

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

1978

Second Regular Session

January 4, 1978 — April 6, 1978

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APPENDIX

SENATE

February 23, 1978

Senate called to Order by the President.
Prayer by Reverend Barry Fearon, First Baptist Church, West Gardiner.

Reverend FEARON: Shall we pray. Our Father in Heaven we pause in these few moments to recognize Your devine authority over the hearts of men. And especially over the governments of the world. And we praise You and thank You for this day and for the privilege we have of being obedient to You. And being subject to Your authority, and we would pray today that Thou give to each one of these men and women devine inspiration and especially the wisdom that comes from You. We thank You Our Father today for the grace of the Lord Jesus Christ who has brought salvation to us. And we pray that our lives might be senative to the leading of the spirit and especially today that You give special wisdom now and direction to these people, this body of law makers. We pray in the name of Christ our Savior. Amen.

Reading of the Journal of yesterday

(Off Record Remarks)

Senate Paper

Mr. Trotzky of Penobscot presented, Bill, "An Act to Insure Local Control Over Education Policy." (S. P. 708). (Governor's Bill)

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I must express some concern. There are 19 legislative days before the end of this Session. This is a major piece of legislation that is extremely controversial and might I ask of the sponsor of the source, I know that it is the Governor's Bill, but why is it being introduced at this time?

The PRESIDENT: The Senator from Kennebec, Senator Katz, has posed a question throught the Chair to any Senator who may care to answer.

The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate: This Bill has undergone many drafts until it is now felt that it is in good order and I was asked to put this in for the Governor. In my town, the City of Bangor, collective bargaining has been extremely costly for the citizens of the town. The city employs an Associate Superintendent. He spends 50 percent of his time during the school year on collective bargaining issues. Also School Board Members have been very concerned about what is going on in the collective bargaining process.

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

Sent down forthwith for concurrence.

Joint Resolution

A Joint Resolution In Memoriam:

WHEREAS, the Legislature has learned with deep regret of the death of the Honorable Ernest O. Porell of Westbrook, a prominent civic leader and business man who represented the City of Westbrook in the House of Representatives during the 88th, 89th, 90th, 97th, 98 and 99th Legislatures, S. P. 707 is presented by Senator Usher of Cumberland.

Cosponsored by Representatives: Carrier of Westbrook, Laffin of Westbrook

Which was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Usher.

Mr. USHER: Mr. President and Ladies and Gentlemen of the Senate: Ernest Porell was a man known by all in his home town. He is one of the most remembered political figures for the area. He was always thinking of his constituents. Whether it be searching for an apartment or aiding them in obtaining household

goods. Ernest was very active in church affairs and was a good christian. His many years in political life, both the twelve years in the House of Representatives, and the four years as Mayor will long be remembered.

Which was adopted.

Sent down for concurrence.

(Off Record Remarks)

Committee Reports
House

The following Ought Not to Pass report shall be placed in the legislative files without further action pursuant to Rule 20 of the Joint Rules:

Bill, "An Act to Assist Localities in Improving the Accuracy of Local Property Tax Valuations." (H. P. 1982) (L. D. 2069)

Leave to Withdraw

The Committee on Judiciary on, Bill, "An Act to Revise the Maine Juvenile Code and Related Statutes." (Emergency) (H. P. 1975) (L. D. 2060)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

The Committee on Labor on, Bill, "An Act to Establish Rates of Contribution in Proportion to Use Under the Unemployment Compensation Laws." (H. P. 1957) (L. D. 2039)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the Report Read and Accepted.

Which Reports were Read and Accepted in concurrence.

Ought to Pass

The Committee on Judiciary on, Bill, "An Act to Authorize the Supreme Judicial Court to Establish by Rule a Committee on Judicial Responsibility and Disability." (H. P. 1900) (L. D. 1957)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed.

The Committee on Local and County Government on, RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Waldo County for the Year of 1978. (Emergency) (H. P. 2120) (L. D. 2148)

Reported that the same Ought to Pass (pursuant to H. P. 1986)

Comes from the House, the Resolve Passed to be Engrossed.

The Committee on Local and County Government on, RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Knox County for the Year of 1978. (Emergency) (H. P. 2121) (L. D. 2149)

Comes from the House, the Resolve Passed to be Engrossed.

Which Reports were Read and Accepted in concurrence and the Bill and Resolve Read Once and Tomorrow Assigned for Second Reading.

Divided Report

The Majority of the Committee on Education on, Bill, "An Act to Provide Funding for Programs to Aid School Administrative Units to Identify and Provide Special Educational Programs for Gifted and Talented Children. (H. P. 1934) (L. D. 2005)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-1050).

Signed:

Senators:

KATZ of Kennebec
PIERCE of Kennebec
USHER of Cumberland

Representatives:

PLOURDE of Fort Kent
BAGLEY of Winthrop
LYNCH of Livermore Falls
FENLASON of Danforth

MITCHELL of Vassalboro
BIRT of East Millinocket
BEAULIEU of Portland
WYMAN of Pittsfield
CONNOLLY of Portland

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

Signed:

Representative:

LEWIS of Auburn

Comes from the House, the Bill Passed to be Engrossed as amended by Committee Amendment "A".

Which Reports were Read.

The Majority Report was Accepted. The Bill Read Once. Committee Amendment "A" Read and Adopted. This Bill, as amended, Tomorrow Assigned for Second Reading.

Second Readers

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

House

Bill, "An Act to Support Improvement of Air Passenger Services." (H. P. 2048) (L. D. 2110)
Which was Read a Second Time.

On Motion of Mr. Speers of Kennebec, Tabled until later in Today's Session.

Bill, "An Act to Revise the Brownville Junction Water District Charter." (Emergency) (H. P. 2115) (L. D. 2147)

RESOLUTION, Proposing an Amendment to the Constitution to Grant to the Supreme Judicial Court the Power to Remove a Judicial Officer from Office. (H. P. 1886) (L. D. 1943)

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

See action later today.

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Oxford County for the Year 1978. (Emergency) (H. P. 2105) (L. D. 2142)

Which was Read a Second Time.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President, I present Senate Amendment "A" to (H. P. 2105) (L. D. 2142), (S-479) and move its adoption.

The PRESIDENT: The Senator from Cumberland, Senator Jackson, now offers Senate Amendment "A" to (L. D. 2142) and moves its adoption.

Senate Amendment "A" (S-479) Read and Adopted. This Bill, as amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

Bill, "An Act to Extend the School Budget Adoption Date." (Emergency) (H. P. 2125) (L. D. 2151)

Which was Read a Second Time.

On Motion of Mr. Pierce of Kennebec, Tabled for One Legislative Day, pending Passage to be Engrossed.

House — As Amended

Bill, "An Act to Establish Standards to Protect Maine Consumers Against Unsafe and Improperly Manufactured Cellulose Fiber Insulation." (Emergency) (H. P. 1998) (L. D. 2079)

Bill, "An Act to Provide for the Sale of Electricity to Public Utilities." (H. P. 2036) (L. D. 2100)

Bill, "An Act to Provide for Limited Guardianship." (H. P. 1991) (L. D. 2064)

Which were Read a Second Time and Passed to be Engrossed, as amended, in concurrence.

Enactors

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

"An Act to Appropriate Funds for the York County Community College." (H. P. 1978) (L. D. 2073)

On Motion of Mr. Huber of Cumberland, placed on Special Appropriations Table,

"An Act to Clarify the Law Concerning the Posting of Bonds by Electric Companies with the Department of Environmental Protection for Certain Licenses or Permits." (H. P. 1925) (L. D. 1986)

"An Act to Simplify the Procedure for Submission of Certain Small Claims Against the State." (H. P. 1931) (L. D. 2002)

"An Act to Regulate Hazardous Materials and to Provide for a Reporting System to Hazardous Materials Emergencies." (H. P. 1958) (L. D. 2040)

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

RESOLVE, Authorizing the Commissioner of Educational and Cultural Services to Exchange Certain lands at Southern Maine Vocational-Technical Institute. (S. P. 660) (L. D. 2037)

Which was Finally Passed and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Emergency

RESOLVE, Authorizing Cumberland County to Pay Deficits from Unappropriated Surplus. (H. P. 1947) (L. D. 2026)

This being an emergency measure and having received the affirmative votes of 29 members of the Senate, was Finally Passed and having been signed by the President, was by the Secretary presented to the Governor for his approval.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I call the Senate's attention to, Resolution, Proposing an Amendment to the Constitution to Grant to the Supreme Judicial Court Powers to Remove a Judicial Officer from that Office (H. P. 1886) (L. D. 1943), and I would move that the Senate reconsider its action whereby this Resolution was Passed to be Engrossed.

