

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume I

January 5, 1977 to May 25, 1977

KJ PRINTING
AUGUSTA, MAINE

SENATE

Wednesday, March 9, 1977

Senate called to order by the President.

Prayer by Father Paul Ouellette of the Oblate House in Augusta.

Father OUELLETTE: Let us pray. Heavenly Father, enlighten the thoughts and rule the deeds of those who in our land and in other lands are responsible for good government. Be in the midst of this assembly today; free its members from all distractions and misunderstandings; help them to speak out clearly and to listen open-heartedly to others. Make of this Session a moment of light and a moment of truth in our world. In all their deliberations today, help these Senators to see clearly the real needs of our people, and give them the insight necessary to meet these needs honestly and vigorously.

Father, never let us be puffed up with pride because of our positions in life. Help us always to remember Jesus' words, 'The first shall be last and the last shall be first.' Amen.

Reading of the Journal of yesterday.

(Off record remarks)

Out of Order and Under Suspension of the Rules:

On motion by Mr. SPEERS of Kennebec, ORDERED, that a message be sent to the House of Representatives proposing a Joint Convention in the Hall of the House of Representatives at 10:30 o'clock for the purpose of extending to The Honorable Armand A. Dufresne, Jr., Chief Justice of the Supreme Judicial Court and the Justices of the Supreme Judicial Court, an invitation to attend the Convention and make such communication as pleases them.

Which was Read and Passed.

The President requested that the Senator from Kennebec, Senator Speers, carry the message, and Mr. Speers retired to the House of Representatives and subsequently reported that he had delivered the message with which he was charged.

(Off record remarks.)

Papers from the House Non-concurrent Matter

Bill, "An Act to Correct Errors and Inconsistencies in Laws of Maine." (Emergency) (S. P. 186) (L. D. 531)

In the Senate, February 23, 1977. Passed To Be Engrossed.

Comes from the House, Passed To Be Engrossed as amended by House Amendments "E" (H-52) "C" (H-53), in non-concurrence.

On Motion of Senator Collins of Knox, tabled until later in today's session pending consideration.

(See action later today)

The PRESIDENT: The Chair recognizes the gentleman from Durham, Mr. Tierney.

Mr. TIERNEY: Mr. President, I am pleased to inform you the House of Representatives concurs in the joint convention to be held in the Hall of the House at 10:30. The House awaits the presence of this Honorable Body forthwith.

Mr. PRESIDENT: The Chair hears the message and thanks the messenger.

Joint Orders

An Expression of Legislative Sentiment recognizing:

The Crusaderettes of Van Buren District High School have won the State Class "B" Girls' Basketball Championship for the academic year, 1977. (H. P. 669)

An Expression of Legislative Sentiment recognizing:

The Sanford High School Boys' Wrestling

Team has won the State Championship for the academic year 1977. (H. P. 602)

Come from the House, Read and Passed. Which were Read and Passed in concurrence.

Communications

ANSWERS OF THE JUSTICES

To the Honorable Senate of the State of Maine:

We, the undersigned Justices of the Supreme Judicial Court, have the honor to submit answers to the questions propounded by the Senate on February 1, 1977. We do this, in our opinion, agreeably to the provisions of Article VI, Section 3 of the Constitution of Maine.

Whenever a question is asked of us by the Governor, the Senate, or the House of Representatives, we must first determine whether the question asked and the occasion is one to which we are constitutionally authorized to respond, i.e., "important question of law, and upon solemn occasion."

That the questions asked are important in a constitutional sense is self-evident.

Ordinarily, no solemn occasion can be said to exist whenever the subject matter of the question is pending in committee and not yet before the inquiring branch of the Legislature. *Opinion of the Justices, Me., 355 A.2d 341, 389 (1976)*. As we there informed the Senate, the status of a bill in committee is not alone conclusive. We do not say that the Justices may never answer questions put to them by a branch of the Legislature concerning proposed legislation which has not yet been reported out of committee.

