

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume II

May 26, 1977 to July 25, 1977

Index

**Senate Confirmation Session
September 16, 1977**

Index

KJ PRINTING
AUGUSTA, MAINE

Amendments so that the Senate may judge its preference.

The Senate Amendment "A" which is before the Body at the moment sponsored by the Senator from Cumberland, Senator Hewes, defines nudity. The Amendment that I would offer is based on the prevention of obscene material on covers that would otherwise be displayed to minors.

Nudity is not necessarily obscene. The attempt to change the wording by speaking about the adult breasts really does not meet the problem. The 16 year old and the 17 year old breast would then become the market place item for those that wanted to use obscene material on covers.

The other morning I was watching the Today television program as I had breakfast, and a physician was demonstrating the procedures for the detection of breast cancer, and the adult female breasts were there. The whole thing was very tastefully done. My feeling was that no one would be offended and no one would call that depiction obscene.

So it depends on the circumstances. The small female child on a magazine devoted to children, parents and children, this sort of thing, an art work in an art magazine, there are many things that may depict nudity which certainly are not obscene, so that is the choice you would be making.

The Amendment that I would offer, if the Amendment sponsored by Senator Hewes is defeated, carefully defines obscene material on the covers of books, magazines, or newspapers, and it goes as far as we can go under the present Supreme Court definition. In order to meet Constitutional criteria, we have to be rather specific and exact, so all the words in here are not the most pleasant words for everyone to read, but if we do not say it this way, we are in danger of not doing what we attempt to do. The substitute Amendment that I am offering (S-272) has been distributed to your desk.

I would move the indefinite postponement of Senate Amendment "A" (S-256) at this time.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves that the Senate indefinitely postpone Senate Amendment "A".

The Chair recognizes the Senator from Cumberland, Senator Hewes.

Mr. HEWES: Mr. President and Members of the Senate: I wish to thank the good Senator from Knox, Senator Collins, for his constructive attempt to provide an alternative to the pending Amendment (S-256). I oppose his Motion to indefinitely postpone that Amendment, however. A little background might be helpful.

As we all know, the first Amendment does provide freedom of speech to everybody. It is a fundamental right, but it is not an absolute right. For example, our Supreme Court, speaking through Justice Oliver Wendell Holmes many years ago, said that a person may not cry fire in a crowded theatre. I think we all agree that there can be a limitation on free speech such as the example used by Justice Holmes. It has been decided by our Courts that obscene speech and photographs, obscene photographs. I should say, are included within the First Amendment provision relating to freedom of speech.

However, our Supreme Court, in 1957, in the case of Roth versus the United States, said that obscenity is beyond the bounds of the First Amendment, freedom of speech provision. Then the question is where does obscenity begin and where does it end? The Supreme Court has gone further and indicated that nudity is not obscenity.

The Amendment that the good Senator from Knox has mentioned that he plans to offer, should this Amendment be defeated, does prohibit obscenity on the covers of magazines, whereas the Amendment before us now does prohibit nudity on the covers. I think that is the basic difference.

Now I submit there are several thousands of people in this State that are upset with the trend that is taking place in the State at the present time in which there are more and more nude pictures, and it is going further and further each year, although now that this bill has come to the floor, in the last few months there has been a retraction and a restriction of displaying nudity by the magazine distributors. I submit that the people of Maine want an Amendment that prohibits nudity, and I hope that you will vote for S-256 and against the pending motion to indefinitely postpone that Amendment, and we can pass a bill that prohibits nudity as defined in S-256, and I do not think it is improper. I think we have that authority. We have the authority to prevent 18 year olds and under, I guess under 20 years of age from drinking. I do not see why we cannot prohibit those under the age of 18 from being faced with the display of nudity, so I think that S-256 is Constitutional, and hope you will vote against the pending motion.

I request a Roll Call on the motion to indefinitely postpone.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all those Senators present in favor of a Roll Call, please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll Call is ordered.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, as I understand the issue before the Body, it is to indefinitely postpone the Amendment offered by the Senator from Cumberland, Senator Hewes. Is that correct, Mr. President?

