

# MAINE STATE LEGISLATURE

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# **Legislative Record**

**SPECIAL SESSION**

**JULY 22, 1940**

**HOUSE**

Monday, October 21, 1940.

The House was called to order by Speaker Philbrick.

The SPEAKER: This is the adjourned Special Session of the Eighty-ninth Legislature, which adjourned on July 26th to three o'clock this afternoon.

Prayer by the Rev. Dr. Wood of Augusta.

Journal of the last legislative day read and approved.

The Clerk thereupon called the roll of the House.

The Speaker declared a quorum present.

Those who were absent were: Messrs. Bates, Bird, Brown of Caribou, Burgess, Dow of Eliot, Luro, MacNichol, Pike, Ramsdell, Smith of Thomaston, Smith of Westbrook, Stacy, Sylvia and Weatherbee.

The following communication:

DEPARTMENT OF STATE  
STATE OF MAINE  
Augusta

October 21, 1940.

To Harvey R. Pease:

Clerk of the House of Representatives of the Eighty-ninth Legislature:

It is my sad duty to report another vacancy in your honorable body, which has been occasioned by the death of Honorable Harry E. Plummer, Representative from Lisbon.

Respectfully  
(Signed) Frederick Robie  
Secretary of State.

Mr. VARNEY of Berwick: Mr. Speaker, I move that the communication be received and placed on file and that the Clerk be instructed to strike the name of the Honorable Harry E. Plummer from the roll of the House.

Thereupon, the motion prevailed.

At this point a message was received from the Senate, borne by Secretary Brown of that body, proposing a Joint Convention to be held forthwith in the hall of the House, for the purpose of hearing the final report of the Joint Special Legislative Investigating Committee and the report of the Committee on Administrative Code.

Mr. LAMBERT of Lewiston: Mr. Speaker and members of the House: The passing of the Representative

from Lisbon Falls, Mr. Plummer, is very untimely. He was a man who was always possessed of fine qualities of heart and mind, a good public servant and a man we shall miss here in the future. I have been associated with the man as a neighbor, in the neighboring town of Lewiston, and I always found him to be pleasant and very sociable, both in business and social affairs, and I think it is only proper at this time to present a resolution to send to his family. I therefore offer a resolution and move its adoption.

The resolution was read by the Clerk, as follows:

WHEREAS, the members of the House of Representatives of the Eighty - Ninth Legislature have learned with profound sorrow of the untimely death on the morning of September twenty-ninth of an esteemed colleague, Hon. Harry E. Plummer, Representative from Lisbon Falls; and

WHEREAS, in his association with the members of this House he was ever honorable and kindly, being highly regarded for his character and sterling qualities of mind and heart; and

WHEREAS, the members of the House of Representatives sense in his passing a personal loss and a genuine grief:

NOW, THEREFORE, BE IT RESOLVED, that the State of Maine mourns the loss of a faithful and valued public servant, and the members of the House of Representatives lament the departure of an esteemed and trusted friend; and

BE IT FURTHER RESOLVED, that a copy of this Resolution be entered in the Journal of the House and a copy transmitted to the widow of the deceased.

The SPEAKER: The Chair suggests a rising vote on the adoption of the resolution. All those in favor of the adoption of the resolution will rise.

Thereupon, the entire membership of the House arose.

The SPEAKER: The Chair declares the resolution unanimously adopted.

The Chair will state that flowers were sent to the family and an official delegation from the House, the Androscoggin Delegation, represented the House at the services.

Mr. Cowan of Portland, presented the following Order and moved its passage:

Ordered, the Senate concurring, that the State Controller furnish the Legislature forthwith a list of all buildings and offices hired by the State for the housing of departments, the amount of annual rents paid for said buildings and offices, and the nature and location of said buildings and offices.

The Order received passage and was sent up for concurrence.

### Reports of Committees

Mr. VARNEY of Berwick: Mr. Speaker, on behalf of the Special Legislative Investigating Committee, I present at this time the final report of that Committee, together with accompanying testimony and exhibits.

Inasmuch as the proposition of a Joint Convention has just been made for the purpose of the reading of this report, I now move that the report and accompanying testimony and exhibits lie on the table and that fifteen hundred copies of the report be printed in pamphlet form.

The motion prevailed and the report was so tabled.

Mr. VARNEY of Berwick: Mr. Speaker, I now move that the House accept the proposition as made by the Honorable Senate for a Joint Convention of this body to be held forthwith in the hall of the House.

The SPEAKER: The gentleman from Berwick, Mr. Varney, moves that the House now concur in the proposal of the Senate for a Joint Convention. Is this the pleasure of the House?

The motion prevailed, and the Speaker then designated the Clerk to convey the message to the Senate, and the Clerk subsequently reported that he had performed the duty assigned him.

The Senate then entered the hall of the House and a Joint Convention was formed.

### In Convention

The President of the Senate in the Chair.

The CHAIRMAN: The Convention will come to order. The Secretary will now proceed with the reading of the report of the Joint Special Legislative Investigating Committee.

Thereupon, the Secretary of the Senate read the report as follows:

### Final Report of the Joint Special Legislative Investigating Commit-

tee, Created by Joint Order, H. P. No. 2254 to Special Session 89th Legislature, October 21, 1940.

### Preliminary Statement

Since the filing of its first report with the Legislature the Committee has held three sessions, at monthly intervals, each lasting approximately a week. In the intervals between sessions the Committee's attorney, Mr. Webber, has worked on the preparation of material for the Committee's use. This has included the investigation of specific complaints, the examination of witnesses, the preparation of transcripts of these examinations for later study by the Committee, and the procuring of statistical information and memoranda to be used as exhibits by the Committee. The Committee's formal sessions have consisted of the study of transcripts of evidence taken in their absence, the study of the documentary evidence produced, the recall of witnesses previously examined by the attorney, for further questioning, and the examination of such new witnesses as the Committee desired to hear. This method of operation has permitted the work of the Committee to progress without the necessity of the Committee itself being in constant attendance. Mr. Ryan, as associate counsel for the Committee, has been in attendance only during the Committee's formal sessions. The Committee has followed its previous policy of working entirely in executive session. The Public Utilities Commission has been most cooperative in allowing the Committee to make frequent use of its hearing room, and has also contributed the services of two very excellent reporters and stenographers, Mr. Ruel Hanks and Mr. Vaughn Robinson, who have compiled the very substantial volume of testimony taken, as well as the several drafts of the Committee's report. The Committee is very grateful to both these young men for their very faithful and efficient service. As might be expected, a large number of persons have been interviewed, particularly by the Committee's attorney, but without any formal transcripts of evidence being made. Some information is available only this way, and sometimes furnishes valuable leads which can be checked. The Committee has, however, taken the written evidence of sixty-five wit-

nesses and has compiled since its first report approximately 1500 pages of evidence. This evidence and the supporting exhibits are submitted with this report and made a part thereof.

The Committee appreciates the able, faithful, diligent and impartial attitude that the attorneys for the Committee have exhibited in the conduct of the various matters under investigation.

#### ATTORNEY GENERAL'S DEPARTMENT

##### Cemetery Developments

Your Committee has been made aware of a substantial volume of protests and complaints through the press and from various citizens of the State bearing on the alleged participation of the Attorney General in various cemetery developments in Maine. Prior to making its first report, your Committee had given some attention to this matter and had questioned Mr. Burkett at some length regarding the same, but lack of time had not permitted a thorough investigation. Subsequently your Committee has taken the testimony of Mrs. Marion Warren, Miss Alice F. Sirois, Mr. Hal D. Hoyt, Mr. Albert Knudsen, Mr. James A. Noon, Mr. Francis C. Hurley, Mr. John G. Marshall, Mr. Seward J. Marsh, Mr. Herbert M. Tucker, Mr. Charles A. Berry and Mr. John E. Willey. Your Committee has been interested only in the question as to whether or not there has been any misfeasance or malfeasance on the part of the Attorney General directly or indirectly connected with his conduct of a State Department. Your Committee has not been interested in the purely private affairs of Mr. Burkett, but, to adequately inform itself, your Committee felt it desirable to get a fairly comprehensive picture of the background of the cemetery project in question. Mr. Burkett himself has been further examined in the light of additional testimony which came to the Committee.

##### Brocklawn Memorial Park

About May 4, 1935, one Paul F. Cassidy, of Boston, came to Portland and purchased a farm in the suburbs from John and Eugene Skillin. It has been estimated that he paid about \$6500 for the farm. It is a matter of record that he gave the Skillins a \$4000 mortgage which was paid and discharged in October

of the same year. Simultaneously there were organized in the office of the late Herbert J. Welch, of Portland, two corporations, one known as Maine Lawn Company and one known as Maine Lawn Memorial Park. The share owners and officers were the same in each corporation, i. e., K. L. McIsaac, M. C. Laflin, both of whom were stenographers, and Judge Welch. In other words, these were so-called dummy corporations in which the real owners did not appear as either shareholders or officers. A few days after the purchase, Mr. Cassidy conveyed all the land to the Maine Lawn Company, presumably taking the company's stock in payment. Immediately after that, the Maine Lawn Company conveyed the real estate to the other corporation, the Maine Lawn Memorial Park. Operations apparently began at once. High pressure salesmen entered the field to sell lots in the cemetery for investment purposes. A little money was spent on the land to give the appearance of a development in progress. The "cemetery racket" along the usual lines had begun in the State of Maine. This "racket" has been exploited successfully all over the United States and always follows a certain pattern. There are always two companies, one the real estate title and perpetual fund custodian, and the other the selling and developing company. Customers are advised to buy a block of several lots and then list these lots for resale at greatly advanced prices. The theory is that the lots as resold will move rapidly and double the investor's money or better. An additional selling point is that there will be no monuments in the cemetery, that the sole ornaments will be flowers and shrubs upon a beautiful lawn with bronze plaques sunk on ground level as markers. Many of these memorial parks have been legitimately handled and have been both attractive and successful. These successful parks are of course cited by the salesmen as additional bait to the investor.

On December 19, 1935, one James Vahey, a Massachusetts lawyer, called upon Mr. Albert Knudsen of Portland and told him he had bought all Mr. Cassidy's stock and owned the cemetery. Mr. Knudsen was then assistant county attorney of Cumberland County and shared offices with Mr. Burkett, although he

was not and has never been Mr. Burkett's partner. Mr. Knudsen had known Mr. Vahey in Law School, knew that Vahey and his father had been well known and successful lawyers and believed them to be people of means and good repute. It now appears that although Mr. Knudsen did not know or suspect it, that actually Mr. Vahey was acting for two gentlemen named William Jarvis and Samuel Gains, who were then serving time in a Federal penitentiary for sale of worthless stock of a concern known as the Polymet Manufacturing Company. Mr. Francis C. Hurley, formerly an investigator for the Securities and Exchange Commission, testified before the Committee that he had personally seen a bill of sale of the Brooklawn stock running from Mr. Vahey to Messrs. Jarvis and Gains and a voting trust agreement authorizing Mr. Vahey to vote the stock for them. Mr. Hurley also informed the Committee that after the S. E. C. started to clean up bucket shop operations, many of the operators and salesmen went into Memorial Park operations in various parts of the country.

Mr. Knudsen states that Mr. Vahey wanted to be sure that his stock transfers were correct according to the Maine law and simply came to him as an attorney. Mr. Vahey advised him that he, Vahey, intended to invest as much as \$200,000 if necessary to develop the cemetery. A month or two later Mr. Vahey returned and asked Mr. Knudsen to be a "dummy" director, as he needed three to comply with the law. He also wanted Mr. Knudsen to do the company's legal work. Mr. Knudsen states that he then carefully checked Mr. Vahey as to his financial responsibility and as to certain rumors which had come to him. He states that he checked Vahey's connection with Jarvis and Gains and apparently became satisfied that Vahey had assisted in defending them in a criminal case but that Jarvis and Gains had no connection with the Portland cemetery. He states that he talked with Mr. Bartlett, the Federal District Attorney who prosecuted Jarvis and Gains and asked him, "Do you think they (Jarvis and Gains) would spend real money, forty, fifty, or sixty or a hundred thousand dollars in any business development or cemetery

development, in view of the propaganda against it, and let Vahey have all the stock with no strings whatsoever upon the stock? Do you think if they were connected with it they would let him take all the stock and pledge it to me?" Mr. Bartlett is said to have replied that "he did not think they were that foolish, to use Vahey as a front man and let him have control." Apparently Mr. Knudsen satisfied himself that Vahey was independent and alone in this enterprise, that the cemetery could be successful and legitimately developed and that Vahey was able and ready to make a substantial investment to develop it. He states, however, that in order to take no chances on Vahey's good faith or any possibility of a connection with Jarvis and Gains, a contract was executed pledging all the shares of the Memorial Park to Knudsen as security for Vahey's good faith. Mr. Burkett and Mr. Seward J. Marsh, a reputable insurance broker in Portland, were both interested by Mr. Knudsen and Mr. Vahey and agreed to become directors and officers of the title holding company. In February, 1936, the name of the Maine Lawn Company was changed to the Brooklawn Company, this being the selling and developing company. Mr. Vahey became president and treasurer and a director. Mr. Knudsen became clerk and director and a Miss Griffin the other director. At the same time the name of the Maine Lawn Memorial Park was changed to Brooklawn Memorial Park, its purpose was altered and reduced, and its directors became Mr. Marsh, Mr. Burkett, and Mr. Knudsen, its president Mr. Marsh, its treasurer and clerk, Mr. Knudsen.

In attempt'ing to estimate the intimacy of Mr. Burkett's connection with Brooklawn, it is perhaps enlightening to see how very little Mr. Burkett appears to know about these concerns and about matters concerning which he could not possibly have any interest in withholding information. For example, he knew nothing about the Cassidy group by name and was under the impression they had a separate corporation named "Sunnyside or Riverside or something like that." He was under the impression that there have been four corporations in all whereas actually there have been but two with a change of name

of each. Mr. Burkett apparently did some legal work for the Brooklawn for which for a while he received \$100 per month, but he appears never to have had the close participation in the operations which Mr. Knudsen had.

