

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-ninth Legislature

OF THE

State of Maine

SPECIAL SESSION

1940

**KENNEBEC JOURNAL PRINT SHOP
AUGUSTA, MAINE**

SENATE

Thursday, June 6, 1940

The Senate was called to order by the President.

Prayer by the Reverend Tom Akeley of Gardiner.

Journal of yesterday read and approved.

First Reading of Printed Bills

Bill "An Act to Encourage Development of Maine's Resources." (S. P. 733) (L. D. 1239)

Which was read once, and under suspension of the rules read a second time and passed to be engrossed.

Sent down for concurrence.

House Committee Report

The Committee on Military Affairs on "Resolve Creating the Committee for the Organization of Maine Defense," (H. P. 2266) reported that the same is inexpedient as the subject matter has been covered by Executive action.

Which report was read and accepted in concurrence.

Senate Committee Report

Mr. Marden of Kennebec from the Committee on Military Affairs on bill "An Act Permitting State to Accept Federal Funds for Promotion of Aviation," (S. P. 714) (L. D. 1220) reported that the same ought to pass.

Which report was read and accepted, the bill read once, and under suspension of the rules, read a second time and passed to be engrossed.

Sent down for concurrence.

House Committee Reports

(Out of Order)

The Committee on Military Affairs on Memorial to the Honorable Senate and House of Representatives of the United States of America in Congress Assembled, Petitioning for Summary Preparedness Steps to be taken in Maine," (H. P. 2258) reported that the same be adopted.

Which report was read and accepted and the Memorial adopted in concurrence.

The Committee on Legal Affairs on Bill "An Act to Incorporate the Town of Bridgewater School District," (H. P. 2267) (L. D. 1240) reported that the same ought to pass.

Which report was read and accepted in concurrence, the bill read once, and under suspension of the rules read a second time and passed to be engrossed in concurrence.

The same Committee on "Resolve Providing for a Research Committee to Study the Administration of State Affairs," (H. P. 2259) (L. D. 1226) reported that the same ought to pass as amended by Committee Amendment "A."

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

The PRESIDENT: The Senate will retire to the Hall of the House. The Senate retired.

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

In the Senate

The Senate was called to order by the President.

From the House:

Communication from the Governor relative to memorandum from the Commissioner of Health and Welfare in reference to Aid to Dependent Children. (S. P. 746)

(In the Senate, on June 5th, sent to the House. Comes from the House, referred to the Committee on Judiciary.)

In the Senate referred to the Committee on Judiciary in concurrence.

Senate Committee Reports

Mr. Chamberlain from the Committee on Library on Bill "An Act Relating to a Maine State Library," (S. P. 738) (L. D. 1234) reported that the same ought to pass.

Which reports were severally read and accepted, the bills read once, and under suspension of the rules read a second time and passed to be engrossed.

Sent down for concurrence.

Mr. Wentworth from the Committee on Appropriations and Financial Affairs on Bill "An Act Relating to Fees of Wardens of the Department of Sea and Shore Fisheries," (S. P. 736) (L. D. 1232) reported that the same ought to pass.

Which report was read and accepted and the bill read once.

Mr. WENTWORTH of York: Mr. President, I move that the bill lay on the table until our evening ses-

sion because at that time I have an amendment to offer.

Thereupon, the bill was laid upon the table pending assignment for second reading.

On motion by Mr. Spear of Cumberland,

Recessed until 8:00 this evening, Daylight Saving Time.

After Recess

The Senate was called to order by the President.

Emergency Measure

Bill "An Act to Incorporate the Town of Bridgewater School District," (H. P. 2267) (L. D. 1240)

Which bill being an emergency measure received the affirmative vote of 29 members of the Senate, and none opposed.

On motion by Mr. Spear of Cumberland,

Recessed for fifteen minutes.

After Recess

The Senate was called to order by the President.

The PRESIDENT: In accordance with the terms of the resolve adopted by both branches of the legislature it is now the duty of the Senate to proceed to consider the adoption of an Address to the Governor.

Mr. SANBORN of Cumberland: Mr. President, I rise to offer and to move the adoption by the Senate of an Address to the Governor for the removal of Belmont A. Smith from the office of Treasurer of the State of Maine for causes set forth in the Resolution adopted by both branches of the legislature on the 29th day of May last, and in making the few observations which I shall make in support of the motion I want it understood that I am not speaking for the purpose of influencing the vote of any Senator nor do I feel at all competent either to enlighten or to instruct.

