

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-Fourth Legislature

OF THE

STATE OF MAINE

1929

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

SENATE

Wednesday, February 6, 1929

Senate called to order by the President pro tempore.

Prayer by the Rev. Stanley Manning of Augusta.

Journal of previous session read and approved.

The PRESIDENT pro tem: The Chair announces with sorrow the death of the Hon. James Morrison, who is the father of the President of the Senate.

Mr. Weatherbee of Penobscot, out of order and under suspension of the rules, presented the following order:

Ordered, that the Secretary of the Senate send by telegraph the following message of sympathy to Hon. J. Blaine Morrison, President of the Senate of the eighty-fourth Legislature.

"The Senate of the eighty-fourth Legislature learning of your great loss expresses to you its heartfelt sympathy in this hour of your great sorrow."

The order was unanimously passed by a rising vote.

Papers from the House disposed of in concurrence.

From the House:

An act relating to the Western Washington Municipal Court (H. P. 643)

In the House, referred to the Committee on Judiciary.

In the Senate:

Mr. MURCHIE of Washington: Mr. President, I move that this be referred to the Committee on Salaries and Fees in non-concurrence; and in explanation I may say that the only substantial change provided in the bill is an increase in the salary of the judge, which has been before the Washington County delegation. The motion prevailed.

House Bills in First Reading

An act relating to the annual payments to the Kennebec Law Library. (H. D. 27)

An act relative to the bringing of actions for injuries causing immediate death (H. D. 16)

The following bills, resolves,

petitions, etc. were received and on recommendation by the committee on reference of bills were referred to the following committees:

Appropriation and Financial Affairs

By Mrs. Carter of Androscoggin: Resolve in favor of the G. A. R. Cemetery Association of Lewiston (S. P. 260)

By Mr. Martin of Kennebec: Resolve in favor of the Augusta General Hospital, at Augusta. (S. P. 261)

By Mr. Minott of Cumberland: Resolve to provide for a memorial to Harold Andrews, the first Maine man to lose his life in the World War. (S. P. 262)

(500 copies ordered printed)
Sent down for concurrence.

Banks and Banking

By Mr. Oakes of Cumberland: An act to incorporate the Monroe Loan Society of Maine. (S. P. 263)
Sent down for concurrence.

Claims

By Mr. Campbell of Washington: Resolve in favor of the town of Danforth, for reimbursement. (S. P. 264)

By Mr. Carlton of Sagadahoc: Resolve in favor of D. B. Cornish to reimburse him for road construction in Phippsburg, Maine. (S. P. 265)

By Mr. Leland of Piscataquis: Resolve in favor of E. F. Drew compensating him for damages. (S. P. 266)

By Mr. Nickerson of Waldo: Resolve in favor of Rodney Jackson of Waldo for damages. (S. P. 267)

By the same Senator: Resolve in favor of Emerson J. Hills and Alice S. Hills of Belmont for damages. (S. P. 268)

(500 copies of each ordered printed)

Sent down for concurrence.

Inland Fisheries and Game

By Mr. Douglas of Hancock: An act to regulate the taking of salmon in St. Georges Lake in the town of Liberty, in the county of Waldo. (S. P. 269)

By the same Senator: An act to remove closed season on white perch in Lake Webb, in Franklin County. (S. P. 270)

By the same Senator: Resolve appropriating money to aid in the

screening of the outlet of Lake Webb, in Franklin County. (S. P. 271)

By Mr. Dunbar of Hancock: An act relating to hunting with dogs in Verona. (S. P. 272)

By Mr. Greenleaf of Androscoggin: remonstrance of Lewis H. Haskell and 13 others (S. P. 273); remonstrance of Asa B. Wells and 20 others (S. P. 274) against the closing of the Swift River tributaries to fishing.

