

412 A.2d 958

Editor’s Note: Additions are indicated by **Text** and deletions by **Text**.
Supreme Judicial Court of Maine.

OPINION OF the JUSTICES of the
Supreme Judicial Court given under the
Provisions of Section 3 of Article VI of the
Constitution.

Questions Propounded by the Senate in an Order
Dated March 3, 1980.
|
Answered March 10, 1980.

Synopsis

Questions were propounded by the Senate to the Justices of the Supreme Judicial Court relating to constitutionality of proposed legislation transferring probate jurisdiction to the superior court. The Justices made answers that: (1) enactment of legislation transferring probate jurisdiction to superior court would not violate constitutional provision excluding appointment of “judges of probate” from governor’s authority to appoint all judicial officers, and (2) enactment of legislation transferring probate jurisdiction to superior court would not violate Constitution on basis that it would not establish a different probate court system with full-time judges.

Questions answered.

*958 Exhibit to follow.

***959 SENATE ORDER PROPOUNDING QUESTIONS**

State of Maine

In the Year of Our Lord One Thousand Nine Hundred and Eighty

In Senate, March 3, 1980

Whereas, it appears to the Senate of the 109th Legislature that the following are important questions of law and that this is a solemn occasion; and

Whereas, a bill, S. P. 775, L. D. 1968, “AN ACT to Transfer Probate Jurisdiction to the Superior Court,” attached as Exhibit A, has been introduced into the

Senate and is now pending before that body; and

Whereas, the constitutionality of S. P. 775, L. D. 1968, has been questioned and it is important that the Legislature be informed as to the constitutionality of the proposed bill; now therefore, be it

Ordered, that in accordance with the provisions of the Constitution of Maine, the Justices of the Supreme Judicial Court are hereby respectfully requested to give to the Senate their opinion on the following questions:

1. Would S. P. 775, L. D. 1968, “AN ACT to Transfer Probate Jurisdiction to the Superior Court,” if enacted, constitute a violation of the Constitution of Maine, Article V, Part First, Section 8, which excludes the appointment of “judges of probate” from the Governor’s authority to appoint all judicial officers?
2. Would S. P. 775, L. D. 1968, if enacted, constitute a violation of the [Constitution of Maine, Article VI, Section 6](#) in that it would not “establish a different Probate Court system with full-time judges?”

***960 (EXHIBIT A)**

SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1968

S. P. 775 In Senate, February 29, 1980

The Committee on Judiciary suggested. Submitted by the Maine Probate Law Revision Commission Pursuant to P&SL 1973, c. 126; P&SL 1975, c. 147, and PL

1977, c. 712.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN
HUNDRED AND EIGHTY

AN ACT to Transfer Probate Jurisdiction to the Superior Court.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 4 MRSA § 9-A, first ¶, as enacted by P. 1973, c. 675, is amended to read:

The Supreme Judicial Court shall have the power and authority to prescribe, repeal, add to, amend or modify rules of evidence with respect to any and all civil actions or other proceedings, and any and all proceedings in criminal cases before complaint justices, District Courts, ~~probate courts~~ Superior Courts and the Supreme Judicial Court.

Sec. 2. 4 MRSA § 57, first sentence, as amended by PL 1979, c. 540, § 2, is further amended to read:

The following cases only come before the court as a court of law: Cases on appeal from the Superior Court or a single Justice of the Supreme Judicial Court ~~or from the probate courts~~; questions of law arising on reports of cases, including interlocutory orders or rulings of such importance as to require, in the opinion of the justice, review by the law court before any further proceedings in the action; agreed statement of facts; cases presenting a questions of law; all questions arising in cases in which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions

arising on habeas corpus, mandamus and certiorari and questions of state law certified by the federal courts.

***961 Sec. 3. 4 MRSA § 101, first sentence**, as amended by PL 1973, c. 599, § 1, is further amended to read:

The Superior Court, as heretofore established, shall consist of ~~14~~ 17 justices and such Active Retired Justices as may be appointed and serving on said court, learned in the law and of sobriety of manners.

Sec. 4. 4 MRSA § 105, as last amended by PL 1979, c. 540, § 3, is further amended by adding after the first sentence a new sentence to read:

The Superior Court shall have and exercise the jurisdiction vested in it by Title 18-A, section 1-302, and shall have and exercise jurisdiction and have and exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters which were, prior to January 1, 1981, within the jurisdiction of the courts of probate, whether cognizable at law or in equity, including the probate of wills, the granting of letters testamentary or of administration, the adoption of children, the changing of names of persons and the appointment of guardians for minors and others according to law, except as concurrent or exclusive jurisdiction is vested in the District Court.

Sec. 5. 4 MRSA § 110, as repealed and replaced by PL 1975, c. 408, § 9, is amended by adding after the first sentence a new sentence to read:

The Chief Justice of the Supreme Judicial Court may assign one or more of the Justices of the Superior Court in any county to hear all cases in which jurisdiction is based upon Title 18-A, section 1-302, and those cases which were within the jurisdiction of the courts of probate prior to January 1, 1981.

Sec. 6. 4 MRSA § 118, as enacted by PL 1975, c. 383, § 4, is amended by adding at the end a new paragraph to read:

In addition, effective January 1, 1981, each county shall pay annually to the State for the support of the Probate Court and registry an amount equal to the direct expenditures by that county for the calendar year 1980, for the support

of that court and registry, less the amount received by the register of probate of that county from fees and other revenues from the Probate Court during 1980. These payments shall be made in equal semiannual installments on January 1st and July 1st of each year. The amount of these direct expenditures by each county for the calendar year 1980 shall be fixed and confirmed by the Treasurer of State. The counties shall continue to make available the space and facilities provided for the Probate Court and registry that they provided on December 31, 1980, as needed pursuant to the determination of the Chief Justice of the Supreme Judicial Court.

Sec. 7. **4 MRSA § 201** is repealed.

Sec. 7-A. **4 MRSA § 202**, as amended by PL 1979, c. 504, § 6, is repealed.

Sec. 7-B. **4 MRSA § 203** is repealed.

Sec. 8. **4 MRSA §§ 251-252** are repealed.

Sec. 8-A. **4 MRSA § 253**, as amended by PL 1979, c. 540, § 7, is repealed.

*962 Sec. 9. **4 MRSA §§ 301-311**, as amended, are repealed.

Sec. 10. **4 MRSA § 352** as repealed.

Sec. 11. **4 MRSA § 451, 2nd sentence**, as last amended by PL 1979, c. 36, is further amended to read:

The council shall be composed of the Chief Justice of the Supreme Court, who shall also serve as chairman, the Attorney General, the Chief Judge of the District Court, and the Dean of the University of Maine School of Law, each to serve ex officio, and an Active or Retired Justice of the Supreme Judicial Court, 2 Justices of the Superior Court, one Judge of the District Court, ~~one judge of a probate court~~ one clerk of the judicial courts, 2 members of the bar and 6 laymen, to be appointed by the Governor.

