

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

**OF THE**

***Ninety-Fifth Legislature***

**OF THE**

**STATE OF MAINE**

**1951**

**DAILY KENNEBEC JOURNAL  
AUGUSTA, MAINE**

## SENATE

Wednesday, March 14, 1951.

The Senate was called to order by the President.

Prayer by the Rev. Arthur G. Christopher of Augusta.

Journal of yesterday read and approved.

## From the House

The Committee on Liquor Control on Bill "An Act Relating to the Liquor Commission," (H. P. 935) (L. D. 543) reported that the same ought to pass.

Comes from the House, recommended to the Committee on Liquor Control.

In the Senate, on motion by Mr. Tabb of Kennebec, recommitted to the Committee on Liquor Control in concurrence.

The Committee on Public Utilities on Bill "An Act Creating a Sewer System for the Town of Winthrop," (H. P. 165) (L. D. 96) reported the same in a new draft, (H. P. 1629) (L. D. 1188) under the same title, and that it ought to pass.

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

In the Senate, on motion by Mr. Marshall of York, tabled pending acceptance of the report.

The Committee on Judiciary on Bill "An Act Relating to Elderly Teachers' Pensions," (H. P. 924) (L. D. 526) reported that the same be referred to the Committee on Appropriations and Financial Affairs.

Which report was read and accepted in concurrence and the bill was referred to the committee on Appropriations and Financial Affairs in concurrence.

The same Committee on Bill "An Act Relating to Elderly Teachers' Pensions," (H. P. 738) (L. D. 425) reported that the same be referred to the Committee on Appropriations and Financial Affairs.

Which report was read and accepted in concurrence, and the bill was referred to the Committee on Appropriations and Financial Affairs in concurrence.

The Committee on Welfare on Bill "An Act Liberalizing Certain Limitations on Old Age Assistance," (H. P. 1245) (L. D. 799) reported that the same be referred to the Committee on Appropriations and Financial Affairs.

Which report was read and accepted in concurrence, and the bill was referred to the Committee on Appropriations and Financial Affairs in concurrence.

The Committee on Education on Bill "An Act to Provide Schooling in Brunswick for Tuition Pupils from Certain Other Towns," (H. P. 1050) (L. D. 630) reported that the same ought to pass.

The Committee on Highways on "Resolve, in Favor of the Town of Southwest Harbor," (H. P. 915) (L. D. 1189) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to Markers Designating Certain Waters and Mountains," (H. P. 463) (L. D. 283) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to Markers for Town Lines," (H. P. 580) (L. D. 350) reported that the same ought to pass.

The Committee on Legal Affairs on Bill "An Act Amending the Charter of the City of Waterville to Provide an Indefinite Term for the City Engineer," (H. P. 1053) (L. D. 633) reported that the same ought to pass.

The same Committee on Bill "An Act to Amend the Charter of the City of Waterville to provide Compensation for Municipal Officers, Board of Aldermen and City Council," (H. P. 1055) (L. D. 635) reported that the same ought to pass.

The same Committee on Bill "An Act to Amend the Charter of the City of Waterville to increase the Salary of the Mayor," (H. P. 1056) (L. D. 636) reported that the same ought to pass.

The same Committee on Bill "An Act to Create the Town of Columbia Falls School District," (H. P. 1122) (L. D. 709) reported that the same ought to pass.

The same Committee on Bill "An Act Amending the Charter of the Town of Camden," (H. P. 1123) (L. D. 710) reported that the same ought to pass.

The same Committee on Bill "An Act to Repeal the Incorporation of Bridgton Centre Village Corporation," (H. P. 1182) (L. D. 737) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to Pensions for Firemen of the City of Bangor," (H. P. 1184) (L. D. 739) reported that the same ought to pass.

The same Committee on Bill "An Act Relating to Pensions to Dependent Survivors of City Employees of the City of Bangor," (H. P. 1185) (L. D. 740) reported that the same ought to pass.

Which reports were severally read and accepted in concurrence, the bills read once and tomorrow assigned for second reading.

The Committee on Legal Affairs on Bill "An Act to Incorporate the Town of Charleston School District," (H. P. 1117) (L. D. 704) reported that the same ought to pass as amended by Committee Amendment "A".

The same Committee on Bill "An Act to Incorporate the Town of Orrington School District," (H. P. 1118) (L. D. 705) reported that the same ought to pass as amended by Committee Amendment "A".

The same Committee on Bill "An Act Creating the Old Town High School District," (H. P. 1207) (L. D. 765) reported that the same ought to pass as amended by Committee Amendment "A".

The Committee on Public Utilities on Bill "An Act to Incorporate the Lisbon Water District," (H. P. 758) (L. D. 454) reported that the same ought to pass as amended by Committee Amendment "A".

The same Committee on Bill "An Act to Create the Veazie Sewer District," (H. P. 1208) (L. D. 766) reported that the same ought to pass as amended by Committee Amendment "A".