There is no question but that from the time Messrs. Marsh, Burkett, and Knudsen became interested there was substantial progress made in developing the physical park. A lot of money was spent in grading, draining, filling, seeding and beautifying. There was apparently a further effort made to see to it that 10% of the purchase price in every instance was turned over to the Memorial Park by the Brooklawn Company for the perpetual care fund.

On the other hand, although Messrs. Burkett, Marsh and Knudsen all profess to have been unalterably opposed to investment selling and in favor only of sales for burial purposes, there is ample indication that Mr. Vahey continued to employ high pressure salesmen and that most if not all purchasers bought for investment purposes. It appears also that Mr. Burkett unwittingly made matters worse by his participation in the company, for the salesmen apparently used as bait the fact that the Attorney General of the State of Maine was an officer of the company. Your Committee examined several investors and several attorneys for investors in order to get a cross section of sales methods. These all follow a pattern. One investor, Miss Alice Sirois, was undoubtedly a typical case. She stated that the salesmen used these arguments which influenced her, in this order:

1. That she would double her money or better in a relatively short time.
2. That the Attorney General of Maine was an officer, so the investment must be perfectly safe and honestly conducted, and,
3. That preferred stock in a well known and financially sound utility company which she owned was no good and she had better convert while she could still get a fair price for her utility stock. Mr. Burkett admits that he knew that on occasion his name was being used in this way and that he made every effort to have it stopped. Mr. Marsh supports him by stating in his evidence:

'Q. Did Mr. Burkett, to your knowledge, ever complain to any

officers of the Brooklawn Company about sales methods?

A. Oh, frequently and vigorously. I think the fact that he was or was likely to become the Attorney General was a threat I heard him use on a number of cases of that kind.\* \* \*

In fairness to Mr. Burkett, it must also be pointed out that these so-called investors for the most part hastened to buy lots, so great was their desire for unusual profits. For example, in the case of Miss Alice Sirois, above referred to, Mr. Herbert M. Tucker, a division head in the Department of Agriculture, testified that before Miss Sirois bought any lots he advised her to keep out of it, that he went to Mr. Burkett and asked him about it and later reported to Miss Sirois that Mr. Burkett had advised that she keep out of it, that the Brooklawn Memorial Park was for burial purposes and not for investment buying. In spite of these warnings, Miss Sirois preferred to listen to an unknown salesman, and thereafter bought lots. Mr. Burkett states that on several occasions when instances of high pressure salesmanship came to his attention he personally made an issue of it and saw to it the salesman was fired.

Mr. Knudsen states that sometime in 1938 Mr. Louis J. Brann, who was acquainted with Mr. Vahey, began negotiations with Mr. Nathan Thompson, Mr. Leon Timberlake, Mr. Charles Morrill, Mr. Henry Merrill and Mr. Fred H. Lancaster to form a group and buy out Mr. Vahey. The plan was to pay \$50,000 to Mr. Vahey for 75% of his stock. Instead, however, this new group were allowed to have stock for which they apparently paid nothing. On January 4, 1939, 991 shares of the stock of Brooklawn Memorial Park was issued to Brooklawn Company, and one share each to Thompson, Merrill, Brann, Morrill, Lancaster, Vahey and Timberlake. Knudsen and Burkett each had one already, making the total of 1000 shares. On January 13, 1939, the stock of the Brooklawn Company was reissued, 100 shares to Leon Timberlake, 80 shares to Nathan Thompson, 60 shares to Franz U. Burkett, 80 shares to Louis J. Brann, 80 shares to Albert Knudsen, 300 shares to James Vahey, 80 shares to Fred Lancaster, and 30 shares to Seward Marsh. This gave these gentlemen control of Brook-

lawn Company which in turn owned Brooklawn Memorial Park. Apparently the only consideration for these gifts of stock was an agreement that the Brooklawn Company would issue its note for \$50,000 to Mr. Vahey payable within five years from September 1, 1938. This note was never issued however. It was apparently hoped that the participation of these people would restore a somewhat shaken public confidence in the project.

On April 30, 1938, a dividend on the stock of Brooklawn Company was paid Mr. Vahey in the sum of \$24,975. This dividend has been the subject of criticism by auditors and others as coming at a time when there existed a large undetermined liability for park development, but, in all fairness, this criticism cannot be addressed to Mr. Burkett who was not at that time either an officer or director of that company, who had no vote against the dividend if he was opposed to it, and who certainly gained nothing by its payment to Mr. Vahey.

Mr. Marsh apparently was opposed to the gift of shares to the Brann group and ceased his activities as a director and officer. Mr. Timberlake continued for a while and then withdrew. Mr. Vahey seems to have disappeared from the scene and his present whereabouts remains unknown. The others remain, but threat of suit from aggrieved investors has forced both companies into receivership. All matters now involving either company are in the hands of Honorable Sidney St. F. Thaxter, as a Justice of the Supreme Judicial Court in Equity. The receiver is Jacob Berman, Esq., and the attorney for the receiver Frank Haskell, Esq.

#### Conclusions:

That the Attorney General was unwise in continuing to be associated with either company after he learned authentically that his name and position were being used as bait by high pressure salesmen. All that is involved, however, is an error in judgment and no inference is warranted or intended that the Attorney General has been guilty of misconduct or has benefited improperly or dishonestly from any operations of these companies.

The perpetual care fund, amounting to \$50,556.49, is intact and on deposit in the custody of the court where it is safe-guarded from inroads by attachment and the like.

The Ernst & Ernst audit, copy of which is an exhibit supporting this report, shows that after proper allowances for operating and sales expenses were set up, the operating company lost money in the years ending April 30, 1936, April 30, 1939, and the nine months ending January 31, 1940, as follows:

Year ending April 30, 1936 (Loss) \$5,817.95.

Year ending April 30, 1939 (Loss) \$5,436.88.

Nine months ending January 31, 1940 (Loss) \$35,826.32.

The company made money in the years ending April 30, 1937, and April 30, 1938, as follows:

Year ending April 30, 1937 (Profit) \$18,265.72.

Year ending April 30, 1938 (Profit) \$15,691.09.

The company had gross sales of lots of \$601,029.33. The gross selling expense of selling that volume of lots was \$386,334.53, or approximately 64% of the gross receipts from sales. The administrative expense was \$247,395.33 during the entire period of operations.

Mr. Burkett and Mr. Knudsen received \$7,910 for legal services covering four years' work or approximately \$988 each per year. They received no salaries as such.

It appears therefore that the salesmen and sales managers have been the principal beneficiaries of the operations up to date. There is certainly no indication that Mr. Burkett has profited excessively or unreasonably by his participation.

It appears that individual investors, knowing that Mr. Burkett was both Attorney General and associated with Brooklawn Memorial Park, made complaint to him of high pressure salesmanship and the like. Unquestionably what most of these people wanted was their money back because they had been disappointed in their anticipated large profits. Mr. Burkett appears to have agreed in some instances to take these matters up with Mr. Knudsen. In some instances no doubt he did so. In one or two instances Mr. Burkett apparently misplaced the information and had to have the matter recalled to his attention. There is no indication, however, that any one of these complaints which were delayed in receiving his attention were of such a nature as to make immediate action of the Attorney General's department imperative. When the possibility of an infringement of the Blue Sky Law appeared,



Mr. Burkett apparently followed the policy of referring complaints to the Bank Commissioner's Department for investigation. These investigations were always made promptly and efficiently.

Your Committee finds no evidence of misfeasance or malfeasance on the part of the Attorney General's department in connection with the Brooklawn companies. The Attorney General apparently relied too heavily on the investigations and opinions of others in whom he had confidence and did not personally keep close enough to the situation as it developed. On the other hand, accusations which have been loosely made that the Attorney General has profited excessively and misused his office in so doing, all at the expense of widows, orphans, and the aged, appear entirely unjustified and untrue.

Your committee also made a cursory examination of the Grandview Cemetery Corporation and Gracelawn Memorial Park, two similar enterprises in other parts of the State. They are organized upon similar lines as to corporate structure, with two separate corporations in each case. Prominent and reputable citizens have been induced to lend their name to these enterprises and in the case of Gracelawn have apparently taken over the management upon a proper and legitimate basis, selling lots for burial purposes only. The Attorney General has no connection with them whatever. Wherever apparent violations of the Blue Sky Law have appeared, they have been investigated and prosecuted promptly. These investigations and resultant action are all discussed in detail in the testimony of Mr. Hal G. Hoyt of the Bank Commissioner's Department. He states that one Raymond Cushing, President of the Grand View Corporation, was prosecuted in Piscataquis County, but the law court dismissed the case on a fault in the indictment. The law court has very recently decided another case involving Cushing in favor of the State. Two salesmen were also indicted and some partial restitutions have been made. There were also prosecutions in Washington County. One salesman paid a fine of \$400. Warrants were taken out and arrests made also in Aroostook County. Mr. Burkett apparently assisted the County Attorney in these matters and there is no in-

dication that the Attorney General refused or failed to act. The Grand View Corporation, like the Brooklawn Park, is now in receivership.

It is interesting to note in passing that one of the promoters of the Grand View Corporation was a Eugene Gains, who had at one time been a salesman employed by Brooklawn Company. He is not to be confused with the Samuel Gains who was apparently associated in some way with Mr. Vahey. It is also noteworthy that the Gracelawn at Auburn, Maine, was first promoted by the same Mr. Paul Cassidy who first promoted Brooklawn Park. To some extent the same operators appear to have drifted from one development to another. Mr. Cassidy when last heard of had been arrested in New Hampshire and was under bond there.

The latest manifestation of cemetery operations takes the form of Memorial Estates, which has been active in the eastern part of the State. Their methods are carefully analyzed by Mr. Hoyt in his evidence and appear to be clearly in violation of the Blue Sky Law. Several arrests were made in Bangor, indictments were obtained and some effort at restitution has been made. There is no indication of a failure to prosecute any complaints in this connection.

It is indeed unfortunate that the Memorial Park idea has been developed along purely speculative lines in this State, for there is nothing improper about the concept of a Memorial Park when divorced from high pressure sales methods and investment selling. The monument makers, through their association, have vigorously opposed the development of these parks along investment lines. Their secretary, Mr. Charles Berry, admitted frankly in his testimony that these developments jeopardize the business of the monument makers. The present status of the law prohibits investment selling of cemetery lots and apparently has the effect of permitting selling for burial purposes only. A rigid enforcement of the present law would presumably have the effect of eliminating all such complaints as have previously arisen. There seems no reason to believe that such enforcement cannot be expected. The Bank Commissioner's Department is charged with the duty of investigating and prosecuting violations of this law and has

shown itself able and willing to aggressively perform its duty in this connection. The Attorney General's Department may be expected to render every assistance in these investigations and prosecutions, and your Committee finds no basis for believing that such assistance will not be readily given.

It is to be hoped that this analysis may better acquaint the people of Maine and the Legislature with the background and development of memorial parks in Maine and may set at rest doubts and suspicions which have been engendered by unwarranted political accusations. The criticism of the wisdom or judgment of an individual in following a certain line of conduct may, under some circumstances, be proper and even justified. It is a vastly different and more serious matter to stretch that criticism into an unwarranted accusation of malfeasance or nonfeasance of public office and public trust.

It is also to be hoped that the people of the State of Maine will profit by this analysis and be warned that conservative investments should not be quickly discarded in favor of "get rich quick" schemes. There are lawyers, bankers and business men in every community able and willing to give advice in such matters and the investor who needs the high pressure salesman without looking for such advice, though much to be pitied, must take his fair share of the responsibility when the expected profits fail to appear.

#### **Department of Health and Welfare**

In the limited time at its disposal the Committee made a reasonably close examination of the Department of Health and Welfare. The inquiry concerning the Department of Health and Welfare included the taking of testimony from Mr. Joel Earnest, Mr. Frank W. Haines, Miss Nettie C. Burleigh, Mr. George W. Leadbetter, Mr. Edgar W. Russ, Mr. Merle F. Burgess, Miss Bertha Hudson, Mr. Harry Henderson and Mr. Robert Perlberg. Old Age Assistance in the State of Maine was first begun in 1936 by the then Governor Brann and his Executive Council, acting by Council order. A plan for the administration of old age assistance was at that time prepared by the then Commissioner, Mr. Leadbetter, with the assistance of Mr. Harry E. Henderson, who was then an in-

vestigator in the department. This plan was approved by the Federal Social Security Board and became the operating agreement between the State of Maine and the Federal Government. Acting under this plan and with no more authority than was furnished by the order of the Governor and Council, which had neither legislative nor constitutional sanction, large sums of money were disbursed by the Division of Old Age Assistance. These disbursements substantially contributed toward the creation of a deficit of two million dollars.

In 1937 the Legislature passed enactments providing for the administration of the Old Age Assistance and for funds to support the same. It then became necessary to prepare a new plan for the administration of Old Age Assistance which would conform to the Statute and Federal requirements. Such a plan was drawn up. Copies of both the 1936 plan and the 1937 plan were filed with the Committee for examination.

