

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Eighty-Seventh Legislature

OF THE

STATE OF MAINE

1935

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Mr. Friend from same Committee on "Resolve authorizing the Forest Commissioner to Convey certain lands to the Highway Commission", (S. P. 117) reported that the same ought to pass.

Which reports were severally read and accepted and the bill and resolves laid on the table for printing under the joint rules.

Passed to be Engrossed

Bill "An Act Relating to Temporary Loans by Penobscot County Commissioners." (H. P. 601) (L. D. 644)

"Resolve in Favor of Havener Webster, of Orland." (H. P. 1439) (L. D. 649)

"Resolve for Screening Lake Thompson, in the County of Oxford." (H. P. 1441) (L. D. 650)

"Resolve in Favor of O. L. Veague, of Castine." (H. P. 9) (L. D. 645)

"Resolve Relative to Closing Goddard Brook, Little." (H. P. 567) (L. D. 646)

"Resolve Relative to Closing Goddard Brook, Big." (H. P. 569) (L. D. 648)

Orders of the Day

On motion by Mr. Fernald of Waldo, the Senate voted to take from the table, Senate Report from the Committee on Judiciary, Majority Report "Ought Not to Pass," Minority Report, "Ought to Pass," on Resolve Proposing an Amendment to the Constitution relating to the election of the Attorney General (S. P. 244) (L. D. 206), tabled by that Senator on February 22nd pending the acceptance of either report.

Mr. FERNALD of Waldo: Mr. President and members of the Senate, the proposition before us today is a constitutional amendment providing that we should change our method of selection of our Attorney General. Under our present law the Attorney General of Maine is elected by the Legislature, as every member of the Senate is well aware. The proposed constitutional amendment would provide that the Attorney General of Maine, who is the legal advisor of the Governor and of the heads of the departments and of the Legislature, should be appointed by the Governor.

We have been here nine weeks and the other evening I took the time to go over the six hundred and

fifty printed bills that you have before you in your document books and I failed to find in any one of those printed bills, outside of a few measures that I have attempted to pass in this Legislature, any measure introduced by any Senator that proposed a decrease in the taxation in the State of Maine, decreasing the burden of taxation on the home and the farm or decreasing our state tax at all; no attempt on behalf of any member of the Senate to reduce the taxes now levied upon the people of Maine. But I did find this: I found a proposition to reinsert that racket known as "the paper plate racket" that would cost the people of Maine and the State of Maine at least two hundred thousand dollars a year. I found the proposition that wished to place upon the hunters and fishermen of Maine another dollar annual burden. I found a proposition to set up a director of school finances with another salary attached. I found that we in the Senate wanted to set up a special investigator on the transportation of poultry at a cost of three thousand dollars a year. And I found also a five million dollar bond issue. And I also found a proposition to set up some more social welfare work. And I found a proposition to build a bridge, a very expensive bridge, at the expense of the State. And I found a proposition to expend nineteen thousand five hundred dollars yearly to set up a public employment office. And I found two thousand dollars appropriated to celebrate the foundation of the County of York. And I found a ten thousand dollar appropriation to create a bureau of research to take care of the Republican "lame duck." And I found a proposal to set up a series of tax administrators at the expense of the State. And I found another proposition to foster upon the State of Maine every state pauper in the State of Maine. And I found another proposition to appoint a commission on the assessment and collection of real estate taxes, at another thousand dollars.

Now, I think that if I sense the feeling of the people of Maine, what they want is some relief from taxation and they want us to make our government more useful, more efficient and more responsive to their will. Now, the proposition before us is not a new one. In 1930 there was a research made in regard to

our government in Maine under the direction of the National Institute of Public Administrators during the administration of Governor Gardiner. And what did that Bureau do relative to the office of Attorney General? I will quote from this report at the top of page 211. On the previous page they have gone into some of the history back of it, but they reported as follows: "As such, he"—meaning the Attorney General—"should be appointed by and held directly responsible to the Executive and we recommend constitutional amendment to this end." And that is what you have before you today. I find that the National Municipal League in 1926 made a study of state government and through their investigation they set up what they term a model state constitution and in that state constitution that they suggest, they suggest that the Attorney General should be appointed by the Governor and held responsible to the Governor, in line with the report that I have just read you.

