

1893

Official Papers Addressed to the Legislature of the State of Maine by Henry B. Cleaves

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Maine. Governor. 1893-1896
(H.B. Cleaves)

OFFICIAL PAPERS

ADDRESSED TO THE

Wm. Edwin May

Legislature of the State of Maine

BY

HENRY B. CLEAVES.

1893.

Some Suggestions presented to the Sixty-Sixth Legislature by Governor Cleaves, touching the financial condition of the State of Maine.

STATE OF MAINE, }
EXECUTIVE CHAMBER, }
March 2, 1893.

To the Honorable Senate and House of Representatives:

In compliance with the constitutional requirement applicable to the Executive, you will permit me to submit, for your consideration, some suggestions relating to the financial condition of the State; and I also submit herewith a communication from the State treasurer, a statement of appropriations already made at this session, amounting to the sum of \$1,184,514.80; also an estimate from the State treasurer of the additional regular expenditures *required* for the year 1893, amounting to the sum of \$410,020.74; also a statement of proposed appropriations for 1893, reported by committees and now pending before the legislature, amounting to the sum of \$169,425.86; and also a statement of the estimated additional appropriations asked for and now pending before committees, that have not been finally adjudicated upon, amounting to the sum of \$86,500.00, making an aggregate of \$1,850,461.40.

I also have the honor to submit herewith an estimate from the State treasurer, of the receipts for the year 1893. It is based on general laws as they existed on the first day of January last.

An additional revenue of some thirty-five or forty thousand dollars will be received from the railroads, by reason of increased taxation upon these corporations; but sixty per cent. of the additional revenue received from the Maine Central Railroad must be refunded to the various cities and towns, and also quite a per cent. of the additional revenue received from the Boston and Maine Railroad, and a very large portion of this increased revenue comes from these two corporations.

One-half of whatever additional amount of revenue may be received from the savings banks will be distributed to various towns for school purposes. These two items constitute the principal portion of the additional revenue secured by recent legislation. It will therefore be observed that while all of this increased revenue, in the first instance, is paid into the State treasury, it is not entirely available to meet appropriations made by the legislature, for existing laws provide that a large portion of the same shall be used for *other specific purposes*.

The appropriations for the year 1891 amounted to the sum of \$1,657,936.47. Two hundred thousand dollars, on account of the temporary loan, was included in such appropriations.

The first appropriation bill passed *at this session* of the legislature, also included two hundred thousand dollars, on account of such temporary loan, but if excessive appropriations are to follow, the treasurer will be required to renew this entire loan, and use the money appropriated for this specific object, for other purposes.

Our existing temporary loan of three hundred thousand dollars reaches the constitutional limit. *We are precluded by the Constitution* from creating "any debt, or debts, liability or liabilities, on behalf of the State, which shall singly or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed three hundred thousand dollars, except to suppress insurrection, to repel invasion or for the purposes of war."

This loan of three hundred thousand dollars has existed since 1890, and it is certainly desirable that a payment shall be made on the same, and the funds appropriated for such purpose should not be diverted to meet other liabilities, created by special appropriations hereafter made.

And in this connection, you will also permit me to refer to the report of the State Treasurer, for the year 1892: It will be observed upon examination, (Page 49) that in the year 1887, our expenditures exceeded our receipts \$6,563.42; for the year 1888, the excess of expenditures over our receipts was \$40,004.62; for the year 1889, \$306,105.00; for the year 1890, \$107,712.24; the report shows that for the year 1891, our receipts exceeded our expenditures, \$34,937.43. While during the year 1891 there is an apparent excess of receipts over expenditures, yet there is included in such receipts, \$357,702.10, refunded to the State from the United States Government, on account of the direct tax; and except for this item of revenue, there would have been an excess of expenditures over receipts for the year 1891, of \$322,764.67. The year 1892 shows an excess of receipts over expenditures of \$107,166.08, and is the first time during the past six years that our ordinary income has been equal to our expenditures.

Sound financial and business principles *absolutely require*, that our expenditures shall not exceed our receipts, and that the State should have a surplus at all times available in its treasury.

