

MAINE STATE LEGISLATURE

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OF THE

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OF THE

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SENATE

Monday, May 18, 1959

Senate called to order by the President.

Prayer by Rev. John A. Mitchell of Livermore Falls.

On motion by Mr. Boucher of Androscoggin,

Journal of last Friday read and approved.

The PRESIDENT: At this time, it is the Chair's pleasure to invite another distinguished member of the Maine Senate to preside as President pro tem during a portion of today's calendar and would request the Sergeant-at-Arms to escort the Senator from Cumberland, Senator Weeks to the rostrum.

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

**Paper from the House
Joint Order**

ORDERED, the Senate concurring, that all bills and resolves referred to Joint Standing Committees that have not been reported by such Committees by 4 P.M. Tuesday, May 19, be and hereby are recalled to the branch of the Legislature in which they were introduced, and the Joint Committees to which such bills were referred, shall be discharged from further consideration of such bills recalled above. (H. P. 968)

On motion by Mr. Woodcock of Penobscot, the Order was laid upon the table pending passage.

Second Readers

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

House

Bill, "An Act Relating to Completion of Josias River Project in Ogunquit." (H. P. 964) (L. D. 1368)

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

House — as amended

"Resolve Appropriating Moneys for a Sprinkler System in Andrews

and Robie Halls at the Gorham State Teachers' College." (H. P. 471) (L. D. 689)

"Resolve Appropriating Moneys for Construction of Enclosures for Stairwells in Corthell, Robie and Andrews Halls at Gorham State Teachers' College." (H. P. 786) (L. D. 1118)

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

Senate

Bill, "An Act Amending the Gasoline Tax Act with Respect to Aviation Fuel." (S. P. 448) (L. D. 1301)

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

Senate — as amended

Bill, "An Act Directing a Study of Property Tax Administration." (S. P. 129) (L. D. 324)

Bill, "An Act to Correct Errors and Inconsistencies in the Public Laws." (S. P. 403) (L. D. 1171)

(On motion by Mr. Woodcock of Penobscot, tabled pending passage to be engrossed and especially assigned for Wednesday, May 20.)

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

Sent down for concurrence.

Enactors

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

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

Bill, "An Act Revising the Probation and Parole Laws." (S. P. 334) (L. D. 910)

Bill, "An Act Relating to Reappointment of School Directors of School Administrative Districts." (S. P. 345) (L. D. 972)

(On motion by Mr. Hunt of Kenbec, tabled pending enactment.)

Bill, "An Act Relating to Juvenile Offenders." (S. P. 484) (L. D. 1258)

Which bills were severally passed to be enacted.

Orders of the Day

The President pro tem laid before the Senate the first tabled and especially assigned item being bill,

"An Act Regulating Certain Insurance Sold in Connection with Credit Transactions." (H. P. 947) (L. D. 1343) tabled on May 6 by the Senator from Cumberland, Senator Charles pending passage to be engrossed; and on motion by that Senator, the bill was retabled and especially assigned for tomorrow.

On motion by Mr. Boucher of Androscoggin, the Senate voted to take from the table bill, "An Act Relating to Local Option for Sale of Malt Liquor in Part-time Hotels." (H. P. 424) (L. D. 603) tabled by that Senator on April 30 pending adoption of Committee Amendment A and that Senator yielded to the Senator from Hancock, Senator Willey.

Mr. WILLEY of Hancock: Mr. President, I thought Senator Boucher of Androscoggin was going to make the motion. What is the status of the bill?

The PRESIDENT: The pending question is the adoption of Committee Amendment A.

Mr. WILLEY: Mr. President, I move that Committee Amendment A be indefinitely postponed.

Mr. STILPHEN of Knox: Mr. President, may we have Committee Amendment A read.

The Secretary read Committee Amendment A.

Mr. WILLEY of Hancock: Mr. President perhaps I should clarify the situation and say that I am going to offer Senate Amendment A which clarifies the bill to the pleasure of the Secretary of State's Department.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Hancock, Senator Willey, to indefinitely postpone Committee Amendment A.

Mr. PARKER of Piscataquis: Mr. President, I move that this bill be tabled until we can find out what the amendments do to it and we all have a clearcut understanding of what is being tried. I move that the bill be tabled.

The motion prevailed and the bill and accompanying papers were laid upon the table pending motion by Mr. Willey of Hancock to indefinitely postpone Committee Amendment A.

On motion by Mr. Woodcock of Penobscot

Recessed for five minutes.

After Recess

The Senate was called to order by the President.

At this point, the President having assumed the Chair, Mr. Weeks retired, amidst the applause of the Senate.

The PRESIDENT: The Chair wishes to thank the Senator from Cumberland, Senator Weeks, for his excellent services presiding as President pro tem for a portion of this afternoon's session. (Applause)

On motion by Mr. Weeks of Cumberland, the Senate voted to take from the table the 78th tabled item being Senate Report Ought to pass in New Draft (S. P. 494) (L. D. 151) on bill, "An Act Relating to Licensing and Safety in Operation of Boats." (S. P. 79) (L. D. 151) tabled by that Senator on May 15 pending acceptance of the report; and on further motion by the same Senator, the report was accepted, the bill read once and tomorrow assigned for second reading.

