

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Fifth

Legislature

OF THE

STATE OF MAINE

1971

KENNEBEC JOURNAL
AUGUSTA, MAINE

by the Clerk and adopted in concurrence, and tomorrow assigned for third reading of the Bill.

Divided Report

Majority Report of the Committee on State Government reporting "Ought not to pass" on Resolution Proposing an Amendment to the Constitution Concerning the Age of State Representatives (S. P. 168) (L. D. 490)

Report was signed by the following members:

Messrs. JOHNSON of Somerset
WYMAN of Washington
CLIFFORD
of Androscoggin
— of the Senate.

Messrs. HODGDON of Kittery
FARRINGTON
of Old Orchard Beach
STARBIRD
of Kingman Township
STILLINGS of Berwick
HANSON of Gardiner
M A R S T A L L E R of
Freeport
DONAGHY of Lubeç

— of the House.

Minority Report of same Committee reporting "Ought to pass" on same Resolution.

Report was signed by the following members:

Mr. COONEY of Webster
Mrs. GOODWIN of Bath
Mr. CURTIS of Orono

— of the House.

Came from the Senate with the Majority Report accepted.

In the House: Reports were read.

On motion of Mr. Donaghy of Lubeç, the Majority "Ought not to pass" report was accepted in concurrence.

Messages and Documents

The following Communication:
THE SENATE OF MAINE
AUGUSTA, MAINE

April 2, 1971

Honorable Bertha W. Johnson

Clerk of the House

105th Legislature

Dear Madam Clerk:

The President has appointed the following members of the Senate to the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill, "An Act Relating to Salaries of

Substitute Teachers and Adjusting State Subsidy to an Administrative Unit" (S. P. 517) (L. D. 1402):

Senators:

KATZ of Kennebec

DUNN of Oxford

GREELEY of Waldo

Respectfully,

(Signed)

HARRY N. STARBRANCH

Harry N. Starbranch

Secretary of the Senate

The Communication was read and ordered placed on file.

The following Communication:

ANSWERS OF THE JUSTICES

To the Honorable House of Representatives of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following answers to the questions propounded on April 1, 1971.

QUESTION I: Does the Legislature have the authority pursuant to Article IV, Part Third, Section 18 of the Constitution which in part states: "The Legislature may order a special election on any measure that is subject to a vote of the people", to order a special election on Initiated Bill (1), "AN ACT to Repeal the Maine Income Tax" despite the request of the Petitioners?"

ANSWER: We answer in the negative.

¹The leading decision in Maine concerning the amendment creating the people's initiative, **Farris, Att. Gen. v. Goss** 143 Me. 227, 60 A. 2d, 908 (1948), discloses that the initiative

"... made a fundamental change in the existing form of government in so far as legislative power was involved. Formerly that power was vested in the House of Representatives and the Senate. By the amendment the people reserved to themselves power to propose laws and to enact or reject the same at the polls independent of the Legislature." (p. 230)

¹We emphasize that our decision to answer this question is without significance to indicate

acceptance, or approval, of the correctness of a premise which seems to underlie the question. The House appears to have assumed that a bill validly initiated becomes a "measure that is subject to a vote of the people" (and, hence, within the language, "The Legislature may order a special election on any measure that is subject to a vote of the people"), when the Legislature merely "proposes" to refrain from enacting the bill without change, or otherwise taking action regarding it or its subject matter, and even though the Legislative session to which the initiated bill is presented is intended to continue while, and after, a "proposed" submission by the legislature of the measure to the people occurs.

The validity of this assumption by the House is open to doubt.

Furthermore, this

"right of the people . . . to enact legislation . . . is an absolute one and cannot be abridged directly or indirectly by any action of the Legislature." (p. 231)

Finally,

"Neither by action nor by inaction can the Legislature interfere with the submission of measures as . . . provided by the Constitution." (p. 231)

Our primary consideration, therefore, must be that by the initiative amendment the people, as sovereign, have retaken unto themselves legislative power and that a particular undertaking by them to exercise that power shall be liberally construed to effectuate the purpose.

