

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*Ninety-Ninth Legislature*

OF THE

STATE OF MAINE

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DAILY KENNEBEC JOURNAL

AUGUSTA, MAINE

**SENATE**

Wednesday, May 13, 1959

Senate called to order by the President.

Prayer by Rev. Roger D. Blinn of Gardiner.

On motion by Mr. Weeks of Cumberland,

Journal of yesterday read and approved.

The PRESIDENT: At this time it is the Chair's pleasure to invite another distinguished member of the Maine Senate to approach the rostrum and act as President pro tem during a portion of today's session, and the Chair would ask the Sergeant-at-Arms to escort the Senator from Knox, Senator Stilphen to the rostrum.

This was done, amidst the applause of the Senate, and Mr. Stilphen of Knox assumed the Chair, the President retiring.

**PAPERS FROM THE HOUSE**

Bill, "An Act to Create a Parking Commission for City of Lewiston." (H. P. 843) (L. D. 1206)

In Senate on May 11, passed to be engrossed as amended by Senate Amendment A (Filing No. 358) in non-concurrence.

Comes from the House, that body having ADHERED to its former action whereby the bill was passed to be engrossed as amended by Committee Amendment: A (Filing No. 204)

In the Senate, on motion by Mr. Boucher of Androscoggin, the Senate voted to insist and ask for a Committee of Conference.

Bill, "An Act to Create a Committee to Study the Relocation of the State School for Boys" (S. P. 484) (L. D. 1358)

In Senate on May 8, passed to be engrossed.

Comes from the House, passed to be engrossed as amended by House Amendment A (Filing No. 347)

In the Senate, on motion by Mrs. Lord of Cumberland, the Senate voted to recede and concur.

**House Committee Reports  
Ought Not to Pass**

The Committee on Taxation on: Bill, "An Act Relating to Excise Taxes on Boats." (H. P. 410) (L. D. 594)

Reported that the same Ought Not to Pass.

On motion by Mr. Willey of Hancock, the Senate voted to concur with the House in the acceptance of the ought not to pass report.

**Ought to Pass-N.D.**

The Committee on Education on Bill, "An Act to Clarify Procedure for Reorganization of School Administrative Units." (H. P. 894) (L. D. 1263) reported same in New Draft (H. P. 958) (L. D. 1360) under the same title, and that it Ought To Pass.

In House, the bill was committed to the Committee on Appropriations and Financial Affairs.

In the Senate, that Body voted to recommit the bill to the Committee on Appropriations and Financial Affairs in concurrence.

**Ought Not to Pass**

Mr. DUQUETTE from the Committee on Appropriations and Financial Affairs on Bill, "An Act to Reactivate the Maine Committee on Aging and Authorize a Report to the 1961 White House Conference on Aging." (S. P. 284) (L. D. 746) reported that the same Ought Not to Pass.

Covered by Other Legislation.

Mr. PIERCE from the same Committee on "Resolve Providing Funds for Supervisors of Practical Nursing." (S. P. 69) (L. D. 119)

Reported that the same Ought Not to Pass.

(In the Senate, on motion by Mr. Martin of Kennebec, tabled pending acceptance of the ought not to pass report.)

Mr. ROGERSON from the same Committee on "Resolve Appropriating Moneys for Equipment for Aroostook State Teachers' College." (S. P. 314) (L. D. 876) reported that the same Ought Not to Pass.

Which reports were severally read and accepted.

Sent down for concurrence.

**Ought to Pass-N.D.**

Mr. DUQUETTE from the same Committee on Bill, "An Act Providing for Mental Health Services." (S. P. 288) (L. D. 812)

Reported same in New Draft (S. P. 490) (L. D. 1367) under same title, and that it Ought to Pass.

Which report was read and accepted, the bill in New Draft read once and tomorrow assigned for second reading.

**Conference Committee Report**

The Committee of Conference on the disagreeing action of the two branches of the legislature, on bill, "An Act Exempting Certain Fraternal Societies from Property Taxes." (S. P. 473) (L. D. 1338) reported that both branches recede and concur in the passage of the bill to be engrossed as amended by Conference Committee Amendment A.

The Secretary read Conference Committee Amendment A.

Thereupon, on motion by Mr. Charles of Cumberland, the report was read and accepted and the Senate voted to recede from its former action whereby the bill was passed to be engrossed; Conference Committee Amendment A was adopted, and the bill as amended by Conference Committee Amendment A was passed to be engrossed.

**Second Readers**

The Committee on Bills in the Second Reading reported the following bills:

**House**

Bill, "An Act Permitting Sale of Liquor on Election Days After Polls Close." (H. P. 765) (L. D. 1083)

Bill, "An Act Refunding Gasoline and Use Fuel Taxes to Local Transit Operators." (H. P. 950) (L. D. 1346)

(On motion by Mr. Cole of Waldo, tabled pending passage to be engrossed.)

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

Bill, "An Act Affecting Certain Statutes Relating to Court Process and Procedure and to Kindred Matters." (S. P. 486) (L. D. 1366)

Which was read a second time and passed to be engrossed.

Sent down for concurrence.

**Enactors**

The Committee on Engrossed Bills reported as truly and strictly engrossed, the following bills and resolves:

Bill, "An Act Creating Municipal Urban Renewal Authorities." (H. P. 555) (L. D. 811)

(On motion by Mr. Rogerson of Aroostook, placed on the Special Appropriations Table pending enactment.)

Bill, "An Act to Tax Equipment Brought Into the State After April First." (H. P. 675) (L. D. 967)

Bill, "An Act to Permit the Eastern Maine Electric Cooperative to Exercise Eminent Domain." (H. P. 818) (L. D. 1156)

Bill, "An Act Providing for a State Tuberculosis Annex to Community General Hospital in Fort Fairfield." (H. P. 890) (L. D. 1259)

(On motion by Mr. Rogerson of Aroostook, placed on the Special Appropriations Table pending enactment.)

Bill, "An Act Relating to Petition for Review of Incapacity Under Workmen's Compensation Act." (H. P. 955) (L. D. 1355)

(On motion by Mr. Bates of Penobscot, tabled pending enactment.)

Bill, "An Act to Regulate the Practice of Nursing." (S. P. 475) (L. D. 1339)

Which bills were severally passed to be enacted.

"Resolve Permitting Ice Fishing in Certain Ponds in Androscoggin and Kennebec Counties." (H. P. 550) (L. D. 785)

"Resolve Refunding Motor Vehicle Fees to Certain Canadian Residents." (H. P. 741) (L. D. 1060)

Which resolves were finally passed.

**Emergency**

Bill, "An Act to Make Allocations from the General Highway Fund for the Fiscal Years Ending June 30, 1960 and June 30, 1961." (H. P. 946) (L. D. 1341)

Which bill, being an emergency measure, and having received the affirmative vote of 27 members of

the Senate, and one opposed was passed to be enacted.

At this point the President assumed the Chair, Mr. Stilphen retiring amidst the applause of the Senate.

The PRESIDENT: The Chair wishes to thank the Senator from Knox, Senator Stilphen for his very excellent services acting as President pro tem during this morning's session.

#### Orders of the Day

The President laid before the Senate the first tabled and today assigned item being House Report from the Committee on Legal Affairs: Ought to pass as amended by Committee Amendment A on bill, "An Act Relating to Certain Acts Constituting Lotteries." (H. P. 813) (L. D. 1151) tabled on May 8 by the Senator from Kennebec, Senator Martin, pending acceptance of the report.

Mr. MARTIN of Kennebec: Mr. President, I move the acceptance of the ought to pass report in concurrence with the House, as amended by the House, and I might simply state that this is a unanimous verdict or vote of the committee on Legal Affairs.

The motion prevailed and the ought to pass as amended report was accepted in concurrence, the bill read once, Committee Amendment A read and adopted in concurrence and the bill as amended, tomorrow assigned for second reading.

The PRESIDENT: The Chair appoints as Senate conferees on the Conference Committee on the disagreeing action of the two branches on bill, "An Act Creating a Park Commission for the City of Lewiston (L. D. 1206) Senators: Boucher of Androscoggin, Lessard of Androscoggin and St. Pierre of Androscoggin.

The PRESIDENT: The Chair would like to announce the members of the Senate on the Commission to Commemorate the Centennial of the American Civil War. On behalf of the Senate, the Chair appoints Senators: Charles of Cumberland,

Carpenter of Somerset, Martin of Kennebec and Coffin of Cumberland.

