

MAINE STATE LEGISLATURE

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THE LEGISLATURE

OF THE

STATE OF MAINE,

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1859.

THIRTY-EIGHTH LEGISLATURE.

HOUSE.]

[No. 2.]

STATE OF MAINE.

The Joint Special Committee to whom was referred the order relating to biennial sessions and elections, have had those subjects under consideration, and submit the following

REPORT.

Biennial sessions of the Legislature and biennial elections are new in Maine and in New England. They are contrary to our customs and our habits. But it is the prerogative of man to *question* custom and habit; and to apply his reason to both; and to make such changes as he deems for the best.

A careful examination of the constitutions of the several States of the Union, has led your Committee to the following results. Biennial sessions and biennial elections of Representatives and most other officers, have been adopted and are now in use in seventeen States out of thirty-two; viz: Delaware, Maryland, Virginia, Georgia, North Carolina, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, Michigan, Missouri, Arkansas, Texas, Iowa and Minnesota.

In thirteen of the States the Senators are elected for four years, the term of one-half the members expiring every two years, so that half the Senate is always composed of old members. In twelve other States the senatorial term is for two or three years, leaving but seven States whose Senators are chosen annually.

In twelve of the States the Governor is chosen for four years;

and in eleven more for two years, leaving but nine States where the Governor is chosen annually.

In these twenty-three States where the Governor is elected for four years, the Secretary of State, Treasurer, Attorney General, and Auditor or Comptroller, are generally elected for two or four years.

From this examination, it appears that our system of annual sessions is in a minority, and our system of annual elections in a small minority, in the Union. Several of the original thirteen States have abandoned them, and most of the new States have rejected both; and not one of them has adopted both. They have followed the great leading principles of the New England constitutions, such as the distribution of the powers of government into three departments, legislative, executive and judicial; and the division of the legislative power into two houses; but our annual sessions and annual elections have received their condemnation, both in theory and practice: and this notwithstanding the important fact that a large portion of the people of each of the northwestern States, at the time it formed its constitution, were men born and bred in the northern and middle States, who understood all the advantages of our system, and whose prejudices were all in its favor.

Biennial elections of Members of Congress are sustained by Mr. Madison, in his defence of the constitution of the United States, as safe and wise, and in accordance with example.

By our constitution, as originally framed, all our executive officers, both State and county, were appointed by the Governor. But by various amendments of our constitution we have abandoned the whole system, and adopted that of popular elections, presented to us by our young and vigorous sister States of the West.

So much for authority and example. The leading argument for biennial sessions, is that of economy.

After a careful examination of the various items of expense attending a session of the Legislature, and a comparison of several sessions, your Committee are satisfied that those expenses are not over-estimated in Governor Morrill's Address; and that for many years past the average cost of a session has been seventy-five thousand dollars.

Your Committee are of opinion that each biennial session would be but little, if any, longer than each annual session now is.

Nearly half of each session is occupied in organizing, electing State officers, making rules and orders, receiving petitions and initiating business to be matured by the committees, before the work of discussion has made much progress. The appropriation bills and many others will be framed for two years instead of one, and it is believed that the number of matters which come before the Legislature will not be much increased, and that the disposition to go home, which grows strong by the middle of March, will bring the session to a close at about the usual time.

The National government derives its revenue from duties on imports, a large part of which are really paid by the foreign manufacturer, and the balance indirectly by the people and almost without their knowledge. But the State government has no way of raising a revenue but by *direct taxes*. The State lands are our only income, and they can hereafter yield but little, as the best of them have been sold. Every expenditure then must be put into the annual tax, must be divided among the different cities and towns, and each man's portion of it must be assessed on him or on his property.

The people of Maine are able and willing to pay all the necessary expenses of good government, but they insist on strict economy everywhere, and do not wish to pay the expenses of an annual session of the Legislature unless it produces some compensating benefit to them; and not merely because it furnishes a pleasant social meeting for the members; nor because a few men at the seat of government or elsewhere make a profit out of the expenditures.