On motion by Mr. Hunt of Kennebec, the Senate voted to take from the table Item 8-3 on Page 2, being bill, "An Act Relating to Reapportionment of School Directors of School Administrative Districts." (S. P. 345) (L. D. 972) tabled by that Senator earlier in today's session pending passage to be enacted; and on further motion by the same Senator, the rules were suspended, the Senate voted to reconsider its former action whereby the bill was passed to be engrossed; and the same Senator then presented Senate Amendment B and moved its adoption.

Senate Amendment B was read and adopted, and the bill as amended was passed to be engrossed in non-concurrence.

Sent down for concurrence.

On motion by Mr. Willey of Hancock, the Senate voted to take from the table the 27th tabled item being House Report from the Committee on Taxation: Ought to pass as amended by Committee Amend-

ment A on bill, "An Act Defining Cigarettes under the Cigarette Tax Law." (H. P. 222) (L. D. 313) tabled by that Senator on April 21 pending acceptance of the report; and that Senator moved the pending question.

Thereupon, the ought to pass report of the committee was accepted, and the bill read once. Committee Amendment A was read and adopted and the bill as amended was tomorrow assigned for second reading.

Mr. WEEKS of Cumberland: Mr. President, I move that the measure be indefinitely postponed.

The PRESIDENT: Will the Senator state to which bill he is referring.

Mr. WEEKS: L. D. 313.

Thereupon, the Senate voted to reconsider its action just taken, whereby it assigned the bill for second reading.

Mr. WEEKS of Cumberland: In support of that motion, I will submit the following:

The Stephano Brothers Company of Philadelphia manufactures and sells a product known as "Trend Little Cigars". They resemble a king size cigarette in size and shape but beyond that there is absolutely no resemblance to cigarettes. The State Tax Assessor, apparently fearful of losing some revenue from the cigarette tax arbitrarily pronounced these little cigars cigarettes and forbid the sale of them in Maine without payment of the cigarette tax. Stephano Brothers went to court and the court held that this product was a cigar and was not taxable under the provisions of the cigarette tax, the court said: "When one looks at the product known as "Trend Little Cigars", he sees an article which looks very much like a so-called king sized cigarette, except that both the contents and the wrapper are dark and of the same color as an ordinary large sized cigar.

"Trend Little Cigars" are packed in a paper container and the product is plainly described upon the package as a "mild little cigar." The evidence disclosed that all of the advertising pertaining to this new product describes it as a little cigar.

Expert witnesses for the plaintiff testified that cigars are made from so-called leaf tobacco unlike that used in ordinary cigarettes. They further testified that all cigar tobacco is fermented and that such is not the case with the tobacco used in cigarettes.

Testimony was to the effect that when an ordinary cigarette is tested by passing the smoke through litmus paper, the reaction is acid and the litmus paper is turned to a red color, whereas when a cigar is put through the same test the reaction is alkaline, and the litmus paper becomes blue in color.

It was testified that the tobacco in the body of "Trend Little Cigars" is the same sort of fermented leaf tobacco as is used in all large cigars. The testimony of witnesses for the plaintiff was to the effect that upon testing "Trend Little Cigars," the reaction was alkaline.

It was further testified that the wrapper of "Trend Little Cigars", although it looks like paper, is composed entirely of tobacco, this wrapper having been manufactured through a secret process entirely from leaf tobacco. The testimony was to the effect that this new wrapper is known as homogenized leaf tobacco and that the "Trend Little Cigars" are composed entirely of cigar tobacco, including the inside contents as well as the wrapper; and it was also testified that the wrapper itself gave the same alkaline reaction as the fermented tobacco used in the body of the new product.

"Upon the evidence adduced at the hearing," the court said: "I am of the opinion and I so find, that the new product known as 'Trend Little Cigars' is a cigar and not a cigarette, and thus not subject to the cigarette tax provided for in Sections 200-221, Chapter 16, R.S. 1954".

Subsequently Mr. Johnson, the State Tax Assessor, had the above entitled bill introduced into the Legislature to "get around" the court decision. The Johnson bill is unfair, unnecessary and discriminatory.

In the first place, there is no evidence whatever that Trend Little Cigars have made any inroads in the cigarette market. On the contrary, all the evidence is that cigar-

ette tax revenue has steadily increased.

Secondly, there is no chance that Trend Little Cigars will invade the cigarette market. The whole product is made of cigar tobacco and has the same taste as a cigar. Thirdly, Trend Little Cigars are in competition in the cigar market. They are advertised as such and no effort whatever is made to try and convert cigarette smokers to Trend Little Cigars. Being in competition in the cigar market and there being no tax on cigars, to call Trend Little Cigars cigarettes by statutory definition (after the court has already declared them to be cigars) means that Trend Little Cigars will have to bear the burden of a five-cent tax on each package in competition with other cigars which pay no tax at all. This is discrimination in its absolute form. At the hearing, Mr. Johnson made no effort to rebut the above arguments. He admitted that there was no present evidence that Trend Little Cigars were affecting the cigarette market. He simply stated that he was afraid that in the future, cigarette manufacturers would disguise the white wrapper and try to claim that the product was a cigar.