The PRESIDENT: The Chair answers in the affirmative.

The Chair recognizes the same Senator.

Mr. MERRILL: Mr. President, I would just like to say that I have reviewed the Amendment drafted by the good Senator from Knox, Senator Collins. I think he has done an excellent job. It is an Amendment that I am anxious to have the chance to support and with that Amendment I could enthusiastically support the Bill, and I would hope the Senate would indefinitely postpone the pending Amendment so that we might get to that.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the Motion by the Senator from Knox, Senator Collins, that Senate Amendment "A" (S-256) be indefinitely postponed.

A yes vote will be in favor of indefinite postponement. A nay vote will be opposed.

The doorkeepers will secure the Chamber.

The Secretary will call the Roll

ROLL CALL

YEA — Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Danton, Farley, Greeley, Huber, Katz, Levine, Lovell, Mangan, McNally, Merrill, Minkowsky, Morrell, O'Leary, Pierce, Pray, Redmond, Snowe, Speers, Trotzky, Usher, Wyman.

NAY — Hewes, Hichens.

ABSENT — Carpenter, Jackson, Martin.

27 Senators having voted in the affirmative, and 2 Senators in the negative, with 3 Senators being absent, the Motion to indefinitely postpone Senate Amendment "A" does prevail.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, I offer Senate Amendment "B" (S-272) and move its adoption.

The PRESIDENT: The Senator from Knox, Senator Collins, now offers Senate Amendment "B" and moves its adoption. The Secretary will read Senate Amendment "B".

Senate Amendment "B" Read and Adopted.

The Bill, as amended, passed to be Engrossed in non-concurrence.

Sent down for concurrence.

The President laid before the Senate:

Bill, "An Act to Require Drivers License Renewal Examinations." (H. P. 397) (L. D. 509)

Tabled — June 16, 1977 by Senator Speers of Kennebec

Pending — Motion of the same Senator that the rules be suspended to reconsider Enactment

The PRESIDENT: Is it now the pleasure of the Senate that the rules be suspended? It is a vote.

Is it now the pleasure of the Senate to reconsider its action whereby this Bill was passed to be enacted? It is a vote.

On Motion of Mr. Greeley of Waldo, Placed on Special Highway Appropriations Table. Pending Enactment.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, I would ask that Resolution. Proposing an Amendment to the Constitution to Require the State to Reimburse Municipalities for at least 50% of Property Tax Exemption Losses. (S. P. 366) (L. D. 1227) which was tabled until later today be removed from the table.

The PRESIDENT: The Senator from Cumberland, Senator Merrill, now moves that the Senate take from the table later table L. D. 1227. Is this the pleasure of the Senate? It is a vote.

The Chair recognizes the same Senator.

Mr. MERRILL: Mr. President and Members of the Senate: I now offer Senate Amendment "A" (S-274) and move its adoption.

The PRESIDENT: The Senator from Cumberland, Senator Merrill, now offers Senate Amendment "A" and moves its adoption. The Secretary will read Senate Amendment "A".

Senate Amendment "A" Read.

The PRESIDENT: The Chair recognizes the same Senator.

Mr. MERRILL: Mr. President, this is the Amendment that I spoke of yesterday, which would remove any price tag from this bill, and have it apply only to programs that are enacted or increased after the passage of this Constitutional Amendment.

I might also say that this does one other thing, and that is it adds a slight element of flexibility for the Legislature in allowing in cases where the Legislature finds another way for the municipalities to make up this 50 percent of their revenue, for them to waive this requirement, so it adds a little extra flexibility, but essentially it does what I said I would do yesterday with this Amendment, and that is make it prospective and not retroactive.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Collins.