By Mr. Murchie of Washington: Resolve in favor of a fish screen being placed at the outlet of Eastern Grand Lake Stream, at Forest City Plantation, Washington County. (S. P. 275)

By Mr. Nickerson of Waldo: petition to reduce daily limit on salmon in Lake St. George. (S. P. 276)

By Mr. Oakes of Cumberland: An act to close the tributaries of Duck Pond. (S. P. 277)

By Mr. Bond of Lincoln: An act relating to the Lincoln County Game Preserve. (S. P. 278)

(500 copies ordered printed)

By Mr. Carlton of Sagadahoc: An act to prohibit the trapping of fur-bearing animals in the county of Sagadahoc, for a period of four years. (S. P. 279)

(500 copies ordered printed)

By Mr. Greenleaf of Androscoggin: An act to prohibit the trapping of foxes in Androscoggin County for five years. (S. P. 280)

(500 copies ordered printed)

By Mr. Martin of Kennebec: An act to amend section 14, of chapter 219 of the public laws of 1917, relating to guides. (S. P. 281)

(500 copies ordered printed)

By Mr. Oakes of Cumberland: An act to prohibit the transportation of live wild hares or rabbits beyond the limits of this State. (S. P. 282)

(500 copies ordered printed)

By the same Senator: An act to prohibit the taking of large smelts with a dip-net in any of the tributaries to Sebago Lake. (S. P. 283)

(500 copies ordered printed)

By the same Senator: An act to regulate the hunting and trapping of fur-bearing animals. (S. P. 284)

(500 copies ordered printed)

By the same Senator: An act to establish the legal length limit of square-tailed trout and land-locked salmon in Cumberland County. (S. P. 285)

(500 copies ordered printed)

By Mr. Weeks of Somerset: An act relating to the hunting of foxes. (S. P. 286)

(500 copies ordered printed)

Sent down for concurrence.

Interior Waters

By Mr. Boulter of York: An act to authorize the erection of a dam across the East Branch of Spruce Creek, sometimes called Barter's Creek, in the town of Kittery. (S. P. 287)

By Mr. Martin of Kennebec: An act to change the name of Ward Pond in the town of Sidney, Maine to Ward Lake. (S. P. 288)

By the same Senator: An act to amend and extend the charter of Kennebec Reservoir Company, said charter being Chapter 113 of the Private and Special Acts of 1927. (S. P. 289)

(500 copies of each ordered printed)

Sent down for concurrence.

Judiciary

By Mr. Greenleaf of Androscoggin: Petition in favor of bill "An Act to register and license barbers and create a Board of Barber Examiners." (S. P. 290)

By Mr. Mitchell of Aroostook: Twelve petitions in favor of the same. (Senate Papers Nos. 291 to 302 inclusive).

By Mr. Littlefield of York: An act relating to the registration of non-resident trucks. (S. P. 303)

(500 copies ordered printed)

By Mr. Minott of Cumberland: An act additional to Chapter 242 of the Private and Special Laws of 1895, entitled "An Act to incorporate the city of South Portland." (S. P. 304)

(500 copies ordered printed)

By Mr. Oakes of Cumberland: An act to create a circuit court. (S. P. 305)

(1000 copies ordered printed)

By the same Senator: An act fixing trial terms of the circuit court. (S. P. 306)

(1000 copies ordered printed)

By the same Senator: An act to create the Port of Portland Authority. (S. P. 307)

(500 copies ordered printed)

By Mr. Page of Somerset: An

act to incorporate the Maine Foundation. (S. P. 308)

(500 copies ordered printed)
Sent down for concurrence.

Legal Affairs

By Mr. Carlton of Sagadahoc: An act to acquire the property of the Arrowsic Bridge. (S. P. 309)

By Mr. Minott of Cumberland: An act authorizing the trustees of the Charity Fund of Hiram Lodge to file its certificate of incorporation in the office of the Secretary of State. (S. P. 310)

By Mr. Carlton of Sagadahoc: An act to permit cities and towns to lay out bridle paths and bridle trails. (S. P. 311)

(500 copies ordered printed)

By Mr. Noyes of Kennebec: An act relating to the charter of the city of Waterville. (S. P. 312)

(500 copies ordered printed)

Sent down for concurrence.

Library

By Mr. Bragdon of Aroostook: Resolve for the purchase of a monograph on the geology, conchology and botany of Maine. (S. P. 313)

Sent down for concurrence.

Military Affairs

By Mr. Slocum of Cumberland: An act relating to application for soldiers bonus. (S. P. 314)

(500 copies ordered printed)

Sent down for concurrence.

Pensions

By Mr. Littlefield of York: Resolve providing for an increase in state pension for Annie M. Welch of Kennebunk. (S. P. 315)

By Mr. Martin of Kennebec: Resolve providing for an increase in state pension for Perley A. Haskell of Augusta. (S. P. 316)

By the same Senator: Resolve in favor of Rena Cooley. (S. P. 317)

By the same Senator: Resolve providing for a state pension for Eva J. Rundlette of Augusta. (S. P. 318)

By Mr. Page of Somerset: Resolve in favor of Lizzie W. Healey, for a teacher's pension. (S. P. 319)

Sent down for concurrence.

