

# MAINE STATE LEGISLATURE

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REPORT  
OF  
THE COMMISSIONER  
ON THE  
REVISION AND CONSOLIDATION  
OF THE  
PUBLIC LAWS  
OF THE  
STATE OF MAINE  
UNDER  
RESOLVE OF APRIL 15, 1927

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## COMMISSIONER'S REPORT

*To the Honorable Legislature:*

In compliance with the Resolve of the Eighty-third Legislature, approved April 15, 1927, relative to the revision of the statutes, the commissioner, appointed thereunder November 9, 1927, herewith respectfully submits his report and draft of such revision, being the seventh revision of the public laws of the state.

A great body of law has been enacted since the revision of 1916, reflecting the modern tendency of a comprehensive regulation of affairs under the police power of the state. Much of this regulation, being in a formative state, has itself been subjected to repeated amendment, so that the task of compiling and coordinating these laws has been an arduous one, particularly so in view of the limited period at the disposal of the commissioner.

It has become more and more apparent that not a little of this legislation requires further amendment of a more fundamental character than the commissioner is warranted in undertaking. Where it is appropriate he has suggested further changes, but certain of the chapters undoubtedly should be materially altered before the new revision is published. It would be a calamity to allow the present text to stand as final, or as the standard to which reference is to be primarily made for a period of fifteen years. It is therefore the recommendation of the commissioner, and the chief one which he has to make, that those portions of the law which must be changed, and those which are likely to be changed within a few years be, if possible, by the diligence of the Eighty-fourth Legislature, placed in form to be incorporated in this revision, and that a new and final draft of the revision be then made under such auspices as the Legislature may direct, to be submitted at a later date, at a special session of the Legislature, in accordance with a practice heretofore pursued in similar cases.

At the time of the last revision it is apparent from an examination of the public laws that some of the corrections suggested by the commissioner, as well as certain others of great importance, no doubt in part suggested by the printing and circulation of the commissioner's report, as for example those relating to practice in the probate courts, intoxicating liquors, the uniform negotiable instruments law, etc., which might as well have been adopted in time to be incorporated in the statutes, were left for the session of 1917, and have ever since had to be referred to in the acts and resolves, to the continual inconvenience of attorneys and others interested.

So that, while the writer does not wish to venture beyond the scope of his commission by offering plans for constructive legislation, still, if a popular demand makes it expedient to put teeth into, or extract teeth from the primary election law, to ameliorate the law of public utilities, eliminate red tape from certain other departments, banish provincialism from the law of the road, extend the scope of uniform legislation, make the courts more homogeneous, moderate and make uniform the punishment of lesser crimes, provide a scientifically humane system for the correction of little children, and make the fish and game laws intelligible, this is the appropriate occasion.

"If it were done when 't is done, then 't were well  
It were done quickly."

The commissioner has followed as nearly as possible the requirements of the resolve. New chapters have been added in what appeared to be the proper places, and a few of the old chapters have been divided where this seemed to

make for clarity. The uniform commercial laws have been placed at the end of the volume in a new title division, each law in a separate chapter in the order of their enactment. By this arrangement, subsequent additions will take their place naturally in new chapters in chronological order, without disturbing the chapter arrangement.

In two respects the commissioner has somewhat taken upon himself an added burden, not without the expenditure of time and money. A modern system of punctuation has, after some warnings from conservative sources, been adopted. An increasing irregularity in punctuation had become apparent, due to the continual insertion of amendments framed in accordance with different standards, and some, truth to say, with no standards at all. By applying a few of the simple rules of punctuation as now taught in the schools, the result has been a great gain in clearness of expression which is sufficiently gratifying to warrant the effort; and yet it is believed that no violation has been done to the meaning of the text. Certain traditional forms and pet ambiguities of the law have been retained in their original confusion, and no attempt has been made to revise the punctuation of the constitutions, or those sections which enter into printed forms, already widely circulated; and in drafting the uniform commercial laws care has been taken to follow the exact wording and punctuation of the forms approved by the commissioners of uniform legislation.

Another innovation is in the numerous references to Maine reports. These have been, not only brought down through the last available advance sheets of 127 Maine reports, but in lieu of anything in the nature of annotation, which the strict limitation of space forbids, the commissioner has endeavored to indicate the leading cases by \*. This involved the careful examination of the recent cases and not only this but a review of the entire one hundred twenty-seven volumes of the Maine reports.

The resolve requires the commissioner to add references to all decisions interpreting the constitution of the United States which appear in the United States Supreme Court reports. These references have now grown to such proportions as to practically defeat the purpose of this annotation, and were already so voluminous at the time of the last revision that while a list was included in the commissioner's report to the Legislature in 1915, it was apparently not thought advisable to print them in the final draft of the statute revision. They can be of very little use to-day. Mere lists of cases, when they become too numerous are discouraging. Reference can be had to extended works digesting these cases and arranging them in more convenient form for reference. Such material goes to make up the usual tools of the practicing lawyer, and on the other hand any substitute in the way of notes such as could be contained within the covers of a single volume of the statutes would be for the most part worse than useless, a hindrance rather than an aid.

Nevertheless the commissioner felt constrained to prepare these references in accordance with the expressed will of the Legislature, and has sought to make them as available as possible by arranging them under appropriate headings of the several sections and section subdivisions of the Constitution. In this he has followed the order and arrangement of the latest and best compilations, in this way making an entirely new compilation more complete and, it is believed more accurate than before, and brought down to the latest cases. Because of the great volume of these references to the United States reports, it has been thought best to insert them in the present report separate from the text of the Constitution, and to leave it to the Legislature to determine what disposition is to be made of the material thus collected.

