

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Fifth
Legislature***

OF THE

STATE OF MAINE

Volume III

June 16, 1971 to June 24, 1971

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1st Special Session

January 24, 1972 to March 10, 1972

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**KENNEBEC JOURNAL
AUGUSTA, MAINE**

is the transfer of many of these patients to boarding homes throughout the state. With this attitude of permissiveness and sexual freedom you can well imagine the problems that will be confronted by the communities. A bill requiring permission of parents before these patients could be transferred into the community was rejected for consideration during the special session. Parents are alarmed and rightfully so.

\$100,000 implemented the program the first year it was introduced. Another \$100,000 was granted the following year. Application is now being made for another grant. Where is this money going? What are the results of the program? How much is the state gaining or losing financially or for the good of patients and parents alike? Passage of this order may bring us some of the answers. I, therefore, request your support for the good of all concerned.

The PRESIDENT: Is it the pleasure of the Senate that this order receive passage?

The Chair recognizes the Senator from Aroostook, Senator Violette.

Thereupon, on motion by Mr. Violette of Aroostook, tabled and Tomorrow Assigned, pending Passage.

On motion by Mr. Berry of Cumberland,

ORDERED, that there be inserted in the Record of the Senate the Decision of Motion of Defendant to Dismiss and Motion of Plaintiff for Summary Judgment in the matter of John N. Kelly, Plaintiff versus Kenneth M. Curtis, Defendant, Civil Action Docket No. 911, Superior Court of Kennebec County, rendered by Justice James L. Reid on February 7, 1972.

Which was Read.

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

Mr. BERRY of Cumberland: Mr. President, I think that the members of the body would be quite interested in the findings of fact as promulgated by the Justice today. It reads as follows:

The Court finds as facts those admitted by the pleadings and supported by affidavits and agreed

upon by the parties to be undisputed as follows:

The Plaintiff is a registered voter in the State of Maine, is a petitioner pursuant to Article IV, Part Third, Section 18, of the Constitution of Maine, and he and 45,933 other citizens of the State seek to initiate a bill entitled "An Act Relating to the Form of Ballots in General Elections".

The Defendant is the duly elected, legally qualified Governor of the State of Maine.

The petitions of the said 45,933 citizens were seasonably filed with the Secretary of State on February 20, 1971. The Secretary of State communicated to the Senate the fact that the petitions had been filed.

On May 24, 1971, the Joint Committee on Election Laws of the Legislature held a public hearing on the initiated bill, and thereafter recommended that no action be taken by the Legislature with regard to the passage of said initiated bill, that no competing measure be submitted, and that the initiated bill be submitted to the electors of the State in accordance with the Constitution. Thereafter the Legislature adjourned without day on June 24, 1971, taking no action with respect to said initiated bill.

Under the Constitution it then became the duty of the Defendant in his capacity as Governor, as the petitions so requested, to proclaim that the initiated bill be referred to the people at a special election upon a specified date not less than four nor more than six months after such proclamation.

The Issues

This Court has already decided that it has jurisdiction to entertain the complaint, to decide the case on its merits and to great relief if the Plaintiff as a matter of law on the undisputed facts is entitled to it. It is the duty of this Court to take jurisdiction.

Therefore, the real and final issue in this case is whether or not the Defendant having taken no action since June 24, 1971, is now under a duty under the Constitution to promptly set a date for a special election to be held not less than four nor more than six months

after proclamation setting such date.

Conclusions Of Law

The Constitution of Maine is the supreme law of this State and no public official may thwart the provisions therein contained, for whatever purpose or motive.

The Constitution has created certain fundamental rights for the benefit of all the citizens of Maine and when it is asserted by any citizen or group of citizens that rights thus created are being infringed upon, the Judicial branch of the government is open through its Courts for a determination of the question raised by such assertion.

Effective as of January 1, 1909, the Constitution was amended to reserve to the people the power to propose laws and to enact or reject the same at the polls, independent of the Legislature.

Article IV, Part Third, Section 18 of the Constitution provides the procedures to be followed when the electors (people) duly qualified to do so, decide to propose law. Among other things it provides, as in the instant case, that where the proposed law has not been enacted by the Legislature without change, and where the written petitions addressed to the Legislature so request, the Governor shall, by proclamation, order any measure proposed, referred to the people at a special election to be held not less than four nor more than six months after such proclamation.

It was held in *Farris vs. Goss*, 144 Maine 227 that the right of the people to enact legislation under this amendment is an absolute one and cannot be abridged directly or indirectly by any action of the Legislature. It follows that the right likewise cannot be abridged by any action or failure of action by the Executive branch of government.

Counsel for the Defendant in their memorandum of law state unequivocally, "We agree with the Plaintiff that this Constitutional duty is mandatory upon the Governor" meaning, of course, that he must make the proclamation called for in said Section 18.