During the hearing in which we have just sat I have endeavored to preserve an open mind and I hope that I may have been to some degree successful. And in coming to the conclusion at which I have arrived I hope that I have not been influenced by prejudice or by concern about political consequences.

The charges set forth in the Resolution, some of them I submit, have seemed to me to be more or less trivial in their nature and as to some I have not found in my own mind the proof wholly plenary or satisfactory. But as to two of the charges it seems to me that they embrace serious matters and that they have been very fairly and completely proven and I perhaps ought to say here that it is my understanding that if any one of the several charges has been found to have been sustained it affords ample ground for affirmative action upon this motion.

The two charges to which I refer are, as I recall it, the third and fifth. Those which are in the third relate to the failure to reinvest the permanent trust funds in accordance with the law and the fifth is the one which relates to excessive deposits in banks because they were beyond the amounts authorized by law. I would not have it go from me that it is at all my conclusion that no other charge has been sustained. It may well be that other Senators feel that other charges are serious and have been amply proven. I, simply for the sake of brevity and because of the lateness of the hour, will confine my remarks to those two.

Now, as I recall the statute, it is provided that permanent trust funds may be invested only in certain securities. As I recall it those are the bonds of the New England states, the states of New York and Pennsylvania and securities of the municipalities and counties within those several states. It appears to me to have been fully proven and, I believe, not disputed that when the present Treasurer came into his office he found a very substantial amount of securities in some of these trust funds which were not so invested.

Now I was not able to follow the argument of counsel on that point. You will recall that it was suggested to us in argument that our charge was that he had not reinvested these funds in accordance with the law, while as he pointed out he had reinvested certain of these funds and in each case they had been invested in accordance with the law. So far I agree. But if you will examine your charge you will find that it is to the effect that he has negligently failed to reinvest these funds so as to conform to the stat-

ute. And it seems to me to have been amply proven that although in two or three instances he did so reinvest, as to the major portion of those illegal investments they lie today exactly where they were when they came into office, and if so he has negligently failed to make the proper reinvestments of those funds, and I contend it was his duty to have done it.

And in consequence thereof we all know that securities of the sort that were referred to, testified to, would be pretty poor material if we wanted to dispose of them at the present time. They should have been disposed of long ago. I will say no more on that point but leave it to you to say whether or not the charge there, this charge, has been amply sustained by proof.

Now then, we come to the charge in regard to the deposits in certain banks. I may misconceive the purpose and intent of the statute but as I understand it the primary purpose of that statute was to prevent deposit in any given bank of such an amount of the state's funds as might imperil the state's interest in the case of insolvency of the bank, and a limit was fixed, twenty-five percent of the capital and surplus of the bank, and it is primarily provided that no state funds shall be deposited in any bank in excess of that amount.

Then there is an exception. That exception admits deposits in excess of twenty-five percent for the purpose of, as I recall it, paying the funded indebtedness of the state or interest thereon and for the purpose of meeting warrants drawn by the Governor and Council.

Now as I said, I may misapprehend the purpose of the exception but it seems to me that it was clearly analogous to a situation that may occur in the private experience of any one of us. I, Mr. President, may have a deposit of seven or eight hundred dollars, a checking account, in some bank in my town. That is enough to meet my ordinary needs. I can pay my rent or pay my stenographer by check and not disturb that deposit. But I find myself some day confronted with the necessity of paying a bill of \$1500 to \$2000, far in excess of any balance that I customarily carry. Now, what do I do? I go over to the savings bank where I have a little money deposited and draw out

a sum sufficient to meet this obligation and I go over and deposit it in my commercial account in the bank because I want to draw a check.

Now I can draw my check for \$1500 or \$1600 and it will be honored. The money is only in there perhaps over night.

Now my notion of the purpose of that exception was that if a payment on the bond issue is to be made and it is understood that there is a large withdrawal of state funds to be made it is proper for the Treasurer, for the purpose of meeting that particular demand, to deposit in a bank a sum in excess of the stipulated amount. The same is true if a governor's warrant for a substantial sum is in immediate contemplation.