Sec. 12. **4 MRSA § 555**, as amended by PL 1979, c. 541, Pt. A. § 13, is repealed and the following enacted in its place:

§ 555. Fee schedule

The Supreme Judicial Court shall have the authority to prescribe rules establishing the fees of clerks of the judicial courts and registers

of probate.

Sec. 13. **4 MRSA §§ 751-756** are repealed.

Sec. 14. **9-B MRSA § 624**, as enacted by PL 1975, c. 500, § 1, is amended to read:

§ 624. Deposits by fiduciaries and other officials

An administrator, executor, assignee, guardian, conservator, receiver or trustee; any court, including courts of ~~probate and~~ insolvency; officers and treasurers of towns, cities, counties; and savings banks of this State may deposit any moneys, bonds, stocks, evidences of debt or of ownership in property or any personal property with a trust company; and any of said courts may direct my person deriving authority therefrom to so deposit the same.

Sec. 15. **13 MRSA § 3062, last paragraph**, is amended to read:

No transfer of such funds or conveyance of any other kind of property shall be made without the approval of a Justice of a Superior Court ~~or the judge of probate~~ for the county in which the donor resides or resided at the time of his decease, if the property was acquired by gift or under any trust agreement or testamentary provision.

Sec. 16. **14 MRSA § 1211, last sentence**, as enacted by PL 1971, c. 391, § 1, is amended to read:

The following persons are exempt from serving as jurors and their names shall not be placed on the list: The Governor, councilors, judges, clerks and deputy clerks of common law courts, Secretary and Treasurer of State, all officers of the United States, ~~judges of probate~~ physicians and surgeons, dentists, sheriffs, counselors and attorneys at law.

*963 Sec. 17. **14 MRSA § 7561** is amended to read:

§ 7561. Liability of executors or administrators

If such executor or administrator, being heir or devisee, commits such trespass or waste, on proof thereof before ~~the judge of probate~~ a Justice of the Superior Court, he shall be liable to the same extent as the heirs or devisees. In both cases, the damages, when recovered by the executor or administrator or adjudged against him by ~~the judge of probate~~ a Justice of the Superior Court,

shall be accounted for in the administration account.

Sec. 18. 16 MRSA § 551, first sentence, is amended to read:

In trials before ~~probate courts~~ arbitrators, referees under Title 14, chapter 303, and county commissioners, depositions may, upon order of the tribunal before which the matter is pending and on good cause shown, be taken and used in the manner provided by rule for depositions in the Superior Court.

Sec. 19. 16 MRSA § 651, last sentence, as enacted by PL 1979, c. 540, § 24-B, is repealed as follows:

~~The rules of evidence in courts of probate are as provided in Title 18-A, section 1-107~~

Sec. 20. 18-A MRSA § 1-201, ¶ (5), as enacted by PL 1979, c. 540, § 1, is amended to read:

(5) "Court" means ~~any one of the several courts of probate~~ **the Superior Court** of this State established as provided in ~~Title 4, sections 201 and 202~~ **section 101**.

Sec. 21. 18-A MRSA § 1-201, ¶ (21-A), as amended by PL 1979, c. 540, § 1, is amended to read:

(21-A) "Judge" means ~~the judge of any one of the several courts of probate~~ **a Justice of the Superior Court** as defined in paragraph (5).

Sec. 22. 18-A MRSA § 1-305, last sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

The register shall be subject to the supervision and authority of the ~~judge of the court in which such register serves~~ **Chief Justice of the Supreme Judicial Court**.

Sec. 23. 18-A MRSA § 1-306, as enacted by PL 1979, c. 540, § 1, is repealed and the following enacted in its place:

§ 1-306. Jury trial

There is no right to trial by jury in any matter within the jurisdiction of this Code except as provided by the Constitutions and laws of this State and the United States.

Sec. 24. 18-A MRSA § 1-309, as enacted by PL 1979, c. 540, § 1, is repealed.

Sec. 25. 18-A MRSA § 1-311 is enacted to read:

***964 § 1-311. Oaths and acknowledgments**

All oaths required to be taken by personal representatives, trustees, guardians, conservators or of any other persons in relation to any proceeding under this Title, or to perpetuate the evidence of the publication of any order of notice, may be administered by the judge, register of probate, or any justice of the peace or notary public. A certificate thereof, when taken out of court, shall be returned into the registry of probate and there filed. When any person of whom such oath is required, including any parent acknowledging consent to an adoption, resides temporarily or permanently without the State, the oath or acknowledgment may be taken before and be certified by a notary public without the State, a commissioner for the State of Maine or a United States Consul.

Sec. 26. 18-A MRSA 1-501, as enacted by PL 1979, c. 540, § 1, is repealed and the following enacted in its place:

§ 1-501. Appointment; bond; salaries; copies

For each county, the Chief Justice of the Supreme Judicial Court shall appoint a suitable person to act as register of probate for that county. If the business of any county does not require the full-time service of a register of probate, the Chief Justice may appoint a part-time register of probate for that county.

Registers of probate in the several counties shall receive annual salaries as determined by the Chief Justice.

The salaries of the registers of probate shall be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for that service, which shall be deemed a fee for the use of the State. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for

personal service, appeal copies and the fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds shall be deemed to be official fees for the use of the State.

Nothing in this section shall be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge.

Sec. 27. 18-A MRSA § 1-502, as enacted by PL 1979, c. 540, § 1, is repealed and the following enacted in its place:

§ 1-502. Condition of bond

The register of probate shall faithfully perform all the duties of his office, pay over all moneys and safely keep and immediately deliver all records, files, papers, muniments in his office and property of the county or State as required by law.

Sec. 28. 18-A MRSA § 1-503, first sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

*965 Registers of probate shall have the care and custody of all files, papers and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship granted, bonds approved, accounts allowed, all petitions for distribution and decrees thereon and all petitions and decrees and licenses relating to the sale, exchange, lease or mortgage of real estate, all petitions and decrees relating to adoption and change of name, and such orders and decrees of the judge, and other matters, as he directs.

Sec. 28-A. 18-A MRSA § 1-503, 3rd sentence, as enacted by PL 1979, c. 540, § 1, is repealed as follows:

~~Any register may act as an auditor of accounts when requested to do so by the judge and his decision shall be final unless appeal is taken in the same manner as other probate appeals~~

Sec. 29. 18-A MRSA § 1-505, last sentence, as enacted by PL 1979, c. 540 § 1, is amended to read:

Beneficiaries in a will shall, upon application to the register of probate, be furnished with a copy of so

much of any probated will as relates to them, upon payment of a fee of \$1, provided the copy does not exceed 10 lines of legal cap paper of not less than 10 words in each line, and 10¢ for each additional line of 10 words in an amount determined under rules prescribed by the Supreme Judicial Court.