We consider the questions now before us, though they concern proposed legislation still in committee, to present a situation not unlike that to which we addressed ourselves in *Opinion of the Justices, Me., 338 A.2d 802 (1975)*.

Here, as there, the Legislature is faced with a problem of overwhelming magnitude.

Much of the legislative work to overcome this problem must necessarily be undertaken in committee.

Since the whole question relates to a major source of tax revenue, it is of great immediate public concern.

It seems reasonably certain that whatever happens in committee to the legislative documents to which the questions relate in part, the Legislature during this session will be directly involved with the issues raised by the questions about which our opinion is sought.

We conclude a solemn occasion exists.

Before undertaking to give specific answers to the questions asked, we consider it helpful in our analysis of the issues presented to recite the factual framework in which the occasion for the requested opinion arose.

The 108th Legislature has before it a legally sufficient initiative which has as its objective the repeal of the uniform property tax and a return to the municipalities of authority to set the property tax rate for public school purposes.

Also pending before the 108th Legislature is the Governor's proposed budget for fiscal year 1978-79, which budget includes recommendations regarding funding for educational programs.

Also pending before the 108th Legislature, now in committee, are L.D. 16, entitled "AN ACT to Provide that the Uniform Property Tax Rate shall be Established in Conformity with Statutory Limits on Educational Funding;" L.D. 193, entitled "AN ACT to Reduce the Uniform Property Tax by 1/4 Mills;" and L.D. 91, entitled "AN ACT to Ensure that the Uniform Property Tax Rate Conforms to Limits on Educational Funding Established by Statute." All the above legislative documents carry emergency preambles.

Obviously, any amendment to the uniform property tax which would affect proceeds of the

uniform property tax in fiscal year 1978-79 must be considered before any budget for such fiscal year can be enacted.

Although in some jurisdictions which have adopted initiative and referendum, specific provision is to be found excluding revenue legislation as the subject of initiative and referendum, we are satisfied from a historical analysis of Amendment XXXI to the Constitution of Maine that initiative can properly be used when the subject matter is revenue legislation.

QUESTION No. 1: If the bill contained in the initiative petition (Exhibit D) is either enacted by the Legislature so that it is effective after July 1, 1977, or passed by the electorate and proclaimed by the Governor so that it is effective after July 1, 1977, will the initiative measure repeal the uniform property tax for the fiscal year beginning July 1, 1977 and terminating June 30, 1978?

ANSWER: We answer in the negative.

By the express terms of 36 M.R.S.A. § 452 it is clear that the liability of the municipality for the uniform property tax becomes fixed on July 1 annually for the fiscal year ending June 30 of the following calendar year. It is likewise clear that the procedure employed contemplates that the tax for which each municipality is liable under the formula described in § 451(3) must be "cranked into" the municipality's taxing process by adding "the amount of such tax to the amount of county and municipal taxes to be by them assessed in their municipalities."

The issue generated by Question No. 1 is whether Exhibit D, if enacted or approved so as to be effective after July 1, 1977, will negate the liability for payment of the uniform property tax which attaches as of July 1, 1977.

'An excellent history of Amendment XXXI may be found in: Black, *Maine's Experience with the Initiative and Referendum*, 43 Annals 159 (1912); Pelletier, *The initiative and Referendum in Maine*, Bowdoin College Bulletin 7 (1951); Address of Governor Cobb to the 73rd Legislature, Acts and Resolves of Maine 1907, 1555, 1562; Address of Governor Fernald to the 74th Legislature, Acts and Resolves of Maine 1909, 1436, 1450-51. See generally, Galbreath, *Provisions for State-Wide Initiative and Referendum*, 43 Annals 81 (1912).

Exhibit D contains nothing purporting to give it retroactive effect. It is the well settled rule in Maine that statutes are to be considered prospective in their application in the absence of language showing a contrary intent. See *Miller v. Fallon*, 134 Me. 145, 183 A. 416 (1936). In general, retroactivity in legislation is disfavored, although it is now established that a tax statute is not unconstitutional merely because it is retroactive in effect. See *Tiedemann v. Johnson, Me.*, 316 A.2d 359, 365 (1974), and cases cited therein.

