

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume I

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law enforcement functions are patrolling and the operation of a jail or detention facility. However, even though a large portion of the sheriff's budget is committed to patrolling, the sheriff's patrol is not that great a presence in the county in comparison with the patrolling functions of the municipal and state police.

The operation of the jail in the 14 counties that have one is a significant function both for pretrial detention and serving court imposed sentences of less than one year.

There are those rural communities that have begun to consider operating central communications for county and municipal police and fire departments; however, in comparing these services to the services provided by local and state police departments, it becomes clear that county law enforcement has been a declining presence throughout the state.

As I said in the very beginning, the present powers and duties of the sheriff in each of Maine's counties are defined by common law, and only in a few particular instances by statute.

Though the Maine Courts have not established in detail the nature and extent of the sheriff's powers and duties, they have recognized explicitly his basic duty as, once again, a conservator of the peace and a protection to society against the commission of vice and crime in the same court case, *Sawyer vs. County Commissioners* in 1917. Under this, the generally accepted common law, the basic duties of the sheriff can be seen as three parts, first of all as a conservator of the peace; secondly, as a jailer ex-officio; and thirdly, as an officer of the court.

The basic functions of the sheriff have evolved by tradition in court cases into many specific duties and powers required to exercise the broad authority of the chief law enforcement officer of the county. In addition, certain specific duties have been created by statute that are in addition to common law powers, such as the serving of civil papers.

I realize that this has been somewhat of a dry description of the background and powers and duties of the sheriff's office, but I think it is important and it is leading up to the problem that I have with this bill.

It is important to note that the common law duties and powers exist in the absence of specific statutory provisions defining the sheriff's powers and duties.

Normally, the common law definition of a sheriff's scope of authority can be altered or removed simply by enacting legislation to cover the same area. In Maine, however, the principle is limited by the fact that the sheriff is a constitutional officer and it limits the power of the legislature to alter or remove the sheriff's common law duties and powers is minimal.

Presently, the sheriffs in the State of Maine are elected for a two-year term. This present term is based on the premise that a sheriff's position can be very influential, and, as in many occupations, abused. By requiring two-year terms, the Maine Constitution provides a means by which abuse, if it occurs, can be stemmed within a very short period of time.

The purpose for increasing sheriff's terms to four years, according to the Statement of Fact in this bill, is to enable the sheriff to perform more efficiently. This presupposes that the two-year term in itself creates an inefficiency that cannot be overcome by any other factor. Presumably, the inefficiency results from preparing for election campaigns that occur every two years.

I had our committee assistant prepare a list of the county sheriffs to get an idea of how this inefficiency is presently working. Aside from those counties such as Cumberland County and Aroostook County, in which sheriffs are serving their first term, we find that in York County, Washington County, Sagadahoc County, Penobscot County, Knox County, Hancock County and Androscoggin County the sheriffs

have all recently won reelection for a second term. The sheriff in Franklin County is now serving his fourth term; the sheriff in Kennebec County is serving his fifth term; the sheriff in Lincoln County is serving his eighth term; the sheriff in Oxford County is serving his sixth term; the sheriff in Piscataquis County is serving his seventh term; the sheriff in Somerset County is serving his fourth term and the sheriff in Waldo County is serving his eighth term. I think if we can read anything from these figures, it may be the sheriffs across the state seem to be able to get re-elected without a great deal of difficulty. And if they are looking for a reason to get re-elected so easily, it may be that you just want to take a closer look at the structure of our county departments.

I am not suggesting that sheriff departments make great political organizations or are even used for that purpose, and I am not suggesting that they are not used for that purpose, I am merely presenting the facts for you as individuals to analyze.

I have to believe that this bill has some pretty good support this morning. I know that my sheriff in Somerset County supports it; just like every sheriff in every county in the State of Maine supports it. But despite the support this bill may have and I guess that is where I find myself this morning. It is because of the historical background of the powers and the duties of this office, it is because of the unique aspects of being a constitutional officer, which leaves us as a legislature with minimal authority over the sherriffs' positions, that I as one individual, and I may be the only one and that is all right too, but it is because of these reasons that I will be voting against this bill on enactment.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Members of the House: Just so the gentleman from Fairfield won't stand alone, I want to tell you that this bill has been before this legislature as many times as I have been here, nearly.