On motion by Mrs. Lord of Cumberland, the Senate voted to take from the table the 1st tabled item being, House Report Ought to pass as amended by Committee Amendment A on bill, "An Act Relating to Salary of Members of Superintending School Committee of City of Portland," (H. P. 119) (L. D. 174) tabled by that Senator on February 11 pending acceptance of the report.

Mrs. LORD of Cumberland: Mr. President, because the City of Portland has appointed a committee to make a thorough study of the city charter, which has not been done since it was adopted in 1923, and since all of these matters will be taken up at that time in the school committee and all phases of the city government, and since the school committee as now constituted is one of the best, I think, in the State of Maine, and since many of them have called me and said they did not wish for a salary, I would like to move to indefinitely postpone this bill.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Cumberland, Senator Lord, that (L. D. 174) be indefinitely postponed.

Mr. COFFIN of Cumberland: Mr. President and members of the Senate: I rise to disagree with my compatriot here. I feel that people who serve as members of school boards need some remuneration.

Now I am not too familiar with government activities in the City of Portland however I believe that people should at least receive the expenses that are incurred by serving on a committee such as this; and I feel that whereas this bill has gone favorably through the House we should give it some consideration. Even in the small town of Freeport, which is nowhere near the size of Portland, we pay fifty dollars a year for school board members. As I understand it, in Portland they pay nothing. The situation is that there are a lot of people capable of serving on school boards who could not afford to serve on them if they could not at least get their expenses. Thank you.

Mrs. LORD of Cumberland: Mr. President, I would simply like to say that if you had a good committee the salary would not be much, but this was too much to pay for just expenses.

Mr. MacDONALD of Oxford: Mr. President and members of the Senate: I heard all the arguments pro and con at the time of the hearing and from that I think this ought to pass. I heard it all from both sides. I think we should follow the report of that committee.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Cumberland, Senator Lord, that the bill and reports be indefinitely postponed.

A viva voce vote being had, the motion prevailed and the bill was indefinitely postponed.

On motion by Mr. Wyman of Washington, the Senate voted to take from the table the 79th tabled item being House Reports from the Committee on Towns and Counties: Report A, ought to pass; Report B, ought not to pass on bill, "An Act Increasing Number of Medical Examiners in Lincoln County." (H. P. 823) (L. D. 1161) tabled by that Senator on May 8 pending acceptance of either report, and that Senator moved the acceptance of Report B, ought not to pass.

Mr. DOW of Lincoln: Mr. President and members of the Senate: When this piece of legislation was introduced it was without my knowledge and I had no feeling on it. The bill was heard in committee from a very few people, and following the committee hearing some of the members of the committee asked me what my feeling was on this matter and I stated that I most likely would go along with the committee report, whichever way that happened to be. It so happened that the committee came out with a 5 to 5 report and left me sitting on the top of a picket fence.

Since the report came out of the committee and since favorable action has come from the House for granting Lincoln County a third examiner, I have had a great many calls and contacts urging the acceptance of the bill calling for a third medical examiner.

It seems that there have been cases in the past where there has been undue delay in getting a medical examiner when one was needed, sometimes a delay of four or five hours.

Now we have a geographical situation in Lincoln County that could be partly the reason for this. Our coastline is very jagged and we have several long peninsulas. For instance, it is two miles from Boothbay Harbor where one medical examiner lives over to South Bristol, which is at the end of one of these peninsulas, and yet it is thirty-five miles around by car. It has worked some hardship to families who have been waiting for medical examiners to come when there has been a deceased member. Last week I was told that an ambulance was delayed and held up for four or five hours waiting for a medical examiner to come. So my feeling is just this: I feel it would do no harm absolutely to have a third medical examiner to make this situation a little better in our county, and I hope that the motion of the Senator from Washington, Senator Wyman, does not prevail.

Mr. FARLEY of York: Mr. President and members of the Senate: I have been a member of the Towns and Counties Committee for four sessions, and it seems that every year throughout the State different counties are coming in for more medical examiners. To my way of thinking, it makes a mockery of the Medical Examiners of the State of Maine. I have tried very hard to be fair with the members of the House and Senate in using a scale, or rule, if you wish to call it that, of where it was thirty-five or forty miles distance before you could get a medical examiner to view a body. I have gone along upon that. I have opposed the medical profession who come before us on that. This session we have increased one in Somerset County although we had bills for three in the county.

Now the Towns and Counties Committee, as you all know, is a political organization where politicians meet politicians on the county level with reference to salary increases or whatever you may have. But there does come a time when you

have got to forget politics and evaluate the evidence that is presented to you in behalf of medical examiners of the State of Maine.

In the case of Lincoln County, the only direct evidence that we had was that this lady said that unfortunately another lady's husband had committed suicide and it was four or five hours before they could get a medical examiner. I think I got myself into a lot of trouble by asking a lot of questions, but I have made it a practice that I am going to ask questions, and then in executive session everyone knows where I am. This lady told us of this case and she told us that there was a delay of possibly four hours. Coming to the mileage, her own testimony was it was only a distance of twenty miles before they could receive the services of a medical examiner. I don't know much about Lincoln County, but I took her testimony that it was twenty miles. We also had a gentleman who was County Commissioner and who was with the lady for the bill.

I don't know just what seems to be the trouble with these medical examiners, but it is no affair of the committee whether the appointment is one or the other of the medical profession; that does not enter into it so far as we are concerned; it is whether or not we wish to increase the number. I am supporting the motion of the Senator from Washington, Senator Wyman for the acceptance of Report B.

I was a little surprised when I received a copy of an editorial which says it is only permissible. I don't know. It says "increase." And the lady used the same argument, that a busy doctor cannot leave his living patients to answer a call where the patient is dead.

Now if you follow the statutes of the State of Maine in regard to medical examiners you will find that any man vested with authority in a city or town can summon a medical examiner but he must first also have the county attorney. Now I do not think that this delay is all the fault of the medical examiner; it could be on the part of the county attorney.

I think myself that medical examiners are very vital to families of the State of Maine, particularly

on matters with reference to insurance and this or that, and things they really want to understand about a death. I am not biased in this. It is just a principle I have followed, and I think I have tried to be fair.

The Senator from Lincoln, Senator Dow, mentioned something that happened within a week. I never knew the gentleman who was the medical examiner that appeared before the committee, nor do I know the other gentleman. I told him last Friday in the Augusta hotel about receiving this complaint and that lately there had been rumors that they couldn't find a medical examiner. He told me that he had called another gentleman by the name of Dr. Ross or Dr. Gross, and he said he had heard it rumored that they couldn't find a medical examiner.

I think this is a very important bill and I think we have reached the right decision. I think we could have had a unanimous report, but I think the members of the committee from the Senate and the House just resented the gentleman from the medical profession coming in and opposing it. That seemed to be the ruling argument. I have always contended that, regardless of who they are or what they are, they have a right to come before us for us to evaluate the evidence in as fair and as unbiased a manner as we can. Once again, I am going to support the motion of the Senator from Washington County, Senator Wyman.

Mr. WYMAN of Washington: Mr. President, I rise in support of my motion and in support of my colleague on the Towns and Counties Committee, Senator Farley of York. He touched upon the fact that the claim has been made by the proponents on this bill that the distances in Lincoln County are too far, and Senator Dow mentioned that sometimes it was necessary to drive thirty five miles. It certainly doesn't take very long to drive thirty-five miles in this day and age.

Further, Lincoln County is our smallest county in population and our second smallest in area. Our six smallest counties range in population from Lincoln County which

has approximately eighteen thousand and people to Knox with approximately twenty-eight thousand. In area Lincoln has 457 square miles while Piscataquis the largest of the six smallest counties has in area 3770 square miles, or eight times the area of Lincoln County. All of these six counties, Franklin, Knox, Lincoln, Piscataquis, Sagadahoc and Waldo have only two medical examiners. Then why does Lincoln need three medical examiners? Certainly not on account of her size or population.

It is said though that Lincoln is divided by a river but then so are some of the other counties including Piscataquis and Sagadahoc, so it cannot be for this reason.

Again it is said that in Lincoln County there is not good medical examiner service. The answer to this is that the service is there if the people would but use it. One of the medical examiners in Lincoln County is Dr. Gregory of Boothbay Harbor who admittedly is a busy man due to his hospital work. The other Lincoln County medical examiner is Dr. Gross who resides in the northern part of the county.