Sec. 30. 18-A MRSA § 1-506, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 1-506. Deputy register of probate

~~Any register of probate in this State~~ **The Chief Justice of the Supreme Judicial Court** may appoint a deputy register of probate for the county with the approval of the county commissioners. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. ~~The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate~~ The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners **determined by the Chief Justice.**

In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the ~~judge~~ **Chief Justice** shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. ~~He shall be sworn and, if the judge requires it, give bond as in the case of the register~~

Sec. 31. 18-A MRSA § 1-507, as enacted by PL 1979, c. 540, § 1, is repealed and the following enacted in its place:

***966 § 1-507. Inspection of register's conduct of office**

The Chief Justice of the Supreme Judicial Court may cause the records of each register of probate to be examined and, when found deficient, direct them to be immediately made or corrected, and when that order is not obeyed, the fact of that deficiency shall be

certified to the Treasurer of State, who shall cause the register's bond to be sued. The money recovered in that action shall be applied under direction of the court to complete the deficient records. If not sufficient, the balance may be recovered by the Treasurer of State in an action founded on the bond and facts.

Sec. 32. **18-A MRSA § 1-508**, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 1-508. Register incapable or neglects duties

When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the ~~county treasurer~~ **Chief Justice of the Supreme Judicial Court**, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid ~~by the treasurer~~ in proportion to the time that he has served and the amount shall be deducted from the register's salary.

Sec. 33. **18-A MRSA § 1-510**, as enacted by PL 1979, c. 540, § 1, is repealed and the following enacted in its place:

§ 1-510. Counseling; conflict of interest

(a) **No register or deputy register of probate may engage in the practice of law, nor shall he act as a counselor in or out of court in the drafting of any document or paper which he is by law required to record; provided that nothing in this section shall be deemed to preclude any register or deputy register of probate from rendering assistance of a general nature to the bar or public in the ordinary course of his duties.**

(b) **No register or deputy register of probate shall serve as personal representative, guardian or conservator of the estate; person or property of any person unless such person is a member of his family; nor shall he commence or conduct, either personally or by an agent, any matter in, or serve as trustee of, any trust which comes before the court in the country where he is register or deputy register. The phrase "member of his family," as used herein, includes a spouse, child, grandchild, parent, grandparent or other relative with whom the register or deputy register maintains a close personal relationship. Whenever a register or deputy register serves as personal**

representative, guardian or conservator for a member of his family, or as a trustee of any trust which comes or might come before the court in the county where he is register or deputy register, the matter shall be transferred to, or brought in, the court in any county other than the county where he is register or deputy register.

(c) **If any register or deputy register of probate has or may have any *967 beneficial interest in any estate or other matter instituted in the court in the county in which he is register or deputy register, the proceedings shall be conducted in the Superior Court in any adjoining county.**

Sec. 34. **18-A MRSA § 1-511**, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 1-511. Fees for approved blanks and forms

For all approved blanks, forms or schedule paper required in probate court proceedings, the register shall charge fees which shall be set ~~by the register and approved by the county commissioners, so as not to incur a loss to the county for such services~~ **in an amount determined under rules prescribed by the Supreme Judicial Court.** Such fees shall be payable by the register to the ~~county treasurer~~ **Treasurer of State** for the use and benefit of the ~~county~~ **State.**

Sec. 35. **18-A MRSA § 1-601, first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

In contested cases ~~in the original or appellate court of probate~~, costs may be allowed to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees, to be paid to either or both parties, out of the estate in controversy, as justice requires.

Sec. 36. **18-A MRSA § 1-602**, as enacted by PL 1979, c. 540, § 1, is repealed.

Sec. 37. **18-A MRSA § 1-603**, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 1-603. Registers to account quarterly for fees

Registers of probate shall account ~~for each calendar quarter~~ monthly under oath to the ~~county treasurers~~ **State Auditor** for all fees received by

them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount ~~for each calendar quarter of the same to the treasurers of their respective counties not later than the 15th day of the following month~~ **Treasurer of State at such times and in such manner as the Chief Justice of the Supreme Judicial Court or his designee shall from time to time specify.**

Sec. 38. 18-A MRSA § 1-604, first sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

When a petition of real estate is made by order of a judge ~~of probate~~, the expenses thereof shall be paid by the parties interested in proportion to their interests; but when such expenses accrue prior to the closing order or statement of the personal representative of the deceased owner of such real estate, having in his hands sufficient assets for the purpose, he may pay such expenses and allow the same in his account.

Sec. 39. 18-A MRSA §§ 1-605 and 1-606, as enacted by PL 1979, c. 540, § 1, are repealed.

***968 Sec. 40. 18-A MRSA § 3-105**, as enacted by PL 1979, c. 540, § 1, is repealed and the following enacted in its place:

§ 3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter

Persons interested in decedents' estates may apply to the register for determination in the informal proceedings provided in this Article, and may petition the court for orders in formal proceedings within the court's jurisdiction including, but not limited to, those described in this Article. The court may hear and determine formal proceedings involving administration and distribution of decedent's estates after notice to interested persons in conformity with section 1-401. Persons notified are bound, though less than all interested persons may have been given notice.

Sec. 41. 18-A MRSA § 3-106, as enacted by PL 1979, c. 540, § 1, is repealed.

Sec. 42. 18-A MRSA § 5-611, first sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

The public guardian or conservator shall not be

required to file bonds in individual guardianships or conservatorships, but shall give a surety bond for the joint benefit of the wards or protected persons placed under the responsibility of the public guardian or conservator and the State of Maine, with a surety company or companies authorized to do business within the State, in an amount not less than the total value of all assets held by the public guardian or conservator, which amount shall be computed at the end of each state fiscal year and approved by ~~the judge of the probate court for Kennebec County~~ **a Justice of the Superior Court.**

Sec. 43. 18-A MRSA § 5-612, sub-§ (b), last sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

Claims for services rendered by state agencies shall be submitted to the ~~probate~~ judge for approval before payment.

Sec. 44. 18-A MRSA § 7-201, sub-§ (a), first sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

The court has jurisdiction ~~concurrent with the Superior Court~~ of proceedings initiated by interested parties concerning the internal affairs of trusts.

Sec. 45. 18-A MRSA § 7-502, first sentence, as enacted by PL 1979, c. 540, § 1, is amended to read:

Unless ordered by decree of the ~~Superior Court~~ **court**, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it, as accountant, may by petition to the ~~Superior Court or the probate~~ court, in the county where the accountant was its principal place of business, secure approval of such accounting on such conditions as the court may establish.