Public Buildings and Grounds

By Mr. Martin of Kennebec: Resolve in favor of the State Park Commissioner. (S. P. 320)

Sent down for concurrence.

Public Utilities

By Mr. Slocum of Cumberland: An act relating to the Portland Water District. (S. P. 321)

By Mr. Weatherbee of Penobscot: An act relating to the location of ways crossing railroad tracks and station grounds. (S. P. 322)

(500 copies of each ordered printed)

Sent down for concurrence.

Public Utilities, Judiciary and Interior Waters

By Mr. Oakes of Cumberland: An act to create a commission to investigate and to negotiate a compact, regarding water power and electricity in New England. (S. P. 323)

(500 copies ordered printed)

Sent down for concurrence.

Salaries and Fees

By Mr. Dwinal of Knox: An act relating to the salary of register of deeds for the county of Knox. (S. P. 324)

By Mr. Martin of Kennebec: An act relating to the compensation of county commissioners for Kennebec County. (S. P. 325)

By Mr. Weatherbee of Penobscot: An act to authorize clerk hire in the clerk of courts office in Penobscot County. (S. P. 326)

Sent down for concurrence.

Sea and Shore Fisheries

By Mr. Littlefield of York: An act relating to the digging of clams in the town of Wells. (S. P. 327)

Sent down for concurrence.

State School for Boys, State School for Girls and State Reformatories

Mr. Harriman of Kennebec: Resolve for the construction and equipment of an industrial building at the State Reformatory for Men. (S. P. 327)

By the same Senator: Resolve in favor of the State Reformatory for Men. (S. P. 328)

(500 Copies of each ordered printed)

Sent down for concurrence.

Ways and Bridges

By Mr. Bond of Lincoln: An Act to aid in the enforcement of statutes governing the use of vehicles on closed or restricted ways and bridges. (S. P. 329)

By the same Senator: Resolve in favor of the town of Dresden. (S. P. 330)

By Mrs. Carter of Androscoggin: Resolve to improve the road leading from the State highway in Fairfield to the State Sanatorium. (S. P. 331)

By Mr. Dunbar of Hancock: Resolve in favor of the town of Orland to aid in repairing road. (S. P. 332)

By Mr. Martin of Kennebec: Resolve in favor of the town of Chelsea. (S. P. 333)

By the same Senator: Resolve in favor of the town of Chelsea. (S. P. 334)

By Mr. Wheeler of Oxford: Resolve in favor of the town of Fryeburg. (S. P. 335)

Sent down for concurrence.

By Mr. Nickerson of Waldo: Resolve to provide a commission for investigating the feasibility of a bridge across the Penobscot river near Bucksport. (S. P. 336)

(On motion by Mr. Douglas of Hancock, tabled pending reference).

Orders

Mr. Oakes of Cumberland presented the following order:

ORDERED, the House concurring, that:

WHEREAS there are two measures before this Legislature relating to export of surplus power known as the Carlton bill S. P. 81 and the Oakes Compact bill S. P. 177;

WHEREAS the economic phases of the question of export of power are being investigated by engineers at great expense and a report is being awaited by this Legislature;

WHEREAS all economic data and elaborate limitations are useless without a valid legal basis for enforcement.

WHEREAS Hon. Charles E. Hughes is a former Justice of the U. S. Supreme Court and George W. Wickersham is a former Attorney General of the United States and both are recognized as men of integrity and as authorities on law involving Federal and state control of interstate commerce;

NOW THEREFORE the Attorney General of this State is hereby instructed to procure from the above named Charles E. Hughes, if possible, otherwise from the above named George W. Wickersham, if possible, unbiased and unprejudiced legal opinions in answer to the following questions:

Would the terms of the Carlton bill be legally enforceable so that upon the export of electricity thereunder, the State of Maine would not,

by reason of the Federal Law, relinquish any portion of its control, jurisdiction and regulation over the hydro-electric resources within our borders?

Would the terms of a compact according to the provisions of the Oakes Compact bill be legally enforceable so that, upon the export of electricity thereunder, the State of Maine would not, by reason of the Federal Law, relinquish any portion of its control, jurisdiction and regulation over the hydro-electric resources within our borders?

Such opinions shall be reported to the Legislature before March 1, 1929 and if the services of neither of the above authorities is available the Attorney General shall so report to the Legislature immediately.