It is a duty that is imperative upon us, in the administration of the affairs of the State to practice frugality, to carefully scrutinize all appropriations, and confine them to the narrowest limits consistent with the welfare of the people, the State and its institutions, and endeavor to reduce the rate of state taxation. While we are striving to secure new and additional revenues to the State from various sources, it will be of little avail in relieving the tax payers of the State, if it serves only to encourage appropriations which are not **absolutely necessary**.

The legislature determines the amount of appropriations, after investigation and hearing. No other department of the Government has the right to exercise that authority. The discretion and power rests where it should, with the chosen representatives of the people; and as I have suggested in a former communication to the Honorable Senate and House of Representatives, the whole subject is within your control. "It concerns every citizen of the State; it is your good judgment that must govern; *and every measure should be considered upon its own intrinsic merits.*"

And before the session closes, in the performance of the constitutional duties committed to you by the suffrages of the people, *you will determine the rate of taxation for State purposes*, for the coming two years, upon the valuation of the State; and that rate *must depend upon the good judgment and wisdom of the legislature, in making appropriations from the public treasury.*

The Supreme Court of the State of Maine has held "That the power of taxation 'for the defense and benefit of the people' is limited only by the good sense and sound judgment of the legislature." Our Court has also held that "It is not for the judicial department to determine where legitimate taxation ends." It is the province of the legislature.

I do not favor illiberality toward any of the interests or institutions of the State. I would deal with them justly, even liberally rather than penuriously; but we should, in considering all of these questions, constantly remember, that *it is the money of all the people we are appropriating*, that *appropriations of money demand taxation*; and that the little streams of revenue flowing from all sections of our State into the public treasury, from which these appropriations are made, are the fruits of industry and toil, and should be guarded as vigilantly as the sagacious man would protect his private means.

I carefully refrain at this time from expressing any opinion for or against any of the proposed appropriations before your honorable bodies for consideration, but I have deemed it my

duty to present to the legislature the accompanying statements from the Treasury Department, with the foregoing suggestions.

The people have imposed a great trust upon the legislature and the Executive, and I earnestly urge the utmost conservatism. Our appropriations should be governed by the actual needs; we should strive to keep our expenditures within reasonable limits; then, we shall have conformed to the imperative demands of the occasion, and fulfilled the confident expectations of our constituents.

HENRY B. CLEAVES.

STATE OF MAINE, TREASURER'S OFFICE, }
 Augusta, March 1, 1893, }

Hon. Henry B. Cleaves, Governor of Maine:

DEAR SIR:—As requested in your communication of the 27th ult., I have the honor to transmit herewith a statement showing appropriations already made for the year 1893, also an estimate of the further regular appropriations for the year 1893, also the appropriations acted on by committees and now pending before the legislature and also an estimate of the appropriations for 1893 asked for and pending before committees, but not yet reported.

I also, as requested, include an estimate of the receipts for the year 1893, showing a total of \$1,464,882.00. The cash on hand January 1, 1893 amounted to \$304,569.68, which added to the estimated receipts for the year gives, an aggregate of \$1,769,451.68. From this amount should be deducted at least \$100,000.00 which it is necessary to have on hand Jan. 1st to meet the payments of railroad and telegraph taxes, soldiers' pensions, school funds and county taxes which fall due on that date, together with the large number of warrants drawn during the last week in December. Deducting the above named amount will leave \$1,669,451.68 with which to meet the appropriations for the year.

In my estimate of the receipts on account of State tax I have allowed a sum slightly in excess of the entire amount called for by the tax act, which you will understand is the full amount collectable without robbing some other year. The receipts from other sources are estimated on the basis of receipts in 1892, with the exception of the amount which will probably be received from the Land Agent, he informing me that the receipts of his office during this year will probably not exceed the amount shown in my estimate.

Very truly yours,

GEO. L. BEAL,

State Treasurer.