Mr. COLLINS: Mr. President, the good Senator, Senator Merrill, has indeed changed the substance of this Constitutional Amendment so that there is no further price tag on it, and he has indeed provided for additional flexibility through providing for legislative action in the event of increases in other revenue sources, and I am very happy to support the new proposal, the new Amendment.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I would like to pose a question, and that is whether or not the reference to the State Municipal Revenue Sharing program, which is in this Amendment, would, if adopted finally by the people, become the only reference to the State Municipal Revenue Sharing Program in the Constitution; and, secondly, what the effect would be upon a future change in that State Municipal Revenue Sharing Program if the Legislature would decide to eliminate it, or do anything else with it.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, the reference, I imagine, would be the only reference in the Constitution, although I have not reviewed it for that fact. It does not place a requirement, of course, that there be a State Municipal Revenue Sharing Program, but if there is one, it allows it to be considered as a factor in the question, and really it was put in there to add an increased flexibility to the Legislature and the approach it can take to handling the problems. My goal really was to allow as much scope of flexibility for the Legislature as possible, but to put a requirement on them, nonetheless, that there be some fiscal note to go with these added property tax exemptions, and so really this is just one other element of flexibility that would be added, it would not restrict the Legislature, in my opinion from amending the State Municipal Revenue Sharing Program, or doing anything else it wanted to do with it.

Senate Amendment "A" Adopted.

The Bill, as amended, passed to be engrossed. Sent down for concurrence.

(Off Record Remarks)

On Motion of Mr. Huber of Cumberland, Recessed until the sound of the Bell.

(Recess)

After Recess

Senate called to order by the President.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following additional papers from the House:

**Committee Report
Committee of Conference**

The Committee of Conference on the disagreeing action of the two branches of the Legislature, on, Bill, "An Act to Require Towns without Secondary Schools to Provide Transportation to Secondary Schools." (H. P. 1025) (L. D. 1273) have had the same under consideration, and ask leave to report: that they are unable to agree.

Committee on part of the Senate:

Ronald E. Usher of Cumberland

John D. Chapman of Sagadahoc

Committee on part of the House:

George A. Carroll of Limerick

Laurence P. Bagley of Winthrop

Which Report was Read and Accepted.

Sent down for concurrence.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, out of order and under suspension of the rules, I would move to reconsider our action whereby Bill "An Act Recognizing County Charters and Establishing County Charter Commissions" (S. P. 437) (L. D. 1648), was passed to be engrossed.

The PRESIDENT: The Senator from Androscoggin, Senator Mangan, now moves that the Senate suspend its rules and reconsider its action whereby L. D. 1648 was passed to be engrossed. Is this the pleasure of the Senate? It is a vote.

On Motion of Mr. Speers of Kennebec.

Tabled until Monday next. Pending passage to be engrossed.

The President laid before the Senate:

House Reports — from the Committee on Election Laws — Bill, "An Act Concerning Registration on Election Day." (H. P. 159) (L. D. 197) Majority Report — Ought to Pass in New Draft under same Title. (H. P. 1664) (L. D. 1864) Minority Report Ought to Pass, in New Draft under same Title. (H. P. 1665) (L. D. 1865)

Tabled — Earlier in the Day by Senator Speers of Kennebec

Pending — Motion of Senator Danton of York to accept Majority Report

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I oppose the Motion to accept the Majority Report and ask for a Division.

If you vote for the Majority Report, you are voting for what I consider to be some very worthwhile changes in the law, and yet I ask you to support the Minority. Let me briefly explain what they do. The Majority Report accepts the notion that we have and will continue to have voter registration on election day, but because election day registration has caused some pile-ups at the poll, the Majority Report says lets open up the closed period prior to the election so that we can also register new voters during the so-called closed period. It is a worthwhile point of view, and one that I applaud, and I think it will help to reduce the chaos on election day.

On the other hand, if you feel as I do, that it is wrong to have voter registration on election day, you will vote against the Motion to accept the Majority Report and subsequently vote to accept the Minority Ought to Pass Report which repeals the provision for registration on election day.

I realize that there is a very, very wide spread popular movement that says let us register all the voters we can by postcards, let's register them at the polls, let's register them on election day, let's do everything we can to get more and more people voting, even at the risk of subverting the process. I guess I realize that there is no real chance the Legislature will take this course of action this session. I think that voter registration on election day is probably here to stay, at least during this biennium, but I want to express my concern just because I feel I want to get it out.