The power of the Legislature, and likewise the power of the people in initiating legislation, to enact retroactive measures is limited. For example, in Maine the Legislature may enact statutes retroactively affecting remedies but not substantive rights. See generally, *Morris v. Goss*, 147 Me. 89, 83 A.2d 556 (1951).

A subsidiary issue which is generated by Question No. 1 merits some discussion. We have expressed the opinion that Exhibit D will not retroactively repeal the uniform property tax for the fiscal year 1977-78 if it is enacted or approved sometime after July 1, 1977. It might be argued, however, that the State Tax Assessor's power under the second paragraph of 36 M.R.S.A. § 452 to direct the collection of such tax from the municipal authorities will cease as of the effective date of Exhibit D if it is enacted or approved.

We reject this contention.

We have said that Exhibit D, if approved or enacted, will be applied only prospectively;

that is, it will repeal the uniform property tax for the fiscal years beginning 1978-79. In our opinion, it would be completely illogical to hold that one section of the bill contained in Exhibit D, that is, the repeal of the actual assessment of the tax, will not be effective to abolish the tax for which the wheels of the collection process are already in motion, while another section, i.e., the repeal of the power to certify the amount to be collected, will have immediate application. It is our opinion that the power to direct collection of the tax assessed as of July 1, 1977 survives the enactment or approval of Exhibit D until July 1, 1978. Hence, we conclude that even if Exhibit D is enacted or approved, the State Tax Assessor will retain the power to direct the collection of the uniform property tax from the municipalities for the entire fiscal year 1977-78.

QUESTION No. 2: Will Legislative Document 16 (Exhibit A) or Legislative Document 91 (Exhibit C), if enacted with an effective date prior to July 1, 1977, alter the mill rate of the uniform property tax, (a) for the fiscal year beginning July 1, 1977 and terminating June 30, 1978 and (b) for any subsequent fiscal year?

ANSWER: We answer in the affirmative as to part (a).

Legislative Document 16 (Exhibit A) and Legislative Document 91 (Exhibit C) both include an emergency preamble and an emergency clause. It appears that in the event either of these legislative documents is enacted into law, the bill would be emergency legislation as defined in Article IV, Part Third, § 16 of the Maine Constitution.

The importance of emergency legislation and the need that it be insulated from premature or ill-conceived disruption is recognized in § 17 of Part Third, Article IV of our Constitution. This section exempts emergency legislation from the referendum process — a process which suspends the effectiveness of laws until the law is ratified by popular election. This constitutional exemption from suspension is particularly important in the area of emergency tax legislation. *Morris v. Goss*, supra.

The people may use the initiative process as provided by Article IV, Part Third, § 18 to challenge emergency legislation. But even this section refers only to the people's power to repeal emergency legislation. No mention is made of their power to suspend existing legislation. To read such a power into section 18 would be to undercut the policies expressly recognized in sections 16 and 17.

There is no inherent conflict between the power of the Legislature to enact immediately effective emergency legislation and the power of the people to repeal that legislation through the initiative process. Cf. *Johnson v. Diefendorf*, 57 P.2d 1068 (Idaho 1936).

The existence of the pending initiative does not vitiate the constitutional provision of immediate effectiveness of emergency legislation. Likewise, it should be noted that if either of these legislative documents becomes law, the right of the people to have the initiated legislation submitted to a vote of the people in accordance with Article IV, Part Third, § 18 is not frustrated.

Legislative document 16 or Legislative Document 91 will become effective, as written, 2 when enacted.

We respectfully decline to answer as to part (B) because we consider the issue there posed is not appropriate for consideration by the Legislature at this first regular session. See footnote 2.

2. As presently written, both Exhibit A (L. D. 16) and Exhibit C (L. D. 91) make it impossible for the Legislature to set a tax rate for fiscal year 1977-78. Since the Legislature must set the new rate "prior to

April 1st" of each year, and since under the language of both legislative documents the new method of establishing a rate may not be used until after June 30 of 1977, then no rate can be set until "prior to April 1st" 1978 when the rate for fiscal year 1978-79 is established.

