

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

**OF THE**

*One Hundred and Third  
Legislature*

**OF THE**

**STATE OF MAINE**

**Volume II**

**May 10 to June 15, 1967**

**KENNEBEC JOURNAL  
AUGUSTA, MAINE**

Representatives:

DENNETT of Kittery  
WATTS of Machias  
CORNELL of Orono  
RIDEOUT of Manchester  
PHILBROOK  
of South Portland

The Minority of the same Committee on the same subject matter, reported that the same Ought to Pass.

(Signed)

Senators:

WYMAN of Washington  
STERN of Penobscot

Representatives:

MARTIN of Eagle Lake  
STARBIRD  
of Kingman Township

Comes from the House, Majority Report—Ought Not to Pass read and Accepted.

On motion by Mr. Lund of Kennebec, the Senate voted to accept the Majority Ought Not to Pass Report of the Committee in concurrence.

#### Divided Report

The Majority of the Committee on State Government on Resolve, Proposing an Amendment to the Constitution Providing for the Appointment of the Attorney-General by the Governor. (H. P. 329) (L. D. 463) reported that the same Ought Not to Pass.

(Signed)

Senators:

WYMAN of Washington  
LUND of Kennebec

Representatives:

DENNETT of Kittery  
PHILBROOK  
of South Portland  
WATTS of Machias  
CORNELL of Orono  
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STERN of Penobscot

Representatives:

STARBIRD  
of Kingman Township  
MARTIN of Eagle Lake

Comes from the House, Majority Report—Ought Not to Pass Read and Accepted.

The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN of Washington: Mr. President, I move that we accept the Majority Ought Not to Pass Committee Report.

The PRESIDENT: The Senator from Washington, Senator Wyman, moves that we now accept the Majority Ought Not to Pass Report of the Committee.

The Chair recognizes the Senator from Cumberland, Senator Snow.

Mr. SNOW of Cumberland: Mr. President and Members of the Senate: I rise in opposition to accepting the Ought Not to Pass Report. We have heard today many arguments concerning the importance of having the Governor appoint people to serve with him. I think in this instance there was an illustration last Fall where we had a Governor of one party and an Attorney General from another party. As I recall it, the Governor was attempting to adjourn a council meeting, and the council was of one party, and the Attorney General was of the same party, and it struck me at that time that this must have been difficult for the Governor, in view of the fact that he should regard the Attorney General as a member of his team in political matters as well as in other matters. Therefore, I would hope that when you vote you would not vote to accept the Ought Not to Pass Report.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Androscoggin, Senator Couturier.

Mr. COUTURIER of Androscoggin: Mr. President, when the vote is taken I request that it be taken by the "Yeas" and "Nays."

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

Mr. HARDING of Aroostook: Mr. President and Members of the Senate. This particular constitutional amendment would be very necessary if we intend to have our District Attorney System which has

so often been suggested is necessary.

We are now moving into the time when we need highly trained district attorneys rather than county attorneys, and we have run into some problems. I would suggest that we are going to run into even more of these problems in the future with our elective system as far as our county attorneys are concerned.

I think everyone is agreed that your Attorney General should be in charge and should be responsible for prosecutions in this State. He is at quite a disadvantage, however, when he has to work with people who are elected and who are not necessarily of his own party. In other words, he has to have some control. If you are going to have the Attorney General to appoint these district attorneys, which I think was suggested, you should have an attorney general who is answerable to the people.

As you know, under the division of our constitutional powers it is up to the Executive to enforce the laws. It is not up to the Legislature to enforce the laws. The Legislature makes the laws. Under this proposed reform, which I think everyone is agreed upon—well, I won't say everyone is agreed upon—but there is a large measure of agreement on it, that the Attorney General ought to be appointing these district attorneys. If you have the present system you have the Executive who would not have the power to enforce the laws; that he has the Legislature in the position actually of enforcing the laws, which is very unsound because we are not here to do that function.

So in view of this very necessary thing which has come up, I think that this constitutional amendment is most appropriate at this time, and I would hope that you would make this possible by voting against the motion of the Senator from Washington, Senator Wyman.

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

Mr. LUND of Kennebec: Mr. President and Members of the Senate: I would like to speak brief-

ly regarding some of the points which have been made. I am rather surprised at some of the arguments that have been made in support of this constitutional change which is proposed.

We have at one point the suggestion made that the Attorney General should be a member of the Governor's team. I find this very troubling in considering some of the duties—just to mention one, for instance, when the Attorney General renders opinions when requested to by the Legislature, and rendering opinions in other matters touching upon the interests of persons throughout the State. It seems to me that in no sense of the word should the Attorney General be the Governor's man, or the Governor's mouthpiece, or anything like that at all, but rather a person who is responsible to a broader segment of the State than just the person who appointed him.

I am also surprised at the suggestion by the good Senator from Aroostook, Senator Harding, that a substantial segment of the bar was in favor of appointing district attorneys. I wasn't at all aware that was so, and I would suggest that if this is so that it hasn't been shown by any poll that I am aware of. I think, quite to the contrary, the people of the State and members of the bar feel that our prosecuting officers should perhaps not be appointed by any single person, but is responsible to the people and should be elected by them.

Regardless of the merits of this, I think that the arguments that have been made in support of it certainly are far wide of the mark in indicating what is the proper function of the Attorney General.

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

Mr. HOFFSES of Knox: Mr. President and Members of the Senate: As a former agricultural farmer, I would be a little hesitant to debate an issue of the duties, the authorities and the powers of the Attorney General, or to debate very extensively with the learned members of the bar here today.