Now, what is the practice in other states on this proposition? You know, Maine prides itself on being unique regardless of whether it is right or wrong. I suppose that when I get through debating this question, which will be very shortly, somebody will get up and say that because we in Maine, where we have as our motto "I direct", elect our Attorney General by the Legislature, being the only state in the Union to do that we should get a great deal of advertising from it. And that the inefficiency of the Attorney General, as it must work out to be because of the system, that inefficiency is worth the cost because of the advertising we get from it. That is the traditional argument that I hear presented when any change of whatsoever nature is proposed. For instance, Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, and Illinois elect their Attorney Generals. In Indiana he is appointed by the Governor. In Iowa, Kansas, Kentucky, Louisiana, he is elected by the people. In Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, and Nevada, elected by the people. In New Hampshire and New Jersey he is appointed by the Governor. In New Mexico, New York, North Carolina, North Dakota,

Ohio, Oklahoma and Oregon, elected by the people. In Pennsylvania, appointed by the Governor. In Rhode Island, South Carolina, South Dakota, by the people. In Tennessee, it is appointed by the Judges of the Supreme Court. In Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin and Wyoming, election is by the people. And we find that the only state in the Union that still sticks to the Legislative appointment of the Attorney General is the State of Maine.

Now, there is a little theory back of this that I would like to read to you that won't do any harm. I believe that the theory of permitting the Legislature to appoint the Attorney General is wrong. And I will quote in that connection from John Stuart Mill, and John Stuart Mill, as some of you will recall, was a member of the British Parliament from 1858 to 1868, and I will read very briefly from his book on "Representative Government". And I will say, gentlemen and lady member, it is time we got back to representative government in the state and in the nation. I will read briefly from John Stuart Mill. "But while it is essential to representative government that the practical supremacy in the state should reside in the representatives of the people, it is an open question what actual functions, what precise part in the machinery of government, shall be directly and personally discharged by the representative body. There is a radical distinction between controlling the business of government and actually doing it. Numerous representative bodies ought not to administer. But a popular assembly is still less fitted to administer, than a select board, or to dictate in detail to those who have charge of administration. Even when honestly meant, the interference is almost always injurious. Every branch of public administration is a skilled business, which has its own peculiar principles and traditional rules, many of them not even known, in any effectual way, except to those who have at some time had a hand in carrying on the business, and none of them likely to be duly appreciated by persons not practically acquainted with the department. At its best, it is inexperience sitting in judgment on experience; ignorance on knowledge. The prop-

er duty of a representative assembly in regard to matters of administration is not to decide them by its own vote, but to take care that the persons who have to decide them shall be the proper persons. Even this they cannot advantageously do by nominating the individuals." That is the word of John Stuart Mill, the great statesman and an independent in politics.

Now, from a practical point of view I never have for a moment thought that it would be necessary to argue to a group of lawyers, at least, that when we as a state elect a Governor and then put upon him duties and functions which necessitate his having to have legal advice we should then superimpose upon that Governor, whether he is a Democrat or a Republican, the legal advice of somebody that he may not possibly have confidence in. And what I say is no reflection upon any Attorney General who has ever been elected by the Legislature in Maine. But the proposition is this: If a man is to be Governor his chief legal advisor should be of his own selection and you, gentlemen and lady member of the Senate, if you were to seek legal advice you would want to seek legal advice from the man or woman in the legal profession that you had confidence in. And I think it is unfair to Governor Brann to superimpose upon him, as our system does, a Republican Attorney General. I think it is unfair for a man who is sufficiently qualified to be Attorney General to be required to troup all over the State of Maine to get you to vote for him for Attorney General for whatever reasons he may see fit to superimpose upon your opinions. I do not think it is within the keeping of the dignity of the office. I do not think that because a man is sufficient capable to travel all over the State and button-hole every Legislator that that necessarily means that he would be a good Attorney General of Maine. I think it is unfair to the Governor to give him a Republican Attorney General. I think it is unfair also to any Republican Governor to possibly superimpose upon him as his Attorney General a member of his party who might not be of the same—well, the same branch of the Republican party or the same wing of the Republican party. I think the theory is wrong. I think the practice is wrong and I think it

would be well if the State of Maine got in line on these things.

Now, that is just a small matter in our state government, the matter of the Attorney General, but when we find the various functions of our government out of line and various branches of our government out of line we could—perhaps it may not be good politics—but we could change to good governmental administrative policies. I think it is time that we took hold of some of these minor matters and remedied them because an accumulation of ineffectual methods of administration leads to chaos in government and leads to just the situation that we in the State of Maine are in today, burdened with taxes, burdened with office holders and burdened with applications to this body for relief on various matters, applications that we cannot grant because we are now overburdened with taxes, taxes in part caused by unnecessary functions of government. If we should drive out of the governmental service all unnecessary things we could very easily take care of the necessary functions of government.

And it is my hope that perhaps today we may be able to have made a start and submit this question to the people and let them say whether or not they do not think that when they elect a man Governor they are not willing to give him also the authority to select his advisor. I thank you.

