

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-Eighth Legislature

OF THE

STATE OF MAINE

1937

KENNEBEC JOURNAL COMPANY
AUGUSTA, MAINE

SENATE

Friday, March 12, 1937.

Senate called to order by the President.

Prayer by the Reverend John W. Poole of Gardiner.

Journal of yesterday, read and approved.

Order

(Out of Order)

On motion by Mr. Fernald of Waldo, out of order and under suspension of the rules, it was

Ordered, the House concurring, that when the Senate and House adjourn, they adjourn to meet Tuesday, March 16th, 1937, at eleven o'clock in the forenoon. (S. P. 440)

Sent down for concurrence.

Subsequently, the foregoing order was returned from the House, read and passed in concurrence.

Mr. FERNALD of Waldo: Mr. President, a parliamentary inquiry. Yesterday in the Senate, following a motion of the Senator from Cumberland, Senator Spear, the Senate voted to take from the table a communication from the Secretary of State transmitting Initiated Bill number one and petitions relative thereto, after which it was referred to the Judiciary Committee and sent down for concurrence.

The record reads as follows: "Mr. SEWALL: Mr. President, also being one of those believing in economy I wonder if it would be proper for me at this time to suggest to the Senator from Waldo, Senator Fernald, that this body might give him permission to withdraw Legislative Document 234, which he introduced and which I think really deals with a very—"

My inquiry, Mr. President, is under what rule of order we were proceeding at that time and what is the precedent for the same?

The PRESIDENT: The Senator from Sagadahoc (Senator Sewall) was not in order at that time, if that answers the inquiry of the Senator.

Mr. FERNALD: Thank you very much, Mr. President. My only thought was that I think we should keep the record clear.

Papers from the House disposed of in concurrence.

House Bills and Resolves in First Reading

"An Act to Require the Use of Safety Glass on Motor Vehicles," (H. P. 1095) (L. D. 375).

In the House, passed to be engrossed as amended by House Amendment "A".

In the Senate, on motion by Mr. Marden of Kennebec, tabled pending acceptance of the report in concurrence.

"An Act Imposing a Tax of One Cent per Barrel on Potatoes for Advertising and Stabilizing the Potato Industry of the State", (H. P. 284) (L. D. 101), in new draft (H. P. 1691) (L. D. 825).

In the House, passed to be engrossed as amended by House Amendment "A".

In the Senate, the report of the committee was accepted in concurrence and the bill was given its first reading. House Amendment "A" was read and adopted in concurrence, and the bill as amended by House Amendment "A" was next Tuesday assigned for second reading.

"An Act Relating to Fishing in Pocumtus Lake and in Western Grand Lake, in Washington County" (H. P. 853) (L. D. 303).

"An Act Relative to Sale and Transportation of Wild Hares and Rabbits" (H. P. 1078) (L. D. 343).

"An Act Relative to Game Preserve in York County" (H. P. 1500) (L. D. 608).

"An Act Relative to Game Preserve in the Towns of Limington and Hollis in York County" (H. P. 1270) (L. D. 457).

"An Act Relative to the Sale of Deer" (H. P. 1082) (L. D. 409).

"An Act Relating to Commitment of the Insane" (H. P. 1535) (L. D. 665).

"Resolve Relating to an Official Song for the State of Maine" (H. P. 120) (L. D. 54).

(On motion by Mr. Willey of Cumberland, tabled pending acceptance of the report in concurrence.)

"An Act to Annex Hurricane Island to the Town of Vinalhaven" (H. P. 1128) (L. D. 371).

Communication
STATE OF MAINE
HOUSE OF REPRESENTATIVES
 Augusta
 Office of Clerk.

March 11, 1937.

Hon. Royden V. Brown
 Secretary of the Senate
 Senate Chamber
 State House
 Augusta, Maine.
 Dear Sir:—

This is to advise that Senate Paper No. 430, being a joint order relative to a Committee to investigate affairs of State Departments for the purpose of making recommendations on economy, was passed in the House this morning as amended by Senate Amendment "B", and the Speaker appointed the following members on the part of the House on the Committee created by this order:

Mr. Chase of Baring
 Mr. Noyes of Franklin
 Mr. Varney of Berwick

Respectfully yours,

HARVEY R. PEASE,

Clerk of the House.

Which communication was read and accepted and the order placed on file.