There has been for years a growing feeling among the people that our laws are too frequently changed; and when the Legislature meets, quite as much anxiety is felt that some mischief will be done as there is hope of real improvement. The clearing up of the forests, the improvement of the farms, the real wealth and prosperity of the people, are attained by hard work, guided by intelligence and education, and not by frequent changes in the laws.

Government is necessary, but too much government is an evil. When good laws are once framed, the more permanent they become, the better is property protected and all the great interests of the State fostered.

There are many calls for private legislation. But the incorporation of several classes of companies can, under the existing laws, be

made by application to a Justice of the Peace just as well as by coming to the Legislature; and by a further law on that subject other classes of corporations might be so formed. There will remain a few corporations, such for instance as ask for a right to take a toll, or to take private property, which should be created only by the Legislature; but it is believed that these and all other private legislation which justice to individuals, or the public good demands, can be provided for by a session once in two years. For example, if it is necessary to make appropriations for roads in those parts of the State where the public lands are situated, they can be made for two years as well as one. People knowing that the Legislature meets only once in two years, will look forward and see what they are going to want during that time.

Should the public good require the immediate chartering of a railroad, or any other legislation, of sufficient importance to justify a special session, such session can be called. There are a few old claims which have been brought before every Legislature for many years. Those claimants may think it hard that they cannot be allowed to "run for luck" annually.

There are, in every State of the Union, more or less of private claims, schemes and projects, brought before the Legislature, supported by all kinds of plausible arguments and pretences, but having their real origin in the idea that the State is a good natured mother, who is always most indulgent to those of her children who give her the most trouble, and who cannot long resist persistent importunities; that whatever is obtained from her is clear gain, and that it is perfectly right for every one to get all he can. If these projects meet with a hard Committee one year they want the chance of going before an easy and pliable one the next; but the State is not bound to furnish annual sessions for their accommodation: and neither private justice nor public prosperity will suffer from their being confined to biennial manifestations of their courage and activity.

It must be remembered that if annual sessions are convenient for those who want special legislation, they are very inconvenient to those who are obliged to come here to defend against it. Probably two-thirds of all the applications for alterations of the Revised Statutes originate with those who have some case in court, or some

particular interest to be benefited by the change; and those against whom those changes in the law are expected to operate are often compelled to appear and resist. So in the applications for divisions of towns and divisions of counties, and a large portion of all the other business before the Legislature, the party moving has to be met by a party opposing.

A session of the Legislature is not therefore even in its most favorable aspects an unadulterated blessing, but is attended with many evils.

The several states of the Union are only parts of a National Government which is charged with all the duties relating to intercourse with foreign nations, peace and war, navigation and commerce, army and navy; and whose laws on those subjects are paramount even within our limits and are administered by her own officers and courts. The legislation of each State is confined within her own lines and shores, and relates only to local and domestic affairs.

Even therefore if annual legislatures were shown to be best for independent nations they might still be unnecessary and unwise in these subordinate States. At the period of the Revolution when the constitutions of the original thirteen States were formed, the people were not so generally educated as they are now. They were but partially accustomed to self government; but imperfectly instructed in its duties and its forms; and annual sessions of State legislatures may have been thought advisable as contributing to their political education. But now that education has become generally diffused, that republican institutions have become fixed facts, and the people have had eighty years of practice under them, this argument in favor of annual sessions has lost most of its force.

The Legislature of 1841 submitted this question of biennial sessions and elections to the people. About 9,000 persons voted in its favor and about 27,000 against it. The small vote tends to show that but little interest was taken in the matter, and that it was not properly discussed among the people.

During the previous years from 1835 to 1840 the State government had been supported entirely from the proceeds of the public lands, without any State tax; and the State tax for the years 1840 and 1841 was only one hundred thousand dollars. The argument of economy had therefore very little practical force. Now the State

owes about \$700,000.00 in scrip, and holds about \$335,000 00 in trust for schools and for the Indian tribes; making a permanent debt of over a million of dollars. The annual interest on this debt is over \$60,000.00, and the installment of the principal which falls due averages about \$39,000.00 annually; so that about one hundred thousand dollars must be annually raised on account of the permanent debt. The cost of our charitable and reformatory institutions, our expenditures for education and agriculture, and our various other expenses, amount to about \$300,000.00 more.