We were willing to go along with him and offered the Committee an amendment which would permit taxing a product whose content was actually cigarette tobacco but not taxing a product whose content was cigar tobacco; but he was unwilling to do so.

It is my opinion that if this bill passes, the court will find that it levies a tax on one segment of the cigar industry and no tax on the balance of the cigar industry and that therefore it violates the provisions of both the Maine and Federal Constitution designed to protect citizens of this State and country against unlawful discrimination.

Moreover, as a matter of fairness, it is not good business to treat people doing business in the State of Maine the way the Stephano Brothers were treated. Johnson made an arbitrary ruling which put people doing business in the State He had the opportunity to allow them to stay in business until the court decided whether their product was a cigar or a cigarette. The

court found against him and now apparently he is trying to force them out of business by attempting to secure from the Legislature a discriminatory law. There is no present danger at all that the sale of this product or similar products will in any way interfere with revenues from the cigarette tax in Maine. In fact in 1958 there were almost 500 billion cigarettes sold in the United States and there were only six billion cigars sold. And only one hundred fifty five million little cigars. The sale of little cigars amounts to approximately fifteen-hundredths of one percent of cigarette sales.

Therefore I rise in support of the motion to indefinitely postpone.

Mr. WILLEY of Hancock: Mr. President and members of the Senate: This bill was prepared by the Bureau of Taxation to protect the State against possible loss of revenue due to the recent development of a new type so-called "little cigar." I have a memorandum here from Ernest H. Johnson, State Tax Assessor, but I won't read it all.

"The Bureau of Taxation is not alone in its concern over this new development."

By the way, this bill is a copy of the Arkansas law, and in the last few weeks Tennessee and Washington have adopted similar definitions intended to accomplish the same result.

He further says in his statement: "Have before me an undated, unidentified, typewritten memorandum of three pages (which you have just heard) which I believe has been brought to the attention of some members of the Senate. This memorandum contains a number of misstatements of fact which should be corrected.

"1. There is no binding court decision in Maine holding such products non-taxable. The only decision is one in which the Court refused to enjoin the State Tax Assessor from applying the cigarette tax to this type of product.

"2. The present bill was not presented to 'get around' any decision of the court. The bill was prepared, and in a fact a copy of the draft was as a matter of courtesy sent to the attorney for Stephano Brothers,

Inc., before any court decision was handed down.”

The statement continues “Finally, the memorandum indicates this is a bill aimed at one manufacturer, Stephano Brothers, Inc. This is far from the truth. Rulings have been made in the case of eight products of this type, three of which are now being sold tax-paid in Maine.”

The State Tax Assessor has further said: “If the Legislature believes there is no possible hazard to existing revenues and that the new type of product should be clearly defined as non-taxable under the law, the bill should be amended to that effect. However, if the Legislature believes prudence requires that this new type of tobacco product be clearly defined as taxable under the law, we believe the bill as it stands should be approved.”

Therefore, I oppose the motion of the Senator from Cumberland, Senator Weeks.

Mr. MARTIN of Kennebec: Mr. President, there is not much I can add except to say I feel that it is made like a cigar, it is advertised as a cigar, and, sitting next to the Senator from Hancock, Senator Pierce, it certainly smells like a cigar. As a matter of fact, A Supreme Court Justice of this state has ruled that it apparently is a cigar, and I do not wish to go against the Court. I therefore support the motion of the Senator from Cumberland, Senator Weeks.

The PRESIDENT: The question before the Senate is on the motion of the Senator from Cumberland, Senator Weeks, that L. D. 313 be indefinitely postponed in non-concurrence.

A viva voce vote being had,
The motion prevailed.
Sent down for concurrence.

On motion by Mr. Farley of York, the Senate voted to take from the table the 51st tabled item being bill, “An Act Relating to Number and Compensation of Special Deputy Sheriffs in Cumberland County.” (S. P. 183) (L. D. 426) Tabled by that Senator on May 1 pending assignment for second reading; that Senator moved the pending question and the bill was tomorrow assigned for second reading.

On motion by Mr. Wyman of Washington, the Senate voted to take from the table the 50th tabled item being bill, “An Act Relating to Certain Per Diem Fees of Deputy Sheriffs.” (S. P. 482) (L. D. 1353) tabled by that Senator on May 1 pending first reading; and on further motion by the same Senator, the bill was read once and tomorrow assigned for second reading.

On motion by Mr. Stilphen of Knox, the Senate voted to take from the table the 46th tabled item being House Report from the Committee on Appropriations and Financial Affairs: Ought to pass as amended by Committee Amendment A on “Resolve, Relating to Non-Lapsing Moneys for Construction of Eastport - Perry Causeway-Dam” (H. P. 884) (L. D. 1258) tabled by that Senator on April 29 pending acceptance of the report; and on further motion by the same Senator, the report was accepted, the bill read once, Committee Amendment A read and adopted, and the bill as amended, tomorrow assigned for second reading.

On motion by Mr. Parker of Piscataquis,

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