Communication

Communication from the Attorney General transmitting the following advisory opinion as to what legal effect I. B. 1 "An Act to Amend Chapter 15 of the Public Laws of 1937, entitled 'An Act Appropriating Monies for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for which no Legislative Appropriations have been Made,' has on (H. P. 1475) (L. D. 697) 'An Act Appropriating Moneys for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for which no Legislative Appropriations have been Made, the latter bill having been enacted into law during this present session of the Legislature':

STATE OF MAINE
 DEPARTMENT OF THE ATTORNEY GENERAL

Augusta

March 11, 1937.

To the Honorable Senate of the Eighty-eighth Legislature:

In an Order passed in your honorable body on March 10, 1937, you

respectfully requested of the Attorney General an advisory opinion as to what legal effect I. B. 1, "An Act to Amend Chapter 15 of the Public Laws of 1937, entitled, 'An Act Appropriating Monies for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for which no Legislative Appropriations have been made'" has on (H. P. 1475) (L. D. 697) "An Act Appropriating Moneys for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for which no Legislative Appropriations have been Made, the latter bill having been enacted into law during this present session of the Legislature."

The question, as worded, may have been intended to make inquiry as to the effect of either the filing of the initiative petition, assuming the same to be in proper form and supported by the requisite number of signatures, or of the enactment or adoption of the initiated law, either by the Legislature or by the people.

As to the former question our Supreme Judicial Court has already spoken in the analogous case of an act the operation of which has been suspended by the filing of referendum petitions. In such a case the Court has said that the right of the voters to pass upon the Act is absolute and cannot be abridged by further action of the Legislature. Subject to the constitutional provision that when an act is initiated the Legislature may submit it to the electors unless enacted "without change" with an amended form, substitute or recommendation so that the people may choose between the competing measures or reject both, it seems clear that the petitions now before you, unless the Court advises otherwise for reasons hereafter discussed, or unless the Legislature enacts it "without change," require the submission of the initiated act to popular vote.

The question of the effect of the enactment of the initiated law or its adoption by the people is one which, it seems to me, can only be decided by our Courts. The title and text of the initiated measure show that it was the intention of the initiators to enact a bill that would change the provisions of an act entitled "An Act Appropriating

Moneys for Overdrafts Already Incurred Due to Insufficient Appropriations and Anticipated Overdrafts and Other Obligations for Which no Legislative Appropriations Have Been Made" which was passed by this Legislature as an emergency measure, signed by the Governor, and became effective on February 25, 1937: The title of the initiated bill erroneously describes this act as Chapter 15 of the Public Laws of 1937." The Secretary of State informs me that this act is now designated and identified in his records as "Chapter 15 of the Private and Special Laws of 1937", and that "Chapter 15 of the Public Laws of 1937" is a resignation given to an act passed by this Legislature entitled "An Act Relating to Practice of Optometry defined" which was signed by the Governor on March 3, 1937, and which will become effective 90 days after the adjournment of the Legislature. In the text of the initiated act, the act sought to be changed is identified solely as "Chapter 15 of the Public Laws of 1937", which as already noted is an erroneous description. Our Court has held that the title of an act is no part of the act. The initiated bill, therefore, applies only to Chapter 15 of the Public Laws of 1937, the Outometry bill unless the Court, notwithstanding that rule, shall adjudge that where the text of an act erroneously or inadequately identifies a law sought to be amended, and where the title or other extrinsic recitals make it possible for the Court to determine the intent of its framers, such title or other recitals may be considered by the Court to identify the act sought to be changed and give effect to the legislative or popular intent. Such a question is entirely without judicial precedent and I can do no more than advise that you use the machinery which exists for securing a declaration of the Court which will clarify the matter for all time.

As to the initiated bill itself, an examination shows that it is drawn in such a manner that unless the Court is willing to read into its provisions a title which will properly identify the act at which the legislation is aimed, its enactment by the legislature or by the people will fail entirely to carry into effect the intent of its framers.

Under the provisions of Chapter 210 of the Public Laws of 1921 the

Revisor of Statutes is charged with the duty immediately after each session of the Legislature, of distinguishing Private and Special Laws from the Public Laws, a duty which previous to the enactment of this chapter was performed by the Secretary of State and there is no duty placed upon any official to distinguish between Public Acts and Private and Special Acts prior to the adjournment of the Legislature.