And it is further ordered that a sum not over ten thousand dollars is hereby made available for the purpose of carrying out this order.

Mr. OAKES of Cumberland: Mr. President, there is now a bill before the House providing for the abolishment of the Fernald Law. It was suggested that that bill was intended to confuse the situation. It was also stated that nobody would wish to go so far as that bill provides and nobody would contemplate this Legislature going so far as to pass a bill, even with a referendum, providing for the abolishment entirely of the Fernald Law, and that no measure should be passed that did not retain state control of surplus power.

My suggestion the other day was that we had no legal opinion that to my mind showed, or was sufficient to give us ground for believing that the bill of my friend, Senator Carlton, had sufficient legal basis so that it could be enforceable.

Now then, the preamble to this order says, "Whereas all economic data and elaborate limitations are useless without a valid legal basis for enforcement." I submit that the first question we have to decide is whether the Carlton Bill or the Compact Bill or any other bill can be enforced legally before we go on to any question of the detail of limitation that we wish to incorporate in the bill. For example—I think this illustration would be applicable—suppose we passed a bill providing that the United States Bankruptcy Law should not apply in the State of Maine and that we made a new law to take the place of it in this State and put in many pages

of limitations in that new law. If the United States Bankruptcy Law still did maintain in the State of Maine and took precedence over the limitations that we suggested, the limitations, no matter how good they were, would be useless. Again, supposing we passed a law providing that the Judges of the United States Court who preside in the State of Maine should have certain qualifications. If the United States law superseded the State law there would be no use in our passing those limitations, no matter how elaborate they were and how good they were and how much we believed in them. They would have no effect if the United States law superseded our State law.

Now, it seems to me that that is the situation which we have in our water power question and I personally was in favor of most of the provisions of the Smith Bill last year. I thought they were very fine, most of them. But if the United States law should supersede any regulations we can make and if once electricity gets into interstate commerce and we lose control, no matter how good those regulations are it does us no good to make the limitations. So it seems to me that we come down to the first proposition in this whole water power question; are we going to pass a law that is fundamentally, legally, unsound?

I said last week that I thought the Compact Law, or the compact principle had run its course, and I did think so. But with the arguments advanced that we should not in this State relinquish control as provided by the bill eliminating the Fernald Law and if the elimination of the Fernald Law and the passage of the Carlton Bill are one and the same thing, that is to say, if they both provide for the export of power, and if the elimination of the Fernald Law has no limitations and the limitations in the Carlton Bill are not enforceable, they mean the same thing. So, if that is true and the Legislature wants to retain control and it is possible that the Compact Bill does retain control, it seems to me logical to reintroduce the Compact Bill and allow the Legislature to consider it again.

Now then, as to the bill which was before the Legislature two years ago, known as the Smith Bill, and the identical measure, as I understand, known as the Carlton Bill.

Many thought that this would not be legally enforceable. I am informed that a prominent legal member of the Governor's Council so stated. I am informed that the Chairman, or then Chairman, of the Public Utilities Commission so stated and that the then Attorney General of the State—all three stated that it was not a valid legal document. That raises sufficient question in our minds so that we should consider the subject, and for that reason it seems to me that this order will clarify the situation, will do it quickly and will bring us to an issue that is clean-cut and will give us an opportunity to pass the Carlton Bill, if it is valid, and if not to eliminate it and go on to something else, perhaps the Compact Bill if that is valid, and if not to try to work out something else, or at least to get down to business and get some action so that we can know what we are working on.

Now, Mr. Hughes and Mr. Wickersham both have available, as I understand, organizations and means of preparing the opinion that are in excess of anybody else in the country. I think they can prepare, either of them, if they are not already engaged in some work so that they could not undertake this work, they can prepare and give us an opinion in a very short time because of the remarkable resources which they have in their organizations to do this type of work. The question was raised as to whether an opinion by either of these gentlemen would bind the Supreme Court or other courts in the future. No, of course it would not, but it would be the best type of information that our Legislature could get, as far as I know, to guide us in such a proposition.