The Committee had not proceeded far with its investigation of the Division of Old Age Assistance before it discovered definite and conclusive evidence of a long existing conflict and controversy between the Old Age Assistance Commission and the officials of the Division, particularly the former Director, Mr. Henderson, the State Supervisor, Mr. Frank Haines, and the field supervisor, Nellie Simons Gallison. The difference of opinion centered around the question of authority of the Commission to determine the amount of any particular grant and its right to override, if necessary, the decision made on budget allowances by field workers. The Commission took the position that it had such authority and that its decisions were final and could be overruled only by the Commissioner of Health and Welfare. It does not appear that Commissioner Leadbetter ever overruled a decision of the Commission or attempted to do so. The Commission based its position first on the provisions of Section 5 of Chapter 105 of the Private and Special Laws of 1937, which states:

"Said Commission shall examine and pass upon all applications for Old Age Assistance and if it is satisfied that the applicant is eligible for such assistance and entitled thereto under the provisions

of Title II of this act, it shall so certify, and no Old Age Assistance shall be granted or paid to any applicant until the application therefor has been so examined and approved;" and Section 15, which provides:

"Any person who is denied assistance or who is not satisfied with the amount of assistance allotted to him or is aggrieved by a decision of the department made under any provision of this act shall have the right of appeal to the Old Age Assistance Commission provided for by Section 5 of this Title, and said Commission shall provide the appellant with an opportunity for a fair hearing. Said Commission shall hear all evidence pertinent to the matter at issue and render a decision within a reasonable period from the date of the hearing." The Commission based its position secondly on the provisions of the plan for administration which was in effect the working agreement with the Federal government, which plan states on Page 2, Section 4, Sub-section A:

"The Division of Old Age Assistance through its staff will gather the information necessary to determine the eligibility of applicants and amount of assistance required, and this material will be presented to the Commission for whatever action it may see fit to take."

The officials of the division base their position on a legal opinion given by the Attorney General, Mr. Burkett, November 26, 1937, which states as follows:

"The plan clearly states that the outlined functions both of the Old Age Assistance Commission and of the Director of the Old Age Assistance Division are merely administrative and advisory and that the final decision on all matters is to be made by the Commissioner of Health and Welfare. In this connection the word 'order' in the first line of the last paragraph of Section 5 of Title II should be construed as meaning 'recommend', and the words 'render a decision' in the last sentence of Section 15 of Title II of the act should be construed as meaning 'make a recommendation to the Commissioner of Health and Welfare.'"

The history of this legal opinion as obtained from the testimony of the Attorney General appears to be that although the legislative enactment was submitted to the Social

Security Board for approval and was approved, about two or three weeks later representatives from the Social Security Board informed the Governor and other officials of the State that the plan was not acceptable if authority was vested in an Old Age Commission. These agents of the Federal Board represented the position of the Federal authority to be that the supreme authority for the State of Maine must be in a single administrative agency and that this must be the same administrative authority which disbursed interstate other Federal aid funds. This meant that unless some action were taken to conform to these Federal requirements Federal funds for Old Age Assistance would be withheld. The Attorney General states that for that reason and in order to prevent the termination of Old Age Assistance he rendered the opinion in question which he admits frankly was a "strained interpretation" of both the law and the plan. It seems fair to state that whether or not the result was beneficial the effect of the legal opinion was to vitiate the law and the plan and the obvious and plainly expressed intention of the Legislature. Obviously an emergency was created by the attitude of the Federal agent and the legal opinion was adopted as the way out.

The resultant conflict of opinion has not been conducive to good feeling between the Commission and the officials of the Division. The Commission felt that it was charged by the law and the plan with grave duties and responsibilities both to the taxpayers and the recipients of Old Age Assistance. The Commission felt that there was an organized effort on the part of the officials of the Division to make of the Commission a fifth wheel and a rubber stamp. The officials of the Division felt that there was no real need of a Commission, and that they, the trained workers in the field, were better qualified to judge the amount of need than the Commission could be, and that the Commission's power was only to recommend, and that in seeking to fix amounts of grants the Commission was exceeding its authority. The controversy manifested itself in many ways, a few examples of which follow.

A fair hearing was held by the Commission at Lincoln, Maine, on

an application of a recipient for an increase. The field worker in question submitted a budget which indicated no need of an increase. After the hearing the Commission decided that the budget was deficient in certain items and that some increase should be granted. The State Supervisor and field supervisor were both present, and when the Commission made known what its decision would be, both supervisors insisted that the Commission had no power to supersede the findings of the field worker and grant any increase. The Commission then very properly inquired what purpose there could possibly be in having a fair hearing on a question purely of amount of grant if the Commission were powerless to increase or decrease a grant after hearing. The State Supervisor, Mr. Haines, was asked this same question by the Committee and could give no satisfactory answer.

A large number of applications were held up by the Commission because it felt that the fuel allowance in the budgets was too high. The Commission took the position that these were cases where the recipients owned woodlots and their fuel cost should not be high. At first, after these applications were returned not approved by the Commission, they were sent back again by the division officials for approval without change. The Commission, however, still refused to approve them and finally, after considerable controversy, the fuel allowances were reduced. It appears that subsequently all field workers were instructed to reduce fuel allowances. The Commission is probably justified in its contention that the position which it took on fuel allowances has saved the taxpayers of the State a substantial sum of money without hardship on the recipients.

There was apparently a further controversy as to what cases should be sent to the Commission for approval. The department officials apparently took the position that they should be the sole judge of what cases should go forward to the Commission for approval and that these should be approved and signed by the Commission promptly and without question. The Commission took the position that it should have a voice in the selection of cases to be given preference, should carefully examine the facts

in each case before passing upon it, and that where need was comparatively equal, preference should be given to recipients in urgent cases in the order of their application. The Commission felt that there were a great many old applications where urgent need existed which for some reason or other had been side-tracked or lost sight of. In an effort to attempt to correct this condition, the Commission asked that all of the old, unapproved cases be sent to it for inspection. The officials state that this request was complied with as promptly as the cases could be gotten together, but the Commission maintains that there was undue delay in complying with the request and that the Commission was able to get the old cases forwarded to it only by appealing directly to Mr. Leadbetter. Mr. Leadbetter appears not to have felt any antagonism toward the Commission or its authority and to have cooperated with the Commission, although he appears not to have been active in the work of the Division of Old Age Assistance once it was under way.

A further difference of opinion arose over the granting of assistance to a large number of old pauper cases. The Commission received a great influx of such cases soon after the fiscal year starting in July, 1939, so many in fact that the Commission began holding them up. The Commission's attitude was that with the limited amount of money available and the great number of really urgent cases on the waiting list, it wasn't right to give preference to people who were already being cared for, in many cases at much less expense than would be the case under Old Age Assistance. The Commission was supported in this position by Mr. Leadbetter and the Governor and Council. The Commission then adopted the policy of laying aside all pauper cases where the applicants had been receiving State or town aid prior to the time when Old Age Assistance went into effect. The Commission reports, however, that this point of view was not shared by the officials, and that from time to time these cases were being taken out of the files and sent up to the Commission for approval.

The differences of opinion between the Commission and the officials of the division reached possibly its extreme point when the Com-

mission arrived in Augusta for hearings and found that a windowless stockroom had been constituted its office and that all of its papers and documents had been moved to this stockroom without the Commission's knowledge or consent. All the officials of the division disclaimed knowledge or responsibility for this action, but the Commission viewed the action as a deliberate insult, and the opportunities for cooperation and harmony were considerably impaired.

For about a year the former Chairman of the Commission, Miss Nettie Burleigh, and the minority party member, Mr. Merle Burgess, worked practically full time on the cases. The third member and present Chairman, Mr. Edgar W. Russ, resided in Arcostook County, and it was impossible for him to be as often in Augusta. The Commission members receive ten dollars a day and their expenses, and the total expense of maintaining the Commission during the year of their greatest activity was approximately seven thousand dollars. The present Commissioner of Health and Welfare, Mr. Joel Earnest, has advised the Commission that the department cannot stand such an expense and that the total cost of maintaining the Commission must be reduced to approximately one hundred dollars a month. All agree that such an allotment would only permit the Commission to function one or two days a month. Although this might be sufficient during the period when no funds are available to add any substantial volume of new cases, it would obviously mean that if such funds were later made available by the Legislature, and the same financial limit imposed, the Commission could not possibly serve as anything more than a rubber stamp for the officials of the division.

The Committee has no knowledge as to what the present attitude of the Federal authority is toward having a Commission in which real control and power is vested, except as its attitude was manifested at the time of the legal opinion rendered by the Attorney General. It must be apparent that no useful purpose is served by having a Commission which serves only as a rubber stamp for administrative officials and that any expenditure for such a purpose is wasted. The attitude of Commissioner Earnest and the other ad-

ministrative officials of the Division is clearly discernible from their testimony and appears to be that there is no real need of a Commission, and the Commission is accepted by them merely as a useless appendage insisted upon by the Legislature. The Commission members, both former and present, very naturally feel that they have performed a service which has been both valuable and beneficial both to the taxpayers and recipients of assistance. They feel that they have served as a check against incidents of incompetence on the part of field workers. It is apparent that the present incongruity as between the expression of the law and its interpretation by the Attorney General leaves the situation muddled and opens wide the door for the continuation of the conflict of authority which has previously existed. The law should be clarified. Either the Commission should be abolished or its authority be made clear and concise. Consideration will have to be given to the attitude of the Social Security Board on this subject, else Federal aid to Old Age Assistance will be jeopardized.

The first employment of field workers in 1936 seems to have been done hastily and largely on a political basis. Mr. Henderson told the Committee that although he had had some thought of applying for the position of Director of Old Age Assistance in 1933, that when he saw the way in which the organization was to be set up he abandoned the idea. In 1937 a reorganization took place, and although there was some carry-over of field workers and staff from the previous set-up there was also a certain amount of reorganization, and Commissioner Leadbetter appears to have had more authority in selections. Still later these field workers were all given examinations by the Personnel Board and received their service rating and status. The Committee selected from the files sample case reports prepared by different field workers and observed certain tendencies to which it believes attention may properly be called. There is ample indication that field workers have in the past solicited persons to make application for Old Age Assistance who previously had no intention of so doing and who were on the whole reluctant to make application. One possible reason for such solicitation

might be the desire on the part of a case worker to increase the case load in his territory and thereby make his position as indispensable as possible to the department. The officials of the department take the position that such solicitation was limited to instances where either the husband or wife was an applicant and it was thought good policy to have the spouse also a recipient, with the total grant split between them. One justification offered was in the case where the spouse who was solicited to apply was the owner of whatever property might be in the family, the theory being that at the death of such spouse there would be an opportunity to make claim for recovery against the property, which opportunity would not be present if such spouse had not become a recipient. In cases where a thirty dollar grant was split, for example, fifteen dollars to each spouse, the justification might be valid. The Committee feels however that in too many cases this doubling up of grants has resulted in an additional outlay of money, even running as high as sixty dollars to the two recipients, and that the policy has resulted in expenditures in excess of any possible hope of recovery. The Committee also seriously questioned whether the solicitation of new applicants has been strictly confined to these cases of spouses owning property. The Committee does not feel that sufficient regard has been given to the potential value of property owned by applicants and that the field workers have been quick to accept the position of an applicant that there was no ready market and therefore no substantial sale value for his particular property. The Committee also feels that there have been many instances of transfers of property away from the applicant made in an effort to constitute the applicant apparently eligible and that the field workers should give very careful scrutiny to this particular phase of their work. The Committee is aware that the field workers see a multitude of very pitiful and deserving cases and it is only natural that their sympathies should be constantly aroused, but the field workers should be constantly made aware that there is a limit to the load which can be placed upon the shoulders of the taxpayers, and the policy should be to spread the funds available over

as many deserving and urgent cases as possible.

It appears that the number of field workers at the peak when many new cases were being put on reached approximately ninety. At present with no funds available for new cases except by way of replacements caused by the death or ineligibility of recipients, there are approximately fifty-eight field workers. Such periods without new funds can apparently be expected to last from six months to a year. The members of the Commission give it as their opinion that during such periods there is no need for carrying such a large staff of field workers on the payroll. The officials of the division, however, assert that such a staff is required to keep a constant check on the recipients, reporting deaths, checking continuing eligibility, checking the acquiring of property, and checking the changing needs of the recipients. These field workers and district supervisors receive from twenty-five to thirty-five dollars a week. In addition there is a large staff of stenographers connected with the field work who receive eighteen to twenty dollars a week.

Mr. Henderson was transferred from the position of Director of Old Age Assistance to the position of Chief Accountant for the Department of Health and Welfare. All of the accounting which was previously done by and within the various divisions of the department has now been centralized by the assembly of all the accounting staffs in one central office, but without any increase in personnel. Their work will be coordinated with that of the Bureau of Accounts and Control. Mr. Henderson's position as Director apparently has not been filled, and Mr. Haines appears to be carrying on part of his work, but without change in his official designation. The balance of Mr. Henderson's duties have been taken over by Mr. MacDonald. The field work on Old Age Assistance is combined in large degree with work on aid to the blind. Under Mr. Earnest's proposals for reorganization there will be more centralization of the work of the various divisions within the department and within the division of Old Age Assistance there will be more authority and more responsibility vested in the district supervisors.

Mr. Earnest in discussing the problems of his department suggests various needs, part of which may be legislative. He suggests that the present method of enforcing legal responsibility of relatives is inadequate and that the system would be more efficacious if the legally responsible relatives could be brought into court and compelled to give support at the very outset, when the necessity for assistance first appeared. On the question of future overdrafts in the Department of Health and Welfare, Mr. Earnest stated that the department will expend no more money than has been appropriated to it for its operations, except for two. Of these two an overdraft in one is likely and in the other is certain. The probable one is Commodities Distribution, and the one which is certain is the State Poor Relief account. Mr. Earnest states that he does not intend to create the overdrafts and then later ask that they be made up, but that he proposes when the funds are exhausted to call that fact to the attention of the Governor and indicate the impossibility of continuing the program further until more funds are furnished. The probable overdraft in Commodities Distribution will arise from the fact that many thousands of dollars worth of commodities more than anticipated are being allocated from Washington, and the additional necessary warehousing and trucking will involve unanticipated expense, estimated at a possible fifteen or twenty thousand dollars. The State Pauper account is under the control of the towns, which bill the State, and the legislative appropriation for this account is apparently insufficient to pay the valid bills which are received. It is estimated by Mr. Earnest that the State Pauper account appropriation will have to be increased between four and five hundred thousand dollars to avoid overdrafts. Recent changes in the law of pauper settlement have of course resulted in more State cases and fewer town cases. Mr. Earnest further suggests some sort of simplified system for making the determination of pauper settlements and responsibility as between towns and the State might be valuable and might have the effect of saving expense, hastening results, and making settlement questions more definite and certain.