We now come to the real and final legal issue in dispute in this case.

Section 18 is silent as to the time period permitted between the date of adjournment of the Legislature (the latter having failed to enact the proposed measure) within which the Governor must make proclamation. The proclamation must await final adjournment of the Legislature because it cannot be known with certainty that the Legislature failed to enact the proposed measure without change until it has adjourned without day. Opinion of the Justices, 275 A2nd 800 (April 5, 1971)

But in the same opinion the Court said at Page 804, "Furthermore, to prevent frustration of the broadly reserved power of the people to legislate it is implicit that the proclamation of the Governor is intended to be made within a reasonably short time after the legislative session has been adjourned without day." (Emphasis supplied)

The Legislature adjourned without day on June 24, 1971. The position of the Plaintiff is that a reasonably short time has long since passed.

The Defendant has stated in an answer to an interrogatory that he made proclamation for vote on income tax repeal to be held at the polls on November 3, 1971, but that he did not also proclaim that date for vote on the ballot reform measure because he wanted to avoid any confusion with respect to a matter so vital as the proposed income tax repeal. This position was, of course, understandable, yet it did not remain as a valid reason for postponing the vote on the ballot reform measure indefinitely.

Although the issuance of the proclamation is in itself a ministerial act pursuant to mandate, the Governor must have some discretion in the matter of time of issue subsequent to final adjournment of the Legislature, but such discretion must not be abused. Abuse of discretion does not imply a bad motive or wrong purpose, but merely untenable grounds.

Reasonable time means such time as is fairly necessary, considering nature of duty to be

performed and surrounding circumstances, and time which upholds and saves interested parties' rights.

A reasonably short time means with promptness.

In view of the failure of both the Legislature and the Governor to act to date on the proposed measure, the Plaintiff had no place to go for the protection of an asserted constitutional right except to Court.

It is the ruling of this Court that the Defendant, in his capacity as Governor of the State of Maine, is under a duty to promptly proclaim that the proposed measure be referred to the people at a special election to be held at a date specified, the date to be not less than four nor more than six months after such proclamation.

Plaintiff asks this Court to specify a date, namely, June 19, 1972, the regular date for primary elections as the date for vote on the proposed ballot reform measure. This Court is without authority to specify any date for a special election. If the Governor so chooses he may, of course, in the interest of saving the time and expense of two trips instead of one to the polls, declare that the special election date coincide with the primary election date, but he is not bound to.

There is no need at this time for the Court to issue any order or orders. The Court rules that it is the duty of the Defendant to issue the proclamation promptly. If the Defendant abides by the ruling, which is a Court judgment that he must, there is no occasion for an order.

Defendant has the right of appeal, and if exercised would be entitled to a stay of any order pending appeal. If there is no appeal the Court assumes that the Defendant will promptly issue the proclamation, without the need of anything further from this Court.

The entry will be:

(a) Motion to Dismiss denied.

(b) Summary Judgment for Plaintiff that Defendant is under a legal duty to promptly issue the requested proclamation requiring a special election on initiated bill "An Act Relating to the Form of

Ballots in General Elections, pursuant to Article IV, Part Third, Section 18 of the Constitution of Maine."

Dated February 7th, 1972.

s/James L. Reid
Justice Superior Court

Thereupon, the Order received Passage.

Second Readers

The Committee on Bills in the Second Reading reported the following:

House

Bill, "An Act Relating to the Assumption of Responsibility for Juvenile Probationers in Cumberland County by State Division of Probation and Parole." (H. P. 1479) (L. D. 1922)

Bill, "An Act Relating to Costs of Inspections by the Passenger Tramway Safety Board." (H. P. 1500) (L. D. 1942)

Which were Read a Second Time and Passed to be Engrossed in concurrence.

House-As Amended

Bill, "An Act Authorizing Use of the Name Maine Institute of Continuing Medical Education." (H. P. 1485) (L. D. 1928)

Which was Read a Second Time and Passed to be Engrossed, as Amended, in concurrence.

Bill, "An Act Relating to Housing and Food Supplies Furnished by State Departments." (H. P. 1504) (L. D. 1946)

Which was Read a Second Time.

On motion by Mr. Katz of Kennebec, tabled and specially assigned to February 9, 1972, pending Passage to be Engrossed.

Bill, "An Act Relating to Speed of Motor Vehicles on Expressway Systems." (H. P. 1513) (L. D. 1955)

Which was Read a Second Time.

On motion by Mr. Schulten of Sagadahoc, tabled and Tomorrow Assigned, pending Passage to be Engrossed.

Bill, "An Act Permitting the Commissioner of Education to Assign Towns to Supervisory Units when Fewer than 35 Teachers are Employed." (H. P. 1527) (L. D. 1970)