***969 Sec. 46. 18-A MRSA § 8-101**, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 8-101. Estates of absentees

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or without the State where he was last known to be, and has no agent in the State, and it is not known where he is, or if such person, having a spouse or minor child dependent to any extent upon him for

support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the State, anyone who would under the law of the State be entitled to administer upon the estate of such absentee if he were deceased, may file a petition under oath in the ~~probate~~ court for the county where such property is situated or found, stating the name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearing or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of the property, real and personal so far as known, and its location within the State, and praying that such property may be taken possession of, and a receiver thereof appointed under this Part.

Sec. 47. 18-A MRSA § 8-304, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 8-304. Approval of bond by judge

Except as otherwise provided by ~~section~~ sections 3-603 through 3-606, 4-204, 4-207, 5-411, 5-412, 5-432 and 7-304, no bond required to be given to the judge ~~of probate~~ or to be filed in the probate office is sufficient until it has been examined by the judge and his approval written thereon.

Sec. 48. 18-A MRSA § 8-308, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 8-308. Reduction of penal sum where signed by surety company

If a surety company becomes surety on a bond given to a judge ~~of probate~~, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond.

Sec. 49. 18-A MRSA § 8-309, as enacted by PL 1979, c. 540, § 1, is amended to read:

§ 8-309. Actions on bonds

Actions or proceedings on probate bonds of any kind payable to the judge may be commenced by any person interested in the estate or other matter for which the bond was given ~~either in the probate~~

~~court in which the bond was filed~~ or in the Superior Court of that county.

***970 Sec. 50. 18-A MRSA § 8-313, first sentence**, as enacted by PL 1979, c. 540, § 1, is amended to read:

The judge ~~of probate~~ may expressly authorize or instruct a personal representative or other fiduciary, on the complaint of himself or any interested person, to commence an action on the bond for the benefit of the estate.

Sec. 51. 19 MRSA § 301, first sentence, is amended to read:

Whenever a man, having a wife, a minor child or children, residing in this State and being of sufficient ability or being able to labor and provide for them, willfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, the Superior Court ~~the probate court~~ and the District Court in the county where the wife or such minor child or children reside, or in the county where the husband or father may be found on petition of the wife for herself and for such child or children, or of such child or children by their guardian or by the municipality that is providing suitable maintenance, after such notice to the husband or father as it may order, and hearing, may order him to contribute to the support of his wife and such minor child or children or either of them such sums payable weekly, monthly or quarterly as are deemed reasonable and just, and may enforce obedience by appropriate decrees.

Sec. 52. 19 MRSA § 301, 4th sentence, is amended to read:

Any party aggrieved by any order or decree authorized by this section and made by a ~~probate court~~ or the District Court may appeal from said order or decree in the same manner as provided for appeals from such court in other causes, and appeal may be taken from the Superior Court to the law court.

Sec. 53. 19 MRSA § 531, first sentence, as repealed and replaced by PL 1969, c. 539, is amended to read:

Any husband and wife jointly, or any unmarried person, resident or nonresident of the State of Maine, may petition the ~~probate court~~ **Superior Court** to adopt a person, regardless of age, and for

a change of his or her name.

Sec. 53-A. 19 MRSA § 531, 2nd sentence, as enacted by PL 1973, c. 451, § 6, is amended to read:

The fee is filing such petition shall be \$5 **determined by rules prescribed by the Supreme Judicial Court.**

Sec. 54. 19 MRSA § 532, sub-§ 4, as enacted by PL 1979, c. 391, is amended to read:

4. Consent given before a Justice of the Superior Court. Except as provided in subsection 5, consent shall be given in front of a ~~judge of probate~~ **Justice of the Superior Court**. Before consent is given, the judge shall fully explain the effect of that consent, and shall make a determination that the consent is freely and knowledgeably given.

***971 Sec. 55. 19 MRSA § 532-A**, as last amended by PL 1979, c. 325, § 2, is further amended to read:

§ 532-A. Surrender and release

The parents or surviving parent of a child, or, if the child is illegitimate, the mother or the mother and putative father if the judge so requires under section 532-C, with the approval of ~~the judge of probate~~ **a Justice of the Superior Court** of any county within the State and after a determination by such ~~judge of probate~~ that a surrender and release is for the best interest of all parties, may surrender and release all parental rights or interests in and to such child and the custody and control thereof to a child placing agency duly licensed in Maine or to the ~~State~~ Department of Human Services for the purpose of enabling such licensed child placing agency or ~~State~~ Department of Human Services to have such child adopted by some suitable person, and its name changed when a change is desirable, and the child made an heir at law under this chapter. The effect of this surrender and release shall be fully explained by the ~~judge of probate~~ to the parent or parents executing the same. The surrender and release approved as foresaid shall be filed with the petition of adoption of the child in the ~~probate court~~ **Superior Court**. The surrender and release shall be executed in triplicate; one of the copies shall be filed in the court in which it is executed and the original and other copy shall be given to the transferee

thereunder.

Sec. 56. 19 MRSA § 532-C, first ¶, as enacted by PL 1973, c. 791, § 2, is amended to read:

When the mother of an illegitimate child wishes to consent to the adoption of the child or execute a surrender and release for the purpose of adoption of the child and the putative father has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child, or waived his right to notice, the mother must first file an affidavit with ~~the judge of probate~~ **a Justice of the Superior Court** so that the ~~judge~~ **Justice** may determine whether the putative father of the child must be given notice of the proceedings.

Sec. 57. 19 MRSA § 532-C, 3rd ¶, first sentence, as enacted by PL 1973, c. 791, § 2, is amended to read:

If the judge finds that the putative father has waived his right to notice in a document acknowledged before a justice of the peace, notary public or a ~~judge of probate~~ **Justice of the Superior Court**, which document must indicate that the putative father understands the consequences of the waiver of notice, the judge shall rule that only the mother of the illegitimate child must consent to the adoption of the child or execute a surrender and release for the purpose of adoption of the child.

Sec. 58. 19 MRSA § 532-C, 4th ¶, first sentence, as enacted by PL 1973, c. 791, § 2, is amended to read:

If, after notice, the putative father of the child wishes to establish parental rights to the child, he must, within 20 days after notice has been given or within ***972** such longer period as the judge may require by order, petition ~~the judge of probate~~ **a Justice of the Superior Court** to grant to him the exclusive care and custody of the illegitimate child.

Sec. 59. 19 MRSA § 532-C, 7th ¶, as enacted by PL 1973, c. 791, § 2, is amended to read:

If the ~~judge of probate~~ finds that the putative father of the child has not petitioned or appeared within the required period as set out in this section, he shall rule that the putative father has no parental rights and that only the mother of the child must consent to the adoption of that child or

execute a surrender and release for the purpose of adoption of that child.