I feel that these people are like ourselves, they should face the public for election every two years. If we are going to change elections, it should be for the sheriffs. I think taking the sheriff out would create even more apathy and we must be careful, we have already created some in this session already. Apathy is when people have no desire to go to the polls. If there is just one or two people on the ballot, they will say, so what, he will get elected anyway, this would be the case in my area. Some of them will go out because they want to help some of the other candidates that are on the ballot.

I think it is a package deal, so to speak, it ought to all be four years or all be two. I don't think it will work. I don't think it will improve government one bit; as a matter of fact, it would be a step in the wrong direction.

I hope the House will see fit to indefinitely postpone this bill, as so many legislatures have done in the past.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Brodeur.

Mr. BRODEUR: Mr. Speaker, I would like to pose a question through the Chair. What are the methods of removing the sheriff who is not adequately performing his job and how does that compare with the removal of other police officers who are not adequately performing their jobs?

The SPEAKER: The gentleman from Auburn, Mr. Brodeur, has posed a question through the Chair to anyone who may care to respond.

The Chair recognizes the gentleman from Fairfield, Mr. Gwadosky.

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I wish I could give a concise answer, but I will simply read to you what was handed to me by my legislative assistant. The limits on the part of the legislature to alter or remove the sheriffs' common law duties and powers are unclear, although it is clear that specific statutory powers identical or sim-

ilar to the sheriffs' can be granted to other officers of the county and the sheriff can be relegated to his common law duties without other power of authority. I am not sure if this answers the gentleman from Auburn's question or not but that is the best I can provide at this time.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one-fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on passage to be enacted. This being a Constitutional Amendment, it requires a two-thirds vote of the House. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Anderson, Andrews, Armstrong, Beaulieu, Benoit, Callahan, Carroll, D.P.; Cashman, Conary, Conners, Cooper, Cox, Crouse, Dexter, Diamond, Drinkwater, Erwin, Foster, Gauvreau, Higgins, H.C.; Holloway, Ingraham, Joyce, Kane, Kelly, Ketover, Kiesman, LaPlante, Manning, Martin, H.C.; Masterman, Masterton, McCollister, McGowan, McSweeney, Melendy, Mitchell, E.H.; Mitchell, J.; Murray, Nelson, Paradis, P.E.; Parent, Pouliot, Randall, Rotondi, Salsbury, Smith, C.B.; Sproul, Stevenson, Thompson, Walker, Webster, Wentworth, Zirnkilton.

NAY—Allen, Baker, Bell, Bonney, Bost, Bott, Brannigan, Brodeur, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Carrier, Carroll, G.A.; Carter, Chonko, Clark, Cote, Crowley, Curtis, Dggett, Davis, Day, Dillenback, Dudley, Greenlaw, Gwadosky, Hall, Handy, Hayden, Hickey, Higgins, L.M.; Hobbins, Jacques, Joseph, Kelleher, Kilcoyne, Lebowitz, Lehoux, Lewis, Lisnik, Livesay, MacBride, MacEachern, Macomber, Martin, A.C.; Matthews, K.L.; Matthews, Z.E.; Maybury, Mayo, McHenry, McPherson, Michael, Michaud, Moholland, Murphy, Norton, Paradis, E.J.; Paul, Perkins, Perry, Pines, Racine, Reeves, J.W.; Reeves, P.; Richard, Ridley, Roberts, Roderick, Rolde, Scarpino, Small, Smith, C.W.; Soule, Stover, Strout, Studley, Swazey, Tammaro, Telow, Theriault, Tuttle, Vose, Weymouth, Willey, The Speaker.

ABSENT—Connolly, Jackson, Jalbert, Locke, Mahany, Nadeau, Seavey, Sherburne, Soucy, Stevens.

Yes, 55; No, 86; Absent, 10

The SPEAKER: Fifty-five having voted in the affirmative and eighty-six in the negative, with ten being absent, the Constitutional Amendment fails of enactment.

Sent to the Senate.

Passed to Be Enacted

An Act to Allow the District Court to Grant Restitution in Cases of Unfair Trade Practices (S. P. 241) (L. D. 664)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Order of the Day

The Chair laid before the House the first tabled and today assigned matter:

HOUSE DIVIDED REPORT—Majority (9) "Ought Not to Pass"—Committee on State Government on Resolution, Proposing an Amendment to the Constitution of Maine to Limit Maine Senator to not More than Five Consecutive Two-Year Terms, and to Limit Maine Representatives to not More than Five Consecutive Two-Year Terms (H. P. 352) (L. D. 410)

Tabled—February 18, 1983 by Representative Diamond of Bangor.