Where it is desired to amend or repeal an act of the Legislature prior to the adjournment of the session at which it is enacted it seems to me that the correct way to designate the act sought to be changed should be by using the complete title and a reference to the date on which such act was approved by the Governor.

In view of the expense of a Special Election, which must be called by the Governor to vote upon this initiated bill in the event that it is not enacted by this Legislature, and because the question involved is one which should be judicially determined, I respectfully suggest that an advisory opinion under the provisions of Section 3 of Article VI of the Constitution, be sought by this Legislature of the Supreme Judicial Court as to (1) whether the intent of a measure, if it can be determined either from the title or the text of the measure, can be read into it in order to identify the particular legislation it is intended to repeal or amend, and (2) if the answer to the first question is, No, whether the mandatory provisions of Section 18 of Article XXXI of the Constitution require the Legislature to submit to the people for adoption or rejection a proposed act which, as worded, will not accomplish if enacted or adopted the purpose for which it was initiated.

Respectfully submitted,

FRANZ U. BURKETT,
Attorney General.

Miss LAUGHLIN of Cumberland: Mr. President, I move that this communication from the Attorney General be referred to the Judiciary Committee and I will say a few words after the motion has been put.

The PRESIDENT: The Senator from Cumberland, Senator Laughlin, moves that this communication be referred to the Committee on

Judiciary. Is this the pleasure of the Senate?

The motion prevailed.

Miss LAUGHLIN: Mr. President, the report from the Secretary of State with reference to this bill and the accompanying papers were yesterday referred to the Judiciary Committee. It now becomes the duty of the Judiciary Committee to consider this initiative petition, so-called, both as to its legal effect and also as to its sufficiency otherwise, and of course to report to the Senate. It may be that there may be authorities found who might modify the opinion of the Attorney General but that is not the important point. Before it is necessary to consider that, the committee must consider whether the petition is sufficient in other ways. That has not been passed upon, of course, by the Secretary of State or by anybody. There are very specific and technical requirements in the signing of petitions for an initiated law, different from some other petitions, and of course the Judiciary Committee has had no opportunity as yet to go into that matter but if it should find that there are not enough names on that petition to entitle it to be submitted regardless of all these legal questions that come up, that should be determined before we consider the legal effect as set forth in the communication from the Attorney General, and so it seems to me that that should be done before anything further is done as to getting the report of the decision.

First Reading of Printed Bills

Bill "An Act Relating to Revocation of Fish and Game Licenses." (S. P. 434) (L. D. 829)

Bill "An Act Extending the Standish Game Preserve." (S. P. 435) (L. D. 830)

Which bills were read once, and next Tuesday assigned for second reading.

Reports of Committees

Miss Martin from the Committee on State Prison submits report of visit to the State Prison with the recommendations of the committee as to conditions in said institution.

Miss MARTIN of Penobscot: Mr. President, I move that the Secretary be instructed to present a copy of the report to the Governor and

Council and that the report be placed on file.

Mr. FERNALD of Waldo: Mr. President, I would like to ask a question, through the Chair, of the Senator from Penobscot (Senator Martin).

The PRESIDENT: The Senator from Waldo, Senator Fernald may ask his question of the Senator from Penobscot, Senator Martin, who may reply if she desires.

Mr. FERNALD: I would like to inquire, Mr. President, whether the report is of sufficient importance that it be read to the Senate. I understand from outside sources that there is some information there that may be of some interest to the Senate.

The PRESIDENT: The Secretary will read the communication.

The Secretary read the communication:

Report of the Committee on State Prison

"Whereas your committee on State Prison has visited the State Prison, and has investigated various reports, complaints and conditions, it begs to submit the following report and recommendations:

"I. Whereas there has been a crop failure for the last two years, and whereas no costs accounting system is maintained whereby it is possible to ascertain what crops, and what stock it is possible to produce on a self-maintaining basis, it is recommended that a system of accounting be set up, so that the cost of production of any crop, herd, or stock may be ascertained, and wherever production is at a loss, it is recommended that the crop, herd, or stock be curtailed until it can be self-maintained. It is further recommended that the Department of Agriculture be consulted from time to time in regard to crop rotation, tests of soil, etc., and that the Department of Agriculture should report annually, or at the pleasure of the Governor and Council, to the Governor and Council as to the conditions at the farm, and recommendations regarding same.

