

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD  
OF THE  
**Sixty-Eighth Legislature**  
OF THE  
**STATE OF MAINE.**  
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**1897.**

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An act authorizing the Governor and Council to execute a contract for water for the Maine State prison.

Resolve in favor of the committee on State prison.

Resolve in favor of the Bangor Children's Home.

Resolve in favor of the Eastern Maine General hospital.

Resolve in favor of Lincoln plantation, No. 5, Range 2, Oxford county.

#### ORDERS OF THE DAY.

On motion of Mr. Hamilton of Biddeford, resolve in favor of the Hospital of the Society of the Sisters of Charity of Lewiston, Me., was taken from the table, and on further motion by the same gentleman, the resolve was assigned for Thursday of next week. Mr. Hamilton stating that Mr. Noble of Lewiston, who had charge of the bill, was unable to be present, today.

On motion of Mr. Macomber of Augusta, bill relating to the use of compressed air was taken from the table, and on further motion by the same gentleman, it was passed to be engrossed.

On motion of Mr. Rounds of Paris, bill an act to prohibit the manufacture and sale of cigarettes was taken from the table.

Mr. Rounds moved that the bill be put upon its passage.

The bill was then read once.

Mr. King of Caribou: The question has been raised as to the constitutionality of this bill and it has been suggested that it be referred to the committee on the judiciary for their decision in regard to that point; and I move that it be referred to the committee on the judiciary.

Mr. Rounds of Paris: I am not the author of this bill but I might say a word in explanation. The question was raised before our committee, the committee on temperance, and we concluded to report this bill and place it before the House for consideration. If this is referred to the committee on judiciary I don't know how it is settled by doing that. They are not a committee who are to determine the constitutionality of any question; it is simply a matter of opinion; and the only way to determine its constitutionality, as I understand it, is to pass the bill here in this Legislature and let it go to the supreme court for their decision.

We will be just as much in the dark after the judiciary committee have reported as we are now. Many of the lawyers in the State have been consulted in regard to this matter and they think it is constitutional in the sense that the prohibitory law is constitutional; and I call for the yeas and nays on the motion to refer it to the judiciary committee.

Mr. King of Caribou: I have here a letter from Ex-Judge Symonds of Portland, which I would like to read before this is put to vote. "I can only give you an impression in reply to your request about the proposed cigarette law. I have only just returned home and have

had no opportunity for investigation. But as a matter of recollection and impression I should not suppose it competent for one state to impose such an absolute prohibition against interstate commerce as the proposed bill undertakes to do. At all events it would be well for the bill to receive the careful attention of a legal committee like that upon the judiciary, before its passage."

It seems to me this is not a question of the passage or non-passage of this bill; it is simply a question of its legality and constitutionality; and I see no good reason for putting a bill like this on the statute books if it is not constitutional. I do not wish this to be referred for a hearing as to the merits or demerits of the bill, but simply for their opinion upon this matter. It simply retards the bill for a few days, that is all. I hope it will be referred.

Mr. Hamilton of Mattawamkeag: If we could get a decision from the judiciary committee which would be legal and binding for future time, a final decision on this question, there would seem to be some object in referring it to that committee; but as no less an authority than the supreme court of the United States can determine the constitutionality of this bill it seems to me to be a waste of time to refer it to the judiciary committee. There is one thing we do know, that the sentiment throughout the State of Maine is overwhelmingly in favor of this bill. Very nearly 2000 petitions have come before the Legislature in its favor while less than 400 have remonstrated against it, and several of the remonstrances have been signed by only one individual. I believe we are ready to deal with this question now and I certainly trust that this bill will not be sent to the judiciary committee. I think it would delay the bill without accomplishing anything as the decision of that committee would not be final. I hope the motion to refer will not prevail.

Mr. Boynton of Sullivan: If I have been correctly informed the attorney general of the State has been consulted in regard to this matter and his advice is that this bill be put upon its passage and let its fate be what it may; and I favor the motion to refer the bill to the judiciary committee.