Pending—Acceptance of either Report.

The SPEAKER: The Chair recognizes the gentleman from Fairfield, Mr. Gwadosky.

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: I move that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Walker.

Mr. WALKER: Mr. Speaker, Ladies and Gentlemen of the House: When the vote is taken, I would ask for a roll call.

This is the first time, to the best of my knowledge, at least since 1951, that this subject matter has reached the floor of the House and been up for discussion. I hope that you will give this your serious consideration because I believe in its merits.

Although it wasn't until 1957 that we allowed a governor as many as two four year terms, in spite of the fact that he was elected by all of the state, we have yet to take any action to limit ourselves and our own incumbency.

Those of us who can remember back to the 40's remember that it wasn't until after such time as our nation had elected a terminally ill man to its presidency for his fourth term that the people of this country took action to limit the tenure of incumbency there.

The purpose of this bill is not, and I repeat, not to limit total terms in either body; the purpose is to limit consecutive terms in either body. This is sort of like sending a long-term member out on his sabbatical after ten rather than seven years. This sabbatical would force new leadership to arise. This wouldn't nor couldn't make minorities the majorities or vice versa and is not its purpose.

I ask, do we need changes in our system, and of course some are going to say no but others may, I hope, agree with me. Some will say with me that our present system leads to problems in at least two areas. Each of us in this House have a constituency of 1/151 parts of the voters of this state, or at least it is supposed to be that way and we have got some people working hard on that issue right now. That means that each of those voters should have an equal say as to the outcome of matters that are before the body. Actually, does anyone believe in this House, even after allowing for differences and abilities, that this is so?

Another problem lies that when an incumbent returns for limited consecutive term, the pipeline to this body is plugged as far as that district is concerned. Any aspiring candidate in the district is effectively prevented from gaining a seat in either body as long as it is held by what the district sees as a capable representative; thereby, we prevent these two bodies from fulfilling one of the most important functions of that district, that of serving as a training ground to a higher office.

At present, we have a Governor and two Representatives to Congress who receive training in these halls. This bill would make that opportunity available throughout the state even though we might be deprived very capable people for a short time. This bill would put out the welcome mat to new candidates, at least periodically. Who here would have the opportunity of meeting the gentlelady from Portland, by way of Eagle Lake, had she remained a gentlelady simply of Eagle Lake? We would have had to say like William Blake, "That full many a flower is born to blush unseen and waste its fragrance on the desert air."

One other problem that is exasperated by the unlimited tenure is that the lethargy of our political parties as they delegate the responsibilities of finding and electing new candidates to the same old offices, who have answered the call to action so often. Our parties would become active if and when we force them to be active.

To those of you who fear a pass vote here would disenfranchise those few districts that appear to favor limitless terms, let me remind you that a pass vote won't be making the decision for anybody in the state, only a "ought not to pass" vote can do that.

This bill simply asks that the people of Maine

be given a chance to decide whether or not these measures might improve the performances of their legislative bodies. To paraphrase a TV commercial, "If you can't trust the voters in the state, who can you trust?" If we won't trust them, should they trust us? When we arrive in Augusta we are coached that it is a good politics to send out questionnaires, "how are we doing and will this bill help us do better?"

The SPEAKER: The Chair recognizes the gentleman from Fairfield, Mr. Gwadosky.

Mr. GWADOSKY: Mr. Speaker, Ladies and Gentlemen of the House: We have before us a Resolution proposing an amendment to the Constitution of Maine to limit the term of Maine Senators and Representatives to five consecutive terms. Although the Statement of Fact doesn't indicate the purpose for this five-term limitation, the sponsor has today, as he did at the public hearing, and as the proponents did, mentioned essentially three areas that they are concerned with; namely, (1) to prevent an individual legislator from becoming too influential or too powerful; (2) to provide municipalities with an opportunity to send to the legislature a different person with different ideas that may not be represented by a long-term incumbent; (3) to prevent the opportunity for the abuse of power or neglect of duties that may arise from unlimited terms of office. My contention is that if these are really the concerns of the sponsors and the proponents, this particular legislation doesn't go very far in solving the problems and I would like to address each one of these.

First of all, to prevent an individual legislator from becoming too influential or too powerful—if a person is an ambitious person and has a personal goal to wield an unusual degree of influence, my contention would be that within ten years a highly ambitious person could do a lot of this and would be able to exercise substantial authority and influence even in the ten years before he reaches his limitation.