Mr. Earnest also suggests a revolving fund to provide temporary aid for the individual pauper during the interim period while the settlement disputes remain unresolved.

Mr. Earnest gave it as his opinion that if all eligible cases were to be added in Old Age Assistance a further appropriation would be necessary, inasmuch as the winnowing out of undeserving recipients could not possibly create enough vacancies to take care of all deserving and eligible applicants. The problem is increased by the fact that in Maine there are more older people in relation to population than in many states.

Maine has about 2229 State pauper cases, involving approximately 9000 individuals.

Mr. Earnest states that it was his policy not to permit the division heads in his department to make public statements or give out information without first taking the matter up with him; that his purpose in establishing this rule was first to keep his staff out of politics, and second to make certain that only authentic information and not misinformation should be given out. The Committee feels that this policy should not be carried to the extreme of preventing the public from getting information about the department, or to the extent of stifling criticism.

Mr. Earnest called the Committee's attention to the importance of the task of a field worker in Old Age Assistance, who is recommending the spending of approximately fifty thousand dollars a year, who is the only contact between the State and the recipient, and who is, under present conditions, carrying a case load of approximately 250 cases. Mr. Earnest took the position that it would not be economical, or in the long run save any money for the State, to substantially reduce the number of such field workers and thereby increase the case load per worker.

Mr. Earnest was questioned concerning the homes and semi-hospitals which have been operated in Pittston, Readfield, Gardiner and other places, in which State paupers have been boarded and cared for. Mr. Earnest stated that an entire reorganization is in progress in this connection and that the home in Readfield about which there had been some complaint is expected to

be closed, as far as the State is concerned.

The Department of Health and Welfare expended, during the fiscal year ending June 30, 1940, the sum of \$6,893,854.89, of which \$4,856,719.97 was furnished by the State. The balance of \$2,037,134.92 came from the Federal Government. Out of the total expenditure of \$6,893,854.89 the sum of \$3,276,151.48 was spent for Old Age Assistance. The overhead in the department for administering this amount was \$263,330.73, of which \$181,426.91 came from the State, and \$81,903.82 came from Federal funds. The total cost of administering Health and Welfare, including Old Age Assistance, during the same fiscal year, was \$575,148.10.

The question of means of supplying funds for the operations of this department is one of major importance to be considered by the Legislature.

It seemed to the Committee that some means of supplying funds should be arrived at other than by clipping funds from other departments.

Either new sources of revenues should be found or else stringent economies should be made in administration costs.

A chart of the Department of Health and Welfare personnel as of October 10, 1940, to indicate the number of employees and the nature of the positions they hold, is as follows:

	Number Employees
Commissioner of Health and Welfare	1
Secretary to Commissioner	1
<b>Divisions of Social Welfare, Poor Relief, Commodity Distribution, Emergency Aid, Aid to Blind, Accounts and Audit, Business Management</b>	
Director of Bureau of Social Welfare	1
Director of Division of Poor Relief	1
Director of Commodity Distribution	1
Director of Emergency Aid	1
Director of Aid to Blind	1
Director of Accounts and Audit	1
Director of Business Management	1
Secretaries to Directors of Divisions	7
State Supervisors	4
District Supervisors	10
Division Supervisors	3

Attorney	1
Indian Worker	1
Field Workers	125
Miscellaneous State Office Workers	15
Branch Office Stenographers	66
State Office Stenographers	4
State Office Clerks and Typists	34
Secretary-Clerks	10
Janitors	5
	<hr/> 294

<b>Bureau of Health</b>	
Director of Bureau of Health	1
Secretary to Director of Bureau of Health	1
Division Directors	5
District Health Officers	6
Supervising Sanitary Engineer	1
Sanitary Engineers	5
Trainee for Sanitary Engineer	1
Inspectors	5
Chemists	6
Laboratory Technicians	3
Laboratory Helpers	2
Clerks	6
Nursing Supervisors	3
Public Health Nurses	32
Nutritionists	1
Social Workers	2
Physiotherapist	1
Stenographer-Clerks	34
Dental Hygienists	3
V. D. Control Officer	1
T. B. Nurse Technicians	2
Jail Physicians	4
V. D. Clinic Physicians	27
Pathologists	1
Statistician	1
Bookkeeper	1
Director of Branch Laboratory	1
	<hr/> 156

#### TOTAL PERSONNEL Department of Health and Welfare 450

The employment of these workers embraces many types of employment in the following divisions and bureaus, all of which are a part of the Department of Health and Welfare:

Old Age Assistance Division
Bureau of Social Welfare
Emergency Aid Division
Blind Division
Division of State Poor Relief
Bureau of Health
Commodities Distribution Division
Division of Accounts and Audit
Division of Business Management
<b>Maine State Liquor Commission</b>
In its first report your Committee touched upon the administration of the Maine State Liquor Commission, but indicated the necessity for further investigation. The Committee



has obtained information from the following persons, whose testimony has been transcribed: Mr. Stillman E. Woodman, Dr. Harold S. Boardman, Thomas F. Locke, Willis E. Swift, Ralph C. Ketchen, Roland O. Parsons, Herbert A. Folsom, Fred M. Berry, James F. Woodbury, J. Edmund Hutchinson, Frederick G. Payne, Carroll C. Blaisdell, Herman Sahagian, Henry D. Hanson, David V. Walton, Benjamin Bornstein, Wesley A. Stratton, and Theodore F. Anketell.

The Committee's effort had been to analyze the development and progress of the activities of the Liquor Department since its inception, comparing methods and efficiency, and securing as far as possible a cross section of reactions, criticisms and suggestions from officials, store managers, salesmen, and both former and present employees.

The first Chairman of the Liquor Commission, Mr. Stillman Woodman, resigned after a few months to become Chairman of the Highway Commission, and on May 9, 1935, Mr. David V. Walton was appointed Chairman of the Commission. At that time the other two Commissioners were Mr. John Couture and Mr. Louis F. Fleming. Mr. Fleming's appointment terminated July 7, 1935, and his successor was never chosen. Mr. Couture's appointment terminated July 21, 1935, and although he continued to serve "de facto" until February, 1937, he was never actually reappointed.

On January 6, 1937, Governor Louis J. Brann and his Executive Council went out of office. Governor Lewis O. Barrows and a new Council came in. Apparently the heavy inventory of liquor stock and the large number of employees became a matter of immediate concern to the incoming Governor and Council. After some preliminaries, the exact nature of which is not disclosed in the records kept by the Secretary of State, Mr. Walton was removed and a new Commission appointed. The Council order of February 4, 1937, speaks for itself, as follows:

"February 4, 1937, David Walton, Chairman of the State Liquor Commission, being present was asked by the Governor if he cared to say anything to the Council. Mr. Walton replied that he had nothing to say except that he was not going to resign his office.

"The Governor then stated that after serious consideration of the situation in the State Liquor Commission and in view of the fact that there had been a vacancy in the Commission since July 7, 1935, and of the fact that one of the Commissioners had been serving de facto only since July 21, 1935, the Governor and Council after mature deliberation had arrived at the decision that a complete reorganization of the State Liquor Commission was desirable and should be brought about speedily.

"The question of concurrence in this decision was put to each member of the Council by the Governor, as follows:

"Do you concur in the decision on reorganization of the State Liquor Commission as stated?"

The answers were as follows:

Councillor Eaton—"I do."  
Councillor Schnurle—"I do."  
Councillor Blanchard—"I do."  
Councillor Wadsworth—"I do."  
Councillor Clarke—"I do."  
Councillor Fernandez—"I do."  
Councillor Beck—"I do."

Mr. Walton testified that at this meeting his attorney, Mr. Folsom Merrill, was present but did not address the Governor and Council.

The "situation in the State Liquor Commission" referred to in the order was evidently the fact that the inventory was at its all time peak near the end of the year 1933. Information obtained from the Bureau of Accounts and Control indicates that at its peak the inventory was substantially in excess of \$900,000. Testimony of witnesses indicates that the warehouse and stores were so completely filled with liquor that it was impossible to unload cars into the warehouse, with the result that eighteen carloads of liquor were standing on the tracks under demurrage in December, 1933, and that a total demurrage bill of \$157 accrued. Information obtained from the Maine Central Railroad indicates that five free days are given on each car, from which it can be determined that all eighteen cars were held up more than five days each before they could be unloaded.

In spite of the unusually large inventory, however, it appeared that during the entire month of December, 1936, the warehouse was unable to fill orders on many items for which there was a substantial public demand. An examination of the requisition sheets from the stores for

the month of December, 1936, discloses that on one order alone there were forty-two separate numbers requisitioned which the warehouse was entirely unable to supply. These seem to be standard items for which there was a constant demand.

Immediately following the removal of Mr. Walton, Dr. Harold S. Boardman, Mr. Willis Swift, and Mr. Thomas F. Locke were appointed as the new Commission. They were charged by the Governor and Council with the duty and responsibility of reducing inventory, personnel and operation expenses. Mr. Swift served only until June 5, 1937, having been persuaded to leave his own business only long enough to assist in reorganizing the purchasing and merchandising methods. The inventory graph clearly shows a well defined effort to reduce inventory, and in fact inventory dropped steadily, in the early months of 1937, to substantially less than \$450,000. At this time it was found that it had been over reduced and new purchases were made to satisfy demands. Inventory since that time has ranged approximately between \$500,000 and \$625,000, the only exception of consequence being when substantial purchases of imported Scotch and Brandy were made at the outbreak of the European War.

A comparison of the methods of the former Commission and the present Commission is enlightening and interesting.

#### **Purchasing**

Apparently all the purchasing was done by Mr. Walton, based on such information as he gained from the Bureau of Accounts and Control as to sales from the stores. This information, he states, was usually late in getting to him. In fact it is evident that Mr. Walton and the Bureau of Accounts and Control were never able to work in harmony and cooperation, and Mr. Walton inferred that there was personal feeling between Mr. Runnells and himself. The store managers had absolutely no control over the stock which came to their stores. In some cases they filled out requisition slips. In other cases the requisitions were made up for them at the warehouse. But in either case Mr. Bornstein, the Shipping Clerk at the warehouse, exercised his own judgment as to what the probable demands at the stores would be and shipped to them, out of stock, the numbers and quantities which he felt they would need.

Mr. Bornstein testified before the Committee, and made it quite clear, that the store managers in his opinion did not know how to order. It was his opinion also that if left to their own devices, the store managers would so misjudge the needs of the stores that they would get badly overstocked or understocked on various items. Two store managers who have had experience under both Commissions and both purchasing methods have an entirely different reaction. They state that under the former method their stores were constantly out of items which were in demand and constantly overstocked on other items. They state that under the present system the store manager is definitely charged with the responsibility of keeping the stock up, replacing items sold, and anticipating seasonal rush periods such as the 4th of July and Christmas. The responsibility of the Commission is of course to keep the warehouse stock and goods on order at a point where the store managers' orders can be filled with a minimum of delay, and this back order situation, the store managers state, has shown great improvement under the present Commission.

The attention of the Committee was called to one particular item, the history of which is analyzed in some detail. This was "Cobb's Creek," a low-price whiskey sold by Continental Distilling Corporation. There is no question but that in 1936 this item was a very fast seller. It appears however that the stores were being constantly sent more of it than they could use. An examination of the store requisitions indicates that orders of 10 or 15 cases were worked up to 20 or 25 cases. One store manager sums the situation up in this way:

"\*\*\*We had some numbers there that when they first came on, of course the price was right, and we naturally had plenty of stock, and I could see by checking back on my stock report\*\*\*that there were certain numbers that I didn't need, and I left them out entirely, but I will be doggoned if they wouldn't send us twenty-five or thirty-five or forty cases of that stuff until we were loaded with it really.

Q. Were there particular items that you can remember, that you think of, that would come through?

A. Yes, there was Cobb's Creek

for one thing, one of the biggest items we were always overloaded on.\*\*\*

Q. Can you mention any other items besides Cobb's Creek that would be shipped and overstock you?

A. Well, perhaps I haven't kept in mind any other things in particular, because we were so dog-goned overstocked on that that it got to be a joke with us all.

Q. What did you do with it after you got it?

A. Well, we would just have to tier it up downstairs in the old store where we were and just hope they wouldn't send us any the next week."

The figures show that in 1936, the Commission purchased 64,605 cases of liquor from the Continental Distilling Corporation, but only sold 55,755 6-12 cases. In 1936 the Commission purchased \$618,935.22 worth of liquor from this one concern, whereas in 1937 only \$210,877.20 worth of liquor was bought from it, a decrease of \$408,058.02 in purchases. The only explanation given for this is that the price of Cobb's Creek was raised and that the sales then fell off. But the fact that purchases in 1936 were apparently greater in excess of public demand would appear to furnish some reason for this.

It is also significant that of the eighteen cars of liquor which were on demurrage, ten of these cars were loaded with products of the Continental Distilling Corporation.

Purchases of all brands were particularly heavy in the last part of 1936. In December, 1936, alone, total purchases were \$483,133.97, as against only \$284,330.51 in December, 1937.

Yet it must be borne in mind that sales generally increased in 1937, and that public demand for liquor also increased. Particular brand items might show a decrease because of price fluctuations or public fancy, but for all the purchases from a particular vendor to decrease in one year from 64,605 cases to 23,765 cases, while sales of that vendor's products only decreased from 55,755½ cases to 32,334 1-12 cases indicates that there was inefficiency in purchasing methods prior to the reorganization of the Maine State Liquor Commission. The result was an unnecessarily large inventory which was

entirely out of line with public demand.

In fairness to the Walton Commission it must be stated that the liquor business was new to the State of Maine and to the Commissioners. Some mistakes were to be expected. However, a visible and prompt improvement in business methods was noticeable soon after the advent of the present Commission.

#### Records

The new Commissioners state that when they took office they found no records, and that if there had ever been any records they had been either removed or destroyed. Mr. Walton was asked if he kept any records at his office and he replied that that was all done at the Controller's office. He also stated that he had great difficulty in getting information which he needed from the records in the Controller's office.