Mr. Pattangall of Machias: I feel at present very friendly towards the motive of this bill but I feel very much in doubt in regard to its constitutionality. Of course the decision of the judiciary committee on that point would not be binding; but their opinion is of value to us in determining how to vote on a measure. It seems to me, if what the gentleman from Sullivan (Mr. Boynton) says is true, that the attorney general advises the passage of this bill, that it is a peculiar suggestion to make to this House. I do not think it is hardly his province to advise this House whether or not to pass a bill. It would seem to me that a bill of this importance—and it is important—a bill that is designed to work important reforms, should be gone at

carefully. We certainly do not desire here to pass a law that is unconstitutional, if this is an unconstitutional measure. If it is not, the strongest argument against the bill is removed; and it seems to me, as a friend of the bill, that we should desire its committal to a legal committee for advice upon the point of its constitutionality.

Mr. Andrews of Garland: Brothers and sisters, as an advocate of temperance, as one who has joined almost every temperance organization since the time of the Washingtonians, I can say today that I am in favor of this bill. I see that we have quite a number of representatives here from our lady friends and they are always on the side of temperance. I believe to quibble with this matter or delay it would not be for our advantage nor to the advantage of this bill as a temperance measure. I esteem our attorney general, his advice is very good indeed, and I think it is our best course to follow those whom we feel are strongly in favor of temperance in regard to this great issue. I represent the town of Dexter from which we have a petition here from our noble men and excellent women, a petition of about 230 names; I also represent Garland, a temperance town, which has sent petitions here. All over the State of Maine our noble ladies have advocated the passage of this measure. Let us do all we can to pass this bill and risk the legality of it.

Mr. Boynton of Sullivan: The attorney general is in the House and he has just informed me that he has not expressed any opinion on the constitutionality of this bill, and I rise to make this explanation as due to him. I was misinformed.

Mr. Talbot of Lewiston: I have the greatest respect for the judiciary committee of this Legislature, made up as it is from the ablest attorneys in the State, but I submit that there are some things which common people have an opinion upon as well as those gentlemen. I do not know just the individual opinion of that committee in relation to many laws that are now on the statute books. This bill was referred to the temperance committee. We have the opinion of that committee. This matter is in the line of temperance. It is in the same class of legislation as our liquor laws. Many have held that these were unconstitutional, but Maine has always held that we have the right to prohibit the manufacture and sale of liquors. The cigarette bill is in the same line. I do not know of a smoker but who will vote to annihilate the cigarette. It ought to be an outlaw in every civilized community. We cannot pass legislation which is too radical against such things as this. I have no fear of the supreme court of our State or nation overturning any legislation of this kind. I think we are capable of expressing our own opinion without being advised by the judiciary committee; and I sincerely hope that the motion to refer will not prevail.

Mr. Winslow of Portland: If it is unconstitutional to pass this bill, I will say

to the House that we already have a law on the statute books very much of the same character. Two years ago, the House passed a bill prohibiting the manufacture and sale of a spurious kind of confectionery, and while that bill was under consideration there was only one voice raised against it. It received practically a unanimous passage in the House and Senate. As regards the cigarette itself, I regard it a very dangerous thing. I have heard it said that there were very few young men who would begin the drinking habit by taking strong drink. They begin by using small beers, so to speak, of a very mild and harmless character, and gradually the habit of taking the social drink is fastened upon them and after a while they become confirmed drinkers. I think the same rule applies to the use of the cigarettes. I see in my city a great many young men puffing cigarettes. It is only a question of a few years when they will become confirmed smokers or users of tobacco. I believe it is a very bad habit and that if this Legislature can do anything to save our boys in this respect we ought to do it. As regards the constitutionality of the bill, I believe we ought to pass it, and if the constitution of the United States interferes with the moral sentiment of the State of Maine, then we had better have the constitution of the United States changed.

Mr. Hamilton of Mattawamkeag: It appears to me that this determining the constitutionality of a measure is a very great question. We had a sample of it in regard to the income tax, a law which was passed by the United States Congress, and after a great expenditure of money in preparing to collect that tax, it was carried to the supreme court of the United States and decided to be unconstitutional by a majority of one vote; and if this deciding the constitutionality of a measure is so great a question as that, and there are so many different opinions as to its constitutionality, I ask you what would be the value really of having the opinion of the judiciary committee in this case. It certainly can be nothing but an opinion.