Sec. 60. 19 MRSA § 532-C, 9th ¶, as enacted by PL 1973, c. 791, § 2, is amended to read:

An appeal shall lie from any ruling under this section, ~~to the supreme court of probate as in other civil cases~~, and no consent to the adoption of, or surrender and release for the purpose of adoption of, the illegitimate child shall be approved pending such appeal.

Sec. 61. 19 MRSA § 534 is amended to read:

§ 534. Records confidential

All **Superior Court** and probate court records relating to any adoption decreed on or after August 8, 1953 are declared to be confidential. The ~~probate courts~~ **Superior Court** shall keep the records of such adoptions segregated from all other court records. Such adoption records may be examined only upon authorization by ~~the judge of probate court~~ **a Justice of the Superior Court**. In any case where it is considered proper that such examination be authorized, ~~the judge a Justice~~ may in lieu of such examination, or in addition thereto, grant authority to the register of probate to disclose any information contained in such records by letter, certificate or copy of the record.

Sec. 62. 19 MRSA § 538, first ¶, is amended to read:

Any ~~judge of probate~~ **Justice of the Superior Court** may, on petition of 2 or more petitions, after notice and hearing and for good cause shown, reverse and annul any decree of the ~~probate court~~ **Superior Court** in his county, whereby any child has been adopted under this chapter.

Sec. 63. 19 MRSA § 781, as amended by PL 1973, c. 451, § 8, is further amended to read:

§ 781. Petition in Superior Court

If a person desires to have his name changed, he may petition ~~the judge of probate~~ **a Justice of the Superior Court** in the county where he resides; or, if he is a minor, his legal custodian may petition in his behalf, and the ~~judge~~ **Justice**, after due notice, may change the name of such person and shall make and preserve a ~~*973~~ record thereof. The fee for filing such petition shall be ~~\$\$~~

determined by rules prescribed by the Supreme Judicial Court.

Sec. 64. 22 MRSA § 1182, first sentence, as amended by PL 1967, c. 8, is further amended to read:

Because of emergency or other cause shown by affidavit or other proof, any Justice of the Superior Court ~~judge of probate~~ of Judge of a District Court, if satisfied that the public health and welfare will not be injuriously affected thereby, may make an order, in his discretion, on joint application of both of the parties desiring the marriage license, dispensing with the requirements of section 1181 as to either or both of the parties, including the laboratory statement, or, if the statement or statements provided for by such section have been filed, extending the 30-day period following the examination and test and extending the 60-day period of validity of any certificate to not later than a day specified, which shall be not more than 90 days after the examination and test.

Sec. 65. 22 MRSA § 1354, as amended by PL 1973, c. 582, § 5, is further amended to read:

§ 1354. Agreement for personal restraint

Before any restraint shall be imposed under the authority of section 1353, a voluntary agreement shall be made in writing by the person suffering from the effects of the use of an opiate, cocaine, chloral hydrate, other narcotic or barbiturate, to the imposition of restraint upon his actions, if necessary, and such agreement must be witnessed by the husband, wife or parent of the person aforesaid, is a resident, and approved, after reasonable notice, by a Justice of the Superior Court ~~or the judge of probate~~ in the county where the patient resides.

Sec. 66. 22 MRSA § 1355 is amended to read:

§ 1355. Progress investigation

Any Justice of the Superior Court ~~or the judge of probate~~ in the county where the patient resides may, at his discretion, require the department, or one of the county examiners of insane criminals, to investigate as to the progress of any such case, and, upon his or its certificate that further restraint is unnecessary, may annul the agreement and the person restrained shall be immediately released upon the order of said justice.

Sec. 67. 22 MRSA § 1819, last sentence, is amended to read:

Unless ordered by decree, the hospital so investing said funds is not required to render a court accounting with regard to such funds, but it, as accountant, or any interested person, may by petition to the Superior Court ~~or the probate court~~ in the county where said hospital is located secure approval of such accounting on such conditions as the court may establish.

Sec. 68. 22 MRSA § 3792, first sentence, as repealed and replaced by PL 1977, c. 652, § 1, is amended to read:

*974 Whenever a duly authorized agent of the department, sheriff or police officer, or 3 or more citizens of any municipality believe that a minor child under the age of 18 years is living in circumstances which are seriously jeopardizing the health, welfare or morals of that child, he or they may petition ~~the probate court or~~ the District Court in the county where the minor child resides, alleging that the child is living in circumstances which are seriously jeopardizing the health, welfare or morals of that child and that child is in need of protective custody, and praying that suitable and proper provision be made for the care, custody, support and education of the child named in the petition.

Sec. 69. 22 MRSA § 3792, 4th ¶, first sentence, as amended by PL 1979, c. 481, § 5, is further amended to read:

The ~~probate court or~~ District Court shall have jurisdiction to hear such a petition in all cases involving the alleged need for protective custody of a minor child, without regard to the existence of a valid decree of custody in any other court and notwithstanding the provisions of the Uniform Child Custody Jurisdiction Act, [Title 19, sections 801 to 825](#).

Sec. 70. 29 MRSA § 1911, 5th sentence, as amended by PL 1977, c. 564, § 108, is further amended to read:

When service is made upon the public administrator, he shall forthwith petition the ~~probate court~~ **Superior Court** of his county for probate of the defendant's estate, any other statutory requirements for probate of estates notwithstanding.

Sec. 71. 30 MRSA § 2, sub-§ 1, first sentence, as

last amended by PL 1979, c. 245 § 1, is further amended to read:

The county commissioners, treasurers, sheriffs ~~judges of probate, registers of probate~~ and registers of deeds in the several counties shall receive annual salaries from the county treasury, in weekly, biweekly or monthly payments, as follows:

Sec. 72. 30 MRSA § 2, sub-§ 1, ¶A, sub-¶ (4), as last amended by PL 1977, c. 657, § 2, is repealed.

Sec. 73. 30 MRSA § 2, sub-§ 1, ¶A, sub-¶ (5), as last amended by PL 1979, c. 82, § 1, is repealed.

Sec. 74. 30 MRSA § 2, sub-§ 1, ¶B, sub-¶ (4), as last amended by PL 1977, c. 657, § 3, is repealed.

Sec. 75. 30 MRSA § 2, sub-§ 1, ¶B, sub-¶ (5), as repealed and replaced by PL 1977, c. 67, § 3, is repealed.

Sec. 76. 30 MRSA § 2, sub-§ 1, ¶C, sub-¶¶ (4) and (5), as repealed and replaced by PL 1977, c. 67, § 3, are repealed.

Sec. 77. 30 MRSA § 2, sub-§ 1, ¶D, sub-¶ (4), as repealed and replaced by PL 1977, c. 67 § 3, is repealed.