As Chairman of your Joint Committee on Towns and Counties, I talked with Dr. Gross last week on this matter and he informed me that he had never delayed more than twenty minutes in responding to a call for medical examiner service. But he did advise that he did not get many calls and that in one case which was within a mile of his office, he was not called, but instead, Dr. Gregory from the other end of the county was summoned.

I further checked on Dr. Gross and found that he has had considerable experience and is highly regarded by those in his profession and those whom he serves in the northern part of Lincoln County.

Following this I checked with the Attorney General's office to find out the number of calls received in the past two years by each medical examiner. The answer to this was that in 1957 Dr. Gregory received twenty calls, while Dr. Gross received only nine calls. In 1958, Dr. Gregory received twenty-three calls while Dr. Gross received only five calls or less than one quarter as many. So far this year, Dr.

Gregory has received eight calls to four for Dr. Gross.

Now, members of the Senate, the medical examiner service is there if the citizens of Lincoln County would but avail themselves of it.

It has been said, why not appoint another medical examiner since these men work by the case and it will not cost the county any more. Then I say if this reason is valid, why not make every doctor a medical examiner. But even the proponents of the bill do not want that. The profession of medical examiner is a trained one and in this as in most work there is no substitute for experience. Dr. Gregory and Dr. Gross both have the time to serve Lincoln County well. To add another medical examiner would accomplish nothing. Dr. Gross has served for some time. He has been appointed by Governors of both parties and is an accepted medical examiner.

Your Committee on Towns and Counties, of which it has been my privilege to serve as Chairman for three legislative sessions, has restricted very carefully the number of medical examiners for all counties in order that those who hold this position might have a sufficient number of calls to sustain their interest in their work and to encourage further study.

This is the case in Lincoln County. Although for the time being there is a lack of harmony and an attempt is being made to take the work away from one of the medical examiners by creating an additional examiner, that should not influence this legislature.

Once again, Lincoln County has adequate medical examiner service and if the law is left as at present, I am sure the present flurry will soon blow over and the county will avail itself of this service which is there.

Mr. DOW of Lincoln: Mr. President, I want to say again that this was a five to five report. Certainly the other five members of the committee must have had reasons for going along on the other side and I might say without any pressure from me whatsoever.

I don't think the fact that Lincoln County is the smallest county in the state has anything to do with



this, or the amount of people that we have down there. We do have a little different topographical and geographical situation there, and it is true that you can travel from one end of the county to the other perhaps within a fifty to sixty mile course but when a medical examiner down in the extreme southern end of the county is tied up in the hospital with an operation and the other medical examiner is in the extreme northern end and is apt to be tied up, I can see very well where it might cause hardship for those people who have to wait.

This does not force a third medical examiner upon us. It only allows us the privilege of having one if we feel that we need one. I recall a speech of the Senator from York last week where he stated in regard to a piece of legislation which was going to affect his county that he thought that members in other counties should stick to their own knitting or something like that. I would say that right now, Senator Farley of York is trying to knit a pair of socks for Lincoln County that don't fit the wishes or needs of Lincoln County. I go home every night. I am there every night and I know pretty much what the people want and what they don't want. I have had three or four dozen contacts in the last week from people who are anxious to have a third medical examiner in this Bristol region which is the farthest from the services of either of these doctors and on the other side I have had three individuals tell me that they did not think that a third medical examiner was necessary. Therefore I think that the people of Lincoln County need and want a third medical examiner and it is going to cost nobody anything. I hope we have the privilege of having a third medical examiner if we decide we want one.

Mrs. LORD of Cumberland: Mr. President, as a signer of the ought to pass report, I would just like to give my views of it. We listened to the testimony and it was brought out that they had two very good examiners and were very well satisfied with them but at times you couldn't get either one of them because they are both busy doctors. One was so very busy that very sel-

dom could you get him. The other one is practically the same. I can't see that it would add any expense to anyone because they are only paid when they work and if it would save a person from suffering when watching over a person who has been killed or perhaps died from natural causes, I can't see that it would do any harm to let them have the third examiner and I shall oppose the motion.

Mr. ROSS of Sagadahoc: Mr. President, I would like to pose a question in two parts through the Chair to anyone who might be able to answer it and that question is, "Are both the present medical examiners M.D.'s and does this have any bearing on the subject in question?"

The PRESIDENT: The Senator from Sagadahoc, Senator Ross poses a question to the members of the Senate and any Senator may answer who wishes.

Mr. WYMAN of Washington: Mr. President, in answer to the question, I will say that Dr. Gregory is an M.D. and Dr. Gross is an osteopath. I was hoping that that would not come into the discussion. We have good osteopaths all over the state and I don't think that has anything to do with the problem. The service is there and Dr. Gross told me he never had waited over twenty minutes but was always ready to go on a case of this kind.

Mr. FARLEY of York: Mr. President, I don't like to take issue with the good Senator from Lincoln County, Senator Dow. I am very unpopular in York County. The issue I spoke about was a local one in the city of Biddeford. One statement that was made was that it doesn't cost the county anything. Well, it does. They have an appropriation. They have one in my own county of five thousand dollars. We had testimony by the County Commissioners of Penobscot County that it cost them over five thousand dollars, mostly around Bangor.

I think that if the members of the Senate would just judge this upon the merits of statutes law and give the benefit of the doubt to the medical examiner, who probably is the last person called, they can see the light of day the same as I have on this.

I am not biased towards Lincoln County. I'm not. All I did was take the evidence that came before us but we seemed to get more evidence after the case was all over.

If Lincoln County really deserved another medical examiner I surely would have voted for it but there was no testimony to that effect. The question was brought up by the Senator from Sagadahoc. Yes, I say to him. That is a lot of the trouble. But the members in Cumberland County have nothing to do with the appointment. The appointment comes from the corner room. Who they put there is none of our business. I hope the Senate will go along with the Senator from Washington County, Senator Wyman.

Mr. DOW of Lincoln: Mr. President, I would like to say that both of our medical examiners are morally and scientifically well qualified. That is not our problem. The Senator from Cumberland stated that all three of our county commissioners want a third medical examiner. That is true. They appeared at the hearing and said so. Yesterday the sheriff called me and said he hoped we'd have a third medical examiner because there have been cases where his deputies have been held up. I hope you will give us down in Lincoln County what we in Lincoln County think we need and it is not going to cost anyone a dime.

Mr. WYMAN of Washington: Mr. President, I don't want to belabor this further but the members of the medical profession who were there opposed this bill, and Dr. Gregory the M.D. from Boothbay Harbor also opposed the bill. Dr. Gross, the osteopath, was not at the hearing.

Mr. FARLEY: Mr. President when the vote is taken I ask for a division.

The PRESIDENT: The question before the Senate is the motion of the Senator from Washington, Senator Wyman, to accept Report B, ought not to pass, on L. D. 1161, and a division has been requested.

A division of the Senate was had.

Fourteen having voted in the affirmative and fifteen opposed, the motion did not prevail.

Thereupon, on motion by Mr. Dow of Lincoln, Report A ought to pass was accepted in concurrence, the

bill read once and tomorrow assigned for second reading.

The PRESIDENT: At this time the Chair would like to welcome to the Senate Chamber another visiting group of students. Today our visitors come from the A. D. Ingalls school in Farmington, Maine, the 8th grade accompanied by their teacher Donald Watson. On behalf of the Maine Senate a cordial welcome to all of you young people and your teacher, Mr. Watson. We trust you will enjoy your day here and find it educational as well.

On motion by Mr. Parker of Somerset, the Senate voted to take from the table the 88th tabled item being bill, "An Act Relating to Fishing for White Perch." (H. P. 88) (L. D. 135) tabled by that Senator on May 12 pending adoption of House Amendment A.

Mr. PARKER of Piscataquis: Mr. President and members of the Senate, I do not propose to go into this at any great length because I think we covered that yesterday. However, I do want to point out that the original bill, L. D. 135 says there shall be no bag limit or weight limit on white perch in all counties of the state. House Amendment A says "in all the counties of the state except that there shall be a bag limit of twenty-five white perch in Boyd Lake in Piscataquis County and Belgrade Lake Chain and Petty Pond in Kennebec County."

