

# 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

The pending question before the Senate is the motion of the Senator from Penobscot, Senator Tanous, that the Senate accept the Minority Ought to Pass in New Draft Report of the Committee on Bill, "An Act Relating to Switch Targets under Railroad Law." As many Senators as are in favor of accepting the Minority Ought to Pass in New Draft Report of the Committee will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. Fifteen Senators having voted in the affirmative, and fourteen Senators having voted in the negative, the Minority Ought to Pass in New Draft Report of the Committee was Accepted in non-concurrence, the Bill in New Draft Read Once and Tomorrow Assigned for Second Reading.

The President laid before the Senate the second tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on State Government on Bill, "An Act Appropriating Funds for Overtime in State Employment and Establishing Hours for a Work Day and a Work Week for Certain Employees." (H. P. 278) (L. D. 367) Majority Report, Ought Not to Pass; Minority Report, Ought to Pass.

Tabled — March 25, 1971 by Senator Johnson of Somerset.

Pending — Acceptance of Either Report.

On motion by Mr. Harding of Aroostook, retabled and specially assigned for April 1, 1971, pending Acceptance of Either Report.

The President laid before the Senate the third tabled and specially assigned matter:

SENATE REPORTS — from the Committee on State Government on Resolution Proposing an Amendment to the Constitution Providing for the Appointment of the Attorney General by the Governor, (S. P. 284) (L. D. 840) Majority Report, Ought Not to Pass; Minority Report, Ought to Pass with Committee Amendment "A" — Filing S-43.

Tabled — March 25, 1971, by Senator Berry of Cumberland.

Pending — Acceptance of Either Report.

Mr. Kellam of Cumberland then moved that the Senate Accept the Minority Ought to Pass as Amended Report of the Committee.

The PRESIDENT: The Senator has the floor.

Mr. KELLAM: Mr. President and Members of the Senate: This particular bill, while it is usually characterized as a governmental reform bill or something of that nature, leading one to believe that it has partisan political implications, it is my feeling that the selection of the attorney general under the present system is probably the worst method that could be devised.

Maine is the only state that does select its attorney general in this manner, that is, by virtue of having the legislature meet in joint convention to vote upon the person who will be the attorney general for the next two years. It seems to me that the selection is made by a system which becomes somewhat cloudy, to say the least, as to equating the relative merits of those who might be selected. It has become, particularly in recent years, something of a consolation prize among candidates within the party that holds the majority in the legislature.

We have somewhat lost sight of the need for legal advice within the executive department. While it may be all right to select some people in this way for administrative tasks, it strikes me that by the peculiar nature of the advisor or attorney for the executive department, that this person should be a man of the choosing of the chief administrator of the state.

Now, we are all well aware that this is the system used in the federal government, and it has worked out very well. The attorney general for the President of the United States is always a man whom the President has complete confidence in, who he approaches with problems, and it has worked out well. I believe that both parties would agree on that.

The attorney general for the State of Maine, however, has not been necessarily of the party of the governor and, even if of the party of the governor, not necessarily a man of his first choice. The attorney general should be a man in whom the governor has confidence, who does advise the governor and who does reflect the governor's opinions on various matters.

Now, we know that the governor has the ultimate responsibility for the administration of the laws of the State of Maine, and in that regard he should be able to select the attorney who is going to act for him.

There is no one of us, if we were conducting a business as large as the State of Maine, who would not want an attorney of our own choosing. Consequently, I would hope that we would move this constitutional amendment along and give it some thought, without having any regard to the present incumbents of these particular offices because, obviously, this is not the question before us. By the time the bill goes into effect we may well have different parties in the respective offices and, as far as I am concerned, I would just as soon forego the need for the change during the present incumbency of the governor if, in fact, we could pass this constitutional amendment.

So when the vote is taken I would like to have a division vote, and I would like to have the members realize that this is purely and simply a method of selecting an attorney to act for the executive branch who will reflect the duties and obligations that are on the governor and, although we may very well have very able and capable attorneys general, the present system is a very poor one indeed.

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

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: In urging you to vote against the motion of Senator Kellam to accept the Minority Ought to Pass Report, I would like to point out several important differences of

opinion that exist between the two schools of thought.

I think that Senator Kellam really put his finger on the major flaw of the bill, and that is that he interprets that the attorney general exists to do the work of the chief executive of the state, and here is where I think we completely leave his thinking. The attorney general represents the State of Maine and all its residents. He represents the three branches of government, the legislative, the executive and the judicial and, as such, the attorney general is a very, very important person acting for the welfare of the state as a whole.

I think the concept of having the attorney general be the appointee of the governor epitomizes the dangers we are falling into by building up the executive into too powerful an office.

As Senator Kellam has pointed out, we have had outstanding attorneys general. I know of no better one than that outstanding Democrat, Dick Dubord.

I think this is the problem. It is possible that there may be other ways of selecting the attorney general. I certainly don't say that the legislature is the only means of doing it, but I do point out to the members of the Senate that the legislature has established an enviable record for selecting very, very capable attorneys general. It cannot be held up that under the guise of reform we should discard a proven method of running the department of the attorney general. Too often we do say that change is for the good. I think here that change would not be for the good along the means proposed in this measure, and I urge you to vote against the pending motion.

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

Mr. HARDING of Aroostook: Mr. President and Members of the Senate: I am always tempted after I hear my good friend, the Senator from Cumberland, Senator Berry, speak on a matter to comment because his remarks are always interesting.

I am sure that the high school students who are here will recall that basically in our government,

and they learned this in first - year civics, that we have three branches of government: the executive, the legislative and the judiciary. The attorney general certainly does not represent the judiciary because the judiciary interprets the law. He should not represent the legislature because the legislature makes the law. He should, however, represent the executive because the executive has the responsibility to enforce the laws of the state, and this is the procedure which is used in almost all of the states.

