

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1861.



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1861.

FORTIETH LEGISLATURE.

SENATE.

No. 14

COMMUNICATION OF THE JUSTICES OF THE S. J. COURT.

SENATE CHAMBER, }
Augusta, January 21, 1861. }

Ordered, That the Justices of the Supreme Judicial Court be requested to communicate to the Senate, in writing their opinions upon the following question, namely :

“Is it competent for the present Legislature to cause the State to be divided into districts for the choice of Senators ?”

We the undersigned, having had the foregoing question propounded by the Senate of this State to us, and having deliberated thereon, submit the following as our answer :

The question calls for a construction of the first paragraph of section 2, part 2, article 4 of the constitution of this State. The language is, “The Legislature, which shall first be convened under this constitution, shall on or before the fifteenth day of August, in the year of our Lord one thousand eight hundred and twenty-one, and the Legislature at every subsequent period of ten years, cause the State to be divided into districts for the choice of Senators. The districts shall conform as near as may be to county lines, and be apportioned according to the number of inhabitants.”

The number of inhabitants, referred to in the foregoing, we cannot doubt, was intended to be that, which should be found by virtue of the provision contained in section 2, part 1, and article 4, which

is, "The Legislature, which shall first be convened under this constitution, shall on or before the fifteenth day of August, in the year of our Lord one thousand eight hundred and twenty-one, and the Legislature within every subsequent period of at most ten years, and at least five, cause the number of inhabitants to be ascertained." Article 4 of the amendments of the constitution.

The first Wednesday of January annually was the time fixed by the constitution for the commencement of the session of each Legislature. Constitution, article 4, part 3, section 1.

In the year of our Lord 1844, the time for the commencement of the sessions was changed to that of the second Wednesday of May annually. But the Legislature to be chosen on the second Monday of September of that year was to continue its political existence to the second Wednesday of May, in the year of our Lord 1846. Amendment of constitution, article 5.

In the year of our Lord 1850, the time originally prescribed by the constitution for the commencement of the political year and of the official life of the members of the Legislature was restored, and Senators and Representatives to be chosen in that year were to continue in office till the first Wednesday of January, in the year of our Lord, 1853, and there was to be no election of those officers in the year of our Lord 1851. Amendment of constitution, article 8. In order to meet these changes in the commencement of the political years, the duration of the official term of the Legislature chosen in 1844, and in 1850 respectively, was of necessity extended or diminished.

The amendments appear to have been designed for the sole purpose of changing the sessions of the Legislature from one season of the year to another. The time for the election of members of the Legislature, the enumeration of the inhabitants of the State, the formation of districts for the choice of Representatives when necessary, and of Senators, were left without any alteration in times, and none can reasonably be supposed to have been intended.

The fifteenth day of August, in the year of our Lord 1821, was the latest time on which the districts for the choice of Senators for the succeeding period of ten years would have been established. The same month and day was the limitation of the cycle of ten years afterwards, on or before which, the number of inhabitants of

the State was to be ascertained, as the basis for the formation of Senatorial districts, and the State divided into such districts upon that basis, according to the provisions of the constitution. This month and day, not being that of the beginning or the ending of the political year, or of the official life of the Senators, the period of ten years cannot be understood as any other than ten civil years.

“The Legislature at every subsequent period of ten years,” which was required to perform the duty in question, was that which should be in power on the fifteenth day of August of the last year of the period. Nothing in the constitution in the least degree indicates that it was intended that this duty should devolve upon the tenth Legislature, elected under the next preceeding apportionment. An amendment of the constitution, providing that the official term of Senators and Representatives should be for the space of two years, instead of one as now provided, must carry with it as a necessary incident, that the period for which districts for the choice of Senators should be formed, would be twenty civil years, if it was designed that such districts should be established by the tenth Legislature, elected next after the last apportionment. Such principle cannot be admitted. It would evidently pervert the great object that the framers of the constitution had in view, when they provided that the Legislature which was first to be convened, on or before the fifteenth day of August, in the year of our Lord 1821, and the Legislature within every subsequent period of *at most ten years*, and at least five, should cause the number of inhabitants of the State to be ascertained. The Senatorial apportionment was manifestly intended to be made as early as the fifteenth day of August, 1831, 1841, &c., being the last year of each period of ten years and based upon the census, which was required to be completed as early as the same time of August 15; so that the Senators which should be elected on the second Monday of September of the same year, would compose the first Senate of the decade next succeeding.

We are not unmindful that the last division of the State into districts for the choice of Senators was made in the year of our Lord, 1852. Consequently if the duty of doing a similar service devolves upon the present Legislature, there was at that time an unauthorized omission in not forming the districts on or before the fifteenth day of August, in the year of our Lord, 1851. It may be answered

without impropriety, that an error should be early corrected rather than perpetuated.

But the Legislature which caused the last division of the State into Senatorial districts, was the one elected in the year of our Lord, 1850, first ten years before the election of the present one, and under the amendment before referred to, were to have a political existence till the first Wednesday of January, in the year of our Lord, 1853. And no election took place on the second Monday of September, in the year of our Lord, 1851. That Legislature was competent to cause the State to be divided into districts for the choice of Senators, on or before the fifteenth day of August, in the year of our Lord, 1851; and if the districts were established on or before that day, it would have been upon the same number of inhabitants which constituted the basis of the apportionment the year succeeding. The only omission was, that the division was not made on or before the fifteenth day of August, in the year of our Lord, 1851.

The two amendments of the constitution changing the time of the year when the sessions should commence and terminate, and the omission of the election in the year of our Lord, 1851, has made the number of Legislatures one less than there would have been if these amendments had not been made. This loss must fall upon the decade which will terminate on the fifteenth day of August, in the year of our Lord, one thousand eight hundred and sixty-one.

For the reasons embraced in the foregoing, we answer the question propounded, in the affirmative.

JOHN. S. TENNEY,
 RICHARD D. RICE,
 JOHN APPLETON,
 JONAS CUTTING,
 SETH MAY,
 DANIEL GOODENOW,
 WOODBURY DAVIS,
 EDWARD KENT.

Hon. JOHN H. GOODENOW,

President of the Senate.

February, 1861.

STATE OF MAINE.

IN SENATE, February 21, 1861.

On motion of Mr. VINTON of Cumberland,

ORDERED, That the Communication of the Judges of S. J. Court,
be laid on the table, and 350 copies be printed for the use of the
Legislature.

JAMES M. LINCOLN, *Secretary.*