The PRESIDENT: The Senator from Cumberland, Senator Conley, now moves that the Senate reconsider its action whereby (L. D. 1943) was Passed to be Engrossed.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I would ask the good Senator from Cumberland the purpose of his reconsideration motion.

The PRESIDENT: The Senator from Knox, Senator Collins, has posed a question through the Chair to the Senator from Cumberland. The Senator may answer if he so desires.

The Chair recognizes that Senator.

Mr. CONLEY: Mr. President, I am delighted to respond to the good Senator from Knox, Senator Collins.

I have seen this Resolution floating on its merry way and I personally have some misgivings about this and again I am not speaking as the Minority Floorleader, I am speaking as the Senator from District 9 and I notice that the Resolution calls its attention to the removal of Judges from the Judicial Court by the Supreme Court and I wonder who removes those from the Supreme Court? Is this action still follow under normal procedures through the impeachment proceedings through the House, and the trial in the Senate.

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

Mr. COLLINS: Mr. President, the Constitution presently provides two ways for removing a Judicial Officer. One is by impeachment and the other is by address of both Houses of the Legislature directed to the Chief Executive.

This matter has been under study for more than a year not only by the Committee on Judiciary but by the Judicial Council of the State, which includes Representatives from all the Courts and from the general public. It has also been under study by various citizen groups and

I think that it has been agreed by all of these groups that an additional method of removing a Judge for a good reason ought to be made a part of our system.

The members of the Supreme Judicial Court who would be authorized to have this power if this Amendment should be accepted by the people in referendum. If the member of the Supreme Judicial Court were being charged, obviously, he would have to disqualify himself from hearing about that issue. It would still be, of course, possible and I think quite likely, that if a member of our highest court were being charged with a serious offense, a dereliction of duty that in order to avoid any involvement of that particular court, the method might well be by impeachment or by address. Which would involve basically this Legislature as has always been the case. There has only been one impeachment of a Jurist in the State of Maine as we are aware of. That was in the year 1870. The Legislature did impeach one of our Judges.

It is felt that there should be greater attention given to the discipline and disability problems that might conceivably arise among our judiciary. We have been extremely fortunate that those problems have not arisen in the past 100 years of our history. But in order that there be better mechanisms available should the need arise, it is the recommendation of the Judiciary Committee that this additional method of removing a Judge be added to our Constitution. And I would hope, therefore, that we would not find it necessary to reconsider the matter although I would be happy to elaborate upon this discussion if anyone wishes.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Levine.

Mr. LEVINE: Mr. President and Members of the Senate: I too have some questions about this Resolution. There is in our Constitution written very carefully, a separation of powers between the Executive, Judiciary, and Legislative Branches of Government, and in the last few years I have noticed a shifting of those powers. Some of the Legislative powers are being taken slowly but surely, the powers are being eroded by the Executive Branch and some by the Judicial Branch in the last few years.

I think that we should all think about this very carefully as we look down the road. I have no great fear of jurist in the State of Maine. I think that the people we have on the Bench are very competent, but I just wonder whether we should be quite so quick to give away some of the powers that were granted us in the Constitution, and whether we should be quite so quick to in anyway break down that separation of powers between the Judiciary, Executive, and Legislative Branches. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: I do not find any problems with what the good Senator from Knox, Senator Collins stated, but I think when we start tampering with the Constitution, we should be doing it for a good reason. I think that there should be something before us that has shown cause for us to amend the Constitution to handle matters such as this in this particular way.

The good Senator from Kennebec, Senator Levine, has stated quite accurately that the transfer of Legislative duties again are being shifted away from us. And I personally do not like to see one system sort of fleecing itself. I think that the appointments made to the Bench, particularly in the last three years, have been considered to be pretty bona fide appointments to the Court. There may be some cases where people have felt that the candidates have not been at the highest level, but I think that overall there has been great balance. Myself as an individual and having spent sometime around the court system have known that appointments in the past may have been done on a political basis. But I think that as we become

more and more aware of the political system that whoever is the Chief Executive uses more restraint in the appointment of judges to the Bench.

And I just again have a very serious problem about passing this Amendment or sending it on to the voters. It appears to me that we could possibly be a problem with a Judge on a district level, and he is not performing his duties as such. Well I think that checks and balances are presently in the statutes. There is a seven year appointment. The Chief Executive again has the right to deny the reappointment of that particular individual if he fails to respond in the manner that one expects him to. And I think that the way that it has been running right now, things seem to be going pretty well. And I do not see any great need at all to again shift the balance of power from the Legislative Branch of Government back into the Judicial System itself. I think that we have Chief Judges on the district level, we have the so called different areas marked out under the Superior Court System now and I absolutely no one has brought any good reason to me for the purpose of this particular Amendment and I believe now when it does come before this Body, I have no intention of supporting it.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President and Members of the Senate: I would like to make three points in support of the Judiciary Committee's position regarding this proposal for a change in the Constitution.

The first one is that we had completed and distributed on December 6th a 15 page report regarding this proposal and also a companion proposal which is right now located in the other Body, and which would provide for a commission to review complaints about Judges. That is not at issue just at the moment, but the report I think would be of some interest to Members of the Senate who perhaps had forgotten about it or not had an opportunity to read it. It describes some of the efforts that went into the Judiciary Committee's Review, the Judicial Council's Review and the efforts that we did in trying to improve our Judicial System somewhat.

The second thing that I would like to point out is, that rather than reducing the powers of Legislature recently, it would be my strong conviction, Mr. President, that we have greatly increased the powers of the Legislature in the last few years. Particularly with the abolition of the Executive Council, we are now in a situation in which the Legislature, a Committee comprised of the House and the Senate in this case for Judges the Judiciary Committee is reviewing in person each one of the nominees made by the Governor for a seven year term and is reviewing each one of the reappointments. This I would suggest has led to a substantial increase in the powers of the Legislature as we are directly concerned with the appointments and I think it is a very good thing and will result in an improvement as perhaps it has already in the nominations that are finally confirmed.

The final thing I would like to point out in answer to the question or the observation of the good Senator from Cumberland, Senator Conley, about some specific reason why this piece of Legislation is necessary. I would suggest two things. First of all, it is wish to have workable Legislation on the books or in the Constitution, and a provision that will work smoothly and quickly when it is necessary. The second thing is that we have indeed, although it did not receive much publicity, received or had a situation in which the Judiciary was in a quandary. That occurred last year when Judge Edward Robinson, Justice of the Administrative Court had a stroke. There was a great question as to how he could possibly be removed from office, if at all. And that was a serious problem although it did not receive very

much publicity.

And I would finally point out that the proposed change in the Constitution does not require that the removal of Judicial Officers be done for malfeasance necessarily, but could be done in the case that I just mentioned of a very severe illness.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Levine.

Mr. LEVINE: Mr. President and Members of the Senate: I am a very simple man let me reiterate my position in the simplest of all manners. I think that what we have to ask each and everyone of ourselves have to ask ourselves today on this question is: Who shall watch the watchers?

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

Mr. COLLINS: Mr. President, I have a very simple and very clear answer to the question of the good Senator from Kennebec, Senator Levine. The answer to who will watch the watchers, is the Legislature. The Legislature has always had the power of impeachment. It still has it, it will have it, and it will continue to have that watch dog authority.

And I would disagree very strongly with the Senator from Kennebec, that we are eroding the Legislative power. The Legislative power remains just as it always has. I think that that question is raised from time to time. Who will monitor the monitors, who monitors the monitors, that monitor the monitors? We are getting into a lot of watch dog situations these days. And I think our Constitution very wisely provided that the Legislature is the ultimate authority in those matters. The Legislature can impeach a Chief Executive, they can impeach a Judge and it can remove one of its own members.