As I see it the problem is this. Apparently there are three ponds, and those that live in their vicinity or in the county in which these ponds are located feel very strongly that there should be a bag limit of 25 white perch and for that reason they would like to have these three ponds removed from the concept of this law.

I can only speak for one in my county, and that is this. This is a warm water pond. It would be impossible to have trout or salmon or any fish that requires cold water. Those that have cottages around this lake are very emphatic in wanting to try and keep some of the white perch there regardless of what the biologists tell us that they breed so fast that you cannot catch up

with them regardless of how much you fish or when you fish.

Those that own cottages around this lake certainly think they know that 25 per day is all that is necessary and they believe in conservation and for that reason I am going to move that we concur with the House in the adoption of House Amendment A as amended by House Amendment A, No. 16.

The PRESIDENT: There is a pending motion before the Senate that the Senate adopt House Amendment A. The proper motion before the Senate is for the adoption of House Amendment A.

Mr. PARKER: I so move.

Mr. MARTIN of Kennebec: Mr. President, since this bill concerns two ponds in Kennebec County, I checked with representatives who represent that area and they tell me it is what the people want in that area and therefore I shall support the motion of Senator Parker of Piscataquis.

Mr. DOW of Lincoln: Mr. President, being a great believer in home rule I also will support the Senator from Piscataquis, Senator Parker.

Mr. BRIGGS of Aroostook: Mr. President and members of the Senate, being a great believer in fighting for what I think is right, I also will rise to make a few remarks on this measure. We are right back with the same old situation that we have labored over day in and day out all through this session, the previous session, and the session before that. The question is no different at all. It is just the same. We had one yesterday as a matter of fact. There's just about as much good reason for having a limit on white perch as there would be to have one on dandelions and there might be a reason for that in the minds of some people who like home rule.

I am not against home rule. I am for conservation too. Everybody is. It's like being against sin. The problem arose with this question when a number of years ago we found we had a group of rather nonsensical special fishing regulations in the State of Maine that filled a Chapter 37 about like this book I have in my hand. All the sporting magazines, Field and Stream, Outdoor Life, and so forth were warn-

ing their readers in their annual or semi-annual reproductions of regulations in various states. After Maine it said, "Be sure to consult local authorities." And they should have said to consult a good Maine lawyer too, because the regulations are so confusing that there will be a ten fish limit at one end of the lake, a nine or six fish limit up to the red stake in the center of the lake and a three fish limit somewhere else; you could catch ten white perch in one pond but in the next you could only catch five and in the next, fifteen. It did not make any sense. So some of us who approved of home rule but were not so enthusiastic about it that we were willing to be blind to the maze of complex and ridiculous special regulations that had been placed upon the books by previous legislators who were all men of great wisdom who also believe in home rule. We decided to see what we could do toward reducing those regulations as much as possible and putting the whole picture on the basis of what was best for the fish or for the specie being considered. Rather exhaustive studies have been made about white perch and that type of fish all over the country. It is a fine fish actually for persons unlike the speaker who is a sort of trout and salmon snob because of our good fortune in the northern part and we have been led to believe we can expect that as a sort of right, to be able to angle for that chosen specie but for places that don't have those cold water type, the white perch is a very delightful fish. He can be caught by dredging with snakes over the edge of a boat or raft or anything of that nature and he is very nice to eat besides that.

Some people say that they don't regard the white perch as a game fish. They think of them more as an insect but they are narrow minded and not true conservationists, because they are good and when they don't have trout and salmon they appreciate them as the Senator from Piscataquis, Senator Parker said and they want very much to utilize them properly and not do anything to unduly damage them and I am in the most whole hearted accord with that because I like things natural and especially

fish, having dealt with a lot of them all my life and I want to do that too, but the truth of the matter is that in these ponds under question, if all the white perch that were born in those ponds over a period of a year or two actually survived like I am sure some of the members perhaps think they might if we don't catch enough of them, they would make a pile of perch probably 500 feet high up over the pond into the air but they don't survive of course because there are so many of them that they just can't and often times what happens except in the very most rich ponds are that the perch there become stunted or become smaller just like too many cows in the pasture, too much corn on the hill and all that stuff. Everything is dependent upon food supply and perch are no different. So what we have done finally as was mentioned yesterday, we have reduced the regulations in Chapter 37 nearly half and we've got quite a few more to go. We set out to remove the foolish white perch regulations from all the chapter and we have them all removed in Maine with the exception of three or four lakes. I think there are probably a thousand or more white perch ponds, probably more than that as a matter of fact. It probably would be safe to say there are thousands of white perch ponds in the State of Maine. They all have different degrees of fishing success for various reasons not usually understood by everyone.

In all these ponds except four, I think we have removed the regulations because they don't serve any useful purpose and they don't protect the perch. They don't make better perch fishing and that is what we are all aiming to do.

Now we would have been allowed prior to the remarks of the first speaker, as far as he was concerned, as I recall it, to remove them all except for this one corner where there are these two or three ponds right together. Now it just doesn't make any sense. If we don't need to have any regulations for clarification or if it doesn't serve any correct purpose so far as making better perch fishing, it is just purely unrealistic to do this for that one pond or one little group of ponds. As a matter of fact, surely there

is no question in the minds of any of you Senators by now that this whole affair has no business in the halls of the legislature at all. You don't need my talented remarks or those of my colleague from Penobscot, Senator Hillman or the Senator from Somerset, Senator Carpenter or any others. Most of these regulations have been designed because of some local notion that could better be handled by interests outside of this legislature. It would save a lot of time.

As long as you insist on keeping them here and I am here, I am going to insist on standing up and presenting them the way I think they will serve the best interest from the point of view of preserving the fish and true conservation. The best interests can be served in this case by removing the regulations from white perch. They don't serve any useful purpose and I hope that the motion to put these amendments on will not prevail.

Mr. COFFIN of Cumberland: Mr. President, I rise in support of the Senator from Piscataquis, Senator Parker and I would like to disagree with Mr. Briggs that white perch do serve a purpose. My experience has been on the lakes and ponds that where the cottages are, they are usually filled with children. Now the children have got to be satisfied one way or another and I find that in my family for instance, my children get just as much kick out of fishing these white perch and I agree they are good eating too. Now if they hadn't had the white perch there, they would have been bothering us adults with our trout and salmon and I feel that the little amount that Senator Parker calls for should be given him.

Mr. HUNT of Kennebec: Mr. President, I want to speak in support of the motion of Senator Parker especially in regard to the Belgrade Lakes. On the last three week-ends I have had occasion to go there with my children to the bridge in the Belgrade Lake Village and the first week I was there there were so many people standing there fishing from the bridge for white perch that my boys and I had to wait for about an hour. The fish were biting good that day and most everyone caught their limit of twenty-

five within a short time. In the interest of conservation, certainly twenty-five perch are enough and I know that on that day there were many hundreds of them taken because people were leaving when we came and more were coming in as we left. I have been up there for the past three weekends, grammar school boys and girls were there fishing and as Senator Carpenter said, they want to catch their fish and catch them quickly and that's the kind of place they like to go. So I feel that at least as far as Belgrade Lakes are concerned, I believe people in that area are in favor of this limit as it allows everyone to have some and at the same time it saves a few for the summer people when they come up in July and August.

Mr. BRIGGS of Aroostook: Mr. President, the pattern is getting increasingly clear, Mr. President and members of the Senate. However, I can see that the Senator from Kennebec, Senator Hunt and the Senator from Kennebec, Senator Martin, approve of my earlier remarks that anyone coming in here is going to need a competent attorney in order to be able to understand the regulations.

The description that the Senator from Kennebec, Senator Hunt has just made, how they caught hundreds of white perch off some wharf or bridge or something is ample testimony I think to the fact that the supply is inexhaustible of white perch and I will buy this and endorse it wholeheartedly if you will put this off for a few days while you go no further than down in the State Library and seek out whatever information you can find there the same as either of these gentlemen would do if they were making a serious study of any legal matter, I will go along completely if they are satisfied that the facts they find on this subject bear out their contention that there should be a limit on white perch.

So far as it being just a little bit to ask, every one of these special resolves that come in here on special fishing and hunting regulations has just a little bit to ask and every one makes the book just a little bit thicker. If that is what you want, so be it.