Appropriations made by bill approved Feb. 8, 1893, entitled an act to provide in part for the expenditures of government.....	\$1,148,038 50
Other bills appropriating money, approved to and including March 1, 1893.	36,476 30
	<hr/>
	\$1,184,514 80

*Estimate of Further Regular Expenditures
for the Year 1893.*

Salaries of State officers, subordinate officers, clerks and laborers.....	\$117,330 00
Furniture, repairs, fuel and lights.....	15,000 00
Water for State House	1,200 00
Agricultural societies and institutes	10,700 00
Board of Agriculture and expenses of secre- tary	670 74
Insane State beneficiaries	65,000 00
Penobscot and Passamaquoddy Indians	15,000 00
Soldiers' pensions	65,000 00
Military pensions.....	4,000 00
Advertising land sale and tax act	500 00
Transportation of documents	1,800 00
Fish and game and sea and shore fisheries..	14,000 00
Stationery and postage	10,000 00
Printing and binding and stitching	42,000 00
Freight and trucking.....	500 00
Contingent expenses of Legislature	3,000 00
Pay roll of Senate and House	41,700 00
Legislative books, stationery and postage ..	2,620 00
	<hr/>
	\$1,594,535 54

*Bills Appropriating Money, reported by
Committees and now Pending before the
Legislature.*

Maine General Hospital	\$7,500 00	
Industrial School for Girls	7,000 00	
Jerusalem Township	500 00	
Bloomfield Academy	500 00	
Sisters of Charity.....	1,250 00	
Calais Academy	500 00	
City of Augusta	2,082 62	
First Maine Heavy Artillery....	600 00	
St. Elizabeth Catholic Orphan Asylum	400 00	
Training School	1,000 00	
Castine Normal School	1,500 00	
Silver Ridge Plantation.....	300 00	
Town of Guilford	292 24	
World's Columbian Exposition..	17,900 00	
Eastern Maine Insane Hospital, \$150,000 (half in 1893)	75,000 00	
Maine State College	12,000 00	
Fish and game—deficiency	1,673 00	
Eastern Maine State Fair, addi- tional	500 00	
Maine State Agricultural Society, additional.....	1,000 00	
Insurance on Reform School....	800 00	
Reform School	24,500 00	
Mattawamkeag bridge.....	500 00	
James McDougal & Sons	878 00	
Lobster hatchery	10,000 00	
Road in Dallas Plantation.....	750 00	
Monmouth Academy	500 00	
		169,425 86
		<hr/> \$1,763,961 40

Appropriations pending before committees but not yet reported to the Legislature, including Bath Military and Naval Orphan Asylum and others.....	\$86,500 00
	<hr/>
	\$1,850,461 40

Estimate of Receipts During the Year 1893.

State tax previous to 1892..	\$8,000 00	
“ 1892	780,000 00	
“ 1893	65,000 00	
	<hr/>	\$853,000 00
“ on Railroad Co's.. ..		100,000 00
“ Telegraph “		6,000 00
“ Telephone “		2,000 00
“ Express “		700 00
“ Insurance “		30,000 00
“ Savings banks.. ..		380,000 00
County taxes on wild lands.....		23,000 00
Secretary of State, fees.....		2,000 00
Ins. Commissioner, fees		9,000 00
Peddlers' license fees.....		6,000 00
New corporations.....		25,000 00
Increase in capital stock.....		500 00
Duty on commissions.....		2,500 00
Interest		1,000 00
Penobscot Indians, shore rents		3,182 00
Railroads to pay commissioners.....		10,000 00
Land Agent		4,000 00
Liquor Commissioner		7,000 00
		<hr/>
		\$1,464,882 00
Cash on hand January 1, 1893.....		304,569 68
		<hr/>
		\$1,769,451 68
Necessary to have on hand Jan. 1, 1894....		100,000 00
		<hr/>
Amount available during the year, 1893.....		\$1,669,451 68

"An Act to incorporate the Auburn and Mechanic Falls Railroad Company," returned by Governor Cleaves, to the Legislature of Maine, without his official approval.

STATE OF MAINE, }
EXECUTIVE DEPARTMENT. }
February 15, 1893.