Now you will recall that it was argued that money that was deposited in a certain bank was available to meet warrants drawn by the Governor and Council but I do not understand that the testimony disclosed, nor do I understand that it is staged in argument that any such deposits were made for the purpose of meeting such demand. And that as I understand it is what the act contemplates. So I contend that those deposits were made just as they were stated to have been made, because there were large sums of money coming into the possession of some agencies of the state outside of Augusta and it was a matter of convenience to put them into the bank and they were put in the bank, and large sums in excess of the amount allowable by statute were deposited and were kept on deposit. And while it may be argued, and I have heard it stated in the corridors, "but no loss was sustained," that is very true, no loss was sustained but had such a bank failed or closed while that excess were there we should then have suffered the loss and there then would have been no question whatever about blame for any such amount of deposit being there.

Now I said I was going to be brief. I have explained the reasons why it seems to me that those two charges, which go to very vital issues, issues, one of them, affecting the soundness of trust funds and the other affecting the funds which the state has and depends upon for the payment of its bills. It seems to me that in those two cases there is a clear violation of law, a clear failure to perform the duties re-

quired, and on those two grounds alone—and I am not saying that I find that the treasurer is wholly free from blame in connection with some of the other charges—but on those two alone I shall feel perfectly satisfied to cast my vote in favor of the address.

I trust, and I feel sure, that the matter will be discussed by other senators and others will doubtless express their views upon other charges, but as I have said, I am content to leave the matter so far as I am concerned on those two counts alone.

The **PRESIDENT**: The Senator from Cumberland, Senator Sanborn presents a Resolution and moves its adoption. The Secretary will read the resolution.

The Secretary read the Resolution:

STATE OF MAINE

Eighty-ninth Legislature

Address to the Governor

The Senate and House of Representatives in Legislature assembled present this Address to the Governor and request the removal from office of Belmont A. Smith, Treasurer of the State of Maine, for the causes following:

FIRST: For that the said Belmont A. Smith on the 4th day of January, 1937, and continuously from that date to the 29th day of May, 1940, has negligently failed in the performance of his duty by failing to use proper diligence in the endeavor to collect back taxes due the State of Maine, and

SECOND: For that the said Belmont A. Smith on the 4th day of January, 1937, and continuously from that date to the 29th day of May, 1940, has negligently failed in the performance of his duty by failing to use proper diligence in the attempting to collect amounts due the State of Maine in connection with checks made payable to the State of Maine and protested for non-payment, and

THIRD: For that the said Belmont A. Smith on the 4th day of January, 1937, and continuously from that date to the 29th day of May, 1940, has neglected his statutory duty of reinvesting the trust funds of the State in a manner to conform to the provisions of the law, Section 86, Chapter 2, Revised Statutes of 1930, and

FOURTH: For that the said Belmont A. Smith on the 4th day of

January, 1937, and continuously from that date to the 29th day of May, 1940, wilfully failed to perform the duties required of him as such Treasurer of State by failing properly to supervise the acts of his Deputy and other subordinates, whereby illegal and unauthorized practices were permitted to exist as follows:

(a) That no carbon copies of the books of receipts of sales by the State Highway Commission of tires and spare parts sold to employees and other persons were kept in the office of the Treasurer of State, contrary to the forms of said books of receipts and permitting remittances of said sales to be made to the former State Controller, William A. Runnells, contrary to the provisions of Section 15, Article 2, Chapter 216 of the Public Laws of 1931, causing a loss to the State of Maine of approximately thirty-one thousand dollars.

(b) That the said Belmont A. Smith negligently failed to supervise the acts of his Deputy, Louis H. Winship, whereby the latter cashed five checks aggregating at least three thousand dollars, said checks being payable to the order of the State Highway Commission for materials purchased from the garage after endorsement by the former State Controller.

(c) That the said Belmont A. Smith negligently failed to supervise the acts of his Deputy, Louis H. Winship, whereby the latter cashed ten checks since January 4, 1937, clearly without right, thereby depleting the cash of the State. That said acts of the said Louis H. Winship permitted the former State Controller to handle cash contrary to the provisions of the State Code.

(d) That the neglect of the said Belmont A. Smith to properly supervise the activities of his department permitted the cashing of interdepartmental checks by William A. Runnells, former State Controller.

FIFTH: For that the said Belmont A. Smith on the 4th day of January, 1937, and continuously from that date to the 29th day of May, 1940, wilfully failed to perform the duties required of him as such Treasurer of State by allowing the deposit of sums of money belonging to the State of Maine in amounts in excess of twenty-five percent of the capital and surplus of the depository banks to wit, in the cases of the Casco Bank and Trust Company at

Bridgton, the Northern National Bank at Presque Isle, the Lincoln Trust Company at Lincoln, the Northern National Bank of Presque Isle at Mars Hill, the Millinocket Trust Company at Millinocket, the Newport Trust Company at Newport, the Norway National Bank at Norway, the Casco Bank and Trust Company at Portland.