This great alteration in our financial condition; the changes of population which are inevitable, and of opinion which are natural, during the lapse of eighteen years; the various causes in operation which have been considered, and what we know of public opinion from the press and other sources; have led your Committee to the conclusion that the majority of the people will be found in favor of biennial sessions and elections, if the Legislature will give them an opportunity to express their opinions.

As your Committee are of opinion that these changes would be for the public good, they herewith submit a resolve for the amendment of the Constitution in these respects, and providing that the first election under this amendment, of Governor, Senators and Representatives shall be on the second Monday in September, eighteen hundred and sixty, and the first election of State officers by the Legislature shall be in January, eighteen hundred and sixty-one.

The order referred to us, following in that respect the language of the Governor's Address, speaks of biennial elections, without defining what elections. Was it intended to embrace county officers, so as to dispense with the annual September election?

Your Committee find that the constitution provides for the election of Judges and Register of Probate once in four years, and Sheriffs once in two years; and that the laws provide for the election of Clerk of the Courts, County Attorney and County Commissioners for the term of three years each, and of Register of Deeds for the term of five years.

If the Governor and members of the Legislature should be chosen biennially, on the same years with Members of Congress, as provided for in the above resolve, there will be no officers to choose on

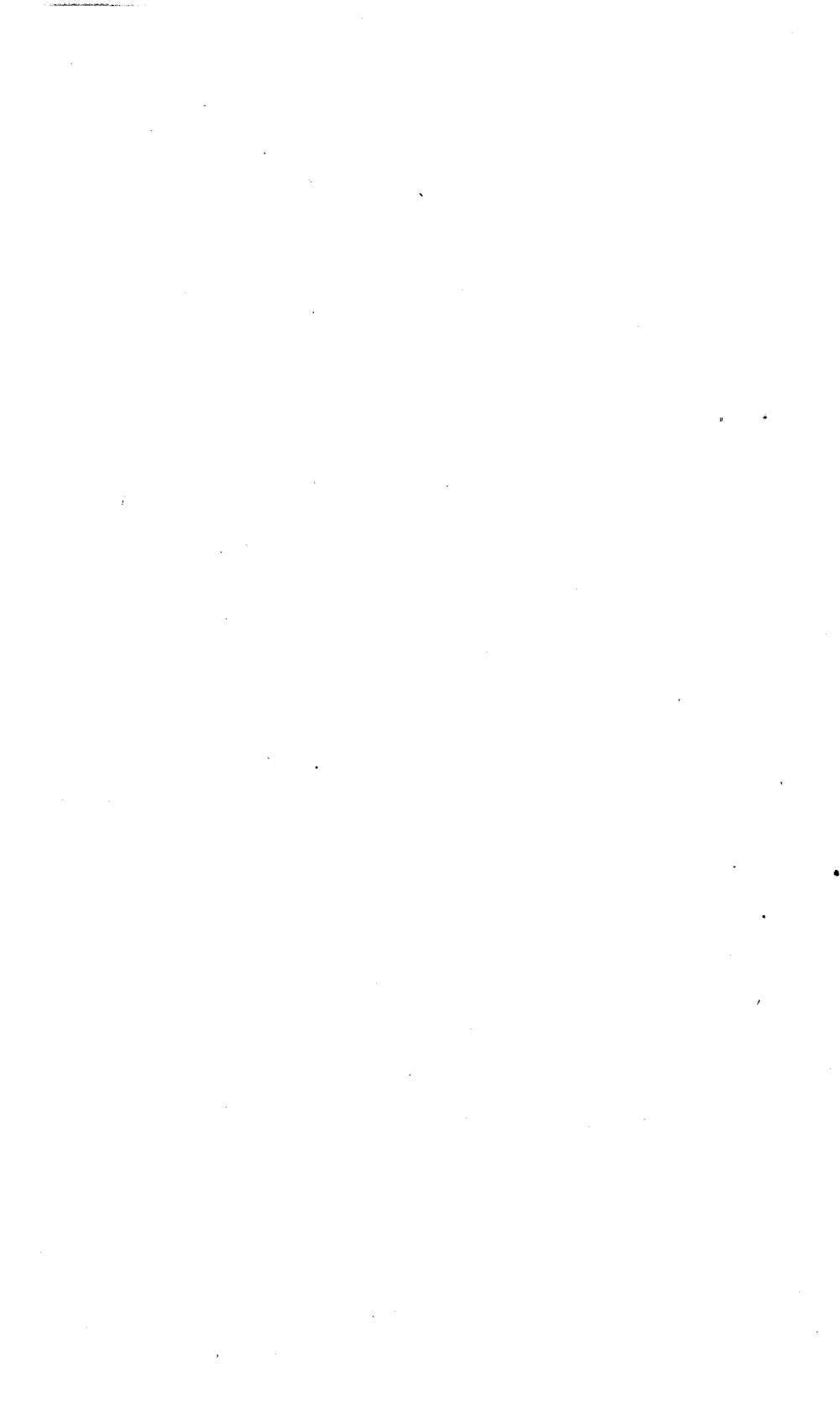
the intervening years, but, on the average, three of these county officers a year.