At the present time there is kept at the office of the Liquor Commission a very adequate and complete set of records, in the form of graphs and Kardex systems, which show the entire history of particular brands, stock turnover, dates of additions to and removals from the list, history of all vendors, comparative inventories, sales and the like. These records give the Commission a clear picture of its day to day position and furnish not only the basis for a satisfactory explanation as to why any particular item has been added to or removed from the list, but also a basis for judging and estimating future needs and requirements.

Mr. Walton turned over to the Committee his personal file which he stated contained all the records he had except for original store requisition slips. This file contains a memorandum of all employees of the Commission as of December 2, 1936, prepared by Mr. Ketchen, some correspondence dated January 22, 1937, concerning analyses of liquor which were about to be begun, a letter from Mr. Carey, legal adviser to the Commission authorizing purchase of furniture and fixtures by the Commission, and sundry letters from other State Commissions giving figures on their operations. It also includes a copy of a statement for the press prepared by Mr. Walton after his removal. All this material is included in an exhibit

folder entitled "Mr. Walton Testimony, Exhibit 3."

#### **Merchandising**

In June, 1938, approximately 95% of the money collected was from the sales of whiskey, gin, rum, and brandy; the other 5% was from the sales of wines and cordials. At that time 343 brand numbers represented the former types of liquor and 163 brand numbers the latter. There was an obvious disproportion in brand numbers. The new Commission reduced the list from 556 items to 394, permitting special orders to care for items on which there is no constant demand.

This has reduced to a minimum slow moving stock and permitted the very substantial reduction which is reflected in total inventory. The turnover of the inventory based on the cost of sales for the period ending February 28, 1937, was 6.12 times per year. The turnover for the succeeding year was 8.43 times per year. The peak inventory for the year ended February 28, 1938, was only \$625,000, and the average inventory was reduced by the new Commission about \$75,000, even though sales steadily increased.

Retail bottle prices were computed by the new Commission by using less-carload prices of liquor as a base. Besides being fair to vendors who necessarily supplied in less-than-carload lots, this increased revenue approximately \$60,000 per year.

A great deal of credit undoubtedly is due Mr. Swift, who gave his attention primarily to straightening out the inventory and merchandising problem.

#### **Transportation**

The New Commission discovered a traffic problem at the warehouse resulting from the confusion caused by trucks delivering and taking away liquor. The narrow street and parking conditions there caused a natural bottle-neck. To eliminate this difficulty and to equalize business between railroads and trucking concerns, both being large taxpayers, it was arranged that all incoming liquor to warehouse should come by rail and that all outgoing liquor should go by truck. The freight rates and routings are subject to check by the State Supervisor of Freight Traffic connected with the Public Utilities Department. Store managers since the advent of the new Commission have been made aware of the possible differences in

freight rates and it is apparent from the testimony of those managers who were questioned that they have been instructed by the new Commission to have constantly in mind the objective of obtaining the minimum rate. This plan alone, it is estimated, saves the State between \$7,000 and \$10,000 annually.

#### **Personnel**

In the first year of operations of the new Commission the number of employees was reduced from 153 in February, 1937, to 138 in February, 1938. As the number of stores has increased to its present figure of 40 stores and the warehouse, the number of employees has increased. In July, 1940, the records show 149 regular employees. In addition 18 are employed temporarily.

The new Commission found an overlapping of duties and responsibilities. For example Mr. Ketchen was Superintendent of retail stores and as such traveled constantly visiting the stores. His assistant, Mr. Quincannon, evidently did likewise. Then in addition there were two supervisors who, it seems, traveled a great deal together. It is not clear as to just what they were supposed to do. In addition an examination of Mr. Walton's expense accounts indicates that he was on the road almost constantly, apparently visiting the various State stores and attending hearings.

Today this duplication of activity is entirely removed. Mr. Locke travels only as much as is necessary to attend hearings. The other Commissioners visit the stores only in case of emergency or trouble. Mr. Ketchen has been transferred to the Alcohol Division, and the positions of Superintendent of Stores and Assistant Superintendent have been abolished, with resultant savings in salaries. The two supervisors, Mr. Hatch and Mr. Anketell, are each assigned half the State and are charged with the responsibility of supervision and instruction. Both supervisors are college men and both seem to enjoy the confidence of both the Commissioners and the store managers. A decrease in traveling expenses was reflected the first year under the new Commission in the amount of \$6,922.66.

Two new departmental divisions have been added by the new Commission; (1) the Chemical Analysis Division and (2) the Alcohol Division. Although these have added some extra operating expense, they

are clearly necessary and desirable. The chemical analysis of all liquor tends to prevent Maine from becoming a dumping ground for inferior liquor and keeps the quality of delivered goods up to the standard of samples. The Alcohol Division administers the so-called "permission system" whereby certain specified classes of legitimate users of alcohol such as rectifiers, hospitals and the like are enabled to get their requirements of alcohol. It might be noted in passing that salary reductions and savings instituted by the new Commission have been estimated by the Bureau of Accounts and Control to exceed \$20,000 a year. It was further estimated that reductions in expenses by the new Commission in its first year of management amounted to approximately \$45,000, while during the same period revenue increased approximately \$60,000. This would seem to indicate that the action of Governor Barrows and the Executive Council in reorganizing the State Liquor Commission in 1937 has paid dividends both in economy and efficiency to the citizens of Maine.

#### Specific Complaints

##### Purchase of Refrigerating Units

The Committee finds that the former Commission purchased and had installed 25 refrigeration units to cool unfortified wines at a cost of \$504. each. In addition a larger unit costing \$2,960. was installed at the warehouse. The total expenditure was \$15,560. Two of these purchases were ratified and confirmed by order of Governor Brann and the Executive Council by order No. 482. Two others were supported by purchase order initialed by Mr. Owen as Purchasing Agent, but all the others were without any other authority than that of Mr. Walton. There is no indication that the contract was put up to bids or handled in any way by the Central Purchasing Bureau.

It now develops that there was no real need for these units in the first place. About 15 of them have been disconnected and are not in use. Fortified wines require no such treatment and the stock of unfortified wines is never large. The only requirement is that the delicate wines be kept at as near a constant temperature as possible, not that they be cooled to any particular temperature. The large unit at

the warehouse is only run four or five times a year, this being during the summer, and it is stated that in the absence of a cooling room, normal ventilation through open doors would serve the same purpose. The largest sale of unfortified wines is from the Bar Harbor store, and there the unit has been discontinued with no apparent bad results to the wines. This expensive purchase seems to have been made in an unusual if not an entirely irregular manner and seems to have been an unnecessary expenditure of State funds.

#### Political Interference

Mr. Walton complained to the Committee that his hands were tied as to hiring and firing by Governor Brann and the Executive Council. He stated as follows:

"Q. Well, did you recommend men to them, or did they simply send them to you?

A. They just sent them to us.

Q. Did you have anything to say about the hiring of help at all?

A. No, sir.

Q. Did you have anything to say about the number of employees you should have?

A. No, sir.

Q. How did that work out? Did it result in your having fewer employees than you needed, or the right number, or more?

A. We had more than we needed.

Q. Substantially more?

A. Yes, sir."

Dr. Boardman on the contrary stated that he accepted his appointment on the condition that he should be free to disregard pressure and political influence, and that Governor Barrows "has never brought any pressure to bear on the Commission, on me—I can speak for myself, in any way, shape or manner." He stated members of the Council had made suggestions from time to time but "I think we have resisted pressure if there has been any applied, and I wouldn't say that there has been any brought that I can think of at the present time."

The political activity of liquor salesmen has also been a subject of comment. The public naturally assumes that the amount of liquor sold by any particular salesman is in direct proportion to the extent of his political activity. This in turn subjects the Commission to improper inferences. Recognizing this fact, the Commission on Sep-

tember 19, 1940, issued a memorandum to all liquor vendors in which it is stated that all representatives must at once cease active participation in State-wide campaigns. The Committee assumes that public reaction to this position will be distinctly favorable, and that public confidence in the integrity of the Commission should be thereby increased.

#### **New York Trip—1935**

A trip taken by the Liquor Commissioners and others to New York in November, 1935, has been the subject of comment and speculation in the press and by the public, and it seems that in fairness to all concerned the facts should be related at this time. The purpose of this trip was to attend the Liquor Control Convention in New York City and inspect State Stores in Philadelphia. The party left Maine on November 10, 1935, and returned November 17, 1935. When Mr. Walton returned, he turned in to the Controller's office a bill for expenses in the amount of \$376.12. There is no record as to how this bill was itemized, but the expense account was returned to Mr. Walton on November 20, 1935, with a statement that there would have to be a Council order to support it and in addition detail on the hotel expense would have to be filed, as well as information as to who participated in the meals charged for. The matter was apparently held up for some time, but on March 10, 1936, a Council order was passed approving \$152.03 of expenses for Mr. Walton. At the same time Council orders were also passed approving \$73.32 for Mr. Harvey who was then Chief Clerk, \$78.25 for Mr. Couture, and \$100.47 for Mr. Carey, legal adviser to the Commission. Expense accounts and vouchers were filed by all four supporting these amounts. Mr. Walton's expenses included Mr. Couture's railway fare. Payment was made in accordance with the orders.

#### **Personal Conduct**

There is probably no department of the State government about which there are and will be more stories, gossip and rumors than there are and will be and have been about the Liquor Commission. The Committee has made an honest and thorough effort to satisfy itself as to whether any stories insinuating bribery, inducement or misconduct

on the part of Commissioners, past or present, has any basis in fact. The Committee has found no proof of such misconduct. The unnecessary purchases made from the Continental Distilling Corporation in 1936 might be explained as merely a part of a generally inefficient purchasing system. It could also be truthfully claimed that there has always been a large demand for Continental products. The large purchases by the present Commission from Ben Burk, Inc., have been no larger than the sales and public demand for that vendor's product.

The Committee was advised to investigate two sales corporations operating in Maine and it did so. It found in "Maine Liquors, Inc." a now defunct corporation formerly sponsored and directed by a Mr. Rackliffe of Old Town, Maine. The records and stockbook of the company were opened to the Committee by the company's attorney. There was no indication of either undue profit making, special favor or political complexion connected with this concern. The "Hamlin Distributing Company" apparently was sponsored by Mr. Tunney to handle the sales of the American Distilling Company. Although this corporation enjoyed a good business for a time, there is no indication that it operated on anything but a legitimate sales basis. It made a sound but not what appears to be an excessive profit. Nothing evidencing the misconduct of any State official, past or present, appears from a check on the operation of these two liquor sales companies.

It has in the past been the custom for the Commissioners to dispose of all liquor samples as they saw fit. Distribution among friends, officials and the like was common practice. It has been an annual practice under both Commissions to make gifts of liquor to city police officers for services to the liquor stores in controlling traffic, etc., during holiday rush periods. This liquor has been charged out of regular stock. This practice should be discouraged. It is suggested that an inventory of samples be maintained and all samples charged in and out. Such an orderly handling and accounting for samples might serve to remove another possible source of criticism. The receiving of gifts of liquor from salesmen seems to be and of course should be discouraged because of the impression of obliga-

tion which is created thereby. The judges of our Courts to avoid any possible intimation of favoritism do not associate intimately and publicly with members of the bar. The Commissioners will undoubtedly find that they too can best avoid criticism by refraining from intimate association with individual sales representatives.

#### **Recommendations**

That the Legislature scrutinize the present law and ascertain whether the present limit of inventory is in accord with the actual business requirements of the Liquor Commission. The limit after June, 1940, is \$340,000, whereas a maximum of \$600,000 may be necessary. In event of an increase in Federal tax, this amount may need to be increased.

The law should be clarified with regard to the established practice of giving discounts on volume purchases, as for example to hotels and clubs. The law does not permit this at present, although discounts so given amount to over \$50,000 the year just ended. Attention was called to this matter in the report of the Department of Audit recently rendered.

The present 64% markup includes the tax of \$2.20 and 50c respectively on each gallon of liquor and wine sold. Practically speaking the tax is ignored. The tax was imposed to avoid any possible Federal income tax problem. Investigation is warranted as to whether such a problem still exists and whether any necessity for the tax in lieu of the markup is present. The problem is particularly connected with quantity discounts because technically the tax is being discounted.

The Legislature should investigate the advisability of legislation permitting the granting of short term beer licenses at less than the regular rate to see whether the practice accords with sound business practice. The practice is pursued at present without legal authority.

The Legislature should clarify the law relating to the granting of beer licenses to premises near a church or school, to more clearly define the ordinary course of travel. The question frequently arises as to whether the measure should be taken directly across a street or by way of regular cross walks at street intersections.

The Commission should under-

take a more rigid enforcement of the law relating to the sanitation of glasses and the dish washing facilities in so-called beer parlors. It is evident that a condition detrimental to public health exists in this connection.

As a matter of policy, the hiring, firing, and pay increases and reductions should continue to be left to the Commission and the Personnel Board by the Governor and Council.

#### **Department of Inland Fisheries & Game**

On January 5th, 1937, the last day of the administration of former Governor Brann and his Executive Council, a Council order was passed, a copy of which is in exhibit, transferring a State-owned camp at Moosehead Lake to Commissioner George J. Stobie.

Mr. Stobie testified that he refused to accept this gift when he learned that the Council order had been passed, that the camp is used as a wardens' cabin and considered by his department as the property of the State of Maine. He stated that the camp is on land leased to the Department of Inland Fisheries & Game.

#### **Department of Audit**

Mr. William D. Hayes, State Auditor, advised the Committee that when he took office April 19, 1940, he found a municipal audit staff consisting of twelve persons, headed by Mr. Crawford, and a departmental audit staff consisting of Mr. Douglas and two other auditors. Mr. Douglas was Secretary of the Farm Lands Loan Commission, to which he had to devote at least half his time. It is obvious that it was impossible for the department with this limited staff to do the continuous post audit required by law. The result was that the big departments such as the Treasury Department, the Bureau of Accounts and Control, Highway Department, Department of Health and Welfare and the Liquor Commission, had gone continuously unaudited. At Mr. Hayes' insistence, the appropriation for the Department of Audit was increased from \$20,000 to \$47,000, and the post audit staff was increased to sixteen. In addition Mr. Hayes is contemplating putting on one additional man for a few months in order sooner to cover the audit of the thirteen institutions.