Mr. King of Caribou: I simply wish to say that I do not smoke cigarettes and I did not raise this question from any personal interest. It was simply a question that a number of good lawyers had discussed, and it seems almost too bad to put such a law on the statute books if it is unconstitutional. I have no interest beyond that in this matter, and I am willing that the yeas and nays should be called.

Mr. Walton of Skowhegan: I introduced this bill for the purpose of having the matter agitated. I believe that the agitation of this measure is important for the good of our boys. I myself have known of several instances where the use of the cigarette has resulted in the complete wreck of the boy. There is, as has been suggested, a law upon the statute books today, in regard to this very matter, that they shall not be sold to boys under 16 years of age. If this law would

be unconstitutional, that also is unconstitutional. As a lawyer I suppose I may claim to know something about constitutional matters. I do not claim to know all about this matter, but I do know that the question which is raised here is a very grave one. The claim is made that it is unconstitutional, for the reason that while you can prohibit the sale of intoxicating liquor, you do it upon the ground that the man may become so intoxicated that he will injure other people, but that if he takes poison and injures himself he does not necessarily affect other people; and that on that account he has a right to use any kind of poison to destroy himself, soul and body. But I take issue with those who make that claim upon that ground. I say that anything a person takes which breaks down his constitution, which destroys his intellect, which makes him a wreck, body and soul, is a matter which the people of the State of Maine have an interest in and which they have a right to legislate upon, and that as police legislation we have a right to pass any law in regard to such matters, because the germs of disease which are implanted in a person not only affect his children after him, and so in respect to such matters the people of the State of Maine as well as the people of all other states have a deep and abiding interest. And so I say let us pass this law. The judiciary committee cannot give it any attention. Members of that committee have said to me: "We have all we can do now, we cannot give this matter any attention." Let us pass this law. Let this question be determined. Then we will have it determined as the liquor law was determined by the court to which it should go. I hope that the motion of the gentleman from Caribou (Mr. King) will not prevail.

The question being upon the motion of Mr. King of Caribou, to refer the bill to the committee on the judiciary, the yeas and nays were ordered, and the motion was lost by a vote of 16 for to 105 against.

When the name of Mr. Burns of Westbrook, was called, that gentleman said he wished to explain his position on this question. I favor the bill if it is constitutional, but if there is any doubt about it and we can get any light upon that subject, I shall favor submitting the bill to the judiciary committee.

Yea—Austin, Burns, Burrill, Coffin of Shapleigh, Golder, Guernsey, Hancock, Kaler, King, Merrill of Portland, Newcomb, Pattangall, Peirce, Prince, Rodick, Shepard.—16.

Nay—Ames, Andrews, Ayer, Bither, Blanchard, Boynton, Briggs, Britton, Brown, Burnham, Burse, Burton, Chandler, Chatto, Coffin of Thorndike, Conant, Cook, Cox, Cram, Currier, Cushman, Day, Dickey, Dudley, Durgin, Edmunds, Fernald of Levant, Floyd, Fogg, Fogler, Forest, Fuller, Furbush, Gagnon, Gardner, Garvin, Goodrich, Goodwin, Gowell, Hamilton of Biddeford, Hamilton of Mattawamkeag, Hathorn, Hill, Holbrook, Holmes, Houghton, Hurd, Hussey, Hutchins, Hutchinson, Jewell, Jones, Kinsman, Kneeland, Knowlton of Port-

land, Lane, Larrabee of Sebago, Lincoln, Littlefield of Kennebunk, Littlefield of Vinalhaven, Longley, Luce, Macomber, Martin, Mason, Maxwell, McIntire, Merrill of Bluehill, Mitchell, Moore of Deering, Moore of Moscow, Murchie, Murphy, Palmer, Patten, Pearl, Penley, Philbrook, Pope, Pratt, Furinton, Reed, Rounds, Rowell of Kittery, Sanborn, Saunders, Sawyer, Searis, Shaw of Saco, Smith of Hampden, Smith of Masardis, Smith of Presque Isle, Spear, Staples, Stevens, Talbot, Tarbell, Thurston, Tolman, Walton, Wheeler, Whiting, Winslow, York, Young.—105.