It appears to your Committee that this would not be enough to give interest to an election. That it would give the people too much trouble to nominate the candidates and attend the polls; and the candidates too much trouble to get out the voters.

Your Committee, therefore, report a second resolve, to be submitted separately to the people, making the necessary amendment of the constitution to secure the election of Judges and Register of Probate and Sheriffs at the biennial election; and if the amendment is adopted, the next Legislature can alter the laws, providing for the election of the county officers at the same time, and making their terms of office even numbers.

All of which is respectfully submitted.

HENRY E. PRENTISS, *Chairman.*



STATE OF MAINE.

RESOLVES providing for amendments to the Constitution in relation to the meeting of the Legislature, and the term of office of its members and of Governor and other State officers, and the time of electing County officers.

Resolved, Two thirds of both branches of the Legislature concurring, that the Constitution of this State be amended in Article second, section fourth; Article fourth, section fifth, part first; Article fourth, section first, part third; Article fifth, section second, part second; Article fifth, section first, part third; Article fifth, section first, part fourth; Article ninth, section fourth; and in Article ninth of the amendments, sections third and tenth; by substituting in each of said articles and sections, the word *biennially* for the word "annually;" in Article fifth, section thirteen, part first, Article fifth; section fourth, part fourth; and Article tenth, section fourth, by substituting in each of said articles and sections, the word *biennial* for the word "annual;" in Article fifth, section second, part

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16 first, by substituting the words *two years* for "one
17 year," and *next after the biennial election* for "in each
18 year;" so that each of the officers named in said sec-
19 tions being the Governor, members of the Legislature
20 and other State officers, shall be elected for and hold
21 their offices two years instead of one year, and the
22 Legislature meet biennially instead of annually.

23 The first election under this amendment of Gov-
24 ernor, Senators and Representatives, shall be on the
25 second Monday of September, in the year eighteen
26 hundred and sixty, and the first election of State offi-
27 cers, by the Legislature shall be in January, eighteen
28 hundred and sixty-one.

Resolved, That Article ninth of the amendments to
2 the Constitution shall be amended in section seventh
3 relating to Judges and Registers of Probate, by striking
4 out the words "annual election" in the third line, and
5 inserting the words, *biennial elections for Governor*
6 *and members of the Legislature*; and in section ninth
7 relating to Sheriffs by inserting the same words after
8 the word "in," in the second line; so that said County
9 officers may be chosen at said biennial election; and
10 that said section be further amended by adding to it
11 these words, "vacancies in the office of Sheriff, Judge,
12 or Registers of Probate arising by the expiration of
13 the term of office before said biennial election, shall

14 be filled by the Governor by appointment, and the
15 persons so appointed shall hold their offices until the
16 first day of January thereafter.