It is in accordance with this principle of liberal construction to avoid potential abridgement, or impairment, of the plenary exercise of legislative power by the people that we must evaluate the constitutional provisions which relate to the holding of special elections for the enactment, or rejection, at the polls of measures initiated by the people.

Article IV, Part Three, Section 18 of the Constitution delineates a **general rule** that initiated measures shall be voted upon

"at the next general election held not less than sixty days after the

recess of the Legislature, to which such measure was proposed."

Section 18 goes further, however, and introduces flexibility to allow accommodation to particular circumstances which might arise and which might involve the desirability of a departure from the general rule. Section 18 says in reference to

"any measure proposed to the Legislature . . . and not enacted by the Legislature without change"

(1) "The Governor **may** . . ." and
 (2) "if so requested in the written petitions addressed to the Legislature", the Governor "**shall**, by proclamation, order any measure proposed to the Legislature . . . and not enacted without change, referred to the people at a special election to be held not less than four nor more than six months after such proclamation." (all emphases supplied)

Careful examination of this constitutional language dealing with the authority for a special election reveals that it omits a specification of a time interval within which the proclamation of the Governor shall be made. Our opinion is that since the proclamation must await ascertainment of whether the "measure proposed to the Legislature . . . (was) not enacted by the Legislature without change", the proclamation must be made by the Governor subsequently to the recess of the session of the Legislature to which such measure was proposed. The fact which is the operative condition precedent of the Governor's proclamation — the failure of the legislature to enact the proposed measure without change — can finally occur and be known with certainty only when the session of the Legislature to which the measure was proposed has been "recessed"—i.e. when, as defined by Article IV, Part Three, Section 20, there has been "adjournment without day."

Furthermore, to prevent frustration of the broadly reserved power of the people to legislate it is implicit that the proclamation of the Governor is intended to be made within a reasonably short time after the legislative session has been adjourned without day.

We conclude, therefore, that in Article IV, Part Three, Section 18 the people have provided themselves with a procedure by which they can control the range of time for the holding of an initiative election, such that: (1) they can increase the minimally required period from sixty days to four months, and (2) reduce the maximally authorized interval from a potential of eighteen months to approximately six months,² subsequent to the recess of the session of the legislature at which the initiated measure was proposed.

The use of the word "may" relative to a gubernatorial order for a special election, and its timing, indicates that, ordinarily, the Governor is afforded a discretion as to whether to order a special election. This general discretion is subject to the exception, however, that "if . . . requested in the written petitions", the Governor "shall" direct a special election by proclamation. The introduction of the word "shall" in immediate conjunction with, and contradistinction to, the word "may" signifies that once the written petitions have requested a gubernatorial proclamation of a special election, the Governor is subjected to a **mandatory obligation** to order the special election. His obligation to act is unavoidable.

² Under our present system of biennial regular Legislative sessions, and with initiative petitions being presentable only at a regular session, it will usually happen that the next regular election after the recess of the Legislature would occur as long as fifteen to eighteen months after recess.

We use the word "approximately" since the maximum period of six months commences from the date of the proclamation by the Governor which must be forthcoming within a reasonably short time after the recess of the Legislative session.

This interpretation, derived from the literal language of Section 18, is supported by practical factors which suggest a need that the initiators of a measure should have opportunity to impose a compul-

sory obligation upon the Governor to order a special election within time limits other than those ordinarily operative as to general elections. Under given circumstances the people initiating a measure may believe that the issues are sufficiently complex to justify extensive opportunity for the conducting of public debate as well as to allow sufficient time for adequate education of the voters on the issues. Hence, they may wish to require a minimum of four months after the recess of the Legislature. Similarly, they may envision that a period as long as one year and a half could elapse until the next general election (should the Governor choose to refrain from calling a special election in the exercise of discretion), and the initiators might consider such extended delay unwise or otherwise prejudicial to the purposes they seek to achieve.