Mr. BURNS of Aroostook: Mr. President, that there may be no misunderstanding, I would like to say at the outset that the minority report, "ought to pass" was signed by but one member of the Judiciary Committee, which committee considered this matter. The majority report was signed by nine members. At the time the bill was brought up for discussion very little was said about it, so in expressing the sentiments which I have in opposing this measure, I am expressing my own sentiments and not those of the members of the committee.

The office of Attorney General is of ancient origin. In the early days, under the common law in England, it was appointed by the Crown. In later days under the common law it was appointed by the Crown but under recommendation of the Government. The suggestion is made that the Governor make the appointment and that appears in the two bills,

one relative to the Constitutional change and the other in the act itself. Now, there were reasons in the old days of England, perhaps, for the appointment to be made by the chief executive of the state, because his powers were autocratic, but as a more representative form was evolved, the people decided that the government, which represented the people, should have something to say about it. That is the theory here in Maine. We live under a Constitutional form of government. We do not live under a bureaucracy or autocratic form of government.

If some suggestion was made that the people should elect the attorney general, I might subscribe to it. But we are not, we are to choose between those two alternatives,—we are to choose whether he should be appointed by the Governor or whether that office should be filled by the legislature in joint session assembled.

Now, if under our statutes, the attorney general acted only as the personal advisor of the executive there might be some merit in the proposed suggestion, but an examination of the statutes will show that the attorney general of the State of Maine not only acts as counsel for the chief executive but he also acts as counsel to the Secretary of State and the Treasurer of State and the heads of the various departments, and last but not least, he also acts as adviser to the legislature and he may at any time call upon him to render an opinion.

Therefore, the duties of the attorney general are twofold;—he is responsible to the chief executive who represents the executive branch of our government, and also responsible to the legislature, another branch of our government. So I say under our system of government it is better to have this office filled by the legislature who represent the people, or by the people themselves.

Now, there has not been any public cry or clamor regarding this proposed change. I have seen no press notices advocating it, nor have I heard that the chief executive recommended this change. The report as read by the Senator from Waldo (Senator Fernald) said a recommendation was in order to have the attorney general named by the Governor but it gives no reason, but the reason I have given here seems to me to be sufficient to continue the

election of that officer in the future as in the past. It must have been a good system because we have had some very distinguished men filling this office, such men as Chief Justice Peters of the Supreme Judicial Court; Thomas B. Reed who was afterwards Speaker of the Federal House; Lucilius Emery, who was Chief Justice; Orville B. Baker, who was one of the most distinguished lawyers in the State of Maine; Justice Powers who served as Associate Justice of the Supreme Judicial Court; Judge Sturgis, Chief Justice Pattangall; and in addition to that, there was another man who has made a name for himself because he is now a member of the highest court next to one in the state or nation, and I refer to Judge Scott Wilson, who now serves in the Circuit Court of Appeals of the United States for the first district. Certainly such a system that put these men in office must not be wrong, and it seems to me for the reasons that I have already stated that the majority report of the Judiciary Committee, "ought not to pass" should be accepted.

Mr. ASHBY of Aroostook: Mr. President, I am probably dense but I would like a little information if I may have permission to ask a question of the Senator from Waldo, Senator Fernald.

The PRESIDENT: The Senator from Aroostook, Senator Ashby, wishes to ask a question of the Senator from Waldo, Senator Fernald, through the Chair, and that Senator may answer if he desires.

Mr. ASHBY: Mr. President, just what bearing, if any, does the question of whether the attorney general shall be appointed by the governor or elected by the legislature have on the increase or decrease of taxation?

Mr. FERNALD: Mr. President, I will say for the benefit of the Senator from Aroostook that in the proper selection of an attorney general by one who is in sympathy with the Governor,—as you will recall, as every governor comes in he appoints certain department heads. If we had an attorney general who was in sympathy with the present governor I am afraid that it would not be necessary for the Liquor Commission to appoint legal outside aid, and I find that certain of your department heads who are now of a different complexion than the attorney general would look with

more favor upon information from an attorney general who was appointed by the governor. In other words, you would do away with the duplication of effort and you would have fewer attorneys hired by the State and it would decrease the cost to the State of legal services. And then you would not have the necessity, for instance, in the special session of the legislature when we took up banking legislation, the Governor found it necessary to go outside and spend several thousand dollars in getting legal advice, legal advice that I am inclined to think he would not have sought and which would not have had to have been paid for by the State of Maine, had he had an attorney general of his own party. That was necessary because of the confidential nature of the information that the Governor desired to have. I think you would find it would reduce the cost of legal services to the State of Maine. Does that answer the question?

Mr. ASHBY: Not entirely. In all the cases you cited, all the bills you found, they were clearly the function of the legislature and if they should pass such laws—

Mr. FERNALD: I do not understand what you mean.

