The pay roll of that year had been made up by the committee on pay roll on the basis provided in the law. The law provided that the compensation of the members should be one hundred and fifty dollars, and the Constitution declared that no law increasing their compensation shall take effect during the existence of the Legislature which enacted it.

No attempt was made to change the law, and of the constitutionality of such a resolve, I leave to a judicial tribunal to determine. From that year to the present the pay rolls have been made up on the basis of single mileage in every instance, but in direct violation of that provision of the statute which fixes the expenses of travel to and from the Legislature *as a reasonable and just commutation* at two dollars for every ten miles *from the abode* of the member to the place of the meeting of the Legislature.

The action of the body over which you have the honor to preside, sustaining the position I assumed upon the pay roll submitted for my consideration yesterday, indicates the correctness of that position. I am not a little surprised, therefore, that a body, which, by a vote of nineteen to one had endorsed the correctness of that position, should, by a mere technicality attempt to over-ride the law, and evade one of the plainest provisions of the Constitution.

An examination of this pay roll now submitted to me reveals the fact that some members who actually live within ten, twenty or thirty miles of the State House, the place of the meeting of the Legislature, are credited with travel from forty to one hundred and forty miles, and the estimated amount due them for travel, is at the rate of twenty cents per mile upon those distances, being equivalent to four dollars for every ten miles from their place of abode to the place of meeting of the Legislature, instead of two dollars as provided by law.

There can be no excuse that it costs a member from Bangor thirty-two dollars, or a member from Bath twenty dollars, or a member from Lewiston twenty-eight dollars as traveling expenses to get to and from the Legislature, when it is a fact well understood by everybody that from four to six dollars will cover all expenses from either of those cities both ways.

Without entering farther into detail into the consideration of this subject, I am constrained to return the accompanying pay roll unapproved, being contrary, in my judgment, both to the letter of the law and the spirit of the Constitution.

ALONZO GARCELON, *Governor.*