Gentlemen of the House of Representatives :

I have examined the act entitled "An Act to incorporate the Auburn and Mechanic Falls Railroad Company," and am constrained to withhold my approval, if for no other reason than to afford the legislature an opportunity to give the subject matter further consideration.

I have given to its various provisions a most careful consideration, for I observe that the charter members of the proposed organization are among the leading citizens of the State, interested in its progress and advancement. Some of its provisions do not afford sufficient security to the public, unduly invade private rights, and are against sound public policy.

Permit me to call your attention to some of the objections. The provision contained in section two, limiting the remedies of parties injured in their person and property, to the conditions and limitations in the general statutes applicable to towns, does not afford sufficient protection to the traveler upon a railway. Highways are maintained for the free use of the traveling public; railroads carry for hire, and should not be

relieved, in their occupation of the streets, from the ordinary obligations resting upon carriers of passengers.

Section nine provides that the "provisions of the thirty-first chapter of the Revised Statutes, relative to the foreclosure and redemption of mortgages, and the rights, duties and liabilities of bond-holders and trustees," shall be made applicable to the bonds and mortgage deed of trust of this corporation. It will be seen that the provisions of the thirty-first chapter of the Revised Statutes, have no reference to the foreclosure and redemption of mortgages or the rights, duties and liabilities of bond-holders or trustees, but relate to dealings between the principal, factors and agents in *mercantile* transactions.

If this allusion to chapter thirty-one is a clerical error, and a reference was intended to chapter fifty-one of the Revised Statutes, which is applicable to railroads and to the foreclosure and redemption of mortgages thereon and the rights and liabilities of bond-holders and trustees thereunder, then it would seem to be intended to give such bond-holders, and trustees the power, in case of default on the bonds, to organize as a railroad corporation, and still, under other provisions of the bill, they are exempt from the further obligations imposed upon railroads under chapter fifty-one.

Section ten of the proposed act, authorizes the corporation in carrying out its purposes to take and hold "*by virtue of the right of eminent domain, any real or personal estate or water power and privileges which it may find necessary and convenient.*"

While I have no doubt this power would be wisely exercised under the management of the promoters of this enterprise, the provision referred to is so broad and sweeping in its terms, that it might permit an unwarrantable exercise of the constitutional provision authorizing the taking of private property for public uses. The proposed legislation would unreasonably jeopardize the rights of private land owners and mill owners and the possessor of water power and privileges upon which industries may already depend.

Section thirteen seems to be somewhat contradictory of other provisions of the charter, uncertain in its operation, and involving legal propositions the judicial determination of which may injuriously affect the interests of the State and the people.

Under the provisions of section one, this corporation is authorized to "construct, equip, maintain and use a railroad with convenient single and double tracks, side tracks, switches, turn-outs and stations." The Board of Railroad Commissioners of the State is constituted and the appellate tribunal to review the decisions of the municipal officers of any city or town, in respect to any matters arising under this act. The railroad commissioners constitute the board to determine the conditions on which this railroad shall cross any other railroad. While this corporation is given even greater powers than are ordinarily accorded to steam railroads, yet we find in section thirteen of the act, the declaration that "said railroad shall not be deemed to be a railroad within the meaning of that term as used in the railroad statutes and Public Laws of this State." While this section may not have great force in law, it practically declares that this railroad, with its extraordinary grants, *shall be a railroad* with all the rights and privileges which our laws guarantee, and still not be a railroad, but exempt from those provisions of law that provide for the safety and care of the travelling public upon the railroads of the State.

Or if the purpose be to declare this to be only an *association*, to enable the corporators to run a street railroad as they might run a stage-coach or an omnibus for private advantage and free the corporation from the obligations of a railroad as common carriers, and its duties and obligations to the public as a railroad, then it seems to be unwise, if not unconstitutional, to grant to such organizations the exercise of the State's right of eminent domain, expressly reserved by our Constitution, for public purposes.

The declaration contained in section fourteen of the bill, that the object of the corporation cannot be attained under the

general laws relating to the organization of railroad corporations, seems to invade the province of the judicial department of the State, and I apprehend would not be regarded as conclusive.