Absent—Daggett, Davis, Donnell, Fernald of Poland, Gilman, Greenleaf, Hathaway, Knowlton of Newburg, Levensaler, Littlefield of Belfast, Maxcy, Murray, Noble, O'Neil, Plummer, Robinson, Rowell of East Livermore, Sewall, Shaw of Cumberland, Simpson, Starbird, Stetson, Thompson, Thurlow, Violette, Weeks, Wheldon, Williams, Wilson.—29.

Mr. Merrill of Portland, offered an amendment to add in line four after the word "cigarette" the words "cigar or tobacco in any form."

Mr. Merrill of Portland: I wish to say merely in reference to this amendment that I feel that the bill is a good one as it stood. I voted to refer it to the judiciary committee merely on the ground of its legality, but now as that motion is negated I shall vote in the affirmative. But the bill does not go far enough. I notice that about this State House tobacco is used and it is very noxious, and I think that some of the tobacco which is used is as noxious and as deleterious as cigarettes. Now I think that the members of this House, even if it deprives them of some comforts or pleasures, would be willing to go the entire length in this reform if they go at all. It is no more than just, it is no more than right, and I think it would be a great advance in this direction. I therefore move that when we vote upon this amendment it be taken by yeas and nays. (Laughter.)

The question being on the adoption of the amendment offered by Mr. Merrill of Portland, the yeas and nays were ordered and the amendment was lost by a vote of 42 for to 77 against.

Yeas—Austin, Ayer, Burrill, Chatto, Coffin of Shapleigh, Conant, Cram, Currier, Cushman, Dudley, Fernald of Levant, Furbush, Gagnon, Gardner, Golder, Gowell, Guernsey, Hamilton of Biddeford, Hutchins, Kaler, King, Kinsman, Lane, Longley, Luce, Maxwell, Merrill of Portland, Moore of Moscow, Murchie, Newcomb, Pattangall, Peirce, Prince, Rodick, Sanborn, Searis, Shaw of Saco, Stevens, Whiting, Winslow, York, Young, Yeas—42.

Nays—Ames, Andrews, Bither, Blanchard, Boynton, Briggs, Britton, Brown, Burnham, Burns, Burton, Chandler, Coffin of Thorndike, Cook, Cox, Day, Dickey, Durgin, Edmunds, Floyd, Fogg, Fogler, Forest, Fuller, Garvin, Goodrich, Goodwin, Hamilton of Mattawamkeag, Hancock, Hathorn, Hill, Holbrook, Holmes, Houghton, Hurd, Hussey, Hutchinson,

Jewell, Jones, Kneeland, Knowlton of Portland, Larrabee, Lincoln, Littlefield of Kennebunk, Littlefield of Vinalhaven, Macomber, Martin, Mason, McIntire, Merrill of Bluehill, Mitchell, Moore of Deering, Murphy, Palmer, Penley, Philbrook, Pope, Pratt, Purinton, Reed, Rounds, Rowell of Kittery, Saunders, Sawyer, Shepard, Smith of Hampden, Smith of Masardis, Smith of Presque Isle, Spear, Staples, Talbot, Tarbell, Thurston, Tolman, Walton, Wheeler, Wilson. Nays—77.

Absent—Burse, Daggett, Davis, Donnell, Fernald of Poland, Gilman, Greenleaf, Hathaway, Knowlton of Newburg, Levensaler, Littlefield of Belfast, Maxcy, Murray, Noble, O'Neil, Patten, Pearl, Plummer, Robinson, Rowell of E. Livermore, Sewall, Shaw of Cumberland, Simpson, Starbird, Stetson, Thompson, Thurlow, Violette, Weeks, Whelden, Williams. Absent—31.

The bill was then read a second time and was assigned for tomorrow at nine o'clock.

On motion of Mr. Hamilton of Biddeford, resolve making an appropriation for the Penobscot tribe of Indians was taken from the table, and on further motion by the same gentleman the resolve was read a second time and was passed to be engrossed.

On motion of Mr. Hamilton of Biddeford, resolve relating to Indian township, Washington county, was taken from the table, and on further motion by the same gentleman the resolve was read a second time and was passed to be engrossed.

On motion of Mr. Holbrook of Brunswick, bill granting right to Susan S. B. Spring to build and maintain a dam was taken from the table, and on further motion by the same gentleman pending its third reading it was committed to the committee on shore fisheries.

On motion of Mr. Winslow of Portland,  
Adjourned.