SIXTH: For that the said Belmont A. Smith on the 4th day of January, 1937, and continuously from that date to the 29th day of May, 1940, neglected his duty of requiring that all State funds should be delivered by the department receiving the funds into the office of the State Treasurer.

Mr. SPEAR of Cumberland: Mr. President, when the vote is taken I move it be taken by the Yeas and Nays.

Mr. TOMPKINS of Aroostook: Mr. President and Members of the Senate, I suppose there are two views that can be taken on this situation. One is the Shylock view, the pound of flesh; no more, no less, if the bond has been forfeited. The other view may be a more liberal view and I wish to recite or to read briefly to you, the opening words of the preamble of the Constitution of the State of Maine: "We, the people of Maine, in order to establish justice, adopt the following Constitution." Now, if there is any doubt in the mind of anybody that any of those charges have not been sustained by fair evidence, this resolution should not receive a passage. If there is any doubt in your mind that the third charge has not been fully sustained you should not vote for the passage of this Address or its adoption. If there is any doubt in your mind that the fifth reason for removal has not been fully sustained by evidence you should reject that.

And as I understand it, Mr. President, on the roll call a Yea vote means the adoption of this Address and the Nay vote rejects it.

The PRESIDENT: The question is on the adoption of the Resolution presented by the Senator from Cumberland, Senator Sanborn for an Address to the Governor for the removal of Belmont A. Smith and the Senator from Cumberland, Senator Spear has asked that when the vote is taken, it be taken by a Yea and Nay vote. Before ordering a Yea and Nay vote the assent of one-

fifth of the members present is required. Those in favor of a Yea and Nay vote will rise.

Obviously one-fifth having risen the Yeas and Nays were ordered.

Mr. HILL of Cumberland: Mr. President and Members of the Senate, each member of this Senate has listened long and patiently to the evidence and the arguments that have been presented in this case during the past three days. It would seem to me wholly unnecessary at this time to debate further those charges in any detail. Personal sympathy impels me in one direction. My judgment on the evidence impels me on the other. Recognizing the responsibility to the people of Maine that accompanies membership in this Body I feel that duty requires me to be governed by honest judgment rather than by sympathy. For that reason, Mr. President, painful though it is, my vote will be cast in favor of the adoption of this Address.

Mr. BURNS of Aroostook: Mr. President, in the three sessions of the legislature of which I have been a member there has never been an occasion which has struck me as being more serious or grave than the one that confronts me this evening in deciding how I shall vote on this question. I am not moved by sympathy or friendship in the manner in which I shall vote although I have the most profound friendship and sympathy for our friend Belmont Smith.

In deciding the issue in my own mind I have tried to decide it according to my conscience and according to the oath which I took, that I would determine matters which are presented to me as a member of this Body according to the law and according to the evidence. It seems to me that the matter has been covered at great length and in detail and it is not necessary at this time or provident to go into any lengthy discussion of the various counts in this address. Those have already been covered and ably covered by counsel on one side and the other. I do think, however, it is proper for me to express my position in generalities and justify the vote which I will cast, which will be against adoption of the Address.

In the first place, the Constitution of Maine provides that the office of Treasurer shall be filled and sets forth the duties and require-

ments of that official. He is charged with the faithful performance of his duties. He is obliged to furnish bond in an amount which has been testified to be \$150,000, under condition that he will faithfully fulfill the duties of office and his subordinates would likewise do so. There has been considerable discussion as to what the legal construction is of the word or term "faithful performance" of the Treasurer's duty. There is a possibility that in due course, through court action, the courts of the State of Maine will determine in this particular case whether or not the acts which have been charged of the present incumbent of that office constitute the faithful or unfaithful performance of his duty. We, therefore, find ourselves in some degree in the position of putting the cart before the horse. In saying that, I realize we are an independent body, that we have three departments of our state government, each independent of the other, but acting in co-ordination. These three, as you know, are Judiciary, Legislative and Executive. So we, in our deliberations here should not be too much concerned by what subsequent action may be taken by the Judiciary of the State of Maine, but it certainly would be a reflection on our judgment to decide this case or this issue in one manner and then have the court thereafter decide it differently. I do not like to be placed in that paradoxical position.