I have one other observation with respect to the point made by the Senator from Cumberland, Senator Conley, about the idea that he thinks that it is wrong for a body to police itself. I am sure that the good Senator will recall that the Legislature is the Judge of the qualifications of the members of its own Branch; the House of its Members and the Senate of its Members. Now that is what you call policing yourself. I wonder if the good Senator would like to remove that power from the Legislature.

It seems to me that we have a very fine system of separation of powers, of checks and balances and it seems to me that this clarification of the power of the Court to discipline or remove its own members for good reasons, one of which was mentioned by the Senator from Penobscot, Senator Curtis, is simply an extension of a sound policy within our Constitution. In some States it has been considered that the Courts inherently had a power to discipline and to remove Members of its Branch of the Government. In other States that power has not been clear and in Maine the issue has never been raised. So that we think that it is wise that we resolve the issue by placing in our Highest Court this clear authority to do this sort of thing when it is warranted.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Levine.

Mr. LEVINE: Might I pose a question to the good Senator from Knox, Senator Collins. If the Supreme Judicial Court should decide to remove a Judicial Officer, what then is the position of the Legislature on that move?

The PRESIDENT: The Senator from Kennebec, Senator Levine, has posed a question through the Chair to the Senator from Knox, Senator Collins may answer if he so desires.

Mr. COLLINS: The Legislature would not lose its power of impeachment. If the Court did remove a Judicial Officer, the Legislature would not again function until the Chief Executive appointed a new nominee for the office. Now in the case in 1870 the same Judge who was removed by impeachment of the Legislature was reappointed to Judicial Office by the

then Governor. In those days there was not the same confirmation power that the Legislature would have its opportunity, of course if that same person should be offered as a nominee again. If he was not offered as a nominee again, then the function of the Legislature on that particular person would not be involved.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate, I would just like to raise a more narrow question than has been raised in debate so far in regards to this Amendment as it is on our desk. Just one small aspect of it that raises some problem in my mind and that is, the Amendment, which is really very short, provides that the Supreme Judicial Court shall have the authority to remove from Office, Judicial Officer, under terms that are provided by statute or by rule of Court. Now that final order or rule by Court arises a little bit of trouble in my mind recognizing that this is a Constitutional Amendment and it would seem to me to be a preferable situation and one which would be clearer. If we removed or by Rule of Court from this Amendment provided that it would be on terms as provided by Statute, and that the Statute wanted to lay out some rule making powers for the Judiciary or to provide that they had some rule making powers to leave that to the Statutes to do so.

It would seem to me that this is rather an extraordinary granting of a rule making power defined in the Constitution. It is something that I no precedent for it comes immediately to my mind. I may be refreshed by some member of the Judiciary Committee, but it would seem to me to at least raise a question if the Legislature was to lay out one set of guidelines, and the Court were to lay out one which was contradictory. That sort of question about who was supreme in laying out these guidelines, it seems to me is furthered by the fact that this Constitutional recognition of the power of the Courts to in essence write the boundaries of its power. It would just seem to me to be preferable for us to vote to reconsider today and then table this so that we can amend this or remove this from the Constitution. As I say I have no problem with providing in the Statutes that will lay out the scope and type of authority that the Judicial Court will have to providing for the Court to have a rule making power but to provide it in this basis, by Statute or by Rule of Court, seems to me to invite a possible conflict and it seems to me to be rather extraordinary language to find in the Constitution.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate: I seriously hope that this does not become a party issue this morning, because it is not. The report from the Judiciary was very unanimous. The Judiciary Committee did consider strongly the problems that we had with the Honorable Justice Robinson. There has always been a legal hangup in the State of Maine, and that is whether the Supreme Court itself has in effect that power of removal as to whether the Justices are appointed from one Court to another by the Law Court and then of course you have that question, that one issue, what happens for example if somebody is extremely incompetent, if they become incompetent in a space of 24 hours because of some accident or what happens if they become senile over a space of a couple or three months or so.

The machinery for impeachment is very cumbersome. It requires an indictment in the house and a trial in the Senate. And in the case of this type, there has to be some source to remove and this would be apparently the Supreme court. We have had the argument in the past that probably somebody should have been removed, that they are incompetent. There are some other Bills coming out shortly on the fact finding as to whether Judges have done anything illegal or incompetent and what have you

and this group is going to be reporting to the Law Court. I think that basically the Law Court has control of its own people. We are not really just saying that there is going to be an interference of Legislative authority here, we are simply saying that the Court itself should be able to police its own members. And there is basically still only one Court in the State of Maine.

I would suggest at this time that the Members of the Senate pass this today. If there are issues that are giving people problems, ask Members of the Judiciary Committee or ask Members of the judiciary itself, and I think that you will be convinced that this is probably one of the better moves that this Legislature can make. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, would you state again that we have passed a Constitutional Amendment, I believe, a couple of years ago dealing with the incapacitation of the Chief Executive. Now it would seem to me that if we are going to deal in that province then I would think that is the way we would gear this particular Constitutional Amendment.

But I would agree with the good Senator from Penobscot, Senator Curtis, when he mentioned the Commission on reviewing the complaints on members of the Judiciary, I think that is a very progressive step and I concur with those thoughts. But again I think that my colleague from Portland, Senator Merrill, has clearly pointed out the real essence of enough of this entire Constitutional Amendment or by Rule of Court. That to me is extremely broad. There are so many times we have passed Legislation in these Chambers and we go home and we think that the implementation of the particular Bill is going to take effect only to find out that rules and regulations are established by the bureaucrats completely contrary to what we intended when we passed that particular Law. We have such a case that is going to be before us this morning. Now I just think that this is extremely broad and it goes too far as far as I am concerned and I would honestly request that the Senate take a real hard look at this thing. The Judiciary, the Supreme Court is not Supreme in that sense, now we probably already said that everybody did not have all their marbles up there at one time or another, in the past, clarify my statement, but there is nothing sacred about any group of people and I just think that when you put broad language such as that into the Constitution of this State, that we are really passing on a great deal of power. Certainly far more than our forefathers ever intended and again I am not trying to destroy this thing in any manner but I think that it needs a little bit more review.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins. Who having spoken three times now requests leave of the Senate to speak a fourth time. Is it the pleasure of the Senate? It is a vote. The Senator may proceed.

Mr. COLLINS: One final word. I think a decision on the point raised by the Senator from Cumberland, Senator Merrill, should rest a good deal on your evaluation of the separation of powers doctrine as between the Legislature and the Courts. In my professional lifetime, the relationship between the Legislature and the Courts has been very good. The Court traditionally has set up rules for the governance of the Courts and the ordering of Judges and various respects. But when the Courts were at all uncertain about rule making authority, they have come to the Legislature rather than have the matter become a matter of testing and confrontation. This happened in the case of the civil rules, the criminal rules, the code of evidence, and more recently the Committee of the Courts concerning Judicial Administration. In any of these cases the Legislature could have chosen to overrule the Court to substitute itself

for the Courts and write the rules, but in each of these cases, the Legislature respected the separation of powers idea and permitted the Courts to write the rules that were presented. The rules were brought to the Legislature, they were put in our Statute Books and I think that this is a tradition that has been very valuable in the State.

The inherent powers of the Court question has never had to be tested in Maine because each Branch has had a respect for the other Branch. I would like to see that tradition continued. I think that the idea that this may be done either by statute or by Rule is a good one, and if a rule should be established by the Courts that did not seem to work out well, I think that the ultimate power of the Legislature to do something about it is there and we do not need to fear erosion of our power.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I do not quarrel with the history as has been presented by the Chairman of the Judiciary Committee, the Senator from Knox, Senator Collins. And I know that in this Chamber all of us greatly respect the skills of that same Senator in dealing with matters of this kind. And I know that the Senate will be reluctant to disagree with him on any matter. But I honestly believe that we are inviting the possibility of some conflict down the road by what I think is extraordinary language to put into the Constitution.