Mr PARKER of Piscataquis: Mr. President, I hope I am the last speaker on the subject before the vote. There has been so much said about employing lawyers to find out what our fishing laws are and I believe one speaker mentioned foolish laws. I'm not sure whether he was referring to the foolish laws in these two counties or those that come from those counties. I am not sure about that. However, I will assume that it was the law.

The whole question before we vote is simply this. There are three lakes, three ponds, one in Piscataquis, two in Kennebec and those who have cottages there, those who fish there, the citizens of those two counties believe that there should be a limit of twenty-five white perch caught per day. The original bill says that there shall be unlimited fishing at any time. No limit on the number of fish you can catch. That is the point we are discussing. We believe that there should be a limit on these three ponds, because otherwise all the white perch or the majority will be caught out and fishing wont be as good as it would if you kept the limit on.

We believe that the limit should be kept on. I ask for a division when the vote is taken.

Mr. FARLEY of York: Mr. President, I voted against zoning for the deer. It looks to me like we are having another zoning. I think Senator Parker is one of those who voted along with me against the zoning of deer. Now we are coming down to the principles of home rule, and I'll go along on something I don't go along with although I am not stubborn. If I think there is a principle in anything, God Almighty never can change it. I think the Senator from Aroostook has presented a matter of principle and I'm going along with the Senator from Aroostook.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Piscataquis, Senator Parker, that the Senate adopt House Amendment A in concurrence, and a division has been requested.

A division of the Senate was had.

Thirteen having voted in the affirmative and sixteen opposed, the motion did not prevail.

Thereupon, House Amendment A was indefinitely postponed in non-concurrence, and the bill was passed to be engrossed in non-concurrence.

Sent down for concurrence.

At this point, the President declared a ten minutes recess.

#### After Recess

The Senate was called to order by the President.

The PRESIDENT: On behalf of the Senate, it is a pleasure to welcome to the Senate Chamber this morning, the members of the 6th grade class of Pettengill School in Lewiston, accompanied by Mr. Owen Palmer and several parents of the students. We certainly extend a cordial and hearty welcome to all of you and trust you will enjoy your visit and find it of an educational nature. It is a real pleasure to have you folks here.

On motion by Mr. Weeks of Cumberland, the Senate voted to take from the table the 70th tabled item being bill, "An Act Relating to Outdoor Advertising Devices on the Interstate System." (S. P. 401) (L. D. 1169) tabled by that Senator on May 6 pending adoption of Senate Amendment A; and that Senator yielded to the Senator from Piscataquis, Senator Parker.

Mr. PARKER of Piscataquis: Mr. President, I would like first to ask the Secretary what is the present status of this bill?

The Secretary read the endorsements on the bill.

Mr. PARKER: Mr. President and members of the Senate, I think that I gave an explanation of Senate Amendment A in my previous remarks.

I think the time has come when we should decide either that we want to eliminate outdoor advertising on our interstate highway in the State of Maine or whether we want to leave it open to indiscriminate billboard placement. I do not know that I want to enter into any further explanation at this time. I know that this has been given a lot of space in the press, I know that our Garden Clubs over the State of Maine have indicated to probably

every member their support of the elimination of billboards on this interstate system. It seems to me that with twenty thousand miles of roads in the State of Maine that we are entitled to one road from Kittery through to Houlton on which we can drive without having to have our attention called every few feet, which in my estimation will happen as the years go by, to some advertising of hot-dog stands or some special attractions that those who have billboards want to hold up for our consideration. So I move, Mr. President, that we adopt Senate Amendment A, and when the vote is taken I would ask for a division.

The PRESIDENT: The question before the Senate is on the adoption of Senate Amendment A.

Mr. MacDONALD of Oxford: Mr. President, I would like to have the Secretary read Senate Amendment A.

(Senate Amendment A was read by the Secretary)

Mr. PARKER of Piscataquis: Mr. President and members of the Senate: Probably I should have taken a little more time in explaining the purpose of this amendment. The purpose of this amendment is wholly to eliminate the objections raised by some of those that have filling station or — in fact I believe it is wholly filling stations. This amendment meets with the approval of the petroleum industries of Maine, it meets with the approval of the Federal Bureau of Public Roads in Washington because they have been contacted and they have agreed that this could be allowed and still come under the law under which they will participate to the advantage of the State of Maine in the amount of approximately \$800,000, one-half of one per cent. It also meets with the approval, I understand, of the Highway Commission. For that reason, I hope that the motion to adopt this amendment will prevail.

The PRESIDENT: The question is, Shall the Senate adopt Senate Amendment A to Committee Amendment A.

A division of the Senate was had.

Twenty having voted in the affirmative and nine opposed, the motion prevailed and Senate Amendment A to Committee Amendment A was adopted.

Committee Amendment A as amended by Senate Amendment A was adopted.

Mr. Weeks of Cumberland presented Senate Amendment A to the bill, and moved its adoption.

The Secretary read Senate Amendment A.

Mr. PARKER of Piscataquis: Mr. President, this bill that we are discussing is, I believe, one of the most important ones we are going to have in this session of the legislature. This amendment is something that is very far reaching. In order to have an opportunity to study it and find out what will happen to our billboards situation on the interstate highway in Maine, I move that the bill be tabled and especially assigned for Wednesday next.

The motion prevailed and the bill was laid upon the table pending motion by Mr. Weeks to adopt Senate Amendment A. and especially assigned for Wednesday next.

On motion by Mr. Briggs of Aroostook, the Senate voted to take from the table the 17th tabled item being House Report from the Committee on Inland Fisheries and Game: Ought to pass as amended with Committee Amendment A on bill, "An Act Relating to Hunting Deer with Bow and Arrow in Islesboro, Waldo County." (H. P. 620) (L. D. 888) tabled by that Senator on April 2 pending acceptance of the report.

Mr. BRIGGS of Aroostook: Mr. President, this is a little complicated, and in order to make it work out right so that the results that are sought will be achieved, it is necessary for me to move that House Amendment A be indefinitely postponed.

The PRESIDENT: The Chair would state that the first motion would be to accept the ought to pass report.

Mr. BRIGGS: I so move, Mr. President.

Thereupon, the ought to pass report was accepted and the bill read once. The Secretary read Committee Amendment A.

Mr. CARPENTER: Mr. President, I rise to a point of order. I think maybe there is a little confusion in

the mind of Senator Briggs of Aroostook as to what House Amendment A does. It extends the season into November and I think that is what we agreed upon.

The PRESIDENT: The motion before the Senate is the motion of Senator Briggs to indefinitely postpone House Amendment A to Committee Amendment A.

Mr. BRIGGS of Aroostook: Mr. President, we had too many cooks work on this broth and it is all souped up in some way. I think according to the most recent information which you have all just heard, it would be best if I just back out of this and withdraw my motion to indefinitely postponed House Amendment A and I think we will be able to take care of the requests in the revisions of Chapter 37 as we do each session.

So I will withdraw my motion and let it go along and everybody will be happy. If not, we will take care of it next week.

Mr. Briggs was granted permission to withdraw his motion.

Thereupon, on motion by Mr. Carpenter of Somerset, House Amendment A to Committee Amendment A was adopted in concurrence. Committee Amendment A as amended by House Amendment A was adopted in concurrence, and the bill as amended was tomorrow assigned for second reading.

On motion by Mr. Cole of Waldo, the Senate voted to take from the table the 69th tabled item being Senate Reports from the Committee on Claims: Report A, ought to pass; Report B, ought not to pass on "Resolve in Favor of Jim Adams, Inc. of Bangor." (S. P. 155) (L. D. 376) tabled by that Senator on May 6 pending motion by Senator Parker of Piscataquis for acceptance of Report B.

Mr. COLE of Waldo: Mr. President and members of the Senate: I hesitate to rise to oppose the sponsor of this resolve because I have a great deal of respect and admiration for the Senator from Penobscot, Senator Hillman. However, I think there is a principle here involved, and I try most of the time to stand on principle, and therefore I would like to give you a few facts in regard to the resolve which

has been amended from the original amount of \$40,400 down to \$12,500.