Likewise, we point out that 20 M.R.S.A. § 3747 as presently written does not provide a formula for determining a tax rate. That subsection merely prohibits the establishment of a rate which will produce an amount exceeding 50% of the basic education allocation. It does not by its terms establish what particular percentage under 50% shall be produced by the tax rate.

Question #3: Will House Paper 205 (Exhibit B), if enacted with an effective date prior to July 1, 1977, alter the mill rate of the uniform property tax for the year beginning July 1, 1977 and terminating June 30, 1978?

Answer: We answer in the affirmative.

For the reasons set out in our answer to Question #2, if House Paper 205 (Exhibit B) is enacted as emergency legislation, it will become effective when enacted. It will affect the mill rate for fiscal 1977 only if it is enacted before April 1, 1977, as the proposed legislation does not purport to amend that part of 36 M.R.S.A. § 451 (2) which requires the mill rate to be set before April 1 of the following fiscal year.

Dated at Portland, Maine, this 8th day of March, 1977.

Respectfully submitted:
ARMAND A. DUFRESNE, JR.
CHARLES A. POMEROY
SIDNEY W. WERNICK
JAMES P. ARCHIBALD
THOMAS E. DELAHANTY
EDWARD S. GODFREY

Which was Read and Ordered Placed on File.

Senate Papers

Mr. PIERCE of Kennebec presented, Bill, "An Act Relating to the Licensure of Plumbers." (S. P. 256)

Which was referred to the Committee on Business Legislation and Ordered Printed.

Sent down for concurrence.

Mr. PIERCE of Kennebec presented, Bill, "An Act to Require That a Hospital Pharmacist, a Chain Pharmacist and an Independent Pharmacist be Appointed to the Board of Commissioners of Pharmacy." (S. P. 251)

Reference to Committee on Business Legislation suggested.

On Motion of Senator Pierce of Kennebec, referred to Committee on Health and Institutional Services and ordered printed.

Sent down for concurrence.

Mr. PRAY of Penobscot presented, Bill, "An Act Concerning Minimum Wage Law." (S. P. 250)

Which was referred to the Committee on Labor and Ordered Printed.

Sent down for concurrence.

Mr. SPEERS of Kennebec presented, Bill, "An Act Relating to Privileged Communications for Clergymen." (S. P. 259)

Reference to Committee on Legal Affairs suggested. On Motion of Mr. Speers of Kennebec, referred to Committee on Judiciary and ordered printed. Sent down for concurrence.

Mr. PIERCE of Kennebec presented, Bill, "An Act to Clarify the Law as to Fraud by a Guest or Customer in a Hotel, Inn, Boarding House or Eating House." (S. P. 255)

Which was referred to the Committee on Legal Affairs and Ordered Printed.

Sent down for concurrence.

Mr. PRAY of Penobscot presented, Bill, "An Act Concerning the Penalty for Sale of Alcoholic Beverages to Minors." (S. P. 249)

Which was referred to the Committee on Liquor Control and Ordered Printed.

Sent down for concurrence.

The same Senator presented, Bill, "An Act Relating to Solid Waste Disposal." (Emergency) (S. P. 248)

Mr. LEVINE of Kennebec presented, Bill, "An Act to Repeal Laws Regulating Floating Timber." (S. P. 244)

The same Senator presented, Bill, "An Act to Repeal the Limitation on the effect of the Water Improvement Commission on Litigation pending on January 1, 1945." (S. P. 245)

Which were referred to the Committee on Natural Resources and Ordered Printed.

Sent down for concurrence.