Resolved, That the Aldermen of cities, Selectmen of
2 the several towns and Assessors of the several planta-
3 tions in this State, are hereby empowered and directed
4 to notify the inhabitants of their respective cities towns
5 and plantations, at the annual meeting in September
6 next, to give in their votes upon the amendments in
7 each of the above resolves, and the questions shall be
8 submitted separately in words following: "Shall the
9 Constitution be amended by adopting the first resolve
10 for the amendment of the Constitution, passed by the
11 Legislature proposing to elect the Governor, members
12 of the Legislature and other State officers for the term
13 of two years, and that the Legislature shall meet once
14 in two years?" "Shall the Constitution be amended
15 by adopting the second resolve passed by the Legisla-
16 ture for the amendment of the constitution, proposing
17 to elect County officers on the day of the biennial
18 election of Governor, members of the Legislature and
19 other State officers, and authorizing the Governor to
20 fill certain vacancies in said County offices?" And
21 the ballots shall be given in separately upon each
22 question, those in favor of either of said amendments
23 voting "yes," and those opposed voting "no," upon

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24 each amendment ; and the ballots shall be received in
25 separate boxes, be sorted, counted and declared, and
26 lists made out of the votes, by the clerks and returned
27 to the office of the Secretary of State in the same man-
28 ner as votes for Senators ; and the Governor and
29 Council shall count the same and make return thereof
30 to the next Legislature, and if a majority of votes are
31 in favor of either of said amendments it shall become
32 a part of the constitution.

Resolved, That the Secretary of State shall prepare
2 and furnish the several cities, towns and plantations,
3 blank returns in conformity with the foregoing re-
4 solves, accompanied with a copy of the resolves.

AMENDMENTS proposed by Mr. PRENTISS of Bangor, and on motion of Mr. BLAINE of Augusta laid upon the table, and ordered to be printed, in connection with the report.

Add to the title of the resolve the words, “and
2 abolishing the Council and providing for a State
3 Auditor.”

After the second resolve add

Resolved, That Article fifth, part second, of the Con-
2 stitution consisting of four sections relating to the
3 Council, is hereby annulled and revoked, and whatever
4 the Governor is by the Constitution empowered to do
5 with the advice and consent of the Council he is
6 hereby empowered to do of his own authority; and
7 an Auditor of public accounts shall be elected by a
8 plurality of the votes given in at the biennial election
9 for Governor and members of the Legislature who
10 shall hold his office for two years, whose duties shall
11 be defined, and whose salary shall be fixed by law,
12 and said salary shall not be altered during the time
13 for which he is elected. Any vacancy occurring in
14 said office shall be filled by appointment by the Gov-
15 ernor, and the person so appointed shall continue in
16 office till his successor, chosen at the next biennial

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17 election, shall be qualified in January thereafter.
18 This revocation of the authority of the Council shall
19 not take effect till the Auditor is qualified in January,
20 eighteen hundred and sixty-one, and the first election
21 of Auditor shall be at the September election, in the
22 year eighteen hundred and sixty. In Article fifth,
23 part first, section eighth, the word "nominate," and at
24 the close of the section the words, "and every such
25 nomination shall be made seven days, at least, prior
26 to such appointment," are hereby annulled and re-
27 voked.

Amend the third which will now become the fourth
2 resolve, by inserting after the last question, this ques-
3 tion.

"Shall the Constitution be amended by adopting
2 the third resolve passed by the Legislature for the
3 amendment of the Constitution, proposing to abolish
4 the Council and provide for the election of an Audi-
5 tor?"

Also substitute "any" for *either* in the next line to
2 the last.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Feb. 1, 1859.

On motion of Mr. BURBANK of Lewiston,

Laid on the table, and 350 copies of the same ordered to be printed for the use of the Legislature.

GEO. W. WILCOX, *Clerk.*