Sec. 78. 30 MRSA § 2, sub-§ 1, ¶D, sub-¶ (5), as last amended by PL 1979, c. 82, § 2, is repealed.

*975 **Sec. 79. 30 MRSA § 2, sub-§ 1, ¶E, sub-¶ (4),** as last amended by PL 1977, c. 657, § 6, is repealed.

Sec. 80. 30 MRSA § 2, sub-§ 1, ¶E, sub-¶ (5), as last amended by PL 1979, c. 82, § 3, is repealed.

Sec. 81. 30 MRSA § 2, sub-§, 1, ¶F, sub-¶¶ (4) and (5), as last amended by PL 1977, c. 657, § 6-A, are repealed.

Sec. 82. 30 MRSA § 2, sub-§ 1, ¶G, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 4, are repealed.

Sec. 83. 30 MRSA § 2, sub-§ 1, ¶H, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 5, are repealed.

Sec. 84. 30 MRSA § 2, sub-§ 1, ¶I, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 6, are repealed.

Sec. 85. 30 MRSA § 2, sub-§ 1, ¶J, sub-¶¶ (4) and (5), as last amended by PL 1977, c. 657, § 10, are repealed.

Sec. 86. 30 MRSA § 2, sub-§ 1, ¶K, sub-¶ (4), as last amended by PL 1979, C. 82, § 6-A, is repealed.

Sec. 87. 30 MRSA § 2, sub-§ 1, ¶K, sub-¶ (5), as repealed and replaced by PL 1977, c. 657, § 1, is repealed.

Sec. 88. 30 MRSA § 2, sub-§ 1, ¶L, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 7, are repealed.

Sec. 89. 30 MRSA § 2, sub-§ 1, ¶M, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 8, are repealed.

Sec. 90. 30 MRSA § 2, sub-§ 1, ¶N, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 9, are repealed.

Sec. 91. 30 MRSA § 2, sub-§ 1, ¶O, sub-¶¶ (4) and (5), as last amended by PL 1979, c. 82, § 10, are repealed.

Sec. 92. 30 MRSA § 2, sub-§ 1, ¶P,¶ (4), as repealed and replaced by PL 1977, c. 657, § 3, is repealed.

Sec. 93. 30 MRSA § 2, sub-§ 1, ¶P, sub-¶ (5), as last amended by PL 1979, c. 82, § 11, is repealed.

Sec. 94. 30 MRSA § 65, sub-§ 1, first sentence, as enacted by PL 1977, c. 67, § 5, is amended to read:

The county commissioners shall set the amount to be charge by ~~the register of probate and~~ the register of deeds for the publication of notices required by law.

Sec. 95. 30 MRSA § 703 is amended to read:

§ 703. Annual statement of financial standing

*976 Each treasurer shall, at the end of each year in connection with the commissioners, make a statement of the financial condition of the county showing in detail all moneys received into and paid out of its treasury, including a statement in detail of all sums received under ~~Title 18, section 2351~~ **Title 33, chapter 27**, and other facts and statistics necessary to exhibit the true state of its finances, including the number of weeks' board

and expense of clothing furnished prisoners, and shall publish in pamphlet from a reasonable number of copies for distribution among its citizens.

Sec. 96. 33 MRSA § 353, first ¶, last sentence, is amended to read:

In all cases in which an executor, administrator, guardian or conservator or trustee, master or receiver or similar officer has been authorized or ordered by a court ~~of probate or other competent court~~ to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has filed to comply with any other prerequisite for the issuance of the license authorizing such sale or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such **personal representative**, executor, administrator, guardian, conservator, trustee, master or receiver, or other similar officer, appointed as aforesaid, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts heretofore done are validated.

Sec. 97. 33 MRSA § 1001, sub-§ 4, is amended to read:

4. Court. "Court" means the ~~probate court~~ **Superior Court**.

Sec. 98. 33 MRSA § 1216, as enacted by PL 1973, c. 616, § 1, is amended to read:

§ 1216. Limitation

Nothing in this chapter shall preclude the rights of the State to title to property under ~~Title 18, section 4001, subsection 8~~ **Title 18-A, section 2-105**, or in any action brought to quiet title with respect to island property.

Sec. 99. 34 MRSA § 2465, first ¶, last sentence, is repealed as follows:

~~The proceedings in such appeals shall be governed by the rules provided for probate appeals~~

Sec. 100. 34 MRSA § 2515, first ¶, 3rd sentence, as amended by PL 1971, c. 62, § 8, is further amended to read:

The State ~~of Maine~~ shall have a claim against the estate of any patient and against the estate of any person legally liable for care and treatment under this chapter, *977 for any amount due and owing to the State ~~of Maine~~ at the date of death of such patient or such person, including any claim arising under an agreement entered into under this chapter, enforceable in the ~~probate court~~ **Superior Court**.

Sec. 101. 36 MRSA § 559, sub-§ 2, last sentence, as amended by PL 1979, c. 540, § 42-B, is further amended to read:

Such tax shall be a charge against the estate and shall be allowed by ~~the judge of probate~~ **a Justice of the Superior Court**; but when the personal representative notifies the assessors that he has no funds of the estate to pay such tax and gives them the names of the heirs or devisees, and the proportions of their interests in the real estate to the best of his knowledge, the real estate shall no longer be taxes to him.

Sec. 102. 36 MRSA § 943, 8th ¶, first sentence, is amended to read:

Whenever the person against whom the tax is assessed shall have died after the tax has been committed and prior to the expiration of the 18-months period of foreclosure and such person shall have left a will offered for probate, ~~the probate judge~~ **a Justice of the Superior Court** of the county wherein said will is offered upon petition of any devisee of the real estate on which said tax is unpaid may grant a period of redemption not to exceed 60 days following the final allowance or disallowance of said will.

Sec. 103. 36 MRSA § 3526, last ¶, as amended by PL 1979, c. 540, § 47, is further amended to read:

Any ~~judge of probate~~ and any Justice of the Superior Court upon application of the State Tax Assessor may compel the attendance of witnesses and the giving of testimony before the State Tax Assessor in the same manner, to the same extent and subject to the same penalties as if before said court.

Sec. 104. 36 MRSA § 3527, first sentence, is amended to read:

If, upon the decease of a person leaving an estate which may be liable to pay an inheritance tax, a will is not offered for probate or an application for administration is not made within 6 months after the date of death, or if the executor or administrator does not qualify within said period, the ~~probate court~~ **Superior Court**, upon application by the State Tax Assessor, may appoint an administrator.

Sec. 105. 36 MRSA § 3581, as amended by PL 1979, c. 540, § 48, is repealed and the following enacted in its place:

§ 3581. Inventory of estate

Every personal representative or trustee, in addition to any inventory otherwise required, shall, within 3 months of the date of his appointment, file with the State Tax Assessor on blanks to be furnished by the State Tax Assessor an inventory upon oath containing a complete list of all the property of the estate or trust within his knowledge.

