The Governor's Council in New England

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http://hdl.handle.net/2144/20575

Boston University
Dissertation

THE GOVERNOR'S COUNCIL IN NEW ENGLAND

by

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PREFACE</strong></td>
<td>v</td>
</tr>
<tr>
<td><strong>Chapter</strong></td>
<td></td>
</tr>
<tr>
<td>I. <strong>INTRODUCTION</strong></td>
<td>1</td>
</tr>
<tr>
<td>- The Role of the Executive in Modern Government</td>
<td></td>
</tr>
<tr>
<td>- The Governor's Council</td>
<td></td>
</tr>
<tr>
<td>- Institutional Origins</td>
<td></td>
</tr>
<tr>
<td>- Governor's Cabinets in American State Government</td>
<td></td>
</tr>
<tr>
<td>- The Problem</td>
<td></td>
</tr>
<tr>
<td>- Methodology</td>
<td></td>
</tr>
<tr>
<td>II. <strong>ORIGINS AND DEVELOPMENT OF THE COUNCIL</strong></td>
<td>19</td>
</tr>
<tr>
<td>- The Colonial Period</td>
<td></td>
</tr>
<tr>
<td>- Massachusetts</td>
<td></td>
</tr>
<tr>
<td>- Rhode Island</td>
<td></td>
</tr>
<tr>
<td>- Connecticut</td>
<td></td>
</tr>
<tr>
<td>- New Hampshire</td>
<td></td>
</tr>
<tr>
<td>- The Councillors in the Colonial Period</td>
<td></td>
</tr>
<tr>
<td>- Early Statehood</td>
<td></td>
</tr>
<tr>
<td>- Connecticut and Rhode Island</td>
<td></td>
</tr>
<tr>
<td>- New Hampshire</td>
<td></td>
</tr>
<tr>
<td>- Massachusetts</td>
<td></td>
</tr>
<tr>
<td>- Vermont</td>
<td></td>
</tr>
<tr>
<td>- Maine</td>
<td></td>
</tr>
<tr>
<td>- Changing Calibre of Councillors</td>
<td></td>
</tr>
<tr>
<td>III. <strong>CONSTITUTIONAL POWERS OF THE COUNCIL</strong></td>
<td>54</td>
</tr>
<tr>
<td>- Appointments</td>
<td></td>
</tr>
<tr>
<td>- Maine</td>
<td></td>
</tr>
<tr>
<td>- New Hampshire</td>
<td></td>
</tr>
<tr>
<td>- Massachusetts</td>
<td></td>
</tr>
<tr>
<td>- Judgeships</td>
<td></td>
</tr>
<tr>
<td>- Salaries</td>
<td></td>
</tr>
<tr>
<td>- Three Significant Dangers</td>
<td></td>
</tr>
<tr>
<td>- Pardons'</td>
<td></td>
</tr>
<tr>
<td>- Finance and Administration</td>
<td></td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS--Continued

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>74</td>
</tr>
<tr>
<td>New Hampshire</td>
<td></td>
</tr>
<tr>
<td>Massachusetts</td>
<td></td>
</tr>
<tr>
<td>Council Decision-Making in Executive Session</td>
<td></td>
</tr>
</tbody>
</table>

| IV. STATUTORY POWERS OF THE COUNCIL | 74 |
| New Hampshire | |
| Maine | |
| Massachusetts | |
| Committees | |
| The Declining Importance of the Council | |

| V. POLITICAL ASPECTS OF THE COUNCIL | 92 |
| The Councillors | |
| Maine | |
| New Hampshire | |
| Massachusetts | |
| The Governor and Council | |
| Maine | |
| New Hampshire | |
| Massachusetts | |
| Division Weakens the Executive Branch | |

| VI. ABOLITION OF THE COUNCIL - PROPOSALS IN CONSTITUTIONAL CONVENTIONS | 131 |
| Massachusetts | |
| New Hampshire | |
| Maine | |

| VII. CONCLUSIONS AND RECOMMENDATIONS | 156 |
| The Theory and Practice of the Council | |
| An Outmoded Institution | |
| Findings of the Maine Citizens Committee | |
| Recommendations for Reassigning the Powers of the Council | |
| Abolition is Essential | |