This is in compensation for alleged damage suffered by loss of business and business interruption by one Jim Adams, Inc. in Bangor. This loss occurred during the construction of the Bangor-Brewer Bridge. I believe that it should be denied for the following reasons:

Jim Adams, Inc. has been paid by the State of Maine the sum of \$50,000 as a result of the decision of the joint board following an extensive and comprehensive view of the property and a public hearing. This \$50,000 was in payment for 126 square feet of land taken from the said Jim Adams Inc. property. This was taken by a raise in the grade of Union St. adjoining the maintenance repair shop and for slight changes in grade on other streets adjoining the Jim Adams property, and for any effect the taking of the land may have had on the value of the remaining property. The State Highway Commission constructed a new ramp from Union St. to the Jim Adams Inc. property, repair shop, at a cost of \$7,023.81. That is in addition to the \$50,000 already paid. Jim Adams accepted the \$50,000 and took no appeal to the Superior Court as they were legally entitled to do if the payment was not satisfactory. That is one of the biggest mistakes, I think, he may have made, because the statute does say that he has thirty days to make his appeal, which he did not do.

Payment to Jim Adams Inc. for loss of business and business interruption set forth in L. D. 376 would be in the nature of a gift, as such losses, if they did occur, are not compensable under the State of Maine law. To make any payments under the terms of the resolve would be definitely unconstitutional and would be singling out one agency for which payment would be made and denying the same consideration to hundreds of business enterprises that may have been affected by highway construction in the past and may be affected by such construction in the future in the manner alleged to have taken place in connection with Jim Adams, Inc.

Payment of any amount under the provisions of this resolve, in addition to being unfair and unconstitu-

tional, as indicated in my past remarks, would, of course, lead to many claims before the Legislature in the future. As an illustration, we are now constructing Capitol St. in front of our State Capitol. There are as many as twenty-five business enterprises located along this street, fifteen of which are in a similar business to that of Jim Adams, Inc. All would be entitled to the same consideration under a claim if any payment should be made on this resolve. Just think of what the future might mean to the State of Maine provided we paid for loss of business on this resolve.

Jim Adams, Inc. sought and received favorable consideration for a resolve in the 98th Legislature. That was L. D. 1579, Resolve Authorizing Jim Adams Inc. to sue the State of Maine. Suit as a result of the passage of this resolve is now pending in the courts of this State on an action calling for payment of \$12,500 as amended in this present resolve. This is for damages by reason of loss of business and business interruption, being the same amount and covering the same alleged damages as set forth in L. D. 376.

Mr. President, I move that this bill and all accompanying papers be indefinitely postponed.

Mr. HILLMAN of Penobscot: Mr. President and members of the Senate: I rise in opposition to this motion. The Senator from Waldo, Senator Cole, says that he acts on principle, and I can tell you that the reason I lent my name to this bill is because I believe in principle also.

This bill has been before the Legislature two different times prior to this session. I sat on the Claims Committee two years ago and heard the evidence presented to the Claims committee by both sides. It was the unanimous opinion of the members of the Claims Committee that this man had been unjustly treated financially, and therefore a bill was presented to this body allowing Jim Adams to sue the State of Maine. Although it was the will of the Legislature that he be allowed to sue the state, the legal representatives of the Attorney General's office and outside legal talent chose to engage in lengthy delaying tac-



tics, costly to both the State and to the party that was attempting to get relief, in a game of legal tag, concerning matters that easily could have been agreed to without harm to the essential issues of the suit, resulting in expense and fruitless delay. And I would like to bring in here that the Highway Commission went outside and hired legal talent, two top-notch lawyers of the State of Maine and probably the best, and paid them \$11,306.53 in addition to that which they paid to the Attorney General's office. That to me is one of the major reasons why I feel that Jim Adams, Inc. was unjustly treated. I talked that matter over with the Commission and I said, if you had money like that to spend why didn't you offer it to Jim Adams to settle the case?" Their reply to me was that Jim Adams would not accept this amount of money. I said, "How would you know until you offered it to him? Why should you give it to attorneys when he has been unjustly treated?" Furthermore, he told me that probably if this matter came up again that instead of ruining his place of business they would take all of his property and put it into a park, and that is what probably should have been done instead of treating this man unjustly.

Now they have referred to the automobile places down on this highway. They are not like Jim Adams. Go over and look at his place and see what has happened to it. It is surrounded by ramps and walls. It is not like this street down here. There could be no comparison made.

At the Joint Board hearing in September of 1954, it was expressly agreed, and a record of the hearing showed that the Assistant Attorney General for highway matters stated that this problem of business loss or business damage resulting in this case from State negligence and misdirected action could not and would not be considered. This, of course, as we all know, because this area of damage is not spoken about at all in our general law of the State on highway damages.

Three months later, after the hearing had taken place on December 15, 1954, an award, a compromise amount, was made. The total

was \$50,000. This award was in amount given for the land taken and for the severance damage to the land left behind, representing a judgment concerning the valuation of the property as the result of the type of construction, the raising of the grades and all the rest that has occurred in front of the property. It could not, and was not, allowed to include this serious damage to the actual business operation already discussed here during the eighteen months of construction.

In regard to setting a precedent and the floodgates being open, a change that could be made against any claim which the Legislature approves, let me point out the following concerning this situation. How often would all of the following basic facts occur in another possible situation? 1. The State constructing a bridge in a business district, and constructing it within a municipality. 2. The construction running along all entrance sides and including a part of a sizable building on two levels. 3. The public construction, just described, continuing in an all - encompassing overwhelming manner for a fiscal year, and one - half of a second fiscal year. 4. The public construction effectively barricading all entrances and exits of a business that requires space for the convenience of vehicles, even more than persons. Most business concerns, in a business district, require principally the presence of people, but this type of business, Jim Adams, Inc., had to have automobiles in order to compete with those who did. 5. Public construction, leaving its equipment on Saturdays and Sundays on and about the property, further complicating and barricading any usable entrance; and, finally, 6. Public construction being concluded by the erecting and leaving for nine months misleading and erroneous traffic directional signs at each of the approaches to Jim Adams, Inc. having the effect of isolating further and unnecessarily this concern from normal customer traffic. These characteristics of this particular situation makes the resultant happenings and unfortunate results to Jim Adams, Inc. unique and different from any of the other situations that the Legislature recog-

nizes as being unfortunate, unnecessary and deserving of compensatory relief.

It is pointed out, therefore, that the amount suggested by the Claims Committee is one, which the Legislature, in its sense of justice, should award. The State always recognizes its obligations, when its agents fail to conduct themselves according to the conduct and standards that are backed by them and by all people of the State.

This is one of those situations, as the evidence of record shows, and when such a situation develops, there should be compensation for the injured party, the party injured through no fault of its own but through the fault of the State agency. This is a precedent well-recognized and firmly imbedded in the law of this State. There is no reason to make an exception to this traditional law of right and justice at this time. Accordingly, the report of the Claims Committee should be passed favorably.

Mr. STILPHEN of Knox: Mr. President, I rise to support the motion of the Senator from Waldo, Senator Cole, in this particular matter.

This morning we passed to be enacted a highway allocation bill for the construction of highways and bridges in the State of Maine and for the maintenance thereof, and I would like to indicate to the Senate here this morning that if the precedent is established of paying claims out of the highway money you might just as well forget your bridges and your highways and your maintenance. This is one of the worst precedents that could possibly be established in the State of Maine. There never has been paid by the Highway Commission any moneys for loss of business, and you are all aware of the facts in this case where they have collected fifty thousand dollars from the State of Maine for quite a small amount of land, 162 square feet.

As far as the reference by the good Senator from Penobscot, Senator Hillman, in referring to the legal entanglements that were placed before Jim Adams and his legal talents, I assume and think that it must have been pretty good when

the court upheld the reasoning of the legal talent representing the State, because in each instance, as I understand, when they went to court the arguments that the State had were held valid by the Court.

I again would like to emphasize that in all instances where there is road construction and bridge construction there is loss of business. You cannot build a piece of highway, particularly in a built-up area, without having loss of business, and we are all well aware of what is going on in the road out in front here. We could not begin to estimate the amount of business that would be lost from here to Hallowell during this construction.

I certainly hope that the motion of the Senator from Waldo, Senator Cole, does prevail.

Mr. HILLMAN of Penobscot: Mr. President, I think there is more to this than just loss of business. For instance, I will cite three cases in the City of Bangor where they have recently taken property. They did not take the whole of Jim Adams property when they should have taken it; there is no question about that.