The same Committee on Bill "An Act to Create the Van Buren Sewerage District," (H. P. 1281) (L. D. 820) reported that the same ought to pass as amended by Committee Amendment "A".

Which reports were severally read and accepted in concurrence, and the bills read once; Committee Amendments "A" were severally read and adopted in concurrence,

and the bills as amended were tomorrow assigned for second reading.

#### Communication from the Supreme Judicial Court

To the Honorable Senate  
of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, the undersigned Justices of the Supreme Judicial Court, having considered the questions submitted to them by the foregoing Senate Order, and having examined the pending resolve, as well as the 1941 legislation to which it relates, respectfully state:

The first four questions can be considered together. Each involves the constitutional provisions that: "The credit of the state shall not be directly or indirectly loaned in any case," and "The legislature shall not create any debt or debts, liability or liabilities, on behalf of the state, which shall singly or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed \$2,000,000." Constitution of Maine, Article IX, Section 14, as amended. The exceptions to this provision are inapplicable to the questions and need not be considered.

The foregoing provisions were written into the constitution by the sixth Article of the Amendments thereto in 1847. Prior thereto there was no limitation on the power of the Legislature to create debts in behalf of the state. In 1867 the Justices of this Court said of the particular provisions that:

"The general design was to provide a perpetual check against rashness or improvidence. 'The credit of the State shall not be directly or indirectly loaned in any case.' This indicates the great purpose of the amendment. But as there may be occasions for indebtedness for State purpose, authority is given to create a debt to the amount of three hundred thousand dollars. Indebtedness on the part of the State is limited to this amount. The object of the amendment cannot be misunderstood. Its binding force cannot be denied. It is the calm and deliberate expression of the popular

will, embodied in the solemn form of a constitutional restriction upon legislative action." Opinion of the Justices, 53 Maine, 587.

A limitation of somewhat similar nature is imposed by the Constitution on our cities and towns. See Articles XXII and XXXIV of the Amendments to the Constitution. The provisions of Article XXII were considered by the Court in **Reynolds v. City of Waterville**, 92 Maine, 292. Decision therein was that the constitutional limitation on municipal indebtedness could not be evaded by making a purchase in the guise of a lease. The questions propounded must be considered in the light of that authority and the Opinion of the Justices, 99 Maine, 515, that the limitations of Article XXII of the Amendments were as binding on the Legislature as on the municipalities to which they directly relate.

The Maine State Office Building Authority, as a body corporate and politic, was created by Chapter 76 of the Private and Special Laws of 1941, as "an agency of the State of Maine," to acquire land and erect an office building or an addition to the State House. The State is to execute a deed to the Building Authority of the necessary land in the rear of the State House, if the Commission selects such land. If not so selected the right of eminent domain is given as to other land necessary.

Section 9 of the Act provides that the Building Authority may issue notes, bonds or other evidences of indebtedness for terms of not more than 30 years secured by mortgage of the proposed building and land, including also the right to assign as security "any lease-hold contract it may have with the state of Maine." There is no limitation on the amount of notes, bonds or other evidences of indebtedness which may be issued by the Building Authority.

Section 12 provides that upon completion of the construction the Building Authority shall execute a lease to the State of Maine "of the entire property for a rental so computed as shall provide for the payment of interest upon the bonds and notes or other evidences of indebtedness hereinbefore provided

for and for their ultimate retirement." The Act makes the execution of the lease mandatory. Upon retirement the entire property is to be conveyed to the State. The so-called lease is not in legal effect a lease, it is a contract of purchase. The so-called rental is not true rent, to wit, payment for the use of property. The total amount of so-called rental is the purchase price the State is to pay for the property. When paid in full it will liquidate the entire indebtedness of the Building Authority. Being a contract of purchase, obligating the State to pay the purchase price, unless the entire amount thereof is to be paid pursuant to an appropriation presently made from funds or revenues currently available therefor, such contract of purchase would in the constitutional sense be a liability created by the Legislature on behalf of the State. It would constitute a liability which would have to be included with the existing debts and liabilities of the State in determining whether or not they exceed the \$2,000,000 limit set forth in Section 14 of Article IX of the Constitution. If such contract price in and of itself, or together with the existing debts and liabilities of the State, should exceed the constitutional debt limit, the so-called lease would be void.

A contract which obligates the State to pay money over a period of years for the purchase of property, creates a liability. It makes no difference whether you call the payments the State is obligated to make rental or instalments on the purchase price, the legal effect is the same. If you vitiate the provision for the so-called lease and payment of rental the Building Authority cannot function. The ultimate source of all funds for the liquidation of the indebtedness of the Building Authority is the State of Maine. Under the so-called lease, the State obligates itself to furnish them. This creates a liability. If the aggregate amount of it either by itself or together with existing obligations exceeds the debt limit of the State, it is beyond the power of the Legislature to impose it.