I suggest ten thousand dollars as a limit for the fee. I dislike to approach an attorney with a limit of a fee but I do not see how we could do anything in a body with a trust such as we have without such a limit and I have reason to believe that those gentlemen, in connection with their civic responsibilities in general, would be willing to work within a limit of this type and to give us assistance without a large fee—large in the field in which they work, as they sometimes charge. And I therefore feel that this amount would probably be a sufficient amount within which the Attorney General could work. There

would be no use in arguing before a body of business men of this type as to whether the expenditure of the money would be warranted if the proposition is right. Such a small portion of one percent of the amount involved would be the first expenditure that a business man in his own business would make to determine whether he had a legal basis for conducting his business or continuing or undertaking any type of business. And so I think as to the amount of expense, a body of the type of these men would not consider for a moment that ten thousand dollars, or less, was improper if it would give us a valid legal decision as to whether we can do business or not do business on either the Carlton Bill or the Compact Bill.

My thought on this is that if, while this is going on, some other bill comes in which seems to offer another theory that some of us have not thought of, another question can be framed and sent on to be answered with that bill. Of course we don't want to add any more than is necessary but my theory is, and what we want to know is, what our legal situation is before we do business and then we can go ahead and do the best kind of work that we are capable of doing along economic lines.

The question as phrased is taken from the Republican State platform: "Would the terms of the Carlton Bill be legally enforceable so that, upon the export of electricity thereunder, the State of Maine would not, by reason of the Federal Law."—the rest is quotation—"relinquish any portion of its control, jurisdiction and regulation over the hydro-electric resources within our borders." That is a quotation from the State Republican platform upon which we are all, as it happens, in this body were elected.

It seems to me that is the fundamental question which we want to decide. I have required that an answer be brought to us before March 1st and if for any reason the Attorney General cannot get the answer from these gentlemen, either because of their other employment or if for any reason they may be tied up so they cannot give us an unprejudiced answer, I have provided that the Attorney General shall report to us immediately and

we can then take such other measures as we think best, but these are the two outstanding men in this line in the country and I think we would be best guided by their opinion.

Mr. CARLTON of Sagadahoc: Mr. President, I was absent during the reading of this order. Would it be out of order for me to ask that it be read again?

The PRESIDENT pro tem: The Secretary will read the order again. The Secretary reread the order.

Mr. OAKES: Mr. President, I move that the order lie upon the table.

The motion prevailed.

On motion by Mr. Weeks of Somerset, it was

Ordered, that on Wednesday of each week, beginning on Wednesday, February 13, under orders of the day, all matters placed upon the table and unassigned during the preceding week shall be taken up without motion and disposed of in the order in which they were placed upon the table.

On motion by Mr. Spear of Cumberland, it was

Ordered, that the use of the Senate Chamber be granted the College Economic Conference for the afternoons of Friday, March 8th and Saturday, March 9th.

Passed To Be Engrossed

An act authorizing and legalizing copies of certain volumes of records of deeds in Knox County. (S. D. 57), under the title of, An act authorizing and empowering the Register of Deeds for the County of Knox to make a true copy of contents of volume twenty-three and of volume twenty-five of the Knox County Records of Deeds and to certify that the same are true copies of said records.

An act to incorporate the Home Security Company. (S. D. 79.)

Sent down for concurrence.

Passed To Be Enacted

An act to amend section four of chapter four of the Private and Special Laws of 1925, entitled, An Act to incorporate the City of Brewer High School District. (H. D. 3)

An Act to extend the charter of the Quebec Extension Railway Company. (H. D. 18)

(On motion by Mr. Greenleaf of Androscoggin, the bills were laid upon the table pending passage to be enacted.)

Orders of the Day

On motion by Mr. Slocum of Cumberland, the Senate voted to take from the table, Resolve in favor of Department of Maine G. A. R. (S. P. 190) tabled by that Senator on February 5th pending reference.

Mr. SLOCUM of Cumberland: Mr. President, I now yield to the Senator from Cumberland, Senator Spear.

On motion by Mr. Spear of Cumberland the resolve was referred to the Committee on Military Affairs in non-concurrence

On motion by Mr. Greenleaf of

Androscoggin, the Senate voted to take from the table, Communication from Secretary of State transmitting County Estimates, tabled by that Senator on February 5th pending consideration; and on further motion by the same Senator, it was voted that the communication be forthwith transmitted to the House.

On motion by Mr. Leland of Piscataquis, the Senate voted to take from the table, bill An Act to regulate the practise of Naturopathy H. D. 137, tabled by that Senator on February 5th; and on further motion by the same Senator the bill was referred to the Committee on Public Health.

On motion by Mr. Carlton of Sagadahoc,

Adjourned until tomorrow morning at ten o'clock.