Mr. LEVINE of Kennebec presented, Bill, "An Act Prohibiting State Legislators from Serving as Lobbyists within 4 Years of their Retirement from Office." (S. P. 246)

Mrs. SNOWE of Androscoggin presented, Bill, "An Act to require Certain Criminal Justice Agencies to make Permanent Records of all Apprehensions and Arrests." (S. P. 258)

Mr. LOVELL of York presented, Resolution, Proposing an Amendment to the Constitution to Combine the Guarantee Limits for the Insurance of Enterprises within the State. (S. P. 252)

Mrs. SNOWE of Androscoggin presented, Bill, "An Act to Provide for a Council of Economic Advisors." (S. P. 257)

Mr. O'LEARY of Oxford (Cosponsor: Mr. JACKSON of Cumberland) present,

RESOLUTION, Proposing an Amendment to the Constitution to Limit Tax Increases to a One-Year Period and to Require Further Legislation and Economic Impact Analysis for the Further Continuation of any Tax Increase. (S. P. 254)

Which were referred to the Committee on State Government and Ordered Printed.

Sent down for concurrence.

Mr. PIERCE of Kennebec (Cosponsor: Mr. MANGAN of Androscoggin) present, Bill, "An Act Requiring Motor Vehicles Registered in This State to Carry Liability Insurance." (S. P. 253)

Reference to Committee on Transportation suggested.

On Motion of Mr. Pierce of Kennebec, referred to Committee on Business Legislation and ordered printed.

Sent down for concurrence.

Committee Reports

House

Leave to Withdraw

The Committee on Judiciary on, Bill, "An Act to Delete Certain Religious Requirements for Adoption Proceedings." (H. P. 272) (L. D. 342)

Reports that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Report was Read and Accepted in concurrence.

House

Divided Report

The Majority of the Committee on Fisheries and Wildlife on, Bill, "An Act to Provide that the First 5 Days of Deer Season Shall be for Maine Residents Only." (H. P. 11) (L. D. 20)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-51).

Signed:

Senators:

PRAY of Penobscot

USHER of Cumberland

Representatives:

McKEAN of Limestone

MacEACHERN of Lincoln

MILLS of Esatport
ROLLINS of Dixfield
PEARSON of Old Town

The Minority of the same Committee on the same subject matter reported that the same Ought Not to Pass.

Signed:

Senators:

REDMOND of Somerset

Representatives:

TOZIER of Unity
DOW of West Gardiner
PETERSON of Caribou
GILLIS of Calais
MASTERMAN of Milo

Comes from the House, the Majority Report Read and Accepted, and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (H-51).

Which reports were read. On Motion of Mr. Usher of Cumberland, the Majority Ought to Pass Report Accepted in concurrence and the Bill Read Once. Committee Amendment "A" was Read and Adopted in concurrence and the Bill, as amended, tomorrow assigned for Second Reading.

Senate

Change of Reference

Mr. O'Leary for the Committee on Natural Resources on, Bill, "An Act to Clarify the Powers of Regional Planning Commissions." (S. P. 221) (L. D. 685)

Reported that the same be referred to the Committee on State Government.

Which Report was Read and Accepted, and the Bill referred to the Committee on State Government.

Sent down for concurrence.

Ought to Pass

Mr. Katz for the Committee on Education on, Bill, "An Act to Revise the Maine Regional Library System Law." (S. P. 140) (L. D. 381)

Reported that the same Ought to Pass.

Which Report was Read and Accepted and the Bill Read Once and Tomorrow Assigned for Second Reading.

Second Readers

The Committee on Bills in the Second Reading reported the following:

House

Bill, "An Act to Modify the Immunity Granted by Statute to a Person Who Testifies Before the Public Utilities Commission on Matters Which May Tend to Incriminate that person." (H. P. 227) (L. D. 291)

Which was Read a Second Time and Passed to be Engrossed, in concurrence.

House - As Amended

Bill, "An Act to Annex the Town of Otisfield to Oxford County." (H. P. 127) (L. D. 160)

Bill, "An Act to Clarify the Right of Trust Companies to Invest Funds Held as Trustee Under Certain Retirement Plans." (Emergency) (H. P. 71) (L. D. 99)

Bill, "An Act to Require Voters to State their Name and Address when Voting." (H. P. 32) (L. D. 49)

Which were Read a Second Time and Passed to be Engrossed, As Amended, in concurrence.