The department has already completed the audit of the Automobile Registration Division of the Secretary of State's office for the year 1938, which had previously been started, and the work for the year 1939 is nearly finished. Mr. Hayes expressed his belief that when Mr. Harold Rodgers has straightened out the Bureau of Accounts and Control so that it is running efficiently, it may be possible for the Department of Audit to reduce its personnel as much as 25%.

Mr. Hayes feels that a problem arises in connection with the doing of municipal audits by outside public accountants. Last year there were forty-seven different accountants doing this work, of which number thirty-seven did three towns or less. Mr. Hayes feels that this work is a specialty and that to insure adequate knowledge and experience each accountant should be doing a minimum of five to eight towns a year. The Department of Audit will issue a list of qualified accountants, qualifying them only for six months; thereafter in order to stay on the list they will be required to bring their work up to standards, cooperate with the Department of Audit and do at least five audits apiece. Mr. Hayes states that these measures are necessary to get the best work at a fair cost to the towns.

Attention has previously been called in the press and elsewhere to a minor defalcation at the State Prison. The amount involved has been erroneously reported as two hundred dollars. Actually the amount involved was thirty dollars, and the matter has been properly and fully adjusted. The audit by the State department at the State Prison has disclosed however that Mr. Johnson, a former warden, at the time of his removal by Governor Barrows, removed State-owned furniture and property to the value of approximately \$450, all of which had been purchased by the State within the previous six months. This matter has been properly addressed to the attention of the Governor and Attorney General, and proper legal action is in process. Mr. Hayes reports that apart from this incident and those incidents of which the public has previously been informed, no evidence of dishonesty in any department has come to his attention. Mr. Hayes reports that there are many evidences of laxity, but

that corrective measures are being effectively applied in all cases.

The attention of the Legislature has already forcibly been called to the laxity in all departments in the handling of accounts receivable. This, Mr. Hayes feels, is the most serious problem of the moment. Ernst & Ernst reported accounts receivable of a little more than \$1,560,000. As of June 30, 1940, the amount was approximately \$850,000, with incomplete and unsatisfactory voucher records to support these accounts. It is probable that the State has lost thousands of dollars in this connection. This Committee understands that the Code Committee will recommend a central collection agency, which in some form is most desirable. Mr. Hayes recommends that this be a separate division under the Commissioner of Finance on an equal footing with the Controller and not a subdivision under the State Treasurer.

The Department of Audit is insisting that the institutions dispense with the practice of taking their inventories of equipment at cost. This is a matter, however, of the internal accounting system of the institutions, inasmuch as these inventories are never included in State assets on the books of the State.

The Department of Audit is adopting a policy of having an entire payroll of some particular department or subdivision paid off by an auditor, who sees the recipients of the pay checks and gets their receipts. This is done on a surprise basis and furnishes an excellent check against payroll padding. The psychological effect of such checks as these upon any employee who is suffering from a temptation to be dishonest should be excellent. Already, road crews, tarring crews and bridge crews in the Highway Department have been paid off in this way. On one occasion five crews in Aroostook County were paid off in this manner. The result is that no State employees can know when or where the Department of Audit may pay a surprise visit. It is much more difficult to introduce the surprise element into municipal auditing, because most municipal audits are made within a limited period after the close of books. Mr. Hayes, however, hopes to be able later to put one auditor out as a traveling inspector on municipal audit work, and although such a man could not



and would not make complete audits, he could make surprise visits, and with a few simple checks, such as taking cash, he would undoubtedly accomplish the desired result.

It will be recalled that several new appointments have recently been made in the Department of Audit, these men of course requiring very special knowledge and training. All those who were qualified on the list of eligibles maintained by the Personnel Board were appointed, the others being chosen from outside, subject to their taking and passing the necessary examinations. The rest of the men were obtained by transfer from other departments. When asked as to the amount of interference, if any, in the making of these appointments, Mr. Hayes' answer was, "I have had absolutely no hint from the Governor in regard to my appointments. He has not tried to influence me one way or the other. He simply sent a few letters to me for information, that is all." He went on to indicate that efforts to influence his appointments had come from various other quarters, but had had no influence whatsoever upon his decisions.

The Committee wishes to call attention to the annual report of the Department of Audit recently issued, a copy of which has been sent to every member of the Legislature. This report includes forty-five separate comments and suggestions which are pithy and to the point. Many of these indicate the advisability or necessity of some corrective Legislative action and should be the subject of study and scrutiny by every member of the Legislature. Mr. Hayes was recalled by the Committee and gave testimony amplifying and explaining many of these proposals, and his evidence in this connection, although too lengthy to be incorporated in full in this report, is recommended to be read by the Legislature in connection with the suggestions in the report.

The Attorney General has ruled that under existing law the Department of Audit has no authority or jurisdiction to audit the courts. Information which has come to the Committee indicates the very real necessity of having the collection of fines and similar matters in our court system subjected to careful audit. The mechanics of bringing this about is a matter for consideration by the Legislature.

The Committee feels that the present set-up in the Department of Audit and in the Bureau of Accounts and Control, as they have been reorganized, is conducive to efficient service and provides adequate financial safeguards to the State of Maine.

The CHAIRMAN: The Chair would inform the Convention that it has taken a little longer to read the report than anticipated. There are sixty-eight pages in the report, fifty of which have been read. Including the report of the Code Committee, only about half of the material has been read, therefore the Chair will entertain a motion to recess until eight o'clock or to dispense with further reading. What is the pleasure of the Convention? It will take approximately two hours more to finish the reading of this report and the Code Committee Report.

On motion by Mr. Spear of Cumberland, the Convention recessed until eight o'clock this evening.

The Senate then retired, amid the applause of the House, the members rising.

#### In The House

Called to order by the Speaker.

Out of order and under suspension of the rules, Mr. LaFleur of Portland, presented the following Order and moved its passage:

ORDERED, the Senate concurring, that the State Military Defense Commission make forthwith a full and complete report of their work to date to the Eighty-ninth Legislature, including therein a list of the salaries of their employees, and all other expenditures authorized.

The Order received passage, and on motion by Mr. LaFleur, was ordered sent forthwith to the Senate.

On motion by Mrs. Latno of Old Town,

Recessed until eight o'clock this evening.

#### After Recess—8 P. M.

##### In Convention

Called to order by the President of the Senate.

The CHAIRMAN: The Secretary will continue to read the report.

Secretary Brown (reading):

##### George O'Donnell Defalcations

A further investigation discloses that Mr. O'Donnell, former inspector at the Auburn branch registra-

tion office, was at the time of the defalcations in that office, to the amount of approximately \$357., bonded to the State of Maine in the sum of \$2500. on a surety company bond. The bonding company at the time of the defalcations took the attitude that the State could not recover on the bond without making definite charges against George O'Donnell and prosecuting him for those shortages. No action ever having been taken by any Grand Jury in Androscoggin County since the defalcations occurred, no collection has ever been made upon the bond. The Committee recommends that a further examination of the conditions of the bond be made and that further efforts be made to recover on the bond.

#### **State Printing Department**

The Committee investigated a complaint made by a Maine firm alleging the failure of the State Printing Department to so specifically specify the paper to be supplied by the successful bidder on a printing contract that a virtual monopoly could and did in fact exist. Mr. Grenier was questioned at length as to his policy. He explained that he has specified the printing requirements in detail, but as to the paper to be furnished by the printer he has specified only that it be Maine made paper of a certain type. Under these circumstances the selection of the paper vendor has been left entirely to the printer, although the State in fact pays for the paper.

A subsequent conference was arranged by a representative of the Committee between Mr. Grenier and the complainant, for the purpose of clarifying any misunderstanding which might have existed on the part of either. As a result of this conference the Committee is confident that in the future all printing contracts will be awarded on a basis whereby the paper vendor offering the best quality and price will be successful, and in cases where quality and price are equal, there will be an approximate equality in volume as among large taxpayers in this State engaged in the manufacture and sale of paper.

#### **Auburn Robbery Investigation**

In its first report the Committee discussed an investigation centering around a certain Plymouth automobile formerly owned by the State Police Department and now the property of one Adelbert Sproul

of Windsorville. Recently information was brought to the Committee by the State Police assigned to the Committee that Mr. Sproul had referred to the finding of a letter in the car. Mr. Sproul was subpoenaed before the Committee and ordered in the subpoena to bring with him the letter, if any existed. Mr. Sproul was questioned at length, and representatives from the Committee went to his home and took the sworn testimony of his wife. It appears that the letter in question was swept out of the car by Mrs. Sproul at the time that Sproul first acquired the car. Mr. Sproul recalled that the letter was addressed to a Mr. Ranalds of Hallowell and stated in substance that the writer had received certain lodge dues. The letter was subsequently burned by Mrs. Sproul. It is the opinion of the Committee that this letter had no connection whatsoever with the Auburn robbery.

#### **Department of Education**

No effort was made to investigate thoroughly the Department of Education, but interviews were conducted with Dr. Bertram E. Packard, Mr. Richard J. Libby, and Mr. Ralph W. Haskell, principally concerning specific complaints which had been made to members of the Committee by interested citizens. Complaints came to the Committee from various independent sources from various parts of the State that preference was being shown by the Department of Education to plans of one particular firm of architects on the construction of public school buildings. These complaints are categorically denied by the officials within the department. Mr. Libby stated that the law provides that any new construction or remodeling in excess of \$500 must meet the standards set up by the State in regard to heat, light, ventilation, and sanitation, and the plans must be submitted to the Department of Education and the Department of Health, and approved by them; that his work in part is to check plans which come into the Department to determine whether they comply with regulations set up by the two departments jointly in regard to those four items. Mr. Libby stated that he sometimes goes to the various towns and cities and advises or consults with either the building committee or the school committee with reference to a proposed building. Mr. Libby stated that when asked by local authori-

ties what firm has designed the larger number of school buildings built in the State in the last few years, he was, in order to be truthful, compelled to give the name of a certain firm, but he denied advocating this firm in any other way. He gave it as his opinion that this particular firm has enjoyed more school business for two reasons: first, because it has designed a low cost building, and, second, because the firm was apparently very energetic in making contacts and getting business. The Committee does not question the truth of Mr. Libby's answers and can only express the feeling that it is unfortunate for such impressions to be created. The Committee is aware of the fact that a number of architects in Maine of the highest standing have very honestly believed that the Department was exerting its influence in favor of a certain preferred firm. It is to be hoped that the fact that this Committee has made inquiry on this point may help to remove this impression. The Committee feels, however, that the officials of the Department should keep constantly in mind the power of their suggestion and should act with double caution in all their dealings with the public in such matters, so as to remove absolutely the possibility of such criticism and the impression, even though erroneous, that any particular firm or individual is the recipient of special favor.

Contrary to popular belief, the State Department of Education has no control over the choice of textbooks used in the public schools. The Committee inquired in some detail as to the possibility of subversive material appearing in textbooks now in common use. The officials stated that the textbooks in Maine schools are comparatively free from material which taken in connection with the entire context can fairly or properly be termed subversive.

Dr. Packard stated that there are about 6500 teachers, exclusive of teachers in colleges, and 121 school superintendents, in Maine and a total enrollment of pupils for the year ended July 1, 1939, of 179,741. Dr. Packard has ten division heads in his department and employs about twelve clerks and three field workers. The department expends annually about \$2,800,000, which, added to the amounts raised by the

towns and cities, makes a total expenditure for public schools of approximately ten million dollars.

Mr. Ralph W. Haskell is Supervisor of Crafts in the department and as such has been instrumental in developing the very valuable program which has been particularly prominent in the Saint John River region. Some of this craft work is taken by certain stores in Maine on a consignment basis, the largest single outlet store being State of Maine Industries, Inc. The consignee adds a 50 per cent mark-up and charges a 33 1-3 per cent commission on the selling price. The consignee keeps the goods insured, pays return transportation on any goods returned, and remits proceeds of sales directly to the craftsmen, monthly. Other craft products in Maine are disposed of through a co-operative by direct shipment to large cities. Mr. Haskell stated that there is no connection between the State of Maine and any one of these outlet stores, although it is true that the individual makers of these craft products are financed out of a State revolving fund. This craft program, as it is being developed, is entitled to the highest commendation. It makes possible employment for a large number of persons who would otherwise be unemployed.

#### Parole Board

Mr. George W. Leadbetter, Chairman of the Parole Board, was examined at some length concerning parole. He was asked first to discuss with the Committee a recent case in which a man sentenced to the Men's Reformatory for the embezzlement of over two thousand dollars of public funds was paroled after serving only forty-seven days. The explanation given was as follows. "I think the principal reason was that he was the type of boy who ordinarily would not get into any trouble, never had been in trouble before, employment was available for him, he had a family, the money had been returned, and it was believed that it would be much better for him and no harm to the community to parole him at that time. You understand that all sentences to the Reformatory for Men are indefinite and it is entirely within the jurisdiction of the Parole Board to parole them at any time, and they try to handle each case on its own merits." The Committee believes that this was a flagrant mis-

use of the parole power. This individual who is referred to as a "boy" was a mature man thirty-one years old. The money which had been stolen was spent in riotous living, the restitution referred to was made by the family and not by the man himself. The individual violated the trust and confidence attached to the public office which he held. There can be no deterrent to crime if such parole methods become common practice. The natural and inevitable result is to inculcate in the minds of all prisoners incarcerated for equal or lesser offenses a sense of injustice and a breakdown in their confidence in our system of government and jurisprudence. The Committee feels that the Parole Board should be very reluctant to grant parole until at least a reasonable minimum length of time has elapsed.