The commissioner has not intended to collect in this report a series of recommendations either of himself or of others for changes to be made in the statutes. It has seemed to be a more practical method to make such changes as were of a purely formal nature in the text of the statutes as the work proceeded. This he has done. Wherever it became necessary or greatly advisable to make material alterations in the language of any section, this has been indicated by italics, signifying words to be stricken out, and by brackets, signifying words to be inserted. Or if such was not possible by reason of the need of more fundamental change, the fact of such change has been indicated in a note following the section. Besides this, notes have been inserted from time to time recommending changes which seemed to be beyond the function of the commissioner to make, or indicating amendments proposed by judges or members of the bar, where such have been brought to the attention of the commissioner.

Helpful suggestions, verbal and in writing, have come from many. In the sifting process only a few of these can be referred to specifically. Chief Justice Wilson has made some important recommendations relating to court procedure, and the commissioner has endeavored to carry these out in correcting the text. The late Justice Beane proposed certain more definite powers for the court in connection with certain phrases of domestic relations, and was requested to draft an amendment particularly setting out his suggestion. Without this the commissioner hesitates to quote more specifically Justice Beane's views on the subject.

Register of Probate, Henry A. Peabody of Cumberland County, with timely suggestions from Judge of Probate Harry B. Ayer of York County and Register Ralph W. Leighton of Kennebec County, has made a careful revision of the probate laws. References have been made in the notes to all changes in these chapters. The several recommendations of Mr. Leighton have been incorporated in the text where they fitted in with the plan of the reviser. A further recommendation by him is in reference to sections 29 and 30 of chapter 68 of the Revised Statutes of 1916, chapter 76 of this revision for the purpose of clearing up an ambiguity relating to the authority of public administrators. There appears, however, in the opinion of judges and registers of other counties, to be no real ambiguity here, and this may be only one of those instances of a variance in the probate practice of one county or another which should be settled by some judicial decision rather than by the Legislature.

Hon. Leonard A. Pierce of Cook, Hutchinson, Pierce, and Connell, has made a valuable suggestion in reference to probate law, which has been incorporated in the text.

Hon. George F. Gould has suggested an amendment to the law relating to discharge of mortgages. This is further indicated in the note at the section referred to.

Justice Arthur Chapman of the Cumberland Superior Court and several members of the Cumberland Bar have suggested amendments relating to appeals from municipal courts, and an amended section has been framed to carry out the purport of these suggestions.

Hinckley, Hinckley and Shesong and Benjamin G. Ward, Esq., have made several valuable suggestions as to real errors in the text and as to the elimination of certain ambiguities.

Linwood F. Crockett, Clerk of Courts of Cumberland County, and Miss Florence C. Hooper of his office have made several important suggestions in matters of practice, and organization of their office, and most of these have been incorporated in the revision, or referred to definitely in the notes. Mr. Crockett has

also furnished a copy of a revised fee schedule, which has the endorsement of the association of clerks of courts.

Hon. Ernest L. McLean, of McLean, Fogg and Southard has made useful suggestions in relation to the chapter on corporations, as has also John E. Wilson, Esq., of Andrews, Nelson, and Gardiner. So far as possible these are explained in the notes.

James B. Mountaine, Esq., has suggested the amendment of sections 37 and 38 of chapter 95 of the revised statutes of 1916, chapter 103 of this revision, in accordance with the provisions of a proposed amendment which was referred to the judiciary committee of the Eighty-third Legislature, House Document No. 308. As this amendment can be found on the records, the commissioner merely makes reference to it.

Hon. George C. Wing, Jr. and Albert E. Verrill, Esq., have suggested changes in arrangement of sections relating to the recording of officers' returns of seizure of real estate, and these suggestions have been adopted in the revision.

Harry L. Crabtree, Esq. has recommended the omission of the word "travels" from the law relating to the observance of the Lord's Day. Others, still more modern, have urged the commissioner to repeal all the "Blue Laws." The commissioner, however, is afraid the world is not moving in that direction, as he has been obliged to insert in the present revision a companion piece for the law of Sabbath observance, namely a law for the observance of Memorial Day, chapter 135, section 45.

Dr. Clarence A. Kendall, State Commissioner of Health, has recommended that the portion of chapter 64 of the revised statutes of 1916, chapter 72 of this revision, relating to vital statistics be revoked, and the so-called Vital Statistics Law be adopted in its place. In case of the adoption of any such model laws, which is commendably the growing tendency of Legislatures, great care must be taken to study the implication of this legislation with other sections of the statutes not only in the same chapter but throughout the statutes. In this connection the commissioner suggests that it is not certain that everything has yet been done to harmonize the statutes with the several uniform commercial laws in title fourteen. It would be well to have this in mind when examining the present revision.

Justice John A. Morrill, author of the fifth and sixth revisions, has given valuable hints as to methods of procedure, indexing, etc. in the preparation of this report and revision.

Owing to the limited time for the completion of the revision, the commissioner has had to rely on assistance from several attorneys and others, whose expert knowledge as well as their faithful effort, has been of invaluable assistance. Of these, he wishes particularly to acknowledge his indebtedness to Miss Marion Day who has lived most intimately with the work from the beginning and to whose accuracy, watchfulness, and universality of mind is due to a large degree the orderly development of the revision, to say nothing of the maintenance of sanity in the office.

Others who have taken part in the work are Gerry L. Brooks, Esq., Henry A. Peabody, Esq., Smith Dunnack, Esq., Mrs. Elizabeth T. Parsons, Miss Chloe Hubbard, Mrs. Alice A. Fletcher, Miss Emily Hawkes, Mrs. Velma G. Peabody, Miss Annie E. Pierce, and Rev. Charles F. King.

Portland, December 15, 1928.

Respectfully submitted,

CLARENCE W. PEABODY,  
*Commissioner.*