*978 Trustees, grantees or donees under conveyances or gifts made during the life of the settlor, grantor or donor, and persons to whom beneficial interests shall accrue by survivorship, shall, within 6 months of the date of death of the decedent, file with the State Tax Assessor on blanks to be furnished by the State Tax Assessor an inventory upon oath of all property subject to tax within his knowledge.

The State Tax Assessor may, for cause, extend the time for filing an inventory. If a person required to file an inventory under this section neglects or refuses to file the inventory, he shall be liable to a penalty of not more than \$500. On complaint of the State Tax Assessor, a Justice of the Superior Court may remove any person appointed by the court from his position as personal representative or trustee for neglect or refusal to file an inventory.

Sec. 106. 39 MRSA § 3584, first sentence, is amended to read:

Except as otherwise provided, no account of ~~an executor, administrator~~ **a personal representative** or trustee showing any payment debts, funeral expenses, expenses of administration and legacies or distributive shares wholly exempt from inheritance taxes shall be allowed by the ~~probate~~

~~court~~ **Superior Court** unless with the consent of the State Tax Assessor or unless such account shows, and ~~the judge a Justice~~ of said court finds, that all inheritance taxes already payable have been paid and that all taxes which may become due have been secured as provided.

Sec. 107. 36 MRSA § 3686, 3rd sentence, as amended by PL 1979, c. 540, § 50, is further amended to read:

Whenever no administration bond is otherwise required, the ~~judge of probate~~ **Justice of the Superior Court**, notwithstanding any provisions of Title 18-A, sections 3-603 through 3-606, may, unless he shall find that any inheritance or estate tax due and to become due the State is reasonably secured by the lien upon real estate hereinbefore provided, shall require a bond payable to him or his successor sufficient to secure the payment of all inheritance taxes and interest conditioned in substance to pay all inheritance and estate taxes due to the State from the estate of the deceased with interest thereon.

Sec. 108. 36 MRSA § 3922 is amended to read:

§ 3922. Compensation and expenses

The compensation and expenses of the members of the board and its employees may be agreed upon among such members and the ~~executor or administrator~~ **personal representative** and if they cannot agree shall be fixed by the ~~probate court of~~ **general jurisdiction** of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the ~~executor or administrator~~ **personal representative**.

Sec. 109. Effective date. This Act shall take effect on January 1, 1981. ~~*979~~ Registers of probate holding office at the time this Act becomes effective shall continue to serve in their respective counties until their terms expire, subject to the direction of the Chief Justice and the provisions of Title 18-A.

Judges of probate holding office at the time this Act becomes effective shall continue to serve until their terms expire and shall sit in the Superior Court on probate matters by assignment of the Chief Justice.

The salary of any such judge of probate continuing

in office after the effective date of this Act shall be paid by the State from the General Fund.

STATEMENT OF FACT

The purpose of this bill is to restructure the probate courts by transferring their jurisdiction to the Superior Court. A brief outline of the basic changes is set forth below with appropriate references to the sections of the bill which create those changes.

1. Transfer of the probate court jurisdiction to the Superior Court.

Sections 4, 20 and 21. Sections 40 and 41 adjust the probate code to accommodate the transfer of probate jurisdiction into the one court of general jurisdiction by amending [Title 18-A, section 3-105](#) and repealing [Title 18-A, section 3-106](#), as suggested in the Uniform Probate Code comment to [Title 18-A, section 3-106](#). The sections of the present [Title 4](#) establishing the probate courts are repealed in sections 7 to 9. One of the sections, [Title 4, section 202](#), concerning the administration of oaths and acknowledgments, is preserved by section 25 of the bill, which would enact a new [Title 18-A, section 1-311](#). Corresponding sections of the probate code are amended by section 23, the then unnecessary provision for lack of jury trial and for removal from the probate to the Superior Court, which would now be covered by [Rules 28 and 29 \(d\) of the Maine Rules of Civil Procedure](#), and section 24, the provision for the selection of probate judges under the present [Title 4](#).

2. Granting of authority of the Chief Justice to designate Superior Court judges to do probate work.

(Section 5) This provisions would enable the Chief Justice, within his discretion, to set up what amounts to a separate probate division within the Superior Court as appropriate to the nature of Superior Court work and probate in any of the various counties of the State.

3. Integration of the probate registry system into the general court system of the Superior Court,

while still maintaining the separate nature of the probate registry. This is done primarily by making the register of probate subject to the authority of the Chief Justice in a manner analogous to the clerks of the Superior

Court. These provisions include:

A. Appointment of registers by the Chief Justice. Sections 20 through 30;

B. Making the register subject to the court through the Chief Justice. Sections 22, 31, 32, 34, 37 and 42;

***980 C. Grants authority to the Chief Justice to set the fees.** Sections 29, 34, 36, 53 and 63; and

D. Transfers responsibility for, and financing of, the probate court and registry from the counties to the State, and provides for transfer of corresponding county moneys in order to cover the new state costs with the savings realized by abolishing probate courts and the transfer of responsibility for the registry out of the county. These provisions are based on the technique used in meeting a similar problem at the time the State assumed responsibility for the support of the Superior Court in 1976. Section 6, 10, 26, 34 and 36.

4. Elimination of the separate provisions for the use of reporters in the probate courts, rendered unnecessary by the transfer of jurisdiction into the Superior Court where reporters are already generally provided for. Sections 13 and 39.

5. Increases the number of Superior Court judges. [Section 3](#). This provision, as presently written, increased the number of Superior Court Justices by 5. The exact number of additional Superior Court judges that would be necessary to handle the increased work has not finally been estimated. Further study is continuing on the exact impact of the probate code on the work load of the probate judges, and consultations are being made with the court administrator concerning this question, including the estimation of costs and savings. A further report on this will be made at the commission meeting on February 12, 1980.

6. Provides accommodation for situations in which there might be a conflict of interest because of any interest that the register of probate might have in a case in his county. [Section 33](#). These provisions are an adjustment of the present [Title 4, section 307](#), concerning registers. The provisions of that present section

are rendered unnecessary insofar as they concern probate judges. Superior Court judges are covered by the rules of judicial responsibility.

The conflict of interest provision concerning registers of probate are taken in part from comparable provisions concerning clerks of the Superior Courts. In addition, the last sentence of the section is added to make clear that the prohibition on counseling persons does not preclude the register of probate from rendering the kind of general assistance which is part of the probate registry's ministerial duties.

7. Other changes. The remaining changes made in this bill are drafting adjustments in various sections of the statutes in order to conform them to the major changes outlined above.

