

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Ninety-Fourth Legislature

OF THE

STATE OF MAINE

1949

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"Finding of apparent need," it seems to me, requires a search of facts. If the majority report had stated that these conclusions to which I object were the conclusions or opinions of the nine signers of the majority report, I would not object, but this calls for a finding. A finding presumably must be based upon facts. Now on what kind of fact can you base that conclusion?

It seems to me that there are two kinds of facts: First, facts as indicated by public interest and demand for particular changes, and secondly, facts within the Constitution itself which we can ascertain by study of the entire instrument in the light of the problems which state government is called upon to meet. Now I submit that those facts were not determined, and the majority report says "the committee finds" not that "the committee thinks"; "the committee finds that there is no public interest," "the committee finds there is no public demand." I submit that is a conclusion which is not justified by the work which the committee put into this job. The committee could not do it in the time that was available. I am not criticizing the committee, but they are not justified in making findings of fact which they did not determine.

I am glad that the gentleman from Cape Elizabeth (Mr. Chase) has qualified that report and made it a matter of record that that report and those conclusions represent only the opinion of the nine people who signed the majority report. I thank him for making that statement which I think is an accurate report of the committee. I thank you.

Thereupon, the several resolves were referred to the Committee on Judiciary, ordered printed and sent up for concurrence.

The SPEAKER: The Chair recognizes the gentleman from Limestone, Mr. Burgess.

Mr. BURGESS: Mr. Speaker and Members of the House: Assuming that sometime in the future these resolves may be on your election

ballot, I am going to move at this time that both the majority and minority reports be incorporated into the Legislative Record for the benefit of you and me at some future date. Both of these reports represent opinions which are worthy of consideration now and at a future date.

The SPEAKER: The gentleman from Limestone, Mr. Burgess, moves that both the majority and minority reports be incorporated into the Legislative Record. Is this the pleasure of the House?

The motion prevailed, and the reports follow:

REPORT OF THE JOINT SELECT COMMITTEE TO CONSIDER THE NEED FOR REVISION OF THE CONSTITUTION.

This Committee was instructed by joint order "to consider forthwith the need for revision of the Constitution of the State of Maine either with respect to need for general revision or revision of particular sections; and in case of a finding of apparent need by said committee, to report to this Legislature on or before February 16, 1949, its recommendations of appropriate procedure either by a bill creating a Constitutional Convention under instruction to consider and propose a general revision or by resolves proposing particular Constitutional Amendments deemed to be urgent and suitable for consideration in regular order by this Legislature including appropriate committee reference and public hearing or by any other method deemed appropriate."

The Original Constitution, enlarged as it is today by numerous amendments, is in poor form for reference use. It can today be improved greatly by a codification which combines into the basic document, all of the forty-three amendments, thus eliminating such parts of the amendment sections as are now obsolete. It can be further improved by minor amendments designed to transfer to the statutes details of procedure such as the method of voting by troops in the field. It contains some inconsistencies of minor importance, as well as

some provisions difficult for a citizen to understand because of the apparent literal meaning having been changed by interpretation. It also contains some provisions which seem to have been ignored or evaded.

Despite these defects, the Committee finds that a general revision of the Constitution should not be attempted at this time. The public interest in revision does not seem to be sufficient to justify the hope that Maine's ablest talent would be drawn to a Constitutional Convention to undertake a general revision. Without such talent, there would seem to be no reason to expect from a convention a production superior to the existing document. The Constitution of Maine commands a respect and reverence which ought not lightly to be sacrificed to the ambitions of the "stream-liner" and the modernizer.

The Committee finds that the need for revision is urgent with respect to particular sections of the Constitution and presents for consideration at this Legislature the following Resolves proposing Amendments to the Constitution.

An Amendment Relating to Apportionment of Representatives.

Under terms of the Constitution there must be a re-apportionment made by the Legislature meeting in 1951. The existing provisions contain an inconsistency as to the number of representatives. The old formula or principle appears to be inapplicable to the present population and its application was not even attempted in recent apportionments. An apportionment amendment can be considered on its merit as to sound principles at this session. If adopted by the Legislature and approved by the people at the general election in 1950, the problem of apportionment should be easy for the next Legislature.

An Amendment Relating to Limitation on Municipal Indebtedness.

The continuing evasion of the apparent intent of the Constitution with respect to municipal debt

limitation is a serious matter by itself, and tends to encourage other evasion. The method of evasion by creating districts is a waste of legislative effort, when the same ends can be achieved without resort to questionable devices. It is desirable that cities and towns should perform their legally required functions of government in their own names and identities so far as possible. Conflicts of authority should be avoided. Creditors should be kept in one classification with respect to rights and remedies. Owners of property liable to attachment for municipal debt should have at least the protection of knowing the extent of total liability.