Mr. Leadbetter states that the Parole Board very seldom gets the opinion of the judge who gave the sentence or the County Attorney who prosecuted, and never seeks the opinion of the jury who convicted. These precautions are not required by law. The Parole Board does not follow the practice of giving public notice on cases coming up for parole. It does seek the opinion of the parole officer and the head of the institution in which the prisoner is detained. A prisoner who is out on parole simply has to report, and as long as he does not violate any law he is virtually free. During the last year 118 prisoners were paroled from the State Prison. During the same period 15 persons already out on parole from the State Prison violated parole. The corresponding figures for other penal institutions were as follows: 136 paroled from the Reformatory for Men, 20 parole violators, 67 paroled from the Reformatory for Women, 4 parole violators, 123 paroled from the State School for Boys, and 33 parole violators. The total number paroled last year was 449, and the total number of parole violators for the same period, 72.

Mr. Leadbetter endorsed a suggestion from the Committee that the element of reform as a part of the program at the Reformatory for Men might be rendered more possible of attainment if the Legislature by appropriate action provided that no person who had ever previously served a sentence in any State prison or Federal peniten-

tiary could be sentenced to the Reformatory for Men. The Committee feels that the presence of criminals who are experienced and prison-wise defeats the possibility of the attainment of reform. Mr. Leadbetter also suggested that the Legislature consider the possibility of establishing a system whereby upon the approval and consent of the Superintendent of the Reformatory for Men, the Warden of the State Prison, and the Commissioner in charge of institutions, a first offender committed to either institution might be transferred to serve his time in the other, without effect on his sentence. Mr. Leadbetter gave as a reason for this suggestion the desirability of segregating the hardened criminal from the better class prisoner for whom there is hope of reform.

Recommended, that the Legislature establish a minimum period which any prisoner committed to the Reformatory for Men or the Reformatory for Women must serve, before being eligible for parole.

#### Personnel Board

The Committee took the testimony of Mrs. Eva C. Mason, Miss Mildred E. Smith, and Earle R. Hayes, and received as exhibits material used by the Personnel Board in its work, including examination forms. The Personnel Board consists of Mr. Frederick Payne, Budget Officer, who serves ex officio, and the two lay members, Mrs. Mason and Miss Smith. The actual work is directed by Mr. Earle R. Hayes, Director of Personnel. It is apparent that the primary consideration in making the Budget Officer ex officio a member of the board was the fact that Mr. William Deering, who was formerly Budget Officer, was much interested in the development of civil service and instrumental in helping to get it set up in this State. The present budget officer, being also Commissioner of Finance, will no doubt find that his regular duties take so much of his time that it may be difficult for him to devote much if any time to the work of the Personnel Board in the future. The two other board members apparently hold one meeting a month, these meetings being ordinarily for one or two days each. Apparently the appropriation for the work of the Personnel Board is not large enough to permit their meeting more often or for longer

periods. The duties of the Personnel Board are to pass on any contemplated new classification specifications, on the general content and method of setting up a series of examination papers, and on all matters of compensation adjustments which at the same time usually involve promotions. They also approve rules and regulations. They hold infrequent hearings and occasionally assist the regular staff in doing clerical work, such as correcting examinations, when a rush period happens to coincide with a meeting day.

The actual work of the Personnel Board, however, is almost entirely in the hands of the Director. He supervises the actual placing of people by the certification of eligibles to department heads when vacancies occur; he maintains lists of these eligibles, current personnel records of all State employees, including their status, changes in salary, leaves of absence and the like, and personally deals with all personnel problems that arise.

There are approximately 3400 people in the so-called classified service, and that in fact includes all State employees except those specifically exempted by law.

There is a staff of two clerks, one of whom works part of the time with the Bureau of Budget, from which bureau the Personnel Board gets some financial help on overhead expense. Occasional extra temporary help is taken on.

The first examination ever conducted was in March, 1938, to establish a list of eligible persons for all clerical positions. Prior to that time classifications of positions had been worked out. In the clerical group, nine different classes were established, Junior, Intermediate and Senior clerks, clerk-typists and stenographers. Salaries are spaced for Juniors, \$14 to \$18, Intermediate, \$18 to \$22, and Senior \$22 to \$26.

Later examinations were given for field workers in the Department of Health and Welfare, sanitary inspectors in the Bureau of Health, accountants and auditors through six grades, and about a year ago junior secretaries, salaried from \$26 to \$30, and senior secretaries salaried from \$30 to \$36.

There remains to be set up an examination for Highway Department staff other than clerical, Public Health nurses, field men in the De-

partment of Agriculture, and other smaller groups.

When the law went into effect all persons who were then employees received status in some classification, but service ratings were made on all these employees. For this purpose the Probst service rating was adopted and the service rating file was established. The Probst service report is in fact an elaborate questionnaire to the heads of the departments, immediate superiors and the like, which when filled out by checking the squares in the three columns can be put on a machine which automatically establishes the numerical rating. An example would be an optional answer by which the superior might check any one of the following: "Nearly always late," "Usually late," "Often late" (about half the time) "Usually punctual," "Never or hardly ever late." The method employed and the fact that the answers are given by more than one superior apparently gives as fair a result as is possible and reduces to a minimum the effect of prejudice for or against an employee on the part of a superior.

The giving of examinations is widely publicized in advance and a large active mailing list of potential applicants is maintained. Examinations have been compiled based in part at least upon those used in other states and other agencies. For example the first test for clerks was divided into six parts, the first part testing general information, the second a test in reading comprehension, third a test in the use of correct English, fourth a test in spelling, fifth a test in simple arithmetic, and sixth a test of ability to understand and follow written instructions. Examinations are given in the State House and in the high schools in various centers and monitors employed are paid on a per diem basis. Sample examinations are interesting and are included as exhibits.

After eligible lists are set up and a vacancy occurs the head of the department sends to the Personnel Board a memorandum on a regular form asking them to certify to him the necessary number of people for the particular type of work. The Personnel Board tries first to fill the vacancy by either transfers or promotions from other departments if it happens to be in the intermedi-

ate or senior grade. Failing in that, the board tries to re-employ some person who has been employed by the State and who has been laid off for some reason not his own fault. Failing in that, the top three available names from the eligible list are certified and the head of the department may select one of the three. After his selection has been made, he advises the Personnel Board of his choice. The Personnel Board then prepares a council order and presents this to the Governor and Council for their final approval. This council order is in proper form for passage by the Governor and Council when it shows on its face that the appointments or promotions listed have the approval of both the head of the department and the Personnel Board. After passage by the Governor and Council the order becomes a permanent record in the office of the Secretary of State. It may be noted in passing that the Committee has in its possession and included as an exhibit a substantial number of council orders, signed by former Governor Brann and members of his executive council, which were found in the office of the Controller and which were never given a number or made a public record in the office of the Secretary of State. These orders were signed but apparently were never passed at a regular meeting of the Governor and Council. They provided certain salary increases, many of which were for employees in the Bureau of Accounts and Control, and included one increasing Mr. Runnells' pay to \$5200 a year. The question arises as to whether any pay increases paid under these irregular orders were ever properly or legally paid.

A pay increase within the same classification wage bracket must begin with an approval and recommendation to the Personnel Board by the head of the department. The Personnel Board must then approve, and final approval must be given by the Governor and Council on a council order. The task of the Personnel Board is theoretically to check so far as possible to see whether or not the employee in question is being paid a wage comparable to that of a person in the same or another department doing the same type of work and with comparable years of service and service rating. It is the opinion of the

Committee that in this regard the Personnel Board has not given as careful scrutiny as might be desired in some cases and that the decision has rested mainly on the opinion of the head of the department and the Governor and Council. It is probably fair to say that the system has been more effective when the promotion or wage increase has been the result of a change from one classification to a higher classification. It is suggested that the Personnel Board and Director should very carefully scrutinize wage increases within the same classification bracket to prevent favoritism and unfairness which may be damaging to employee morale.

There is no indication that the Governor and Council have seriously impaired the effective working of the Personnel Law. It appears that they have quite uniformly followed the recommendations of the heads of departments and the Personnel Board. The Director of Personnel states positively that the instance recited in the Committee's first report in which names of employees and their salary increases were added to a council order without the knowledge of either the head of the department or the Personnel Board was an isolated instance and not a matter of frequent occurrence. The council order, after its passage, clears back through the Personnel Board and the data on the order is posted on the service record cards. It is suggested that the Personnel Board should retain a copy of every council order which it sends approved to the Governor and Council for passage and that when the order after passage clears back with the Personnel Board it should be compared with the copy to see what additions, subtractions or changes if any were made by the Governor and Council at the time of passage. It is noticeable that both the Director of Personnel and the two members of the Board who were examined were much disturbed by the instance discovered by the Committee and agreed that if such an instance became a frequent or customary occurrence the entire effectiveness of the Personnel Board would be vitiated.

The rules and regulations of the Personnel Board under the law must be approved by the Governor and Council. The board has established a rule which provides that in the cases of original appoint-

ments and promotions council orders must be presented to the Governor and Council for final approval. If this rule were to be abolished, the matter of original appointments and promotions would lie entirely with the head of the department and the Personnel Board, and it is suggested that this might be a progressive step for the Personnel Board to take and that the Governor and Council approve the abolishment of this particular rule. This step would go far toward accomplishing what is generally conceived to be the primary purpose of a personnel law, i. e. to keep the appointment and promotion of all State employees as far removed from political influence as possible.

Dismissal from the classified service may be only for cause. The head of the department must advise the employee in writing of his dismissal and the cause therefor and file with the Personnel Board a copy of the same. The employee, if he feels unjustly removed, may within two weeks file an appeal with the Personnel Board. The Board must then investigate. It may grant a hearing but does not have to. If the decision is against the employee, he is dismissed and may never again be employed by the State; if it is in his favor, he may be transferred to a similar position in another department, or, if there is no vacancy, be put on the re-employment list. He cannot be forced back into the same department from which he has been dismissed. There is no provision in the rules and regulations for suspensions or demotions as disciplinary action, although there is apparently nothing in the law to prevent such action. It is suggested that a rule and regulation covering this contingency and providing an additional disciplinary method might be advisable.

In the case of classification groups for which no examinations have as yet been set up, the Department head nominates employees in the classification. The Personnel Board may then confirm or refuse to confirm or grant authorization for the employment of such people on a provisional basis. Examinations in such cases may be delayed for years. The reason for such delay, according to the Board, is that funds are insufficient. Mr. Hayes testified that the cost of examinations may range from fifty dollars

to "three or four hundred dollars, depending entirely on how much technical advice you have to employ and how many people you have to pay." There have been more than eight hundred and fifty applicants take one examination. Some of the big examinations have been given in several places in the State, Augusta, Bangor, Portland, Lewiston and Presque Isle, and the expense of proctoring the examination in each city is incurred. Proctors are paid anywhere from three to ten dollars per day, depending upon the person and the location.

On a question of salary increase, discharge or demotion of an employee in a classification group for which no examinations have been set up the action and approval of the Personnel Board in the usual way would be necessary. The engineer group in the Highway Department is illustrative of such a classification group.

Eligible lists are set up every two years and at the end of two years those lists are abolished and examinations given over again. This means that the work has to be kept going, and as this routine work grows in volume it becomes increasingly difficult to find the time and opportunity to set up the necessary new examinations for new classification groups. It is estimated that the entire set-up could be completed in a two-year period, but an appropriation of approximately twelve thousand dollars is estimated as necessary to accomplish that result. With the present appropriation continued, it is estimated that it will take several more years to complete the set-up. The Board and the Director express as their greatest need the employment of a person trained in the construction and conducting of examinations. Funds sufficient to permit the board members to meet either more frequently or for somewhat longer periods when they do meet would undoubtedly have beneficial results.

The Personnel Board has not established lists for the institutions except as to clerical employees.

The board members were found to be conscientious and interested in the success of the work. It is suggested that they be militant and aggressive to safeguard and protect the board, its functions and its authority from all encroachments, political and otherwise. It is further-

er suggested that the spirit of the law will be most effectively carried out if the Governor and Council confine their activities to the approval of classification and compensation schedules definitely, fixing the titles of all positions, the pay ranges for those positions and the number of units of increase in those ranges, leaving it to the department head and the Personnel Board in all cases to determine whether or not the pay of individual employees within those established ranges should be increased.

The Committee recommends that the Personnel Board act promptly on the recommendations of all department heads, and that whenever a department head recommended an employee for promotion to a higher classification and no examination for that higher classification group has been previously given, the Board should proceed as promptly as its funds will permit in giving such examinations.

#### State Payroll

The Committee feels that the size of the State as an employer of labor should be re-emphasized. The total payroll for the last fiscal period was approximately \$4,900,000, and the total number of employees approximately 3700. For purposes of comparison it may be noted that in 1933 the total annual payroll was approximately \$2,950,000. The increase is attributable in large part to the addition of such departments or divisions as the Division of Old Age Assistance, the Department of the State Liquor Commission, the Department of Unemployment Insurance Compensation, and various others, many of which however are self-supporting through licenses, fees and the like.

#### Miscellaneous

The Committee finds that the office quarters of the various State departments are badly overcrowded, and in some instances employees are required to work under conditions which are not conducive to good health, efficiency or morale. Pending the day when the State can afford a new and adequate office building it may be necessary to make drastic changes in present office arrangements. At the present time the museum is occupying a substantial area of floor space, and although the Committee fully realizes and appreciates the educational value of the museum, it be-

lieves that it may be wise and even necessary to temporarily remove the contents to a different place for exhibition purposes and make the floor space there available for office work. This would for example permit the badly overcrowded Bureau of Accounts and Control to have a centralized location, with all units in one place.

The attention of the Committee has repeatedly been attracted to the fact that there are a very great number of instances where several members of one family are all employed by the State of Maine in various divisions and departments.