Mr. ASHBY: In your case, it is clearly a case of supposition and you do not know it is so, and it is simply a theory on your part and it would entail more or less cost to the State of Maine to try the experiment. It might work out as you say and it might not. I cannot see for the life of me how there is any absolute proof that this would affect the taxation of Maine to the slightest degree. I may be dense again, and sometimes I am brutally frank but it would almost seem to me that this supposition could be construed as a clear reflection on the attorney general who has been elected by the legislature. There are several bills here that would seem to indicate that we were a bunch of dummies. I am not ready to admit it just yet, but I cannot see for the life of me how you or anybody else could show this would be absolutely true, that it would decrease the taxation of Maine provided the Governor appointed the attorney general. Personally, I am opposed to a concentration of power and it would almost seem to me that 184 are more capable of picking a man than one is, regardless of how brilliant that man may be.

Mr. FERNALD: Mr. President, I would say to the gentleman from Arcostook (Senator Ashby) that it would seem to me that if our system of selecting the attorney general was such a splendid system, it would seem that possibly some of the other states in the Union would try it. I am inclined to think one of the big troubles in our state government today is that,—at least it must impress itself upon any member who has been in the legislature for any considerable length of time and who has been in the State House for any considerable length of time—that as he looks on the right or as he looks ahead of him, or even looks behind him or on the left, he sees duplication of effort in the activities of the State, duplication that is unnecessary and duplication that the taxpayers of Maine are paying for. I am sure that I do not believe that it is necessary for every department and every bureau connected with the State Government to have a personal attorney, and I believe that this method of selection, which is the approved selection, would be helpful in mitigating, at least to a certain extent, that evil.

It has been said here today that there were no reasons given for the change. I do not care to burden the gentleman from Arcostook, Senator Burns, with reading the reasons why this change was proposed because I know that the committee, the Judiciary Committee, has requested a copy of this report, and if the Senator in his leisure will turn to page 210, he will find a complete page of well thought out reasons why they, the National Institute of Public Administration, felt that was the proper manner of selecting the attorney-general, and if the Senator (Senator Burns) sometime before he goes home from this session or before he comes back here for another session, will turn to Professor Holcombe's "State Government in the United States", and will turn to the Model Constitution in the back of the book, page 579, he will find other reasons outlined.

I think the difference in opinion existing between myself and Senator Burns is this, that my theory of government is this: If we elect a man governor we want to hold him responsible and then we will know at the end of two years whether we want to re-elect him or not, and there will not be this mysticism and the cloak of uncertainty that veils the man in office. The people will know whether he is a good govern-

or or whether he has fallen down in the affairs of the state government.

Mr. ASHBY: Mr. President, the gentleman from Waldo, Senator Fernald, persists in harping upon other states. I think according to his own report that there are only four states, as I remember it, where the attorney general holds office by appointment. Like my brother from Aroostook (Senator Burns) if this was a proposition to elect by popular vote, I think I would be in favor of it. Os it is, I hope the minority report will not prevail.

The PRESIDENT: Is the Senate ready for the question?

Mr. FERNALD: Mr. President, I ask for a division.

The PRESIDENT: The question is on the motion of the Senator from Waldo, Senator Fernald, that the Minority Report "Ought to Pass" be accepted, and the Senator from Waldo, Senator Fernald, asks for a division.

A division of the Senate was had. Two having voted in the affirmative and twenty-four opposed the motion to accept the Minority Report "Ought to Pass" did not prevail.

Thereupon, on motion by Mr. Burns of Aroostook, the Majority Report "Ought not to Pass" was accepted.

From the House, out of order:

Ordered, the Senate concurring, that the Clerks of the Joint Standing Committees be and hereby are directed to file with the Secretary

of the Senate and with the Clerk of the House a report of the number of bills and resolves referred to their committees and their disposition, the first report to be filed forthwith as of February 22nd, and weekly reports to be filed on Friday of each week.

In the House, read and passed.

In the Senate, on motion by Mr. Schnurle of Cumberland, the order was laid upon the table pending passage in concurrence.

On motion by Mr. Schnurle of Cumberland, the Senate voted to take from the table, Joint Order relative to reports of Clerks of Joint Standing Committees, just previously tabled by that Senator pending passage in concurrence.

Mr. SCHNURLE of Cumberland: Mr. President and members of the Senate, I can see no particular reason for this. I don't know whether it has ever been done before. It hasn't to my knowledge. I don't know the value of it. I do know it would necessitate a tremendous amount of work and I believe it is entirely unnecessary. I move for the indefinite postponement of the order.

Thereupon, the order was indefinitely postponed in non-concurrence.

Sent down for concurrence.

On motion by Mr. Blaisdell of Hancock,

Adjourned, until tomorrow morning at ten o'clock.