In one instance here they took the property, they took the land and buildings, they didn't divide it in two, they took it because they knew it would ruin his place of business. They paid them \$150,000 for his building out on Union St. which was farther removed and not in the center of the city. Furthermore, they took the Dysart property, his home, and they paid him \$249,700. Another piece of property, three apartment houses down on Main St., old wooden apartment houses, they paid for three buildings \$120,000. Compare that to Jim Adams. What did they do with those buildings? They sold them back to the original owner and he still has them, as I understand, for one hundred dollars apiece.

Now these people had money to fight those cases, but Jim Adams was working hard, his money to operate was being borrowed from the bank. He was successful, yes, but he didn't have the money to fight a legal battle.

Mr. WEEKS of Cumberland: Mr. President: A few years ago our great Senator Baxter, who at one time

occupied the place now occupied by our President, made the remark that this is the great general court of the State of Maine where the heart and soul of the people is represented.

In every claim that is presented here there is no legal obligation, otherwise they would not be here. When it comes in here in the form of a claim somebody is asking for some money; in other words, he is asking for the distribution of some sort of a burden between him and all of the other people of the State of Maine. It doesn't make any difference whether it comes from some town on the coast where we paid \$2500 approximately on a settlement case where to be sure the town had missed up by not protecting its rights against another town, or whether it is on a deer claim or some other claim. There is not any claim presented here which has any legal obligation against the State of Maine or the people of the State. It then becomes our duty to decide whether or not under all the circumstances it is fair for us to distribute the burden, at least to some extent. If you feel in a certain circumstance that an individual has been hurt unduly, then give it consideration; if you do not, then brush it off. That is what we have been doing this year.

Talking about an identical situation to this which occurred two or three sessions ago, in Damariscotta a filling station was completely isolated from travel because of the way the Highway Department cut down a grade and barred practically complete entrance to the filling station and a claim was paid. Now you are talking about loss of business. There was loss of business. You can call it a gift. It is a gift. There is no legal obligation.

In deciding one of these cases we attempt to locate something which could be called a moral obligation.

The Senator from Bangor, Senator Hillman, has covered the facts as I understand them to be and has covered them quite well. Of course the Highway Department in handling in the course of its business the settlement of claims on projected highway developments has not paid any claims for loss of business

simply because we have a statute that they must follow, and of course under the statute we in our wisdom have not seen fit to make that an element of damages. Of course they are not going to pay any claims. The only way in the future that anybody is going to get anything from the State of Maine for loss of business, if you want to find a hardship case in the future, is on the same basis that we have here today, by a claim, unless some future legislature wants to amend the law to permit that as an element of damage. The question of fairness or unfairness is not involved here. It is a question of looking the facts squarely in the face. Is there a situation where we should spread the burden? Has a man suffered a loss which should be assumed to some extent by the rest of us? That is the sole question.

Insofar as the right to sue, we gave that right by this same Senate to sue, and as I understand it, there has been no argument on the merits. If I am wrong it is because of my lack of information on it, but I understand that the State filed a demurrer, the demurrer was sustained, and that is the end of the case so far as I am concerned. I feel, and I think the entire committee felt, after hearing all of the testimony, that Mr. Adams had not been adequately compensated for the loss of his place of business and, to be sure, that element of lack of access to his place which caused loss of business. Under the circumstances, we thought he should be compensated more, and it is strictly in your power to say whether or not we should share some of his losses. If you say no, then that is the end of it; if you say yes, then he will get it.

As far as the future is concerned, it is going to be up to the wisdom of every future senate to decide on the merits of any particular case coming before it whether or not it will pay something out. So far as this standing as a precedent, I am not concerned with that. If I should be here at the next session I should pass upon the merits of a request for a gift, if you want to call it that; but I think there is a moral obligation here in this case, and I think there will be a moral obli-

gation in the next case, and I can weigh each one of them separately. The Highway Department, in future operations, until we change the statute, is not going to be bothered one bit. I urge you to accept the report of the committee which was "Ought to pass."

Mr. FOURNIER of York: Mr. President and members of the Senate: Having been on the Claims Committee for the last three terms of the legislature, having heard and considered the Jim Adams bills at the hearings, I must go along and I urge passage of the amended amount agreed on by five members of the committee.

First, it should be recalled the type of man Mr. Adams is. He left Presque Isle during the depression of the thirties in an effort to find work. Leaving his wife and five children in Presque Isle, he went to Bangor with but eight dollars in his pocket and mechanic's tools. There he went to work as a mechanic and later, by borrowing from banks, started his own business and made a success of the enterprise in the late forties and early fifties and he had twenty persons working for him in his automobile sales department and repair garage.

In 1953 the State built a new bridge eliminating all possibility of Adams' continued success by barricading the garage with construction and directing traffic from any direction away from the garage. Instead of taking the Adams sales room and garage, the State left almost all of it to die financially.

Again, after the opening of the bridge which took eighteen months to complete, the State caused further negligent damage by erecting and leaving for nine months street signs which served to mislead traffic and prevented any left turn into the garage. The State finally admitted these clear mistakes and removed the signs.

So I relate to you, members of the Senate these facts plus one more, namely, that the claims committee and the membership of the 98th Legislature gave Jim Adams Inc. the right to sue the State, for they too believed that he had not received a just and complete award and there was merit to his claim. The Highway Department thereup-

on retained the services of high-priced legal talent, outside the State government, not for the purpose of presenting a defense on the merits as the 98th Legislature intended, but to defeat this right to sue by dragging Adams through a series of technicalities and fine points of pleading.

Since there never was a full and final payment made in this case, there being no opportunity to recover against the State for its errors under the general Maine statutes, I therefore go along with this amended amount for full and final payment of any and all claims of Jim Adams in this matter and hope you will also support passage.

Mr. COLE of Waldo: Mr. President, I would like to clarify the record a little bit in regard to some statements made in regard to the Highway Commission hiring very expensive lawyers. Now the facts are that the Highway Commission did not hire any lawyers; the lawyers were hired by the Attorney General's Department to protect the citizens of the State of Maine. And I would explain why the cost of defending the suit was a little high was because of the fact that the resident engineer came from an engineering firm that the State of New Hampshire has and the State of Maine has and he happened to be the engineer on the Bangor-Brewer bridge; he is now in Kansas City and it was necessary for him to come here and stay nearly a week and the State had to pay his expenses for him to testify in regard to what the actual troubles were during the construction of the bridge.

It also has been brought out that this is a gift. If it were a gift and was strictly a gift I would not hesitate, but in the bill it says, "Damages suffered by loss of business and business interruption." Now there is no state in the Union that pays a dollar or a dime for any such losses.

Mr. WEEKS of Cumberland: Mr. President and members of the Senate: Whatever any other state in the Union may pay by statutory process in settlement of any claims is one thing, but I defy the Senator to find any state in the Union which was presented with an obligation of

this type or a claim of this character which appeals to your moral sense of responsibility, because you have the same claims committee in every legislature and they obviously do not get into the Supreme Court reports, because if a claim is allowed it is going to be paid out of State funds and if it is not allowed it is dead, consequently you cannot find any precedent unless you search through every legislative record. I dare say if you do that you will find a lot of moral obligations being paid. I cannot see any precedent here which is going to handicap any future legislature. It is a question of looking the facts in the face and deciding whether there is some sense of moral responsibility which belongs to us. We have passed out claims for years and we will continue to o.k. claims for years, and it is only proper that we should do so. I certainly hope the motion will not prevail.

Mr. HUNT of Kennebec: Mr. President, I would like to address two questions through the Chair to anyone who wishes to answer. First, I wonder if anyone can tell me if Jim Adams had an attorney representing him at the time the County Commissioners made their original award, and, secondly, why was it that an appeal was not taken from the County Commissioners award?

The PRESIDENT: The Senator from Kennebec, Senator Hunt, proposes a question. Any member of the Senate may answer if he chooses.

Mr. PARKER of Piscataquis: If I understand question No. 1, was he represented by an attorney, I presume he was. I have no actual knowledge, but I presume he was, being a smart businessman and well aware of the need for representation by an attorney. As to the second question, I did not get that.

The PRESIDENT: The Senator from Kennebec, Senator Hunt, will kindly repeat his question.

Mr. HUNT of Kennebec: The second question was: After the County Commissioners made their original award why was not an appeal taken in the usual course to the Supreme Court?

Mr. PARKER of Piscataquis: The answer to that would be simply this: that being well-aware that he had

received or would receive \$50,000 for a piece of land ten feet by sixteen, I expect at that time he was very well satisfied that he was receiving all the State money that was due him in any capacity, otherwise, being a smart businessman and having access to unlimited attorneys, I would expect that he felt that certainly he had no just cause for asking additional pay from the State of Maine.