APPENDICES | 177 |

BIBLIOGRAPHY | 231 |

ABSTRACT | 245 |

AUTOBOGRAPHY | 248 |
PREFACE

In preparing this paper, the writer has enjoyed the hearty cooperation of a number of individuals and institutions, without whose assistance the work could not have progressed to fruition. The writer is especially grateful to the following for their invaluable assistance and suggestions: Hon. Harold I. Goss, Secretary of State of the State of Maine; Hon. Harry Jackson, Secretary of State of the State of New Hampshire; Miss Edith L. Hary, Law Librarian, Maine State Library; and their deputies and staffs. Thanks are owed also to the State Libraries of Maine, New Hampshire, Rhode Island, and Massachusetts, the libraries of Boston University, Harvard University, and Northeastern University, the Boston Public Library, the Social Law Library of Boston, and their librarians and personnel.

The writer is especially grateful to the Citizens Committee to Survey the State Government, of the State of Maine, for the opportunity to examine reports and other data in its files.
CHAPTER I

INTRODUCTION

The Role of the Executive in Modern Government

Present day concepts relating to the American state governor require that he be vested with sufficient power to exercise a firm control over administration, finance, and personnel, and to plan and execute policy for the state.¹ The governor has gained greatly in power and prestige in recent years. Under the republican form of government traditional in the fifty states of the American union, the governor has from the early days of statehood been the chief executive, invested constitutionally with certain powers appropriate to this position. These powers, not numerous in early times, have been added to through the years.² Recently he has emerged as political and policy leader, as manager of the state government, and as a molder of public opinion. His role in government has become ever more important, and as a result he must have at his disposal an organization geared to provide him with necessary tools to carry out his managerial responsibilities. His administrative control over the state government must be such that he can readily command the support necessary to carry out


his program. The modern trend is to place the governor in a position to manage the state administration and so arrange the machinery of the state government that he may be, in fact as well as in theory, the responsible chief executive of the state. ³

The role of the executive in modern government is a matter of ever-increasing interest. The influence of business institutions upon governmental forms may be seen in the current emphasis upon management in government. It is not uncommon for the businessman to draw the analogy between business and government by comparing the political executive to the business manager, the legislature to a board of directors, and the citizens to stockholders. This is doubtless an oversimplification, but is nonetheless worthy of notice.⁴

The idea of management in government was introduced at the local level in the city manager movement during the second decade of the present century. It was held that the city council was in effect a board of directors of the municipal corporation, and the manager was its agent in administering the city. The ancient office of mayor was retained as presiding officer of the city council and the city's ceremonial head. The state of Minnesota experimented with a manager, in this case responsible not to the legislature as a board of


directors, but to the governor. The National Municipal League's Model State Constitution contains a provision for a similar official, an administrative manager. The report of the President's Committee on Administrative Management, the reports of the first and second Hoover Commissions, and the documents emanating from the numerous "Baby Hoover Commissions" engaged in similar studies aimed at the state level of government, in recent years have repeatedly advanced the notion that the governmental executive is a manager in a sense not unlike that of a business manager. Thus proposals for government reorganization at the national, state, and local level have generally advocated that more managerial power be placed in the hands of the chief executive.

In the latter half of the nineteenth century, increased complexity in the organization and activity of state government


everywhere necessitated the strengthening of the chief executive. The principal objective of the subsequent reorganization movement in state government has been to make the governor a true "chief executive" and the office one of real power. Amendments to state constitutions and reorganizations of state administration by statute have broadened the area of the governor's authority and influence during the last years of the nineteenth and the first half of the twentieth century. Stress has been laid on the governor's role as administrator, and on his managerial responsibilities and the tools needed to discharge these responsibilities.