As I want to make clear, I have no quarrel with the idea of delegating this power by statute. The power of the Court to make these rules within the confines of the Legislature lays out, but what good reason I ask this Chamber, is there to include this language in the Constitution which invites the possibility of a conflict. Now if the Supreme Court at some future date, at some time of trouble between the Branches that we cannot anticipate at the present time. Or to make rules that were broader in scope than the Legislature. What possible guidance does this language provide as to which power is supreme? It says by statute or by rule of the Court no order of preference is set up between the two. It invites a problem. Now hopefully it will never come, but it seems to me that when you delegate powers to separate branches, you recognize that there is a possibility of conflict between those branches. We have a system of Government that was designed to bring that conflict to the head if it is there, and it seems to me that it is better draftsmanship, it is more careful, to have this provide terms that are provided by statute. And then to have us when we pass the statute delegate what we think is the proper amount of authority to the Court in making these rules.

Under those conditions, there would be no question in the future as to what is meant in our Constitution, and I just think that we would do ourselves a service to give this some careful consideration today to vote to reconsider and to remove that language. I cannot see what would be lost by it. I have listened carefully to the debate made by the Senator from Penobscot, Senator Curtis, and the Chairman of the Judiciary, the Senator from Knox, Senator Collins. I have not heard a suggestion as to what would be lost by taking that approach. I think it is a much more traditional approach to the delegation of rule making, of quasi legislative powers to the Judicial Branch and I think that it is an approach that we should follow. We are writing the Constitution here, and I think that it is wise to air on the side of caution.

On Motion of Mr. Collins of Knox, Tabled for One Legislative Day, pending the Motion of the Senator from Cumberland, Senator Conley, that the Senate reconsider its action whereby this Resolution was Passed to be Engrossed.

(Off Record Remarks)

On Motion of Mr. Speers of Kennebec, Receded to the sound of the Bell.

(After Recess)

Senate called to order by the President.

(Off Record Remarks)

Orders of the Day

The President laid before the Senate: Bill, "An Act to Provide a \$250,000 Grant to the New England College of Osteopathic Medicine." (S. P. 667) (L. D. 2055)

Tabled — February 17, 1978 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

Which was Passed to be Engrossed.

Sent down for Concurrence.

The President laid before the Senate: House Report — from the Committee on Natural Resources — Bill, "An Act to Clarify Certain Definitions under the Subdivision Law and to Set Out the Intent of the Legislature in Enacting that Law." (H. P. 1935) (L. D. 2006) Ought to Pass as amended by Committee Amendment "A" (H-1032)

Tabled — February 22, 1978 by Senator Minkowsky of Androscoggin

Pending — Acceptance of Report

On Motion of Mr. Speers of Kennebec, Retabled for Two Legislative Days

The President laid before the Senate: Bill, "An Act to Encourage Early Resolution of Discrimination Complaints and to Clarify the Subpoena Power of the Maine Human Rights Commission." (S. P. 703) (L. D. 2150)

Tabled — February 22, 1978 by Senator Morrell of Cumberland

Pending — Passage to be Engrossed

On Motion of Mr. Morrell of Cumberland,

Retabled for One Legislative Day.

The President laid before the Senate: Bill, "An Act to Set Off a Portion of Land from the Town of Wales and Annex the Same to the Town of Sabattus." (H. P. 2085) (L. D. 2116)

Tabled — February 22, 1976 by Senator Minkowsky of Androscoggin

Pending — Enactment

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Mr. MINKOWSKY: Mr. President and Members of the Senate: There was a little controversy on this particular Bill yesterday and I just thought for the purpose of clarification I would like to be sure that the Senate understands that this particular transaction has been approved both by the Town of Sabattus and the Town of Wales, both my Senatorial District. And for the record I would like to read just a brief letter from each one of the towns before enactment of this particular Bill. This is addressed to a Ralph Blier of Sabattus, Maine. From the Town of Sabattus Board of Selectmen. The board of Selectmen of the Town of Sabattus approved moving the Sabattus — Wales Town line so that the entire trailer park would be in Sabattus instead of being split between the two towns. And Sincerely the Selectmen of the Town of Sabattus, Horace J. Atwood, Chairman, Edward Sturtavent, and Richard Bier. And also the Town of Wales was in concurrence with the move because this property was in the Town of Wales. The Selectmen of the Town of Wales did meet on November 22, 1977 with Mr. Ralph Blier of the same town and operator of a mobile home located partially in the town of Wales and partially in the Town of Sabattus. Subject to the meeting was response by the Wales selectmen to the proposal by Mr. Blier to have the town line be-

tween the two towns be moved so that it goes around the mobile home instead of through it. By doing so, the entire mobile park would be in the town of Sabattus. And this is signed by the Board of Selectmen of the Town of Wales.

The only other thing to resolve at the present time Mr. President and Members of the Senate, is the new line to be drawn which will be done this Spring after the snow is off the ground and on that particular basis Mr. President, I now move that this Bill enacted.

Which was Passed to be Enacted and having been signed by the President was by the Secretary presented to the Governor for his approval.

The President laid before the Senate: Bill, "An Act to Reconstruct the Fuel Adjustment Clause." (H. P. 2092) (L. D. 2137)

Tabled — February 22, 1978 by Senator Collins of Aroostook

Pending — Enactment

On Motion of Mr. Speers of Kennebec,

Retabled for One Legislative Day.

The President laid before the Senate: Bill, "An Act to Expand the Elderly Low Cost Drug Program." (Emergency) (H. P. 1912) (L. D. 1973)

Tabled — February 22, 1978 by Senator Conley of Cumberland

Pending — Passage to be Engrossed

On Motion of Mr. Speers of Kennebec,

Retabled for One Legislative Day.

The President laid before the Senate: Bill, "An Act to Establish and Apply a Policy on the Classification of Major Policy-influencing Positions Below the Head of State Department and Agencies." (H. P. 2051) (L. D. 2111)

Tabled — February 22, 1978 by Senator Katz of Kennebec

Pending — Enactment

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I offer I guess I move that the rules be suspended for reconsideration purposes.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that the Senate suspend its rules.

The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: I would oppose the Motion to suspend the rules and would ask for a Division.

The PRESIDENT: A Division has been requested.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: I withdraw my Motion.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now requests leave of the Senate to withdraw his Motion to suspend the rules. Is it the pleasure of the Senate to grant this leave? It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I very effectively muzzelled myself. It sure is nice to have friends.

This Bill is a result of two years of hard work by the Committee on State Government. Which has dealt with the perplexing question as to how do you go about giving better management tools and establish better accountability within the Department of State Government. And the Committee's answer and it has been a very, very perplexing problem I am sure, has been to give to the Commissioners who come in the right of appointment to officials within the Department at secondary and as I see it tertiary level. If a new Commissioner of the Department of Transportation comes in, he has every right under the philosophy of this Bill to appoint not only his deputy but certain other officers within his Department. He is going to be held accountable for his performance and he ought to have his own policy making troops to

do the job. And on that basis who could possibly oppose the enactment of this Bill?

In the Bill though is a section that pertains to education and this is a Department that I have lived with for many, many years. I have served with a number of Governors, I have served with three or four Commissioners, the numbers tend to fade and become blurred. And throughout all these years we have tried to do one thing, we have tried to keep education which is a unique responsibility of this State. Completely insulated from political influence. Or I should say the politicizing of education. It is something about which I feel very, very deeply. I ask myself if I were Governor of this State and I have got some pretty strong notions about where education should go. Some of which may be completely wrong, and I have the opportunity to appoint not only my Commissioner, but also although the Commissioner himself theoretically would appoint the others, lower down. I would have I would clue you a strong voice on who he selects to run the Department.

So there is the political influence right there. On the other hand there is the State Board of Education. The State Board of Education is made up of lay people. There are not any educators, they are lay people. They are appointed as a policy making Board for the State. And they are the foundation on which we build our approach to the State role in education. The State Board of Education on the one hand, the Legislature on the other. We set policy but the State Board of Education has no staff. When they need staff work they turn around to the Commissioner and on the Commissioners absence they turn around to lower level Deputy Commissioners. What happens if this policy making Board of Education has a difference of opinion with the Commissioner? Well it is a thought that perplexes me. Where do they turn? They turn to a Department which has an appointed Commissioner and under this Bill appointed Deputies, appointed Undersecretaries, or whatever they are called in this Bill.