"II. Whereas there has been well founded criticism of the goods produced by the wood-working shop, and the clothing shop, as well as delay in getting signs from the plate shop; and it is impossible to determine the cost of production of any article under the present system; and there is inadequate supervision

of production, it is recommended that production of the twelve different industries should be put under the supervision of a competent man trained in industrial supervision, and that said supervisor should keep a close check on the cutting of all materials in order to prevent waste, and that he should also, set up a system of accounting, whereby it would be possible to determine the profit or loss of running each department.

"III. Whereas coal, wood, and other goods have been sold to the employees to the detriment of private business in the vicinity, it is recommended that no goods except those manufactured or produced at the Prison be sold to the employees of the Prison, and that all other sales shall be made through the State Purchasing Department for the use of the State.

"IV. Whereas the loss of taxable property whenever the Prison acquires property in the town of Thomaston causes an increase in the tax burden on the residents of the town, and this condition does not tend to foster a spirit of amity and good-will between the townspeople and the institution, it is recommended that further acquisition of property by the institution shall be only through legislative enactment, and that the Governor and Council be requested to investigate the feasibility of selling the recently acquired Leighton property.

"V. Whereas the building now occupied and used by the State Police is maintained by the State Prison, it is recommended that the property be transferred to the State Police and maintained and repaired by that Department.

"VI. Whereas the East Wing wall is in a condition dangerous to life and limb, it is recommended that money for its repair should be appropriated from the contingent fund by the Governor and Council.

"VII. Whereas there appears to be divers opinions as to the economic advisability of repairing what is known as the "Warden's House," it is recommended that the Governor and Council investigate the feasibility of hiring an exterminator to rid the house of vermin, and the advisability of either repairing or demolishing the building.

"VIII. Whereas sec. 3., Art. VI of chap. 216 of 1931 Laws of Maine, provides, "that the department of audit shall have authority: 1. To perform a post audit of all accounts and other financial records of the state government, or any department or agency thereof, and to report annually on this audit, and at such other times as the legislature may require"; and whereas, the department of audit does not audit the accounts of the State Prison, it is recommended that this audit should be made annually and the report be submitted to the Governor and Council and to the legislature.

"IX. Whereas there is apparent lack of co-operation of the Warden with the State Purchasing Agent, with the Director of Institutional Service, and with various other departments, it is recommended that the Governor and Council should investigate and remove the cause, wherever it may be.

"X. Whereas there is need of the closest co-operation between the Warden and the sheriff's department, and there is evidence that such co-operation was lacking between the Warden and the sheriff's department of Knox County, it is recommended that the Warden be instructed to assist and cooperate with the sheriffs wherever possible in the future.

"XI. Whereas there is strong evidence that prisoners have been outside the walls and off the property, delivering wood after night check, and this is a condition dangerous to the peace and welfare of the inhabitants of the State; the committee recommends that immediate steps be taken to prohibit such special privileges.

"XII. Whereas the Warden has been in office for more than 1 1-2 years, and it is his duty to see that all departments of the Prison run efficiently and economically, and in view of the above recited recommendations, it appears to the committee that there is ample evidence of gross inefficiency, it recommends the replacement of the Warden by a thoroughly competent administrator, and that a deputy warden trained in the work of rehabilitation and discipline of men be employed to take over that part of the work."

The PRESIDENT: Is it the

pleasure of the Senate that a copy of the report be transmitted to the Governor and Council?

Mr. FERNALD: I would like, Mr. President, to amend the order and have a copy of the matter sent to the Economy Committee.

The PRESIDENT: The Senator from Waldo, Senator Fernald, moves to amend the report and that a copy of the report be furnished to the Economy Committee. Is it the pleasure of the Senate that copies be transmitted to the Governor and Council and to the Economy Committee?

The motion prevailed.

Mr. Owen from the Committee on Public Health on bill "An Act Relating to Narcotics," (S. P. 364) (L. D. 623) reported that leave be granted to withdraw the same.

Mr. Goudy from the Committee on Legal Affairs on bill "An Act Relating to Mortgage of Household Furniture," (S. P. 340) (L. D. 602) reported that the same ought not to pass.

The same Senator from the same Committee on bill "An Act Relating to the Support of Paupers," (S. P. 342) (L. D. 613) reported that the same ought not to pass.

The same Senator from the same Committee on bill "An Act Relating to Employment of Convict Labor on Highways," (S. P. 341) (L. D. 757) reported that the same ought not to pass.