Furthermore, if you would take a look at our current situation as far as membership of this body, you will find that we have members in leadership, we have individuals who are chairmen of committees who have only been in the legislature for two years or one term, so it certainly doesn't take ten years or five terms before you begin to accumulate any substantial power or authority.

The second point brought out by the sponsor of this bill was that it would provide municipalities with an opportunity to send the legislature a different person with different ideas that may not be represented by long term incumbents, and I think the answer to this question may rely to a great extent upon the individual legislator. There are some long-term legislators who are very open to representing new and different ideas, while others may be more traditional in their views and thoughts.

Also, if there is a young individual living in a legislative district, a young man or young woman who is destined to become President of these United States, I might respectfully suggest that if they can't win that particular House seat, they may have a problem with the Presidency.

The third point that was brought up by the sponsor of this bill was to prevent the opportunity for the abuse of power or neglect of legislative duties that could arise from serving an unlimited amount of terms. I think the answer is, again, that within a period of ten years a person could, if he was so inclined, abuse legislative influence to a significant degree or neglect many legislative duties. Again, however, this would depend on the individual and I am not sure if the magical ten year limitation would solve these problems.

The turnover in the Maine Legislature is approximately 33 percent every two years. In other words, we have approximately 50 new legislators involved in the process every two years. The average length of service in the

Maine Legislature is two to three terms.

During the public hearing, Representative Paradis brought an interesting thought that he is now serving his third term and although it is only his third term, there are only 18 members of the Democratic caucus that have more tenure than Representative Paradis, so there are not really that many long-term veterans that we are talking about.

Senator Hichens, who has the most tenure of any serving on our committee, feels that he is a better Representative after ten years than he was when he was first elected, because now he knows the people, he knows the issues and he can communicate better with the people. So perhaps with the big turnover, it is important to have some long-term veterans to add some continuity and historical reference not only to what took place in the committee but what has taken place in past legislatures. No other state in the nation has found it necessary to place this limitation on their legislature and I am not sure that it has been demonstrated this morning why we need to be the first.

Finally, I would remind the gentleman from Skowhegan, Mr. Walker, that when the two-term limitation was placed on our Governor here in the State of Maine, it was back in 1957 when the Governor was a Democrat and both branches of the legislature were Republican. With that, I would sit down and urge you to support the Majority "Ought Not to Pass" Report.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one-fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Fairfield, Mr. Gwadosky, that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Andrews, Baker, Benoit, Bost, Bott, Brannigan, Brodeur, Carrier, Carroll, D.P.; Carroll, G.A.; Carter, Cashman, Chonko, Clark, Cooper, Cote, Cox, Crouse, Crowley, Curtis, Daggett, Diamond, Dudley, Erwin, Gauvreau, Greenlaw, Gwadosky, Hall, Handy, Hayden, Hickey, Higgins, H.C.; Higgins, L.M.; Hobbins, Ingraham, Jacques, Joseph, Joyce, Kane, Kelleher, Kelly, Ketover, Kilcoyne, LaPlante, Lebowitz, Lehoux, Lisnik, MacBride, MacEachern, Macomber, Manning, Martin, A.C.; Martin, H.C.; Matthews, K.L.; Matthews, Z.E.; Maybury, Mayo, McCollister, McGowan, McHenry, McPherson, McSweeney, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murray, Nadeau, Norton, Paradis, E.J.; Paradis, P.E.; Paul, Perkins, Perry, Pines, Pouliot, Reeves, J.W.; Reeves, P.; Richard, Ridley, Roberts, Roderick, Rolde, Rotondi, Scarpino, Small, Smith, C.B.; Soule, Stover, Strout, Swazey, Tammara, Telow, Theriault, Thompson, Tuttle, Vose, Wentworth, Willey, Zirkilton, The Speaker.

NAY—Anderson, Armstrong, Bell, Bonney, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Callahan, Conary, Connors, Davis, Day, Dexter, Dillenback, Drinkwater, Foster, Holloway, Kiesman, Lewis, Livesay, Masterman, Masterston, Murphy, Nelson, Parent, Racine, Randall, Salisbury, Smith, C.W.; Sproul, Stevenson, Studley, Walker, Webster, Weymouth.

ABSENT—Beaulieu, Connolly, Jackson, Jalbert, Locke, Mahany, Seavey, Sherburne, Soucy, Stevens.

Yes, 105; No, 36; Absent, 10.

The SPEAKER: One hundred and five having voted in the affirmative and thirty-six in the negative, with ten being absent, the motion does prevail.