An Amendment Relating to State Aid Policy in Education

Article VIII of the Constitution, which requires the Legislature to compel the cities and towns "to make suitable provision, at their own expense, for the support and maintenance of public schools" is hardly consistent in language or intent with what the state has been doing in state aid and in equalization. It certainly affords ground for questioning the constitutionality of any measure proposing that the state give money to the towns for building schools. If the state intends to pursue a policy of maintaining an approximate uniformity of instruction throughout the state by subsidy and equalization, the Constitution should be amended to justify the policy. This proposed amendment will afford a basis for discussion on what the state's educational policy ought to be.

An Amendment Relating to the Time of Presentation of Initiated Measures.

The Constitution now provides that a measure initiated by petition must be presented at least thirty days before the close of the Legislative session. Such a measure, if seasonably presented, must be passed by the Legislature without change or referred to the people. An initiated measure appearing so late in the session and before

a date which can never be known in advance, which may be inconsistent in its terms with laws already enacted, can upset the entire Legislative program. Laws already passed on related subjects may be challenged as competing measures or as substitutes, even though the Legislature never intended them as such.

The Initiative ought not to be used as an obstructive device. It was intended to be constructive and originative. It would seem that the Referendum affords sufficient protection to people who want to over-rule the Legislature. When the Initiative was adopted in 1908, Legislative sessions were usually less than 90 days in length, and 30 days represented a much larger percentage of Legislative working time.

The usual dead line for introduction of general bills by members of the Legislature is around February 15. It seems fair and reasonable that the sponsors of an initiated measure should meet the same requirements. It is also to their advantage that they should be assured that their efforts will not be made futile by an adjournment of the Legislature earlier than they anticipated. The Resolve now introduced would make the time limit 45 days after the convening of the Legislature in regular session.

An Amendment Relating to the Debt Limit of the State

The Constitution is now encumbered by numerous amendments authorizing bond issues for various purposes. Nearly every new bond issue has required a Constitutional Amendment. This procedure is slow and uncertain. Furthermore, it is dangerous when a bond issue is to be paid from proceeds of a tax, because the bond issue may be approved while the tax is defeated by the people. It is believed that the procedure can be greatly simplified and expedited without changing in any essential respect the rights of

the people to control borrowing by the state.

To accomplish this purpose, two methods are proposed as embodied in two Resolves. One of these Resolves proposes to amend the Constitution by including a section in the Constitution requiring a popular vote on bond issues as by referendum rather than by Constitutional amendment. A bond issue would be authorized in compliance with the terms of the Constitution, but it would not be part of the Constitution.

The other proposed method is to amend the Constitution so as to sweep away the numerous previous bond issue amendments by inserting a new amendment which would establish a Constitutional state debt limit ceiling under which ceiling the Legislature, by vote of two-thirds of both branches and by approval of the Governor, could issue bonds for construction of permanent facilities. The people would fix, and could later raise or reduce, the debt limit, leaving discretion to the Legislature within that limit. Obviously such an amendment, if adopted by this Legislature, would have to be framed, in amount and language, to conform to any other approved bond issue amendment, so that the amount first designated in the original resolve as the state debt limit should be regarded as tentative and subject to change later in this session.

* * * * *

The Resolves which will be introduced as herein recited are not necessarily regarded by your committee as ideal or perfect for the purposes in mind. We agree upon the urgency of need for Constitutional revision with respect to these matters, and we believe that the described Resolves, prepared for introduction in the regular order of Legislative procedure, are deserving of careful study by the appropriate committee and by the Legislature, always with a view to an improved final form.

The proposed Amendment (L. D. 30) providing for Codification of

the Constitution, if adopted, would presumably result in bringing into the codified form those amendments which are simultaneously approved by this Legislature and adopted by the people. By such actions and procedure the Constitution, as a practical working instrument for reference and guidance, should be improved.

In making these recommendations, your Committee has applied the test of urgency with the efficient functioning of the Legislature in mind. We express no opinion as to the urgency of several other proposed amendments in the Legislative mill and already referred to regular joint standing committees, such as the proposals for a four-year term for governor and for senators, for changing the date of the general election, and for annual sessions of the Legislature. The number of such proposals for change in the form of our state government, together with evidence of a growing sentiment for a general revision of the Constitution by a convention, indicate that there may be a need for careful study of the subject by a special recess commission, or by the Legislative Research Committee with a view to presenting to the next Legislature specific proposals, either by bill creating a Constitutional Convention or by recommendation of a limited program of revision for that Legislative session similar to the one now recommended and embodied in the resolves accompanying this report. February 15, 1949

SENATE

Robert N. Haskell
George B. Barnes
Roland H. Cobb

HOUSE

Edward E. Chase
Joseph B. Campbell
Harry M. Brown
Percy G. Sargent
Marguerite R. Fay
Jarvis L. Tyler

THE JOINT SELECT COMMITTEE TO CONSIDER THE NEED FOR REVISION OF THE CONSTITUTION.