Our conclusion that a request in the initiative petitions for a gubernatorial proclamation of a special election, to be held within the constitutionally defined time limits, imposes a **mandatory obligation** upon the Governor logically imports a restriction upon the unlimited discretion which Article IV, Part Three, Section 18, purports to confer upon the Legislature by the language "the Legislature may order a special election. . . ." The imposition of a **mandate** upon the Governor to order a special election within the constitutionally prescribed time range is inconsistent with a **discretion** in the legislature to order a special election as, and if, the Legislature may deem appropriate and uncontrolled by the constitutional time limits to which the obligation of the Governor is subjected. The request in the written petitions, by creating a mandatory obligation for action by the Governor, negates, ipso facto, a repository of discretion either in the Governor or in the Legislature.

The Legislature, therefore, lacks authority pursuant to Article IV, Part Three, Section 18 of the Constitution to order a special election on Initiated Bill (1), "AN ACT to Repeal the Maine Income Tax" despite the request of the petitioners for a gubernatorial

proclamation ordering a special election.

QUESTION II: If the answer to question number I is in the affirmative, may the Legislature set the date for the referendum and direct the form of the ballot with the attached Joint Order?

ANSWER: Our answer to Question I being in the negative, no answer is required on Question II since it becomes inapplicable by its terms.

Dated at Portland, Maine, this fifth day of April, 1971.

Respectfully submitted:

(Signed)

Armand A. Dufresne Jr.
Donald W. Webber
Randolph A. Weatherbee
Charles A. Pomeroy
Sidney W. Wernick
James P. Archibald

The Communication was read and ordered placed on file.

Orders

On motion of Mr. Gill of South Portland, it was

ORDERED, that Beth Bryce and Doreen Johnson of South Portland be appointed to serve as Honorary Pages for today.

The **SPEAKER:** The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. **CALL:** Mr. Speaker, I should like to inquire if the House is in possession of L. D. 359.

The **SPEAKER:** The answer is in the affirmative. An Act relating to the Control of Dogs, House Paper 270, L. D. 359, is in the possession of the House.

Mr. **CALL:** Mr. Speaker, I move that the House reconsider its action of Friday whereby it passed this bill to be enacted.

The **SPEAKER:** The gentleman from Lewiston, Mr. Call moves that the House reconsider its action of April 2 whereby this Bill was passed to be enacted.

Whereupon, Mr. Good of Westfield requested a division.

The **SPEAKER:** A division will be ordered. All in favor of reconsidering whereby this Bill was passed to be enacted on April 2 will vote yes; those opposed will vote no.

A vote of the House was taken.

57 having voted in the affirmative and 77 having voted in the negative, the motion to reconsider did not prevail.

The **SPEAKER:** The Chair recognizes the gentleman from Bowdoinham, Mr. Curtis.

Mr. **CURTIS:** Mr. Speaker, I would inquire if the House is in possession of Senate Paper 348, L. D. 1016, An Act Continuing the Maine Cultural Building Authority.

The **SPEAKER:** The answer is in the affirmative. It is in the possession of the House.

Mr. **CURTIS:** Mr. Speaker, I would move that we reconsider our action of April 2 whereby this bill failed of passage to be enacted.

The **SPEAKER:** The gentleman from Bowdoinham, Mr. Curtis moves that the House reconsider its action of April 2 whereby this Bill failed of passage to be enacted. The Chair will order a vote. All in favor of reconsideration will vote yes; those opposed will vote no.

A vote of the House was taken.

64 voted in the affirmative and 69 voted in the negative.

Whereupon, Mr. Birt of East Millinocket requested a roll call vote.

The **SPEAKER:** The yeas and nays have been requested. For the Chair to order a roll call it must have the expressed desire of one fifth of the members present and voting. All members desiring a roll call vote on the reconsideration motion will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The **SPEAKER:** The Chair recognizes the gentleman from Lubec, Mr. Donaghy.

Mr. **DONAGHY:** Mr. Speaker, is this debatable?

The **SPEAKER:** It is debatable.

Mr. **DONAGHY:** Mr. Speaker and Ladies and Gentlemen of the House: We would like to have this recalled in order to offer an amendment that would change the complexion of this bill somewhat, and I would ask that someone table this.