I regret to say I have not the capacity to have fully and completely followed the case as I would have liked to, but I listened to it patiently and various thoughts went through my mind. It seems to me the predominant rule that should decide our vote here is the degree of care with which Belmont Smith should be charged with the performance of his duty. This is a great era of casting stones and pulling the other fellow down. If we adopt the principle that because Belmont Smith on one or more occasions was negligent in the performance of his duty and therefore the Address should be adopted, why don't we carry the thought just a little farther and see how it applies to this body or to some other branch of our State government to which argument has already been given? We, in this legislature have made mistakes. During the three terms I have been here I have made mis-

takes. Hardly a day goes by that there isn't some irregularity of procedure with relation to the conduct of the business of the legislature.

It has been argued in the third charge and in the fifth charge that some irregularity took place and that therefore we should find Belmont Smith guilty of those charges. If such irregularity does exist and I listened to the statements in support of those charges and I was not impressed that the irregularity if it did exist, went much beyond a technical nature. Are we to convict and condemn people on grounds of technicalities? If we do so, it is about time that we start convicting ourselves and offering our own resignations because we have also made mistakes similar to those which we are charging against Mr. Smith and on which it is undertaken to remove him from office. I do not have to go back farther than the last session to point out a stupendous error, at least from the point of public sentiment in the State, which we made when we adopted the title law, and I do not believe Belmont Smith made any more serious error than we did when we passed that law. I do not free him from negligence in the matter but I do say that the rule that should govern our position here should be a rule of tolerance and a rule of common sense. When we came down here we were not supposed to check our brains in the town in which we reside, nor were we supposed to leave our common sense there. So I say in approaching this question we should use our common, every day experience and the realization that irregularities and mistakes are being made all about us. If there was any evidence here to prove that Belmont Smith was unfaithful, that would be in violation of the Constitution of the State of Maine, or had been dishonest in the performance of his acts as Treasurer of the State I would be one of the first to cast a yea vote here. It seems to me that there has been much ado about nothing.

I do not like to be placed in a position where I am forced to vote in respect to one official when my common intelligence tells me other officials and we, ourselves, often may have been guilty of laxity or want of judgment equally as great as that charged against Belmont Smith. I do not think it is the

American way. I do not think it is fair play. If there are others guilty, and I have reason to believe there has been that degree of laxity in other departments, I would be willing to sit in convention and have the proper charges brought, rather than to have him singled out and to use him as a sacrifice. For those reasons, Mr. President, I shall vote No when the roll is called.

Mr. CHAMBERLAIN of Penobscot: Mr. President, I would not for a moment deign to speak of the legal aspects of this question. And there are also enough here who can explain every part of it. I recently served as a juror in Penobscot County for several weeks. There the witnesses presented the facts to us, the lawyers on both sides interpreted the facts and the Judge told us what the law was.

In one of the cases the jury was very much separated in their judgment and in their opinion, so much so that I, acting as foreman, suggested that we ask the Judge for further information, particularly in one way, and we did so and the question was this, "In considering this case how far can we go in drawing inferences from the testimony?" And the Judge said there was no limit, we could draw any inference that we chose from the testimony, abiding of course with the law.

We have heard the testimony and I think that it is perfectly right and fair for every member of this

Senate to draw inferences from that testimony, inferences that concern the circumstances and the conditions surrounding the case. And it seems to me that if we do that and give full credence to those circumstances and to those inferences that can be drawn we must vote No on the adoption of this Address.

The PRESIDENT: Is the Senate ready for the question? The question is on the Resolution presented by the Senator from Cumberland, Senator Sanborn, for an Address to the Governor for the removal of Belmont A. Smith. A vote Yea is in favor of the adoption, and a vote Nay is against the adoption of the Resolution. The Secretary will call the roll.

The Secretary called the roll:

YEA: Beckett, Boucher, Chase of Piscataquis, Cony, Dow, Elliot, Hill, Kennedy, Laughlin, Lewis, Marden, Owen, Sanborn, Spear.—14.

NAY: Boothby, Burns, Chamberlain, Chase of Washington, Dorr, Findlen, Friend, Graves, Harkins, Littlefield, Morse, Thatcher, Tompkins, Wentworth, Worthen.—15.

ABSENT: Cook.

Fourteen having voted in the affirmative and fifteen opposed the Resolution failed of adoption.

Sent down for concurrence.

On motion by Mr. Spear of Cumberland

Adjourned until tomorrow morning at ten o'clock, Daylight Saving Time.