Mr. HILLMAN of Penobscot: Mr. President, I would like to remark on the second question. Jim Adams Inc. was paid \$18,000 at one time and he was paid \$32,000 at another time. At no time was he ever informed that this was in full payment for his damages that he received, never was he told. This is one of the reasons they never applied for an appeal. There was a joint hearing between the County Commissioners in the county and the State Highway Commission. The County Commissioners had a figure much larger than the State. They deliberated for two days and into the wee hours of the morning, and the third day they could not come to any decision and the County Commissioners capitulated. That is one of the things on which the Senator from Kennebec, Senator Martin, had a bill in the legislature. I think the joint board should not consist of the Highway Commission which acts in judgment on their own appraisals. When they do that it becomes a stalemate between the County Commissioners and the Highway Commission and they have the last say.

Mr. WOODCOCK of Penobscot: Mr. President, I rise in opposition to the motion for indefinite postponement made by the Senator from Waldo, Senator Cole. As the Senator from Knox, Senator Stilphen, has said, I too hope that there is no precedent being made here in this case, and I do not see that of necessity such would follow. It was an unusual situation. By the time that the State of Maine got through with Jim Adams so far as business purposes went he didn't know whether he was beast, bird or fish. Perhaps they should have taken all of his property but the fact they did not take it was not his fault and I do not believe he should

be made to suffer for what they failed to do. Therefore I think that it is a unique situation and not necessarily precedent-setting, and I think the least we can do is to compensate Mr. Adams to the amount of \$12,500, which certainly is little enough in this case where he was harmed so deeply by this action of the State of Maine.

Mr. LESSARD of Androscoggin: Mr. President, I would like to ask a question of any member, what is the present status of the law case of Jim Adams Inc. vs., I imagine, the State of Maine?

The PRESIDENT: The Senator from Androscoggin, Senator Lessard, directs a question to any member of the Senate, and any member of the Senate who chooses may answer his question.

Mr. WEEKS of Cumberland: Mr. President and members of the Senate: It is my understanding that the action was brought and that defect was found in the right to sue, the act creating the right to sue, and that a demurrer was filed to the declaration and the demurrer was sustained, which, as you know, is quite a definitive action.

Mr. LESSARD of Androscoggin: Mr. President, if I understand correctly then, and I am now directing my remarks to Senator Weeks, the act which was passed at the last session of the Legislature, the Court found that was not sufficient in order to effect a declaration.

The PRESIDENT: The Senator from Androscoggin, Senator Lessard, proposes a question to the Senator from Cumberland, Senator Weeks, and the Senator may answer if he chooses.

Mr. WEEKS of Cumberland: It is my understanding that was correct.

Mr. LESSARD: And was there an appeal taken from the sustaining of the demurrer?

The PRESIDENT: The Senator may answer if he chooses.

Mr. WEEKS: As I understand it, no.

Mr. LESSARD: Has the time lapsed when an appeal could be taken?

The PRESIDENT: The Senator from Androscoggin, Senator Lessard, directs a question through the Chair to the Senator from Cumberland, Senator Weeks, and

the Senator may answer if he chooses.

Mr. WEEKS: It is my understanding that the action is quite dead either by reason of the failure to take an appeal or because of the granting of the demurrer.

Mr. PARKER of Piscataquis: Mr. President and members of the Senate: It is now high noon. I feel this subject has been covered very thoroughly. However, if you will give me about three minutes I will try and explain my position.

First, I believe my good friend, the Senator from Cumberland, Senator Weeks, made the statement that it was the unanimous report of the committee in favor of this bill. If I remember correctly, it was either a six to four or an evenly divided report. Either way, it has no effect on the outcome at the present time.

I made up my mind on this bill from two or three factors that I consider very important factors. First of all, this bridge from Bangor to Brewer that was built starting in 1953 and completed early in 1954, at no time did anything to injure the actual buildings of Jim Adams, Inc. They did use a very small piece of land, namely 162 square feet, which is about ten by sixteen feet. Secondly, in paying to Jim Adams Inc. \$50,000 for this small piece of land I am very confident that the taxpayers—and after all we are talking about taxpayers' money, and this is not a gift by the State — this is taxpayers' money that we are here today asking to be contributed to a company that has already received \$50,000 for this size piece of land. In my honest opinion, I believe that this company, Jim Adams Inc., has received more than it would ever be entitled to receive under any act or any claim, otherwise I would not have opposed it. Thirdly, I believe that this is wholly unconstitutional and when we attempt in the legislature to establish the precedent of paying a claim that has been ruled by the Attorney General as unconstitutional I think we are certainly establishing something. I would like to have the Secretary read this report I have here, or decision, from our Attorney General.

The Secretary read the following letter:

"May 1, 1959

The Honorable Clarence Parker  
State House  
Augusta, Maine

Re L. D. 376.

Dear Senator Parker:

This is in reply to your oral request for an opinion regarding the constitutionality of L. D. 376.

Section 21 of Art. 1 of the Constitution of Maine prohibits the taking of private property for public uses without just compensation. The common law rule and that followed in Maine with respect to such a taking is that damages cannot be recovered for loss of business or business interruption. Our statutes provide only for land damages.

"It is my opinion that this resolve violates a well established principle of law that the legislature cannot grant a special privilege to one person that is denied to others under the general law. The legislature is attempting to exempt a particular corporation from the operation of the general law. The people have not conferred upon the legislature the power to exempt a particular person or corporation from the operation of the general law. (Sections 1 and 2, Art. 1, Constitution of the State of Maine.)

The equal protection of the laws clause of the 14th Amendment of the U. S. Constitution was designed to prevent a person or class of persons from favoring or discriminating legislation.

Based upon the foregoing reasons, it is my opinion the L. D. 376 is not proper legislation.

Very Truly yours,

FRANK E. HANCOCK,  
Attorney General"

Mr. WEEKS of Cumberland: Mr. President and members of the Senate: I apologize for making a statement which was obviously incorrect. I inadvertently said we had a unanimous report and I apologize. As I have had my memory revived, it was a five to five report in the last analysis.

So far as the Attorney General's report is concerned, I have made a remark bearing upon that, but I must remind you that there is no

higher law in the State of Maine, and you are bound by the Constitution which is the people's dictation to you, and you are not confined to statutory processes which have been created by this same body and which can be amended by this same body, and no one can complain if in your sound wisdom you think that someone has been unduly hurt, and, as I said before, if you feel that the rest of the people should share part of the burden instead of throwing it on one person. In the committee we felt that there was that burden, and we felt that there was the moral obligation, and the Constitution does not prevent this legislature from making awards from the general funds or whatever funds we may have to alleviate a wrongdoing in our particular respect. We have the power to make payment in this case if we want to, if our sound judgment of the facts warrants it we can do it. The Constitution does not prevent it. I dare say that as long as we have a legislature which is controlled only by the will of the people as expressed in the Constitution, that we will continue to have that privilege.

Mr. FARLEY of York: Mr. President and members of the Senate; After listening to the Senator from Penobscot, Senator Woodcock, I happen to be one of those who were on that committee in 1951 and I took his advice and his judgment. As I listened to the debate going on here this morning it seemed to me that we are a group who are jealous of State funds and that we want to take the evidence and put it together and do right by the State of Maine. I have come to the conclusion that this gentleman has had his day in court.

When the vote is taken I am going to vote with the Senator from Waldo, Senator Cole.

Mr. COLE of Waldo: Mr. President, when the vote is taken, I ask for a division.

The PRESIDENT: The question is on the motion of Senator Cole of Waldo that the bill be indefinitely postponed.

A division of the Senate was had.

Eighteen having voted in the affirmative and eleven opposed, the

motion to indefinitely postpone prevailed.

Sent down for concurrence.

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The PRESIDENT: At this time the Chair is happy to welcome to the Senate Chamber today members of the 8th grade of the Waynfleet School in Portland Maine, accompanied by their instructor. I am

sure that the members of the Maine Senate join me in extending to you young people a very cordial welcome. We trust you will profit by your day here in the statehouse and that you will enjoy it.

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On motion by Mr. Thurston of Oxford

Adjourned until tomorrow morning at nine-thirty o'clock.