Today, the American state governor has a variety of powers. He is a party leader and the state's principal representative before the public at large. In most states he has sweeping appointive power checked by the senate, but in the case of Maine, New Hampshire, and Massachusetts by a governor's council. Except in the case of judges the governor can generally remove at his discretion those officers he has appointed. He has the responsibility for law enforcement and exercises limited military power, being in every state the commander-in-chief of the militia or national guard. He has general supervisory control over administration although this control is weak in those states where reorganization has lagged. His administrative supervision is further strengthened, in most states, through his preparation and administration of the state budget.

As legislative leader, the American governor recommends policy measures to the legislature, signs or vetoes bills, adjourns or prorogues the legislature under certain conditions, calls special
sessions, and within certain statutory limits legislates directly by executive order. His judicial authority includes the granting of pardons, the issuance of reprieves, and the commutation of sentences. He may grant or refuse extradition of fugitives from justice from other states. The governor at the state level thus exercises authority in these judicial matters not unlike that of the President of the United States at the national level.11

While the operating or line agencies of the state have multiplied over the years to care for the ever-increasing demands of the people for governmental services, the responsibility of the governor ordinarily relates more to efficiency and economy in the operation of the state administration as a whole than to the performance of the highly technical services by the various operating units.12 Accordingly, a number of staff services have been provided for the governor in most American states. These staff services have to do mainly with budgeting, accounting, personnel, and purchasing.13 In some states, these activities are coordinated and brought together in a single staff department.

The Massachusetts Commission on Administration and Finance, set up by the legislature of the Bay State in 1922, is such an agency.14


13 Ibid., p. 21, 30.

14 Ibid., p. 128-129.
It consists of four members appointed by the governor with the consent of the council for overlapping terms of four years. One of the commissioners is designated as commissioner of administration and is the chairman of the commission; the other commissioners, each heading a bureau, have the titles of state comptroller, state budget commissioner, and state purchasing agent. The commission also includes a division of personnel and standardization. The commission has sweeping authority over the business management of the state departments and institutions.15

In the state of Maine, the 1931 legislature laid the groundwork for the present administrative organization of that state. An administrative code was enacted which abolished a number of existing agencies and set up four administrative departments and a department of audit. The latter department is headed by a state auditor, elected by the legislature. The administrative departments of finance, health and welfare, sea and shore fisheries, and education are each headed by a single commissioner appointed by the governor with the advice and consent of the council.16 The department of finance is charged with budgeting, accounting control, purchasing, and taxation. Here is an agency with line as well as staff functions, but one which serves as a valuable staff aid to the governor.17

In New Hampshire, the general court, as a result of recommendations of the reorganization commission appointed by Governor Sherman Adams in 1950, created a department of administration and control to be headed by a state comptroller appointed by the governor and council for

15 Ibid. 16 Ibid., p. 118. 17 Ibid., p. 119.
a six year term. The comptroller, by statute, was designated the executive officer of the department and the director of the division of budget and control within the department. In the same department are also a director of accounts, a director of purchase and property, and a business supervisor. This department has provided the coordinated staff assistance for the governor of New Hampshire which that official has long needed. 18

The provision of such staff agencies as the foregoing, a legislative post-audit, as in the case of Maine, the setting up of modern machine operations in the field of bookkeeping and accounting, and the transfer of the overwhelming majority of state employees from the patronage rolls to a civil service system are in the main stream of the movement to reorganize state government in keeping with ever-expanding and changing needs, which has had many manifestations in the American states from the 1920's down to the present.