We have a stable government. We have a reasonably law abiding government when it comes to election, but I have been in enough countries where the government has not been that stable so that I am extremely reluctant to create conditions under which widespread fraud, widespread subversion of our system can occur. I am not talking about taking a load of college kids down to the polls on the last day to support a candidate. I am looking down the road toward occasions when there may be civil unrest in the United States or in the State of Maine, and to put a significant number of people into the polls on election day in a fraudulent manner might be more of a reality than just a fear.

I guess it is for this basis, because of my real, real concern as to what could happen in the United States and the State of Maine under different circumstances, that I feel that the mad rush to make it easier and easier for people to vote is not necessarily the best way. Now, I think that I am enough of a politician to state that I really do not want to take anybody's rights away. I really do not want to take anyone's rights away, but I am willing to rest more heavily on the fact that as American citizens we also have responsibilities, and I am equally concerned that Americans today do not necessarily live up to their responsibilities as much as they should.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Mr. DANTON: Mr. President and Members of the Senate: This Bill came into the Election Laws Committee very early in the session, and we kept it there for many months. I would not like to see this issue become a Democratic or Republican issue.

As the good Senator said earlier, no matter what happens we are going to have registration on election day. I think the compromise here is to help the city and town clerks out and the peo-

ple that work on the Boards of Registration. As you all know, in November people just swarmed to the polls, went down on election day, signed up went to vote and those people did not really really and truly know how to handle it.

What we are attempting to do with this Bill now, like the good Senator did mention, is during the closed period to allow someone to go in and register to vote. This will free up the people on the Boards of Registration, to get the master list together for election day. On election day they will be handed a supplemental list, which they will take along with them to the polls. This compromise here is acceptable to the clerks, to the Boards of Registration, because they know, and I have told them so, I have had a meeting with them two or three months ago in Brunswick at the Storehouse. There was about 30 of them there. I told them right out if they thought that there was not going to be any registration on election day, they were just kidding themselves, and the best thing they could hope for was a compromise that would make it somewhat easier.

When we talk about fraud and that has been brought out time and time again, we have to remember in the First District that there was one screwball that decided he wanted to vote two times. Most usually, we cannot get people to the polls one time. This guy just wanted to prove a point. He went. He voted two times and then he went and bragged about it, and I guess he got convicted for breaking the law. That is the only known fraud. Maybe there are many others. I do not know it, and I am sure none of you in here can prove that there were, but the people that I want you to be concerned about when you vote today are the people that work in the city and town clerk's offices and the Boards of Registration. They are the ones that really have the big job on election day, because if this does not pass, you will just go back to the chaos that you had in November and this is a compromise. If it is not this compromise, I guarantee you that there will be nothing, because when it goes to the other Body that will be the end of it, and then it will stay just the way it is.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President, I want to make it very clear that if my point of view does not ultimately prevail, and I suspect it cannot prevail, I will very eagerly support the position of the Senator from York in accepting the Majority Report.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion by the Senator from York, Senator Danton, that the Senate accept the Majority Ought to Pass in New Draft Report of the Committee.

A Division has been requested.

Will all those Senators in favor of the pending motion, please rise in their places to be counted.

Will all those Senators opposing the pending motion, please rise in their places to be counted.

16 Senators having voted in the affirmative and 9 Senators in the negative, the Motion to accept the Majority Ought to Pass in New Draft Report does prevail.

The Bill (H. P. 1664) (L. D. 1864) Read Once. House Amendment "C" Read and Adopted.

On Motion of Mr. Merrill of Cumberland, and under suspension of the rules, the Bill Read a Second Time.

On Motion of Mr. Speers of Kennebec.

Tabled for One Legislative Day. pending passage to be engrossed.

The President laid before the Senate:

House Report — from the Committee on Human Resources — Bill, "An Act to Establish