I think that it is a step in the wrong direction. I am not thinking of any vague sense of the words of protecting jobs, I do not think that that is involved. I studiously avoided trying to find out who the men were involved in this. But if there is one thing that I deeply believe in and on which I base my whole approach to Education it is lay control of education. So here we are in the balance. On the one hand the Bill which purports to improve management and accountability but the other hand in my mind jeopardizes the lay traditional control of Education. And I do not know each of us will come down on one side or the other. But my feelings about the politicizing of education are so strong that I cannot support the Bill in its present form.

It occurs to me that when I suspended the rules or sought to, it would take a two-thirds vote to suspend the rules to even talk about amending the Bill. So instead I am going to ask you on the enactment to withhold your support of enactment in which case I will attempt then to suspend the rules and offer the Senate Amendment "B", (S-477). Which directs itself directly only to the Department of Education.

There is one other fact I will call to your attention in the Department of Education. There are certain commissions which are operated by people, Historic Preservation, Arts and Humanities, Museum, and others. These were set up by the Legislature specifically to involve lay people in policy setting positions. The Committee on State Government in order to improve administration makes change in that too. And that change makes me uneasy, because it turns over the selection of the various Directors to the Commissioner of Education with the approval of the majority of the lay boards. But this is a big distinction to me. Where is the loyalty? Do we really want the people of Maine to control this phase of our cultural activities or

do we want to be part of the bureaucracy? I guess again I come down on the side of the people of the state controlling these unique objectives. So I ask you to withhold your support of enactment and I request a Division.

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

Mr. COLLINS: Mr. President, the State Government Committee is aware that this Bill has had a long and stormy past. It was before the last Session, it has had two public hearings, and as I indicated some days ago, the Committee attempted to air, if at all on the side of caution and conservatism with respect to reclassification or unclassification.

The good Senator has pointed out that we have made some changes in the Department of Educational and Cultural Services. And that is true, but we have made fewer changes than the Bill requested. For example, the Director of Planning and Management was a Classified person. The Bill suggested that he be unclassified. The Committee did not agree. He remains classified. Likewise the Director of the Division of Federal Programs, and likewise the Director of Finance. Essentially we did not try to get at third level management people. We tried only to concern ourselves with deputy and associate commissioners. In order to provide for more accountability and better management. With respect to the State Librarian, the Director of the Arts and Humanities, and Historic Preservation we did retain the advice and approval of the respective boards.

While the Commissioner may nominate in these instances, he must have the approval of the citizen board, a majority of the citizen board. So we do not think that we have taken away from those boards the duties that they were originally charged with. We do not think that we are taking away from the citizen involvement. This Bill is in its enactment stage. It has been through the House and enacted there, I hope very much that you will enact it into here today.

The PRESIDENT: The pending question before the Senate is enactment of L. D. 2111. A Division has been requested.

The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Mr. CHAPMAN: Mr. President and Members of the Senate: I would just like to support the statements made by the Senator from Kennebec, Senator Katz. I think that he has raised some very important points here, it is important that we maintain a proper level of citizen involvement in our Governmental Process. And particularly, I feel that efficiency in Government certainly is important, it is vital, it is something that we should be constantly striving for. But we also must balance that with making sure that we have proper citizen input. After all, we are supposedly representing the will of the citizens and I think in education it is particularly important, and I feel it was particularly well brought out in recent referendum. I think the people made it all too clear that they wished to maintain as much citizen or local control in this important area. So I wish that the Senate would support the good Senator, Senator Katz on this issue.

The PRESIDENT: Is the Senate ready for the question?

Will all those Senators in favor of Enactment please rise in their places to be counted.

Will all those Senators opposed please rise in their places to be counted.

10 Senators having voted in the affirmative and 18 Senators in the negative, this Bill Fails of Enactment.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I move that the Senate suspend its rules for the purpose of reconsideration on our action whereby this Bill is Passed to be Engrossed.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that the Senate

suspend its rules.

The Chair recognizes the Senator from Kennebec, Senator Katz who the Chair understands and suggests that the Senate reconsider its action whereby this Bill Failed of Enactment.

Mr. KATZ: My very thought Mr. President.

The PRESIDENT: Is it the pleasure of the Senate?

It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: I now move suspension of the rules.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that the Senate suspend its rules. Is it the pleasure of the Senate?

Mr. KATZ: I move the Senate reconsider its action whereby it Passed this Bill to be Engrossed.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that the Senate reconsider its action whereby this Bill was passed to be Engrossed. Is it the pleasure of the Senate? It is a vote.

Mr. KATZ: Mr. President, I offer Senate Amendment "B" to L. D. 2111, S-477 and move its adoption.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now offers Senate Amendment "B" L. D. 2111 and moves its adoption. Senate Amendment "B" S-477 Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: I request a Roll Call on the Adoption of Senate Amendment "B".

The PRESIDENT: A Roll Call has been requested.

In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting.

Will all those Senators in favor of a Roll Call please rise in their places to be counted.

Obviously more than one-fifth having arisen, a Roll Call is ordered.

The pending question before the Senate is the Adoption of Senate Amendment "B" to (L. D. 2111). A yes vote will be in favor of Adoption.

A nay vote will be opposed.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEA — Carpenter, Chapman, Curtis, Farley, Greeley, Hewes, Huber, Katz, Lovell, Mangan, Martin, Minkowsky, Morrell, O'Leary, Pierce, Redmond, Speers, Trotzky, Usher, Wyman

NAY — Collins, D.; Collins, S.; Conley, Danton, Hichens, Jackson, Levine, McNally, Merrill, Pray, Snowe

ABSENT — Cummings,

20 Senators having voted in the affirmative and 11 Senators in the negative, and 1 Senator being absent, Senate Amendment "B" Adopted.

This Bill, as amended, Passed to be Engrossed in non-concurrence.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I move reconsideration of engrossment.

The PRESIDENT: The Senator from Kennebec, Senator Katz, now moves that the Senate reconsider its action whereby this Bill was Passed to be Engrossed.

Will all those Senators in favor of reconsideration please say yes.

Will all those opposed please say no.

A Viva Voce Vote being had,

The Motion to reconsider does not prevail. Sent down for concurrence.

The President laid before the Senate: Bill, "An Act Allocating Funds to Construct an Access Road to the Phase 2 Housing Project on the Penobscot Tribal Reservation." (H. P. 1916) (L. D. 1977)

Tabled — February 22, 1978 by Senator

Conley of Cumberland

Pending — Enactment

On Motion of Mr. Greeley of Waldo, placed on the Special Highway Appropriations Table.

The President laid before the Senate:

Bill, "An Act to Revise the Salaries of Certain County Officers." (H. P. 1942) (L. D. 2108)

Tabled — February 22, 1978 by Senator Conley of Cumberland

Pending — Adoption of Committee Amendment "A" as amended by Senate Amendment "A" (S-472), Thereto.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I offer Senate Amendment "C" to Committee Amendment "A" (S-475) and move its adoption.

The PRESIDENT: The Senator from Penobscot, Senator Pray, now offers Senate Amendment "C" to Committee Amendment "A" and moves its adoption.

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President, I oppose that Motion and would hope that the Senate would vote against the adoption of that Senate Amendment and I would ask for a Division when the vote is taken.

Mr. President and Members of the Senate, after long deliberation and several communications to various County Chairmen and County Delegations, we were able to adopt a salary package which was acceptable to all the 16 counties in the State. The majority of those Counties in their deliberations proceeded to present us with a signed document stating what they indicated, the salaries of their County Officers should be for the ensuing year under Senator Pray's Amendment. For Penobscot County, the County that he is directing his attention at rightly so as he represents them, but his Amendment calls for zero increase for the majority of the County Office Holders. Only in two instances, I believe, in his Amendment. One the Sheriff and, I guess that is the only one. Retroactive to October 24, 1977 will anybody recognize an increase in salary. His amendment goes one step further and puts into law the salaries for the Office Holders in 1979.