OPINION OF THE JUSTICES

To the Honorable Senate of the State of Maine: In compliance with the provisions of [section 3 of Article VI of the Constitution of Maine](#), we, the undersigned Justices of the Supreme Judicial Court, give the following opinion upon the questions propounded to us by the Senate on March 3, 1980.

QUESTION 1: Would S. P. 775, L. D. 1968, "AN ACT to Transfer Probate Jurisdiction to the Superior Court," if enacted, constitute a violation of the Constitution of Maine, Article V, Part First, Section 8, which excludes the appointment *981 of "judges of probate" from the Governor's authority to appoint all judicial officers?

ANSWER: We answer the first question in the negative.

The main purpose of the bill now pending before the Senate is to place within the jurisdiction of the Superior Court matters that are now heard and determined by the judges of probate. In particular, section 4 of the bill would vest the Superior Court with the jurisdiction conferred on "the Court" by section 1-302 of the Probate Code (title 18-A of the Maine Revised Statutes, effective January 1, 1981) as well as jurisdiction over matters now within the jurisdiction of courts of probate except as concurrent or exclusive jurisdiction is vested in the District Court. Sections 7, 7-A, 7-B, 8, 8-A, 9, and 10 of the bill would repeal the provisions of chapter 7 of title 4 of the current Revised Statutes which define, for the most part, existing jurisdiction of judges and courts of probate.

The probate courts have only the limited jurisdiction conferred on them by legislation. E. g., [Thaxter, Appellant](#), 154 Me. 288, 147 A.2d 126 (1958); [Shannon v. Shannon](#), 142 Me. 307, 51 A.2d 181 (1947). They were established and their special jurisdiction defined by the provisions of chapter 51 of the Laws of 1821. With relatively minor modifications, those provisions were carried forward into chapter 105 of the Revised Statutes of 1840 and eventually into chapter 7 of title 4 of the current Revised Statutes.

Before 1855, under Article V, Part First, section 8, of the Constitution, judges of probate, like other judicial officers, were appointed by the Governor with the advice and consent of the Council. Pursuant to chapter 273 of the Resolves of 1855, a constitutional amendment was adopted, excepting judges of probate from the Governor's appointive authority and requiring their election by the people of the several counties.

There can be no serious doubt that the 1855 constitutional resolve and amendment used the term "judges of probate" to mean only those judicial officers having the special jurisdiction provided for by chapter 105 of the Revised Statutes of 1840. It did not include justices of the Supreme Judicial Court even though that court then had jurisdiction, sitting as the Supreme Court of Probate, to review the decision of a judge of probate and, in doing so, to hear and determine all issues de novo. There has never been any suggestion, in the decisions of the Law Court or in legislation, that justices of the Supreme Judicial Court were excepted by virtue of the constitutional amendment of 1855 from the Governor's appointive power merely because they might on occasion hear and determine matters normally within the jurisdiction of judges of probate.

We conclude, therefore, that the expression "judges of probate," as used in Article V, Part First, section 8, refers to judges having the limited special jurisdiction now defined in chapter 7 of title 4 of the Revised Statutes of 1964, as amended.

[Article VI, section 1, of the Maine Constitution](#) provides:

The judicial power of this State shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

The pending bill would exercise that legislative power to reallocate the jurisdiction of the present probate courts to an already established court, the justices of which are constitutionally appointive judicial officers. The Superior Court is Maine's trial court of general jurisdiction. The

pending bill would add to that jurisdiction probate matters which would thereafter constitute but a part of all the matters the Superior Court has jurisdiction to hear and determine. The justices of that court would not be transformed into "judges of probate" merely by that addition to their jurisdiction.

Finally, the Legislature is not prohibited by the Maine Constitution from abolishing the probate courts. The Constitution nowhere explicitly requires the establishment of courts of probate. The provision of Article V, Part First, section 8, *982 excepting judges of probate from the class of appointed judicial officers, even when that provision is considered in conjunction with the provision now in effect for election of judges of probate in [Article VI, section 6](#), falls short of requiring the establishment of courts of probate and the designation of their presiding officers as "judges of probate." The fact that a constitutional provision prescribes the manner of designating the incumbent for an office does not alone imply a constitutional requirement that the office exist. Cf. [Ross v. Hanson, Me.](#), 227 A.2d 606 (1967).

In view of the broad grant in [Article VI, section 1](#), of legislative authority to create inferior state courts, Article V, Part First, section 8, and [Article VI, section 6](#), must be construed to govern the designation of judges of probate only if probate courts are established and judges of probate exist, and not to require the establishment of such courts or the existence of such judges. If the pending bill is enacted, Superior Court justices, though exercising what was formerly probate jurisdiction, could not be properly characterized as "judges of probate" as the term is used in Articles V and VI of the Maine Constitution.

QUESTION 2: Would S. P. 775, L. D. 1968, if enacted, constitute a violation of the [Constitution of Maine, Article VI, Section 6](#) in that it would not "establish a different Probate Court system with full-time judges?"

ANSWER: We answer the second question in the negative.

By the terms of chapter 77 of the Resolves of 1967, the repeal in 1967 of [Article VI, section 6, of the Maine Constitution](#) is to become effective "at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges."

Taken in conjunction with the Probate Code (Title 18-A of the Revised Statutes, effective January 1, 1981), the pending bill would establish a new and different system for the administration and adjudication of matters heretofore within the jurisdiction of the probate courts.

See Maine Probate Law Revision Commission, Report of the Commission's Study & Recommendations Concerning Maine Probate Law (Oct. 1978). The pending bill, considered in connection with the Probate Code, would redefine and reallocate the authority and responsibility of the judge and the register in many important respects and would make the present sixteen county probate courts part of the single state-wide Judicial Department. See 4 M.R.S.A. s 1 (1979). It would thereby establish a different system. Since the bill would provide that justices of the Superior Court are to adjudicate controversies arising under the Probate Code, it is clear that the new system would have full-time judges.

In combination with the Probate Code, the pending bill may be properly regarded as establishing a "different Probate Court system" within the meaning of the constitutional amendment of 1967. The operative language of the 1967 amendment does not require a separate system of courts to handle matters heretofore administered or adjudicated by courts known as "probate courts." The purpose of the amendment was to give the Legislature discretion to study and determine the best system for administering and adjudicating matters traditionally within the jurisdiction of the probate courts. The intent was to open the way for change in the system. See 2 Me.Legis.Doc. 3425 (1967) (remarks of Senator

Lund). It is not necessary to adopt a system of any particular nature in order to effectuate the repealing amendment as long as the system provides for handling of probate matters, is different from the existing system, and has full-time judges. The pending bill carries out the broad purpose of the operative language of the 1967 amendment.

Dated: March 10, 1980.

VINCENT L. McKUSICK

SIDNEY W. WERNICK

EDWARD S. GODFREY

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