For a moment I would like to tell you of an incident that will show you how unfair the existing set - up is, and it casts no reflection on any of the occupants of the offices, but this is just one little incident. I remember it was at the 103rd Legislature that the governor had taken a certain action, and on the way down I heard on the radio that the attorney general had ruled that that action was illegal. So the legislature of this state asked the Supreme Court to rule on that fact, as to whether or not the action the governor had taken was illegal. When I got here I asked for an appointment with the governor, and I asked him if the attorney general had submitted his opinion to the governor. The governor advised me that he only knew about it what I knew, of what came in on the radio.

This matter was submitted to the Supreme Court on a brief. The governor had no one to represent him. He had to retain himself, from his private funds, people to represent the State of Maine on that particular point. As an aside, I might mention that the Supreme Court of Maine ruled that the attorney general's opinion was incorrect and that the governor was correct. But the humiliating part of it is that when the governor of this state, who is elected by all of the people, needs advice and counsel he must seek it from private counsel rather than from the attorney general, who should represent the people of Maine.

This is a very, very bad set-up. It is not duplicated in any other state in the union, and I would

hope there would be a change. So when the vote is taken I would ask that it be taken by the "Yeas" and "Nays".

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ of Kennebec: Mr. President and Members of the Senate: What the Senator from Aroostook, Senator Harding, has so graphically and so beautifully pointed out to us this morning is not an error in the system, but in the implementation of the system.

I find it difficult to believe that communication between the governor and his attorney general, after a couple of years of incumbency, hasn't been better established so that the communication works.

I take a look at other states, and noticed in this morning's paper that a former governor of another state has been convicted of an impropriety. It has never happened here in the State of Maine, not to say it couldn't happen, and I think that if indeed the attorney general is the lawyer of all the people that he must be the lawyer of all the people, even with respect to the executive department, and maintain an independent stature from the judiciary and from the executive.

I think that is what our present system does. It may be that a change in procedure might be in order, but change for change's sake, and I am sure the Senator from Aroostook, Senator Harding, would agree with me, is not desirable at the legislative level. Consequently, I shall vote with relish against this constitutional change.

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

Mr. BERRY of Cumberland: Mr. President and Members of the Senate: Of course, one of the more empty arguments that was used by my good friend, the Senator from Aroostook, Senator Harding, in his dissertation was that I was in error in saying that the attorney general worked with all three branches of government.

He either was absent or was inattentive when I gave what I felt was an expression of thanks to the Department of the Attorney General quite recently for the outstanding work which that department did for the legislature in overseeing, correcting and doing an awful lot of homework on all the bills that this legislature is acting upon. And of course, as a member of the legal profession, he knows just as well as I do that the attorney general does work quite closely with the judicial branch.

It seems to me that his arguments point up again that he considers and the governor considers the attorney general the private lawyer for the governor, and this isn't what we want in the State of Maine at all.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion of the Senator from Cumberland, Senator Kellam, that the Senate accept the Minority Ought to Pass as Amended Report of the Committee on State Government on Resolution Proposing an Amendment to the Constitution providing for the Appointment of the Attorney General by the Governor. A roll call has been requested. In order for the Chair to order a roll call, it requires the affirmative vote of one-fifth of those Senators present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The Chair will state the question once more. The pending question before the Senate is the motion of the Senator from Cumberland, Senator Kellam, that the Senate accept the Minority Ought to Pass as Amended Report of the Committee on Resolution Proposing an Amendment to the Constitution providing for the Appointment of the Attorney General by the Governor. A "Yes" vote will be in favor of the motion; a "No" vote will be opposed.

The Secretary will call the roll.

#### ROLL CALL

YEAS: Senators Bernard, Carswell, Clifford, Conley, Danton, Fortier, Graham, Harding, Kellam,

Levine, Marcotte, Martin, Minikowsky, and Violette.

NAYS: Senators Anderson, Berry, Chick, Dunn, Greeley, Hichens, Hoffses, Johnson, Katz, Moore, Peabody, Quinn, Schulten, Sewall, Shute, Tanous, Wyman, and President MacLeod.

Mr. Hichens of York was granted permission to change his vote from "Yea" to "Nay".

Mr. Bernard of Androscoggin was granted permission to change his vote from "Nay" to "Yea".

A roll call was had. Fourteen Senators having voted in the affirmative and eighteen Senators having voted in the negative, the motion did not prevail.

Thereupon, the Majority Ought Not to Pass Report of the Committee was Accepted.

Sent down for concurrence.

The President laid before the Senate the fourth tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Taxation on Bill, "An Act to Eliminate Moose River from the Maine Forestry District." (H. P. 141) (L. D. 196) Majority Report, Ought Not to Pass; Minority Report, Ought to Pass.

Tabled — March 26, 1971, by Senator Graham of Cumberland.

Pending — Motion by Senator Martin of Piscataquis to Accept the Minority Ought to Pass report.

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

Mr. WYMAN of Washington: Mr. President and Members of the Senate: I think that I have expressed my position on this last week, and I hope the members will go along and oppose the motion of the good Senator from Piscataquis, Senator Martin.

The PRESIDENT: The Chair recognizes the Senator from Piscataquis, Senator Martin.

Mr. MARTIN of Piscataquis: Mr. President and Members of the Senate: In order to provide some information on this bill, I would like to point out that Moose River in the last five years has paid \$12,355.45 in Forestry District taxes. Suppression costs to Moose River have been in the amount of \$15.75 over one-tenth of an acre.