I think that alone should be a decision that should be made and not bound or binding by another Legislature and should be made at that time. I cannot speak for the entire Penobscot County Delegation. I am not a member of that Delegation but we have two members or three members in this Senate who represent Penobscot County and maybe they can elude to this just a little further.

The PRESIDENT: If the Senators will defer their motions for one moment, we will get the Amendment before the Body.

Senate Amendment "C" (S-475) Read.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President, I would like to pose a question through the Chair to the Chairman of the County and Local Government Committee, as to whether or not any other counties have adopted a concept such as this Amendment which gives pay raises to elected officials after January 1, 1979.

The PRESIDENT: The Senator from Penobscot, Senator Pray, has posed a question through the Chair.

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President, not to my knowledge have they in such a manner. They have, of course, when you look at the Committee Amendment provided for pay increases for this year and for ensuing years if the Legislature sees fit not to vote. But I do not believe that any of the counties have proceeded to take that course and put in the Statute an effective date of January 1, 1979 on the salaries.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I rise in support of the position that the Chairman of the Committee, Senator Jackson from Cumberland County.

And the reason is this, the majority of the Penobscot County Delegation in a vote decided to do the same thing that most of the other counties are doing and that is provide a pay raise based upon our understanding of the cost of living, a little over six percent for this year, and it would be retroactive same as most of the other counties as provided in the Committee Amendment, which is filing number (H-1030), retroactive to January 1st of this year. The Amendment which is proposed by my colleague from Penobscot County, Senator Pray, would, in my opinion, be opposed to the position that was taken by the majority of the delegation from our County.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate: I first of all point out to the Chairman of the Local and County Government under the Committee Amendment, Section 10, Piscataquis County has adopted with the elected officials will receive pay raises effective January one and after January 1 of 1979. That is the Section which follows Section 9 which I am attempting to amend.

As to the reference of the 6.8 as voted by the County Delegation, if you check the Committee Amendment, as the Committee has put out, that is a 5 percent raise and not a 6.8 percent raise as we had voted on in County Delegation. And also the budget had been voted on by the County Delegation, the reports have been signed in support of that and after the signatures were obtained on the County Budget, it was then voted at another meeting to change after we had already signed the acceptance of the budget.

Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting.

Will all those Senators in favor of a Roll Call, please rise in their places to be counted.

Obviously more than one-fifth having arisen, a Roll Call is ordered.

The PRESIDENT: The pending question before the Senate is Adoption of Senate Amendment "C" to Committee Amendment "A" to (L. D. 2108).

A yes vote will be in favor of Adoption.

A nay vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Conley, Danton, Farley, Levine, Martin, Merrill, Minkowsky, O'Leary, Pray, Usher

NAY — Carpenter, Chapman, Collins, D.; Collins, S.; Curtis, Greeley, Hewes, Hichens, Huber, Jackson, Katz, Lovell, Mangan, McNally, Morrell, Pierce, Redmond, Snowe, Speers, Trotzky, Wyman

ABSENT — Cummings

10 Senators having voted in the affirmative and 21 Senators in the negative, with 1 Senator being absent, Senate Amendment "C" Falls of Adoption.

Committee Amendment "A", as amended, Adopted in non-concurrence

This Bill, as amended, Passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The PRESIDENT: The Chair will direct the Senate's attention to;

Bill, "An Act to Support Improvement of Air Passenger Services." (H. P. 2048) (L. D. 2110),

Tabled earlier in the day by the Senator from Kennebec, Senator Speers, pending Passage to be Engrossed.

The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: Mr. President, my wounds are healing slightly as a result of my airplane crash yesterday. I left my crutches out in the other hall and I hope that today I will not be wounded again.

I think our debate yesterday rather clearly identified the pros and cons of the Bill. My position remains the same. I am opposed to it for three or four what I consider rather good reasons.

First of all, you may recall that I indicated that I was opposed to the principal of supporting with public funds, a private business venture.

Secondly, I indicated to you that while I was sympathetic to the needs of Aroostook County with respect to air transportation, I feel that this particular proposal were it enacted and were it followed to its logical conclusion, could not possibly prevail in any sort of a legitimate business condition.

The history of airlines in Aroostook County, feeder — regional type lines, interstate primarily, has been entirely disastrous. There have been no success stories whatsoever, and this is an attempt to provide for a service that would benefit a relatively small number of people using County Funds for that particular purpose.

I read to you yesterday I think two or three communications from governing boards of Legislative Bodies within the confines of Aroostook County, and I think that you must agree that there is no consensus within the County for this particular proposal, and it seems to me that if we were to enact this, we would be in a position whereby we would delegate to two or three County Commissioners the ability to establish such a subsidy for a flying service in Aroostook County. And I submit to you that I do not think that the people of Aroostook County were they individually polled would be supportive of this endeavor.

I had one additional letter that I received today that pertains to one of the service areas that I thought might be of some interest to you, and I would like to read it in part to you. And it says and I quote, "You are no doubt aware that Houlton was served for many years by Northeast Airlines. Northeast was finally successful in obtaining permission to discontinue service to Houlton due to the lack of passengers. More recently Lis-Air attempted to institute a regular air passenger service here as a fix base operator at the Houlton Airport, even with considerable help from the Town of Houlton you know what happened to them."

I think that today that we ought to recognize the economics of this particular proposal. I do not think that there is any way that this airline can succeed. It is doomed to failure, and we are asking people in Aroostook County to support a failure with tax dollars. Mr. President, I would ask for a Roll Call on engrossment and I will hope that you will vote against engrossment.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President and Members of the Senate: I am from York County and this is an Aroostook County Bill.

There is only one thing that really bothers me, is the fact that in yesterday's debate it was mentioned out of the Aroostook County Delegation which numbers 15, 14 of them voted to approve this in their budget. Now I am not one who wants to take and stick his nose in Aroostook County politics. The good Lord knows I have all I can do to take care of the politics in York County. But it is hard for me to take and vote against 14 members of the Delegation that voted to subsidize this air service and this is the position I am in as a Senator from York County.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: All I can say is, if we adopt the attitude of my good

friend, the Senator from Aroostook, Senator Collins. I am glad that none of us was around when Edison was trying to invent the Light-bulb, or Alexander Graham Bell was trying to invent the Telephone. They tried a few times before they were successful.

I would just like to answer a couple of the points raised by the Senator from Aroostook, Senator Collins. The First issue being polling of the residents. I submit to you the same as I did yesterday, that I do not believe that there is one item in one County Budget in the State of Maine that could be supported, would be supported probably if you polled the residents of all the counties, because of the nature of County Government and County Budgets the issues tend to centralize in particular areas within the county, and particular programs that benefit or help a particular area, so I do not think that that is really a valid point.

I want to point out one question that was raised to me after the debate yesterday. I want to make sure that it is clear. What we are proposing to do is to have an airline. There is no airline, I emphasize, no airline and no person, no organization, presently, that has an upper-hand or has a lock on this commuter service. What we propose to do is to put this out to a bid. A bidding procedure, which I assure you will be pure, so that if Bar Harbor Airlines or any of the other presently operating airlines are interested, they can come in and bid for the franchise and I am sure given their assets that they probably could underbid anybody starting their own new airlines. So you know if you think this is going to hurt an existing airline, I would submit to you that it would not.

I certainly would like to see the arguments of the good Senator from Aroostook, Senator Collins, mortally wounded this morning so that he no longer would have to use crutches. And I hope that we can support the overwhelming majority of the Aroostook County Delegation, the unanimous Committee Report, I emphasize again, from the Committee on State and County Government and send this Bill flying on its way. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Morrell.

Mr. MORRELL: Mr. President and Members of the Senate: I would like to remind my friend from Aroostook, Senator Carpenter, that neither Mr. Bell nor Mr. Edison asked for Government help, and were successful in spite of their lack of need in that regard.