Minority Report:

The Committee was created "to consider forthwith the need for revision of the Constitution of the State of Maine either with respect to need for general revision or revision of particular sections . . ."

It seems clear that these instructions imposed upon the Committee a twofold job: (1) a study of the public demand for revision of any part or all of the Constitution; and (2) a study of the need for revision in the light of the problems which State government is today called upon to meet and the functions which our people expect State government to exercise.

This job could not be done in the time available and it was not done. The only study made of public demand for revision was confined to a poll of the opinions of the Committee members. A thorough study of the Constitution as a whole could not be undertaken. The bulk of the Committee's time was devoted to the consideration of the five propositions which the majority report labels as urgent, and these five were not necessarily more urgent than at least nine others which were listed by Committee members as worthy of consideration. The latter included several which are deemed of sufficient importance and public interest by members of this Legislature to warrant the presentation of legislation to accomplish the changes desired.

Since the Committee did not, and could not do the job of basic research for which it was created, it was not justified in reaching any conclusions whatsoever as to the public demand or the need for a general revision of the Constitution. The following conclusions reached in the majority report cannot, therefore, be supported by the undersigned: (1) "that a general revision of the Constitution should not be attempted at this time", and (2) "The public interest in revision

does not seem to be sufficient to justify the hope that Maine's ablest talent would be drawn to a Constitutional Convention to undertake a general revision."

The following considerations were not given the careful study and analysis which should be given them before conclusions are reached as to the advisability of calling a Constitutional Convention:

1. There is a considerable and growing body of opinion throughout the State in support of various specific changes in the Constitution. This opinion has found expression in the public utterances of students of government, in editorial comment, in political campaigns, and in an increasing volume of legislation proposing such changes.

2. Public interest can be expected to concern itself with particular changes rather than overall revision. The complete instrument is a vague and complex thing to the average citizen. And yet, specific changes may so affect the entire structure of our government as to warrant or even make advisable other changes which should not depend upon the hit-or-miss amendment process. For example, elimination of the governor's council might well raise the question of the advisability of annual sessions of the Legislature.

3. The question to be decided is whether public interest in specific changes is such as to justify the calling of a Constitutional Convention to insure the study of such changes as an integrated whole.

4. The extent of general public interest does not determine the ability of the men elected to a Constitutional Convention. The talent which would insure competent technical study of the Constitution should not depend upon public interest or popular election. Presumably such talent would be summoned to such a Convention in a consulting capacity.

We must assume that this Committee was called into existence out of an awareness on the part of the Legislature of public interest in the

results of a thorough study of the subject. It is the opinion of the undersigned, therefore, that it is the duty of the Committee to report that it was unable to do a thorough job and to recommend the creation of the necessary agency to do the job. Such an agency might be a special recess committee to function during the next biennium, or it might be the Legislative Research Committee, or it might be a special commission, composed of a representative cross-section of our ablest citizens, to carry on the necessary research during the next biennium.

The undersigned endorses the recommendations of the majority report which relate to the five propositions presented therein. The problems raised merit the serious consideration of the Legislature. The Committee devoted considerable time to their solution. The solutions offered may be subject to criticism and change, but they are commended as a basis for discussion.

(Signed) Rep. Edmund S. Muskie

Passed to be Engrossed

Bill "An Act to Provide for Authorization of Issues of Stocks, Bonds or Notes by Public Utilities and Railroads" (S. P. 59) (L. D. 35)

Bill "An Act relating to Fares Between the Westerly End of Peaks Island and Portland" (S. P. 119) (L. D. 140)

Bill "An Act relating to Chief Inspector of Utilities" (S. P. 176) (L. D. 234)

Bill "An Act relating to Suspension of Public Utility Rates" (S. P. 177) (L. D. 233)

Bill "An Act relating to Caboose Cars Used by Railroads" (S. P. 192) (L. D. 245)

Bill "An Act to Incorporate the 'Progressive Loan Co.'" (H. P. 179) (L. D. 55)

Bill "An Act to Incorporate the Dover-Foxcroft School District" (H. P. 837) (L. D. 334)

Bill "An Act to Create the Boothbay Region Community School District" (H. P. 839) (L. D. 335)