Senate

Bill, "An Act Relating to Incorporation of the Officers and Members of the Grand Royal Arch Chapter of Maine." (S. P. 138) (L. D. 379)

Which was Read a Second Time and Passed To Be Engrossed.

Sent down for concurrence.

Enactors

The Committee on Engrossed Bills reports as

truly and strictly engrossed the following:

"An Act to Increase the Number of Teachers Allowable in Certain Administrative Units under the Education Laws." (H. P. 67) (L. D. 92)

"An Act to Advance the Schedule for Legislative Approval of County Budgets and to Change the Interest Charges on Delinquent County Taxes." (H. P. 73) (L. D. 63)

"An Act Concerning a Limitation for Imposing a Penalty for Violations of the Public Utility Regulatory Law." (S. P. 80) (L. D. 188)

"An Act to Clarify the Laws Governing Vehicles Overtaking and Passing." (H. P. 17) (L. D. 26)

"An Act Relating to School Age under the Education Laws." (H. P. 100) (L. D. 124)

"An Act to Clarify the Education Laws." (H. P. 123) (L. D. 156)

"An Act to Amend the Duties of the Commissioner of Educational and Cultural Services Relating to Bilingual Education." (S. P. 52) (L. D. 109)

Which were Passed To Be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Emergency

"An Act to Authorize the Commissioner of Public Safety to Empower Local and County Law Enforcement Officials with Statewide Jurisdiction." (H. P. 102) (L. D. 126)

On Motion by Senator Conley of Cumberland, tabled until Tuesday next, pending enactment.

Emergency

"An Act Appropriating Funds for the Save Loring Committee." (S. P. 48) (L. D. 97)

This being an Emergency Measure and having received the affirmative votes of 28 members of the Senate, was Passed To Be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders Of The Day

The President laid before the Senate, Bill, "An Act to Amend the School Lunch and Milk Program." (H. P. 467) (L. D. 484)

Tabled — March 8, 1977 by Senator Katz of Kennebec

Pending — Passage to be Engrossed
On Motion of Mr. Katz of Kennebec, Retabled for Two Legislative Days.

The President laid before the Senate, Bill, "An Act to Correct Errors and Inconsistencies in Laws of Maine", L.D. 531, which was tabled until later in today's Session by the Senator from Knox, Senator Collins.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President and Members of the Senate, this is the first chapter of the Errors and Inconsistencies Bill, which this year is being divided into two segments. The other segment will come up late in the Session. I wanted to call your attention just briefly to the changes in the Bill as it now is before us, as placed by the other body. One of these changes relates to Indian educational scholarship matters and is quite properly deleted in this Bill because since our Committee dealt with it, other legislation has come along which operates in this same area, and we think it is wise that this not be treated here, although it was a very minor correction in the existing law.

The other matter relates to the timing of agricultural fairs. This is a matter that has been in and out of our statutes in various ways, three times in my memory in the last three years. I don't purport to know the answer to it. The problem, apparently there is overlap in one fair scheduling of one day, which has caused some problems, and I do not know the answers

to those problems. I did want the Senate to be aware of what has been added to the Bill.

I now would move that the Senate recede and concur with the House.

Thereupon the Senate voted to recede and concur.

(Off Record Remarks)

The Senators retired to the Hall of the House of Representatives where a Joint Convention was formed.

(For proceedings of Joint Convention, see House Report.)

After Joint Convention

Called to Order by the President.

Out of Order and Under Suspension of the Rules, the Senate voted to consider additional paper from the House.

Enactor

Emergency

The Committee on Engrossed Bills reports as truly and strictly engrossed the following:

An Act Making Additional Appropriations from the General Fund for the Current Fiscal Year Ending June 30, 1977. (S. P. 238) (L. D. 728)

This being an Emergency Measure and having received the affirmative votes of 26 Members of the Senate, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland, Adjourned until 2:00 tomorrow afternoon.