Two main features of state government reorganization in this period have been the attempt to give the governor a real measure of fiscal control in state operations through setting up departments of finance or administration as before mentioned, and eliminating innumerable boards and commissions with operating functions, each reporting independently to the governor; and reassembling the responsibilities of such agencies into a smaller number of integrated departments, preferably single-headed, few enough in number so that a governor could reasonably be expected to exercise a supervisory

18 New Hampshire, Laws of 1957, ch. 88, 274; Revised Statutes Annotated, sec. 8:2, 4.
control over them.\textsuperscript{19}

The movement for the short ballot, with the consequent elimination of state-wide elective officials in the executive branch leaving the governor, as the single responsible official elected by the voters to manage the administrative affairs of the state, is closely allied with the reorganization movement. Likewise, the elimination of other elective executive officials results in an accrual of power to the governor, for if he appoints all of the heads of departments in the executive branch, they are responsible to him, and the supervision of the administration is his responsibility. This centralization of responsibility and authority in the hands of the chief executive is essential in modern state government, for the governor must have the power to effectively administer the agencies of the state which are to carry out his program as enacted into law by the legislature.\textsuperscript{20}

\textbf{The Governor's Council}

Although Maine, Massachusetts, and New Hampshire have moved forward in providing the governor with the valuable assistance of staff agencies to aid him in carrying out his administrative responsibilities, each of these states retains, as part of its executive branch, the anachronism known as the governor's council. This body, sometimes called the executive council, was a feature of the colonial governments of the thirteen states which won their independence from

\textsuperscript{19} Lipson, \textit{op. cit.}, p. 64-66.  \textsuperscript{20} \textit{Ibid.}, pp. 171-182.
Great Britain. Each of these states retained the institution in its original state government, but it is found today only in Maine, New Hampshire, and Massachusetts. No state which did not originally have a governor's council as a part of its constitutional executive structure has ever seen fit to provide for one. Specifically, the council is a small body which is considered to be in continuous session. Actually, council meetings are usually held for periods of one or two days at a time, twice monthly, or, in the case of Massachusetts, weekly.

Inherent in the term "council" as originally conceived, is the idea of a group of advisers who counsel and advise the governor in the discharge of his executive and administrative duties. In these New England states, the council members are indeed counsellors, but they are more than that. There is, in fact, a clear-cut division of executive authority in these three states, for the council has powers and duties arising both from constitutional and statutory provisions which enable it to operate as a check on the governor in important areas of his executive functions. The power of confirming the governor's appointments is vested by the constitutions in the council. The pardoning power of the chief executive, including the power of commutation of sentence, may be exercised only with the consent of the council; and a host of miscellaneous functions, many of which pertain to state finance, are vested in the council by constitution or statute. Consequently, this body interposes its influence in many directions in the decision-making processes of the state executive department.

21 See Appendices A, B, and C.
As the legislative department of the state government is divided into two branches or chambers, a senate and a house of representatives, so in Maine, New Hampshire, and Massachusetts is the executive department divided into two "branches": the governor, and the council. Those executive actions, which are given to the governor and council to perform by constitution or by statute, are performed by what would be called in legislative parlance "concurrent vote," or action in concurrence. That is to say, each votes as a separate entity and the votes of each must be in agreement, if effective action is to be taken on a particular measure.

The governor's vote is given separately from the vote of the council, and an affirmative vote of the "governor and council" requires an affirmative vote by the governor, and also an affirmative vote by a majority of the councillors. The bifurcated nature of the governor and council has been clearly stated in opinions of the supreme courts in one or another of the states concerned from time to time. For instance, in 1932, in answer to a question by a majority of the members of the Maine council as to the power of the governor to vote to make a tie, the justices of the Supreme Judicial Court replied:

The governor and council in exercising the powers and performing the duties in respect to elections delegated to them under Section 55 of Chapter 8 of the Revised Statutes act in their executive capacity. They do not constitute a single tribunal in which the governor votes as a member, but a bipartite body in which the governor votes as governor, and the votes of the councillors are as members of that branch of the executive. Action, affirmative or negative, lies in the concurrence of the vote of the governor with that of the council. A tie vote in effect results when the governor and his council disagree.22