In view of the great interest manifested in legislation involving special charters, you will again allow me to call attention to the provisions of article four, part third of the Constitution of the State, directing that "The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation." This provision in our Constitution embodies the deliberate expression of the people of Maine, and it will be observed that it is positive, direct and mandatory; and the duty is enjoined upon us by this constitutional declaration to confine legislation of a private and special character to the narrowest limits consistent with the public weal.

The Constitution also provides that "Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes and in cases where the objects of the corporation cannot otherwise be attained." If the legislature deems the objects of those desiring special charters and privileges practicable, and existing laws are not sufficiently comprehensive to permit the accomplishment of the purposes desired, it may provide the remedy by additional public laws, and thereby avoid the burdens of private and special legislation constantly increasing and pressing upon its attention.

In obedience to the constitutional provisions before referred to, a former legislature determined that it was practicable to provide by general law for the organization of railroad corporations. It is certainly desirable to provide by general laws for the organization of all railroad corporations desiring to construct, maintain and operate railroads for public use, except perhaps where they cross tide waters, the State having determined that it will retain within its control

jurisdiction over all the tidal waters of the State, and that they shall be subject only to legislative action.

If it is practicable to permit the organization of steam railroads under the general laws, and to allow them to exercise the right of eminent domain, it would seem that it is also practicable to provide by general laws for the organization of electric or street railroads. If existing general laws are insufficient, and they are so deemed by many, if they are defective, if they do not furnish sufficient security to the investors of capital desiring to aid in the development of these enterprises, we shall be conforming to the people's demand and expectation, embodied in their constitution, by making them sufficiently broad and liberal to meet all requirements. We are all desirous that nothing shall be done to hinder whatever may encourage enterprise and industry, and we should offer, by liberal enactments, every inducement that will aid in developing our broad acres, in building up our own industries and manufactures, and in making the people more prosperous.

Our supreme court has recently held, that the construction and operation of a street railway in the streets of our cities and towns, is not a new and different use of the land from its use as a highway. Laying down rails in the street and running street cars over them for the accommodation of the public may be a change in the mode of using the way, but not in the actual use; it is still used for a highway.

The legislature of the State, representing the public, if there be no constitutional inhibition, has the paramount power over all public ways, subject to property rights and easements of the abutting owner, and may delegate the authority of permitting the location, construction and operation of lines of street railway to the local authorities.

The history of these enterprises has clearly demonstrated the propriety of conferring upon the cities and towns the right to exercise some voice in a matter of so much consequence to them; and in more than ten of the states of our

Union constitutional provisions have been adopted depriving the legislature of the power to grant the right to construct and operate street railways in any city, town or village, without the consent of the local authorities. In many of the states of the Union, where no constitutional provision exists upon this subject, provision has been made by law investing the cities and towns with the right to permit the use of their streets for street railroad purposes and determine the conditions under which the privileges shall be enjoyed.

Some of these various constitutional and statute provisions provide that no law shall be passed by the legislature, granting the right to construct and operate a street railroad within any city, town or village, or upon any public highway, without first requiring the consent of such city, town or village having control of the streets or highways to be occupied by such street railway; and in many of the states it is provided that the franchise so granted shall not be transferred without similar assent first obtained.

The control and supervision of our public highways is vested in the local authorities. While it may be said they are held in trust by the State for the public, they are controlled by municipal instrumentalities. The land owners adjoining the same and the public are interested in having them maintained in a condition to meet the public demands. There is a growing sentiment that special franchises and privileges should not be granted to private incorporators, to unduly burden the public easement, now enjoyed by the people of the various cities and towns in their highways, without the consent of the municipality interested.

I believe it is safe and practicable to provide by general laws for the organization of street railways and avoid in the future the great time and expense that has been incurred in the past in considering and granting these special charters. It is a matter that is entirely within the province of the legislature to determine. The executive is powerless to afford a remedy without the co-operation of the legislative department of the government.

It is not a pleasant obligation to with-hold my signature to an act that has received the unanimous approval of the co-ordinate department of the government, but a sense of duty compels me to return the same to the branch in which it originated, without my official approval.

HENRY B. CLEAVES.