I guess my feeling is that the question here is to whether or not we want to expand the area of service to be supported by County government. My personal feeling is that there are areas now in which they are involved through our help where perhaps they should not be. And if we are prepared in this one instance in this County to expand by permissive Legislation, if it is that, then I think that we should bare in mind that it is quite likely that other counties may put themselves in the same posture, for although Aroostook is by far the larger one geographically there are other areas of the State where communities are equally remote from flying facilities.

And for myself, I guess I have some real qualms about the capacity of county government not only to finance but to administratively handle more than it is presently doing. I would hope that we would not support this Bill.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: unlike my good friend from Cumberland, Senator Morrell, I really do not like to get engaged in Aroostook County politics but I should make the Senate aware that I believe Senator Morrell is still looking for another opportunity to succeed from Cumberland County and this further strengthens his argument to succeed to Aroostook since Sagadahoc rejected them when he gave support to keeping Loring Air Force Base open.

I do not think that the Legislature has always acted with the greatest of wisdom. I recall back several years ago, in fact quite a few years ago, when the City of Portland thought they had a bunch of farmers on the end of a string and they tried to sell them the Portland Airport for a buck and the State rejected it. It has become one of the greatest money producers for the City of Portland as far as revenues received than any other operation we have. And there is another saying that we have in Portland we sort or chuckle about is that, we tried to sell you the million dollar bridge extending between Portland and South Portland which is in total disarray and the state purchased it, and you have been stuck with the bill ever since.

So I do not believe that we really use the smartest of wisdom when it comes to negotiating. There is an old saying that I recall that I have heard the former Manager of the City of Portland say quite frequently and that is, that traffic generates traffic. And I have seen that happen so many times in the course of certain items that we have passed in the local municipalities that we thought were going to be dead beats only to find that a revival of some kind has taken place and that industry begins to move. Now this may be just one little small step in that direction in this part of Aroostook County that is going to help. And again I would only, and I like to keep my, I am not really sure as to whether I am acceptable above the International Date Line in Aroostook County. I think I get safe passage as far as Houlton. But ever since I made some remarks dealing with a Dicky Lincoln Hydroelectric Project up there I am not too aware of how my reception would be in that area, but on the contrary I think that it makes good sense and I certainly think that if 14 members of the Delegation can support this project for Aroostook County then I think what is good for Aroostook County is good for the entire State and I would hope that the Senate would not vote to reject this Bill.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Morrell.

Mr. MORRELL: My very good friend, my associate from Cumberland, Senator Conley, continues to embarrass me by his long memory. Referring to the short courtship that Brunswick had with Sagadahoc. And I just like to say that although we would be reluctant to form any kind of permanent alliance with Aroostook County, if there is a County that is somewhat closer to Brunswick who might be receptive to joining with us I would appreciate it if you would see me after the Session.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Mr. MARTIN: Mr. President and Members of the Senate: I am a little disturbed this afternoon because I honestly believe that there is a little confusion here between L. D. 2110 and the Aroostook County Budget process.

You have been told here time and time again that the members of the Aroostook Delegation have approved this sum of \$17,000.00 by a 14 to 1 vote. No way would I ever consider trying to over turn a decision like that for any other county. The statement that was just made previously, as a matter of fact about five minutes ago, by the Chairman of the Local and County Government Committee, Senator Jackson, in which he said that County Delegation members determined their own budget and Members of this Senate I would hope that this would apply here in this case.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting.

Will all those Senators in favor of a Roll Call please rise in their places to be counted.

Obviously more than one-fifth having arisen, a Roll Call is ordered.

The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: I request permission to pair my vote with the Senator from Penobscot, Senator Cummings, if she were here she would be voting against engrossment and I would be voting for engrossment.

The Chair recognizes the Senator from Cumberland, Senator Jackson.

Mr. JACKSON: Mr. President and Members of the Senate: As I stated earlier that we are all aware of the Local and County Government signed this Bill out of Committee in unanimous Ought to Pass.

I also think that in the hearings that we are bringing the history of this up-to-date, the Bill was introduced January 27th and the first hearing was February 7th. Due to the large snow storm the attendance was very small so the hearing was extended to the 14th of February or there abouts. At that time we had a few people there in attendance the majority of them were Legislators. And as indicated by the good Senator from Aroostook, Senator Carpenter, and also Senator Martin, that there was only one in opposition. And that member happened to be a member of the Legislative Delegation from Aroostook County.

Since we signed this Bill out of the Local County Government Committee I have had numerous letters or correspondence from various cities or communities of Aroostook County. I often wonder how well informed these municipal officials were of exactly what this piece of Legislation entails.

I supported the measure yesterday and I also feel that the good Senator from Aroostook County, Senator Collins, has brought out some valid points in his debate. Those valid points in his debate plus the numerous correspondence, pieces of correspondence that I have received from the municipal officials of Aroostook County because of this, I am going to change my support today from being in favor of the proposed Legislation to being in opposition. I find it rather difficult to do this as a Committee Chairman and a signer of the Majority Report but I feel that with the correspondence that has been coming in outweighs it about three to one and the points that Senator Collins alluded to the principal, the benefits, and the experience ration that has been experienced in Aroostook County with commercial or commuter flying, commuter airlines that maybe we should reconsider our action of yesterday.

I also wonder how far \$17,000.00 is going to go in trying to interest some person or some group or some service to provide airline service of this type to Aroostook County. I do not think that \$17,000.00 will buy very much gentlemen when a plane that you are talking about is going to cost between two and three hundred thousand dollars and possibly to keep that plane in the air is going to cost another \$2000,000.00 per year.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: I too signed the unanimous Ought to Pass Report very reluctantly, because I questioned in Committee as to what this would cost throughout the State, but as no one else would sign along with me I did not want a split report and went along with it convinced with that 14 to 1 decision we have heard so much about. Since that time like the good Senator from Cumberland, I have had a lot of response from people up in Aroostook who do not go along with that 14 to 1 decision, and feel that it was given before they had a chance to have their input into it, so I too would change my vote.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: I am very well aware of the pressure and the correspondence, the letters that have been generated. I would not consider seriously for one moment standing on the floor of this Body and indicat-

ing anything that I felt to be not completely true. I know that there has been some very inflated figures thrown around as to the money involved in this particular proposal. I also know in talking to some of the town official municipal officials that have sent letters in opposition to this Bill. They were a bit confused as to exactly what the proposal was. The proposal was discussed not only at our budget deliberations down here but also at the public hearings in Aroostook County. After two public hearings within the Legislature here we still had the one opponent, some one opponent, did not see municipal officials clamoring, writing letters. You did see the letters begin to generate and I would again just as you to look at the map as to where they are coming from.

The good Senator from Aroostook, Senator Collins, mentioned when he first arose a few minutes ago there were two or three good reasons why this Bill should be killed. I submit that the two or three good reasons are in essence are named Presque Isle, Caribou, and a few others that I could mention. I have to smile a little bit, I thought we were discussing an airplane Bill and after listening to the comments of the last two speakers I am not sure that we are not discussing a ship Bill and sinking ship.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: At the rate we are going, it will be a unanimous Ought not to Pass Report. In answer to the good words of the good Senator from Aroostook, it is like rats deserting a sinking ship.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: I would like to respond to just one of the specific arguments that has been brought up here today and that is this overall question of propriety of any branch of government, State or County, contracting with private business in any way.

It seems to me that there is certainly ample precedent, historic and otherwise, for the Government to engage in joint enterprise with private business. I cannot honestly believe that the Senate objects to that idea and principle. Railroads were built across this country because they were heavily subsidized by a Republican Congress following the Civil War. I cannot believe that anybody looking back on that certainly any member of this Republican Senate would see that as a mistake on the part of the United States Government. I think that it has proof to be a great investment, and we continue today at all levels of Government to contract with private industry and I do not think that any of the Republican Senators here objection to that in principle. We oftentimes at the town level, the county level, and the State level, contract to have private people plow the roads. Is that something that we are going to go on record as objecting to. Some municipalities contract with private bus lines to provide bus transportation if they think that is the cheapest thing to do. Is that something that this Senate objects to? As a matter of fact in the last Legislature, the 107th, we provided the power to the State Government, the Department of Transportation, to subsidize railroad spurs if that was necessary to keep those open and as I understand the situation with Farmington that is presently being discussed. Is that something that the Senate objects to? I do not think that this Senate rejects the notion under the proper circumstances or the bidding process of the Government working with the private sector to provide services and certainly the services of transportation are some of the services that we have the longest record of history in contracting for. So as to the general principle that has been raised here like a red flag, I think there is ample precedent for it. And as a matter of fact, in many instances I think that is the best way for Government to provide services. I am not wed as a matter of philosophy to either the complete public or the joint approach. And I would

hope that the Members of this Senate were not either.