22Opinion of the Justices, 131 Maine Reports, 511.
The council has power essentially negative in character. It is not a constructive governmental entity. It is not concerned with policy formulation, or with programs. It can initiate no action at all. It is the province of the governor to bring matters before the council. It is for the council, then, to pass upon them, and to either approve or reject that which has been proposed or brought to its attention by the governor. In some cases, the governor's introduction of business implies his approval of it; but in other cases, the routine procedure of introduction cannot be taken as an actual endorsement by the chief executive, who may care to give neither an expression of approval or disapproval. It is a general rule, then, that the council cannot act until the governor has placed an item of business before it, although at times a gubernatorial veto may follow a favorable council vote.

Institutional Origins

The councils in American states originated in the boards of directors of the early English trading companies which sent out groups of settlers to establish colonies in North America. They became assimilated during the colonial period of American history to the position, vis-a-vis the colonial governor, of the privy council in relation to the crown. As the privy council in England developed from a body composed of noblemen to a stage when it was made up in part at least of newly important classes, "notables", to the modern privy council whose active and powerful members are ordinarily commoners representing the popular branch of parliament and

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one of whom is the prime minister himself, so the council in America developed from a group of notables, "assistants", who shared the executive authority with the governor, to a group of politicians elected to an office with specifically defined constitutional functions in the executive branch of the state governments set up in 1776 and in the years following.

Max Weber in his *Essays on Bureaucracy* wrote of the tendency in government over the years toward the replacement of nobles by notables; the councils in American states show precisely this development. In the American colonies the "nobles stage" never took full form, although the early colonial councillors could qualify as notables, selected as they were from the elite of the colony, from men of property with royalist and conservative tendencies. Restriction of franchise in the early state constitutions to those with property was intended to reserve to a select group of voters the choice of all higher offices of the government, including the council. This was to be a group of wise advisers, a sort of "council of elders", who, with the governor, would share the executive duties of government. The governor thus surrounded by experienced men of affairs would be the leader in a

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collegial executive department. 26

The development of the council in American states has of course differed from the growth of the cabinet system in Great Britain and other parliamentary democracies. The state governments in the United States, perhaps due to the principle of separation of powers, embody many of the features of what is often termed presidential government in contrast to the parliamentary form. Under this system, considered standard for both the federal and state governments in the United States, the sovereign powers, executive, legislative, and judicial are separated and deposited in three branches of government. 27

**Governor's Cabinets in American State Government**

Although there are but three states, Maine, New Hampshire, and Massachusetts, which still retain the council in a form similar to that in the original constitution, there are a number of states of the union which have so-called governor's councils or governor's cabinets which are very different in composition and function from the councils of the three states named above. Such council or cabinets are a part of the executive structure of New York, New Jersey, Kentucky, and Tennessee, and they are also found in Colorado, California, and a few

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26 Massachusetts, Governor, 1858-61 (Banks), "Address to the Council, January 11, 1859," Acts and Resolves passed by the General Court of Massachusetts (Boston: William White, Printer to the State, 1859), pp. 574-575.

27 Johnson, op. cit., p. 34.
other states. These councils, usually termed governor's cabinets, are modeled on the president's cabinet. Their members are appointed by the governor and serve only in an advisory capacity. These bodies are usually statutory, having no constitutional basis, and in some cases they are entirely informal, depending upon invitation from the governor. They often have few if any statutory functions and their meetings are apt to be rather infrequent. The use made of the cabinet by the governor may vary considerably between states and by governors within a state.