Which reports were read and accepted.

Sent down for concurrence.

Miss Martin from the Committee on Legal Affairs on bill "An Act relating to Beauty Culture to Include Registering and Licensing of Barbers and Barber Shops and to Create a Board of Barber Examiners," (S. P. 192) (L. D. 451) reported that the same ought to pass.

Which report was read and accepted, the bill read once, and next Tuesday assigned for second reading.

Passed to Be Enacted

"Bill An Act Relating to Penobscot County Court House." (H. P. 1832) (L. D. 764).

Bill "An Act to Create the Hampden Water District." (H. P. 1692) (L. D. 826).

Bill "An Act to Incorporate the Danforth Water District." (H. P. 1693) (L. D. 827).

Bill "An Act to Provide a Town

Council and Manager Form of Government for the Town of Old Orchard." (H. P. 1694) (L. D. 828).

Which bills were read a second time, and passed to be engrossed in concurrence.

Bill "An Act to Enlarge and Define the Powers of the Androscoggin and Kennebec Railway Company." (H. P. 1695) (L. D. 824)

(On motion by Mr. Willey of Cumberland, tabled pending second reading.)

Bill "An Act Relating to the Issue of Notes and Bonds of the South Portland Sewerage District." (S. P. 188) (L. D. 249)

Bill "An Act for the Protection of Rhododendron Maximum Linnaeus and Kalmia Latifolia Linnaeus." (S. P. 305) (L. D. 516)

Bill "An Act to Provide for the Perambulation of the Maine and New Hampshire Boundary Line." (S. P. 345) (L. D. 614)

Which bills were read a second time and passed to be engrossed.

Sent down for concurrence.

Orders of the Day

The President laid before the Senate, bill An Act Relating to the Duties and Functions of the Maine State Poultry Association and the Androscoggin Poultry and Pet Stock Association, (H. P. 604) (L. D. 196), recalled from the Executive Department.

Thereupon, on motion by Mr. Hussey of Kennebec, the Senate voted to reconsider its action whereby the bill was passed to be enacted; and on further motion by the same Senator the bill was laid upon the table pending passage to be enacted.

The President laid before the Senate, bill, An Act Relating to the Fire Department of the City of Lewiston, (S. P. 395) (L. D. 736), recalled from the Committee on Legal Affairs by joint order.

On motion by Mr. Fortin of Androscoggin, that Senator was granted permission to withdraw the bill.

Sent down for concurrence.

Mr. FERNALD of Waldo: Mr. President, at yesterday's session I served notice that I would move a reconsideration of the passage to be enacted of Legislative Document 792, An Act Relating to Clerk Hire in the Office of the Register of Deeds in the county of York. In the absence of the Senator from

York, Senator Wentworth I do not wish to take any action on the bill at this time. However, Mr. President, I will move reconsideration of the passage to be enacted of this bill.

Thereupon, the bill was laid upon the table pending the motion for reconsideration.

On motion by Mr. Fernald of Waldo, the Senate voted to take from the table, Senate Order No. 55, Relative to 500 additional copies to be printed of An Act Relative to Workmen's Compensation Act, (S. P. 281) (L. D. 495), tabled by that Senator on March 5th pending passage.

Mr. FERNALD: Mr. President, I hesitate to take this matter up during the absence of the Senator from Washington, Senator Corrigan, but he agreed with me that it was of no importance to him but was put in at the request of the Document Clerk. My motion will be, following my explanation, that the matter be indefinitely postponed, in that the matter has been heard before the Judiciary Committee and I believe I sense the feeling of the committee that the most favorable

report that the committee would give would be for a new draft, and consequently I cannot see where any public benefit would be performed to have additional copies of the bill printed as it would serve no public purpose and it would be better to save our printing for the new draft if it comes out. Unless there is some interest on the part of other members of the Senate, I move the order be indefinitely postponed.

The motion prevailed, and the order was indefinitely postponed.

The PRESIDENT: Is there any further business to come before the Senate?

Miss MARTIN of Penobscot: Mr. President, if it is in order, I would like to present petitions in favor of An Act to Extend Suffrage to Qualified Voters in Unorganized Territory, (S. P. 337) (L. D. 598).

Thereupon, the petitions were received and referred to the Committee on Judiciary.

On motion by Mr. Marden of Kennebec

Adjourned until next Tuesday morning, March 16th, at eleven o'clock.