I think that what we have there then, is a question of the propriety of letting the County of Aroostook try to provide these services if they want to and there has been a great deal of discussion here which really seems to me to undermine the confidence or would undermine the confidence that we in the Senate have in the elected officials of County Government of Aroostook County. Now if that is the position that the Senate wishes to take that is well and good, but I have confidence in these local officials to reflect the public will. And as to the nose under the tent argument, I would assume that no county would take up an endeavor of this kind unless it proved to be successful in Aroostook. If it did prove to be successful then we might have a model that we should follow in other instances.

Certainly as the Senator from Aroostook, Senator Carpenter pointed out yesterday, the availability of air traffic and regular air service to an area is a very important element in that area being able to grow financially, and certainly as everyone recognizes there is a need for us to allow Aroostook to do whatever they can to bring about that sort of growth.

And I would hope that the Senate in its great tradition of remaining steadfast to its precious views and not changing its mind in mid stream would act as it acted yesterday and allow this Bill to go on, and allow the people of Aroostook through their elected people to decide the fate of air service in Aroostook County.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: To go along in the same vein about what the counties subsidize, I would like to remind the Members of this Body, that in Oxford County, the County itself built the Airport in the Town of Fryeburg. Now 60 percent of the tax funds in Oxford County are generated right there in the Town of Rumford and it is 70 miles from Rumford to Fryeburg but our citizens subsidize that. Now we built an airport in the Town of Oxford, the County has, and we subsidize that to the tune of about \$15,000.00 a year, and it is a good thing it has brought a lot of industry into the Town of Oxford and a lot of jobs. And I think that an air service into Aroostook County in addition to what they already have would be economically good for the County.

And speaking of how we subsidize other things, I have to look at our County Budget and remember that we subsidize a mental retarded school, we subsidize a home for mentally retarded adults, we subsidize a Saco River Corridor Commission, we subsidize the extension service, we subsidize community action programs, and this morning the good Chairman of our Committee on Local and County Government, the Senator from Cumberland, Senator Jackson, who I have every respect for, in contradiction to the majority of our County Legislative Delegation submitted an Amendment this morning to subsidize this tri-county family planning. So I see nothing wrong with subsidizing an air service to Aroostook County.

The PRESIDENT: Is the Senate ready for the Question?

The Chair recognizes the Senator from York, Senator Lovell.

Mr. LOVELL: Mr. President and Ladies and Gentlemen of the Senate: I hesitate to speak on this Bill, but I have a meeting of my Committee on Human Resources at 1:00 o'clock and I would like to see the vote. But at \$17,000.00 that the people of Aroostook County are not going to buy any airplanes or start any air route. You need more planning and more time, so I will go along with Senator Collins on indefinitely postponing this.

The PRESIDENT: The pending question before the Senate is Engrossment of L. D. 2110.

A yes vote will be in favor of Passage to be Engrossed.

A nay vote will be opposed.

The Senator from Penobscot Senator Pray has asked leave of the Senate to pair his vote with the Senator from Penobscot, Senator Cummings. Senator Pray would be voting yea and the Senator from Penobscot, Senator Cummings were she here, would vote nay. Is it the pleasure of the Senate to grant this Leave? It is a vote.

The Doorkeepers will secure the Chamber. The Secretary will call the Roll.

ROLL CALL

YEA — Carpenter, Conley, Danton, Farley, Levine, Mangan, Martin, Merrill, Minkowsky, O'Leary, Speers, Usher, Wyman

NAY — Chapman, Collins, D.; Collins, S.; Curtis, Hewes, Hichens, Huber, Jackson, Lovell, McNally, Morrell, Pierce, Redmond, Snowe, Trotzky

ABSENT — Greeley, Katz

13 Senators having voted in the affirmative and 15 Senators in the negative, with 2 Senators being absent, and 2 Senators pairing their votes, this Bill Fails of Engrossment.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Morrell.

Mr. MORRELL: Mr. President, having voted on the prevailing side, I now ask the Senate to reconsider its action and hope that you vote against me.

The PRESIDENT: The Senator from Cumberland, Senator Morrell, now moves that the Senate reconsider its action whereby it failed to send this Bill for Engrossment.

Will all those Senators in favor of reconsideration please say yes.

Will all those opposed please say no.

A Viva-Voce Vote being had,

The Motion to reconsider does not prevail.

Sent down for concurrence.

Out of order and under suspension of the rules, the Senate voted to consider the following:

Paper from the House

Joint Order

An Expression of Legislative Sentiment recognizing that: David Driskell, well-known painter, writer and narrator of the film "Hidden Heritage" and leading authority on Black Art in America is appearing at Westbrook College on February 24, 1978 to help introduce art exhibits in honor of Black History month, (H. P. 2130)

Comes from the House, Read and Passed.

Which was Read and Passed in concurrence.

Communication

Office of the Governor

Honorable Joseph Sewall, President of the Senate

and

Honorable John Martin, Speaker of the House Dear Joe and John:

I have today renominated John V. Keaney of Portland to serve as Chairman of the Industrial Accident Commission.

Pursuant to Maine State Revised Statutes Annotated, Title 39, Section 91, this nomination will require confirmation by the Joint Standing Committee on the Judiciary and confirmation by the Maine Senate.

Thank you for your assistance.

Sincerely,

Signed:

JAMES B. LONGLEY
Governor
(S. P. 709)

Which was Read and Referred to the Committee on Judiciary.

Sent down for concurrence.

Paper from the House

Study Report — Natural Resources

The Committee on Natural Resources to which was referred the Study relative to Air-mobility pursuant to Resolves, 1977, c. 49 have had the same under consideration and ask

leave to submit its findings and to report that the accompanying bill, "An Act to Amend the Statutes Relating to Airmobiles" (H. P. 2126) (L. D. 2153) be referred to this Committee for public hearing and printed pursuant to Joint Rule 17.

Comes from the House, the Report Read and Accepted and the Bill referred to the Committee on Natural Resources. Which Report was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I am growing everyday troubled by the fact that there are still bills being introduced into this session. I would hope that some of my fellow Senators would start considering a policy of simply voting against any that are introduced after this weekly no matter what their merit. When we are limited by the number of days, we are using up those days, and yet we continue to have these Bills, which I assume have been around for a long time, being introduced, and I would hope that the Leadership would do everything that it could do to get all Bills before this Body before the end of this week. Otherwise, I would hope that the members of the Senate would take matters in their own hands and vote against any Bills introduced.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President and Members of the Senate: I question as to whether or not it is necessary that we send this Bill to a public hearing. I remember in the 107th we had a Bill dealing with airmobiles and we also had one in the last Session in the study order at that time, and I believe that the two public hearings last year is basically what generated this study and would question as to whether or not we should just give this Bill its first reading at this time instead of sending it to another public hearing.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pray.

Mr. PRAY: Mr. President: I make that in the form of a Motion.

The PRESIDENT: The Chair thanks the Senator. Is it now the pleasure of the Senate to accept the study report from the Committee on Natural Resources and the Bill therein referred to, under suspension of the rules, be given its first reading at this time? It is a vote.

The Bill Read Once, Tomorrow Assigned for Second Reading.

The PRESIDENT: The Chair would ask the Assistant Sergeant-at-Arms to escort the Senator from Kennebec, Senator Speers to the rostrum so he may preside over the Session for the remainder of the afternoon.

Thereupon, the Assistant Sergeant-at-Arms escorted Senator Speers to the rostrum where he assumed the duties of President Pro Tem and President Sewall retired from the Senate Chamber.

On Motion of Mr. Huber of Cumberland,
Adjourned until 12:00 noon, Friday,
February 24, 1978.