Chapter 200 of the Public Laws of 1939 set up a Board of Sanitation, Licensing and Inspection, consisting of the Commissioner of Agriculture, the Attorney General and the Director of Health. These gentlemen were instructed by the Act to eliminate needless duplication of travel and other expense in examination, licensing and inspection services carried on by the Bureau of Health and the Department of Agriculture. Mr. Burkett, Mr. Washburn and Dr. Campbell, were all questioned with regard to the progress made by the newly constituted bureau. Dr. Campbell is not a member of the board, but has attended its meetings. The bureau has had one or two meetings and has discussed the situation, but the Committee is unable to discover any concrete evidence of any combinations of inspection work to effect economy, or any practical or well-directed effort of the bureau to accomplish the purposes for which it was created. There is ample indication of a duplication of effort. The Committee feels that in many instances an inspector in one department could easily learn the inspection work of another department so that he would be equipped to make all the necessary inspections for both departments in any particular territory. This would save both time and travel and would permit the same number of inspectors to cover more territory more frequently. The Committee recommends that this bureau take immediate steps to carry out the manifest purposes for which it was created.

The policy has been followed in the Automobile Registration Division of the Department of State of permitting owners of trucks registered at certain load limits to re-



ceive temporary seasonal increases in load limit. The usual custom has been for the registration clerk to typewrite across the face of the truck registration an authorization to increase capacity. On a sample registration certificate which the Committee procured for examination, the following was typewritten in the middle of the certificate: "Pd. \$25.00 10-10-40 to increase capacity to 14,000. AMF." The Committee does not feel that this offers any adequate safeguard against loss. It would obviously be easy for a truck owner to typewrite such a notation on his own certificate. Some plan should immediately be devised for handling such increases in an orderly and efficient manner.

### Conclusion

Work of the Legislative Investigating Committee has proceeded continuously since June, 1940. The Committee is well aware of the fact that the necessary expenses attendant upon the performance of its duties have been very substantial. The Committee believes, however, that its efforts have had the necessary effect of stimulating all department heads and employees to an awakened and renewed interest in and realization of the duties and responsibilities of their respective positions; that its methods have brought to light irregularities and laxities which for the most part have been followed by prompt corrective action by the proper authorities. The Committee has concealed nothing of its findings from either the Legislature or the public, and has tried to deal with all persons and positions on a basis of fairness and equality. The public now has good reason to believe that it is not deceived as to the condition of all State departments. The Committee has neglected no department or division about which it has heard any serious or disturbing rumor or complaint. Even as to those departments or divisions which have not been specifically investigated, the Committee has seen visible evidences of the fact that the existence of this Committee and the expectation of investigation have had a stimulating and beneficial effect. The Committee now feels that the continuation of its work and the attendant expense would not be justified by any results that could be reasonably anticipated. The reorganized Department of Audit is established to do very much the same

sort of work that this Committee has tried to do, and in the opinion of the Committee is quite capable of carrying out this assignment. The Committee therefore respectfully requests that it be relieved from a further continuation of its duties.

Eternal vigilance is the price of liberty, but it is also the price of sound, honest and efficient government.

We herewith submit the supporting testimony and exhibits with this report.

Nathaniel Tompkins, Chairman, Gail Laughlin, Frank A. Thatcher, Jean Charles Boucher, On the part of the Senate.

George D. Varney, Robert C. McNamara, F. Ardine Richardson, M. P. Noyes, Robert B. Dow, William P. Donahue, Alexander MacNichol, On the part of the House.

The CHAIRMAN: The Secretary will now read the report of the Committee on Administrative Code.

Secretary Brown (reading)

### Partial Report of the Committee on Administrative Code; Created by Resolve, L. D. 1226

To the Members of the Eighty-ninth Legislature in Special Session:

Since the submission of its last report the Committee has employed Charles P. Nelson of Augusta, Maine, as counsel. The Committee has met at stated intervals in Augusta to review and discuss factual reports submitted by counsel and to interrogate witnesses. By Joint order at the last session under date of July 24, 1940, specific recommendations of the Joint Special Legislative Investigating Committee were referred to this Committee for study and preparation of such bills as might be necessary to effectuate those recommendations. Such bills were to be reported at this legislative session or at the next regular session. The Committee has devoted much time to a study of these recommendations and, at this time, submits the report embodied in the two next following subheadings.

### Progress Report

(1) **Highway department reorganization; powers and duties of governor and council in connection therewith.** The Committee has made a study of the highway laws of the State as to composition of the commission and its powers and duties. As a basis for comparison it has conducted a detailed inquiry into

the laws of other states including those recently reorganized. It has made similar studies with regard to administrative divisions within highway departments including the fields of highway accounting and purchasing. Recommendations made by members of the department in the interest of efficiency and economy have been received and thoroughly considered. The Committee has thoroughly canvassed the power of the governor and council with relation to the highway department both in theory and in practice. Detailed revision of several sections of the highway law is indicated. The problem of the relation of the council to the highway department cannot be answered intelligently until an analysis is made of the functions of the council with relation to the entire state organization. This analysis the Committee proposes to make. For the reasons stated no recommendations are made at this time. A full report will be submitted at the next regular session of the legislature.

(2) **Independent audit at the end of each fiscal year.** The Committee is engaged in a study of the laws of other states with regard to post audits. Investigation discloses that Rhode Island is the only state that now has a provision for an audit by outside accountants. That state has no independent department of post audit within the state government such as that existing in Maine. Other states with a department such as ours have either created legislative audit committees to review and analyze the auditor's report or have no provision for further check on the auditor. The problem is how to properly safeguard state funds without going too far in creating expensive, duplicating functions. Because of the problems involved, the Committee proposes to devote further time to a study of this recommendation and to report thereon at the next regular session of the legislature.

(3) **Separate department of Motor Vehicles Registration.** Time has not permitted the Committee to thoroughly consider this recommendation. A study thereof will be made and a report filed at the next regular session of the legislature.

#### **Legislation Inexpedient**

(1) **Relating to the abolishing of the office of Supervisor of Motor Vehicles.** This is not a statutory

office. It was created under an order of the governor and council as an administrative division of the bureau of purchases. The office ceased to exist with the resignation of the last incumbent. This Committee concurs in the opinion of the Legislative Investigating Committee that this office is useless and unnecessary and for the foregoing reasons feels that legislation is superfluous.

(2) **Relating to the Office of Superintendent of Public Buildings.** The position of assistant superintendent of public buildings is another administrative position without express statutory authorization. The present incumbent took office under a council order of May 17, 1933. This again is a matter which cannot be handled expediently by legislation. This Committee concurs in the opinion of the Legislative Investigating Committee that this position is unnecessary and that the duties thereof should be performed by the Superintendent of Public Buildings.

The recommendation was also made by the Joint Special Legislative Investigating Committee that the superintendent of public buildings be given a definite tenure of office and divorced from purely political change. Under our present law the superintendent serves at the will of the governor and council. Tenure of office is usually granted by statutory enactment only to an officer of considerable importance whose duties require him to be to some extent independent of the Executive. This Committee is of the opinion that this is not a position of that type. Abolishing the office of assistant superintendent should make it necessary that a man competent and experienced be appointed as superintendent. Purely political appointments are not usually made to offices that have real duties to perform. A competent man would probably be retained even with a change of administration. No legislation is therefore recommended.

#### **Legislation Recommended**

Under the provisions of L. D. 1226, resolve creating this Committee, it was authorized "to recommend such changes in the statutes relating to the administrative code and providing for the operation of the other departments of the state as may be necessary to improve administration

of the affairs of the state of Maine; and shall draft and present with its report such amendments." Pursuant to this authorization, your Committee herewith reports on recommended changes and presents herewith bills designed to effectuate those recommendations. In considering the scope of its recommendations to this Special Session, the Committee has realized that legislative time is of great importance and therefore presents only such measures as it feels should be passed by this legislature to become effective as law in due course after adjournment. The specific recommendations of the Committee follow:

(1) **An Act Relating to Payment of Accounts to the State.** Under our present statutory law no general provision is made allowing the proper state officials to withhold funds due from the State to an individual, corporation, or town when that individual, corporation, or town is in turn indebted to the State. Such right is given in two isolated cases in the highway laws, involving the collection from towns of amounts expended by the State for snow removal on winter routes, (R. S. Ch. 28, Sec. 57) and the collection from towns and counties of proportionate shares for bridge construction (R. S. Ch. 28, Sec. 65). We are aware of no reason why this right should not be granted in the many other situations in which it could be effectively used by the State. Under such a provision amounts by law coming due to a town could be reduced by the amount that town might be indebted to the State for state taxes, highway payments, and old age pension contributions. Such a provision would greatly facilitate collection by the State and do away with a great deal of unnecessary paper work. It is believed that in most instances such a provision would be equally beneficial to the towns. Under the suggested law the power to thus set-off accounts is made a discretionary one. Where hardship may result it need not be exercised. A similar right was granted to cities and towns by this legislature in 1939 (P. L. 1939, Ch. 60).

(2) **An Act Relating to Payment of State Officers and Employees.** Under the present provisions of the code (P. L. 1931, Ch. 216, Art. II, Sec. 16) state officers and employees are to be paid twice each calendar

month "except as the commissioner of finance may specify." Under this provision the practice of paying weekly, effective before the passage of the code, has been continued in every instance save the judiciary, the highway commission and normal school teachers who are paid monthly and fish and game and fire wardens, who are paid twice a month. In a few other isolated cases of minor importance payment is not made weekly. The Committee is satisfied from the evidence presented to it that payment fortnightly as provided in the suggested bill would result in an annual saving to the State in labor and materials of approximately eight thousand dollars (\$8,000), would free the central control machines now used two days a week on payrolls for use on valuable statistical data and would relieve the controller's office of much unnecessary paper work. Other state governmental agencies and the federal government pay their employees on such a basis. The Committee is convinced that no hardship would result to state employees. Exception is duly made in the law to provide for temporary or seasonal employees who may require weekly payments for the reason that they have no regular income.

(3) **An Act Relating to the Duties of the Treasurer of State.** At the last session of this legislature, the Committee submitted a bill creating a bureau of the treasury as a companion bill to a resolve amending the Constitution to remove the office of treasurer from its provisions. That bill was not considered because of failure of the resolve. The bill provided that the treasurer keep record of and promptly collect all taxes and accounts due the State. The Committee at that time reported as follows: "We recommend that lists of all items of income accruing to the State be certified to the treasurer by the various departments and state agencies in which they may originate, and that to the duties now imposed upon the treasurer by law, there be added those of receiving and keeping a record of all such items and of promptly and diligently collecting them. By such a system there can be found in one office a fairly comprehensive picture of the financial condition of the State at all times." The Committee is of opinion that such a central collection agency can and should be

set up in the office of the treasurer of state.

(4) **An Act Creating a Legislative Research Committee.** The Committee has conducted a comprehensive study of a legislative organization to be called a "legislative research committee" as it exists in other states under various designations. Such committees now exist in the following states having been established in the year indicated in each case, Kansas (1933), Virginia (1936), Kentucky (1936), Connecticut (1937), Nebraska (1937), Illinois (1937), Maryland (1939), and Rhode Island (1939). In each case the committee is made up of a given number of legislators from each house appointed during each regular session, their term to cease with the convening of the next regular session. In each case the committee is authorized to hire competent research assistants and must make a full report to each member of the legislature at least 30 days before the next regular session, thus serving as a permanent recess committee to study legislative problems, with a personnel which changes with each legislature. The function of the practical legislators on such committee is to outline a program for research in questions of major legislative importance. The function of the research staff is to furnish a comprehensive analysis of such questions including all pertinent facts and alternative solutions. These in turn are presented to the legislature for its final decision on the choice of a solution.

The legislative research committee is designed to meet the need of legislatures in these days of crowded sessions, for a source of factual information which is under their own control and direction and upon which they can fully rely. It was intended to end the legislature's necessary dependence, in the hurried days of a session, upon administrative officials or special interest lobbies. It is further designed to enable legislators, through the medium of factual reports issued by it, to keep in touch continuously with problems of government rather than for a short period of months every two years. Reports of such a council submitted to all members well in advance of any session, are designed to eliminate legislative congestion by concentrating attention on the facts and possible solutions of major is-

suues and by informing newly-elected members on such issues.

The Committee has considered carefully the laws and experience of Kansas which has a legislative council tried in the fires of several legislative sessions. It has corresponded at some length with the council in that state. From the evidence thus gathered the Committee is convinced that the establishment of such an organization in this State, adequately supported by the legislature, would serve all the purposes above outlined and thus meet a genuine need. The experience in Kansas definitely shows that such an organization does accomplish the purpose for which it was created. Some skepticism at its inception has given way to its acceptance by the legislature of that state as genuinely helpful to the legislative process as shown by the increasing percentage of council recommendations favorably considered at successive sessions of the legislature. This is also shown by similar figures in Virginia and Kentucky.

This Committee is convinced that the establishment of such a legislative organization in this state would meet a real need for an agency of, by and for the legislature to supply it with factual information. It would, further, serve to keep the legislature in constant touch with administrative methods and problems and help to expedite legislative procedure. The Committee therefore recommends the establishment of such a committee.

We have prepared and present herewith the bills necessary to carry out these recommendations.

Respectfully submitted,

Augusta, Maine  
October 21, 1940.

LAUREN M. SANBORN  
FRANCIS H. FRIEND  
CLARENCE B. BECKETT  
ALDEN C. STILPHEN  
GEORGE R. GRUA  
GEORGE H. HINCKLEY  
ROLAND J. POULIN  
ALAN L. BIRD  
WALTER MAYO PAYSON  
E. S. FARWELL

Committee on Administrative Code.

The CHAIRMAN: The purposes for which the Convention was formed now having been accomplished, I declare the Convention dissolved. The Senate will return to its chamber.

Thereupon, the Senate retired, amid the applause of the House, the members rising.

**In The House**

Called to order by the Speaker.

The SPEAKER: Is there any

further business to come before the House tonight?

The gentleman from Berwick, Mr. Varney, now moves that the House adjourn until tomorrow morning at ten o'clock.

The motion prevailed, and the House so adjourned.