Two years ago when these same matters were brought up I did a little bit of research. It was my task to defend the position of the Executive Council, and I did learn a little of the functions. I would like to make some comment in regard to what the good Senator from Aroostook, Senator Harding, said about the Governor's appointment of the Attorney General, that it would be better than the Legislature doing this.

The Legislature now has the prerogative and the duty of electing the Attorney General as well as these other governmental officers. Now, I cannot see wherein the appointment of these officers by the Governor is going to be so much more efficient and so much more progressive. I would feel that if these particular offices are filled by the Legislators themselves then they are being more representatively elected than they are by one individual. The members of the Legislature are answerable to the people. As has been pointed out, those members of the Legislature who wish a decision can go to the Attorney General and get that decision.

Now, if we are to have a conflict of political philosophies between the office of the Attorney General and the legislative body, I can envision where we might have some real difficulties, and I would not at the present time consider that we should digress from the present method which we have of electing the Attorney General, making him responsible to the Legislature, and the members of the Legislature in turn responsible to the people of the State of Maine.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Brewer.

Mr. BREWER of Sagadahoc: Mr. President and Members of the Senate: I have been listening with a great deal of interest to all of these bills containing constitutional amendments. I believe the proof of the pudding is in how much interest the people of the State of Maine have in making constitutional changes.

As an individual, I have had no mail, no correspondence, in relation to any of these bills. It was never a campaign issue in my area. They weren't even mentioned during the last campaign. So I would suggest to you that maybe the name of the game is not politics, but the name of the game is publicity, and that is what the minority party today is trying to build up. I would further say in relation to the rules of the game that it seems to me it makes a great deal of difference who the umpire is.

The PRESIDENT: The Senator from Cumberland, Senator Snow, has requested that when the vote is taken that it be taken by the "Yeas" and "Nays." As many as are in favor of the vote being taken by the "Yeas" and "Nays" will stand and remain standing in their places until counted.

Obviously a sufficient number having arisen, a roll call is ordered.

The Chair recognizes the Senator from Franklin, Senator Mills.

Mr. MILLS of Franklin: Mr. President and Members of the Senate: This measure comes closer to the practice and experience, of course, of the lawyers than any of these others. Although some of us have not sat on the committee which deliberated on these other measures, we do claim perhaps an area of knowledge and a basis for an opinion which might be expressed without any desire for notoriety, which has just been suggested, but to clear one—shall we say—conscience on a thing of this kind.

I feel very strongly, gentlemen, that anyone ought to be able to hire his own lawyer. Anyone in private business has that right, and we lawyers will fight rather than see you switch to show any thinking other than that kind. We feel—I think I can speak for the profession—we feel that if a bank is going to hire a lawyer it isn't going to have another bank tell them who to hire. We know that if the Knights of Columbus are going to have a lawyer do some work that they aren't going to ask the Masons who it should be. And we

think that if a Democratic Governor has some legal problems that he ought to be able to get his own counsel. I think it is very much as simple as that.

We have an excellent precedent, may I suggest, in the United States Government, which we all love and revere. No one would think of suggesting that the Attorney General of the United States, that cabinet officer, and that leading officer in the Executive Branch of the Government, should be designated by the Legislative Branch. And no one should seriously really think about preserving that anachronism in the government of the State of Maine.

As I say, these others we don't claim so much special knowledge about or so much experience to lead us to an intelligent opinion. I was beginning to think there was a break in the dike a few minutes ago when I saw the great Senator from Washington, Senator Wyman, going over the traces on the measure relating to a Lieutenant Governor.

I think another thing we want to look out for in this type of activity which we saw here today is mass thinking and regimented thinking. I am going over the line, and if I am the only one I don't care, if I am the only Republican to vote with the Democrats here. I know they are right. In my own mind, I know they are right, and I couldn't vote any other way.

The PRESIDENT: Is the Senate ready for the question?

The pending question is on the motion of the Senator from Washington, Senator Wyman, that we accept the Majority Ought Not to Pass Report. As many as are in favor of accepting the Majority Ought Not to Pass Report will answer "Yes" when their name is called, and those opposed to the motion, "No." The Secretary will call the roll.

#### ROLL CALL

YEAS: Senators Albair, Anderson, Barnes, Beckett, Berry, Brewer, Curtis, Ferguson, Good, Greeley, Hildreth, Hoffses, Johnson, Katz, Lund, MacLeod, Ross, Sewall, Sproul, Viles, Wyman, Young, and President Campbell.

NAYS: Senators Boisvert, Couturier, Duquette, Farley, Girard, Harding, Mills, Norris, Reny, Snow, Stern.

A roll call was had. 23 Senators having voted in the affirmative, and 11 Senators having voted in the negative, the Majority Ought Not to Pass Report of the Committee was accepted in concurrence.

#### Divided Report

The Majority of the Committee on State Government on Resolve, Proposing an Amendment to the Constitution to Abolish the Council and Make Changes in the Matter of Gubernatorial Appointments and Their Confirmation. (H. P. 330) (L. D. 464) reported that the same Ought not to Pass.

(Signed)

Senators:

WYMAN of Washington  
LUND of Kennebec

Representatives:

DENNETT of Kittery  
PHILBROOK

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The PRESIDENT: The Chair recognizes the Senator from Washington, Senator Wyman.

Mr. WYMAN of Washington: Mr. President, I move we accept the Majority Ought Not to Pass Report of the Committee.

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