An interesting type of governor's cabinet exists in the state of Florida. Here the elected executive officials of the state government, in addition to the governor, constitute a body called the cabinet. These officials are the secretary of state, the attorney-general, the state treasurer, the state comptroller, the superintendent of public instruction, and the commissioner of agriculture. The constitution and statutes of Florida give this body important powers and duties which transform the executive branch of the state government, in many areas of its responsibility, into a kind of plural executive. The governor, sitting as chairman in this group of cabinet officers, has only one vote and thus is in the same position as any other member. He may therefore be out-voted in questions of policy which fall under the jurisdiction of the cabinet. In practice, the cabinet does not

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28 Kentucky, Revised Statutes, sec. 11.060; Tennessee, Code, sec. 4-304; Colorado, Revised Statutes 1953, sec. 3-1-4; California, West's Government Code 1957, sec. 120110, 120111; the cabinets in New York, and New Jersey are informal, having no statutory basis.
sit under that name but rather as a series of ex-officio boards consisting of some or all of the cabinet members with the governor presiding. 29

Certain other states have governor's cabinets, councils, or executive boards, made up of ex-officio members—generally elective heads of administrative departments. The administrative board in Michigan is such a body. Another is the Council of State in North Carolina. A similar arrangement exists in the executive councils in Minnesota and Iowa. In Pennsylvania, the executive board is composed of the governor and six appointed heads of administrative departments, designated by the chief executive from time to time. All these bodies have statutory functions to perform in connection with the executive work of the state government. 30 In the case of Michigan these are fairly extensive and they represent some dilution of the governor's executive authority. In the other states mentioned they are of less importance. 31

The council in Maine, New Hampshire, and Massachusetts, and some of the bodies we have been describing in other states, such as the governor's cabinet in Florida and the administrative board in Michigan,

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31 Ibid.
constitute definite checks on the executive authority and powers of the governor. In the three New England states, this check on the governor's power was the obvious intention of the framers of the state constitutions. The existence of executive councils in the three states poses baffling problems for effective government. This institution, the council, unique alike for its antiquity and because it is found in so few states, is regarded by some as a useful instrument of government, part of the system of "checks and balances." To most, it has appeared as an impediment to the governor in exercising his office, not only in the use of his managerial powers but also in the execution of public policy.

The Problem

The governor's council is the principal concern of this thesis. This institution is examined in terms of its relationship to the governor since its constitutional powers are limited to actions taken in concert with that official. Under the republican form of government in the American states, the governor alone among existing officials has sufficient authority both to lead in the formulation of policy and to direct the state administration. The governor must be concerned with legislation, and once a policy is established by statute it must be enforced and administered under his direction. He is by the very nature of his office the chief administrator as well as the chief executive. The existence of the council in the executive branch of a state government, with constitutional powers that result in a sharp cleavage of executive authority, harms the public good by needlessly weakening state administration.
It is the thesis of this dissertation that the governor's council in the states of Maine, New Hampshire, and Massachusetts is an historical anachronism. Originally conceived to diffuse power, it accomplishes this objective today at the cost of a diffusion of responsibility in governmental management, in the execution of law, and in the administration of justice, incompatible with present day concepts of the relationship of state government to the people. It is also the viewpoint of the writer that the council performs no essential service for the governor that could not be better performed, in terms of responsibility in government, by an agency responsible to the governor.

Methodology

I have supported this thesis: (1) by tracing the history of the council from its colonial origins through the basic stage of transition during the Revolution, as well as later developments in the institution during the nineteenth and twentieth centuries, dictated by the changing role and significance of state government, (2) by stressing the role of the council today and its relationship to the governor, and (3) by indicating the inadequacy of the council as an aid to the governor, and its incompatibility with responsible government. I conclude by showing that the managerial position of the governor in state administration has been affected by modern organization, particularly in the fields of budgeting and finance, which make the council's efforts in these areas largely superfluous and ineffective. I recommend alternative methods of handling those executive functions that are now assigned to the council.
In preparing this study I have consulted treatises, monographs, and articles which have dealt with the subject of the executive council in both its historical beginnings and development, and in its present day status. Further, I have examined the manuscript records of the councils in the state archives of Maine, New Hampshire, and Massachusetts. These records consist of journals of proceedings and supporting papers. Court cases bearing on the powers and duties of the council in the three states have been reviewed. I have obtained as many interviews as possible with councillors and other public officials concerned with the activities of the councils. I have also been privileged to personally observe council proceedings at a number of council meetings in all three states.