Under the Act in question, the Building Authority is a mere

agency of the State. It is expressly declared to be such by the Act itself. Without such declaration it would be. Its duties and functions determine its character. Its liabilities, which must be ultimately discharged by the State, are liabilities of the State within the spirit, purpose, and true meaning of Section 14 of Article IX of the Constitution. To hold otherwise would render the limitations imposed thereby meaningless.

Assuming, as we must, that the debt limit of \$2,000,000, fixed by Section 14 of Article IX of the Constitution, will be exceeded if the State becomes obligated to make the payments provided for in the lease contemplated in the Act, Questions 1, 2, 3 and 4 must be answered in the affirmative.

We answer Question 5 in the negative. One Legislature cannot obligate succeeding Legislatures to make appropriations. One Legislature may, within constitutional limitations, impose a contractual obligation upon the State which it is the duty of the State to discharge; but one Legislature cannot impose a legal obligation to appropriate money upon succeeding Legislatures.

Dated at Portland, Maine, this 13th day of March, 1951.

Respectfully submitted:

HAROLD H. MURCHIE  
SIDNEY St. F. THAXTER  
RAYMOND FELLOWS  
EDWARD F. MERRILL  
ROBERT B. WILLIAMSON

#### Memorandum

Mr. Justice Nulty was out of the State when the foregoing questions were submitted. Despite his entire willingness to return for the purpose of answering them, it is the unanimous view of his Associates that such action on his part is entirely unnecessary. He has all the material before him, has considered the questions and authorizes the statement that he concurs in the answers.

HAROLD H. MURCHIE

Which communication was read and together with accompanying papers was ordered placed on file.

#### Referred to Committee

The following Bill was transmitted from the Director of Legis-

lative Research pursuant to Joint Orders No. 138, and No. 265, and on recommendation by the Committee on Reference of Bills, was referred to the following committee:

#### Education

Mr. Haskell of Penobscot presented Bill "An Act Relating to Powers of East Corinth Academy." (S. P. 497)

(Ordered printed.)

Sent down for concurrence.

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#### Order

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On motion by Mr. Dennett of York, it was

ORDERED, the House concurring that S. P. 171, L. D. 345, bill, An Act to Incorporate the Kittery Sewer District be recalled from the engrossing department.

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#### Passed to be Engrossed

Bill "An Act Amending the Charter of Congregational Christian Conference of Maine." (H. P. 648) (L. D. 388)

"Resolve Regulating Fishing in Horne Pond in the Town of Limington, in the County of York." (H. P. 734) (L. D. 423)

Bill "An Act Relating to Tax Lien Fees." (H. P. 1213) (L. D. 770)

Which were severally read a second time and passed to be engrossed, as amended, in concurrence.

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Bill "An Act Relating to Examination of Criminal Character of Prisoners." (S. P. 104) (L. D. 153)

Bill "An Act Relating to Gambling." (S. P. 324) (L. D. 723)

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

Sent down for concurrence.

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Bill "An Act to Amend the Charter of the Union Mutual Life Insurance Company." (S. P. 337) (L. D. 753)

Which was severally read a second time and passed to be engrossed, as amended.

Sent down for concurrence.

#### Orders of the Day

Mr. ELA of Somerset: Mr. President, I don't know as this is the

proper time to make the motion, but if I may make it in view of the importance of the decision of the Justices of the Supreme Court, I move that the report be printed.

The motion prevailed.

Mr. CROSBY of Franklin: Mr. President, I move we reconsider our action of yesterday whereby we insisted upon our former action in indefinitely postponing Bill, An Act Relating to the Licensing of Cats (H. P. 1508) (L. D. 1103).

Mr. BARNES of Aroostook: Mr. President, I still feel exactly the way I did in the first instance on this foolish bill. I do not, however, want to create an incident which will bring about friction between the two bodies of the legislature, and therefore I will not object to the motion of the Senator from Franklin, Senator Crosby, that we reconsider our vote of yesterday to adhere.

The PRESIDENT: The question before the Senate is on the motion of Mr. Crosby of Franklin, that the Senate reconsider its former action whereby it voted to adhere to its action in indefinitely postponing this bill.

The motion prevailed.

Upon motion by Mr. Barnes of Aroostook, the Senate voted to insist on its former action and join the House in a committee of conference.

The PRESIDENT: At this time the Chair will appoint the members of the Committee of Conference on the part of the Senate:

Senators:

BARNES of Aroostook  
ALLEN of Cumberland  
PALMER of Lincoln

The PRESIDENT: At this time, the Senator from Lincoln, Senator Falmer has called to the attention of the Chair the fact that there are more boys and girls in the balcony than those who come from Farmington. He says that the students of Jefferson Grammar school with their principal Mrs. Preston Parlin, are also here. The Chair is glad to welcome them today in behalf of the Senate.

On motion by Mr. Palmer of Lincoln

Adjourned until tomorrow morning at ten o'clock.