Before considering the present status of the governor's council, its political aspects, operating procedures and relationship to the executive and legislative branches, we shall examine the origins and development of the institution, with particular reference to the three states that still retain it in their government.
CHAPTER II

ORIGINS AND DEVELOPMENT OF THE COUNCIL

The governor and council in the colonial period and in the early years of statehood exemplified a system of divided executive power. Virtually all of the executive business of the government was transacted at their meetings by their joint order. Down to the time of the Revolutionary War, they also held frequent legislative sessions because they constituted the upper house of the legislature. The council was a very important institution in the government of the British North American colonies.

The Colonial Period

The council as we have it today in the states of Maine, New Hampshire, and Massachusetts had its beginning in a type of British commercial institution common to the sixteenth and seventeenth centuries. As early as 1463, Edward VI had granted a charter to the Merchants Adventurers Trading with Flanders. Elizabeth I in 1599 granted a charter to the East India Company. These prototypes were followed many times in the organizing of the numerous trading companies of "gentlemen and adventurers" chartered by the British Crown during the reigns of Elizabeth and James I for the purpose of exploring, colonizing, and exploiting new lands in America and elsewhere. The purpose of the charter grant by the crown was for profit for itself, as well as for those adventurers who would go themselves,
or send others in their stead, to seek out and settle the new lands. The trading companies were corporations, and were governed by a board or "court" of directors with a presiding officer or managing director usually styled "governor." The corporate title itself would often be in the following style: "The governor and company..." ¹

To be sure, the first charters were granted not to companies but to individuals, such as those issued by Elizabeth to Sir Humphrey Gilbert in 1578 and to Sir Walter Raleigh in 1584. ² Such documents provided that governmental powers would accompany the land grant to the patentee. At first the relationship between the grantee and the Crown was very loose. ³ The land companies were regarded as chartered entities with responsibility for internal control not unlike chartered municipalities.

Permanent settlement began under James I, and this was followed by more definite political control over the colonies. ⁴ This course of development was followed in Virginia, ⁵ where a local government under the jurisdiction of the company was soon established. Representatives were elected by inhabitants of the subdivisions (plantations, hundreds, or wards) into which the colony was divided. Representatives were called burgesses, and along with the governor and the members of his

council constituted a general assembly, which first met at Jamestown on Friday, July 30 (old style), 1616. Thus the beginnings of representative government in Virginia and in America came under the London Company. Another organization, the South Virginia Company, gave a patent to certain settlers who in 1620 founded a colony well to the north of the Virginia settlements. This was the Plymouth Colony. These settlers soon found that they had reached a region outside the jurisdiction of their company. They thereupon instituted a government of their own, choosing a governor and a board of assistants of seven members. These assistants form the historical origin of the present council in Massachusetts.

The founding of the Plymouth Colony marks the beginning of Massachusetts history. The Pilgrim's scheme of government and its development are of considerable interest in the study of the constitutional history of Massachusetts. While the Mayflower Compact was not a constitution, inasmuch as it did not create a government, it demonstrated the desire for a government in which the members of the colony would share. The earliest government instituted by the settlers at Plymouth was a town meeting. As settlement spread farther from the

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8Ibid.
original village at Plymouth itself, the town meeting gave way to a form of government where various communities had representation.  

From 1621 to 1628, the Plymouth colonists governed under authority of a patent granted by the Council for New England, established in 1620. A new patent was granted in 1628 by Charles I; this provided that the freemen of the colony could elect eighteen assistants, who, with the governor and deputy governor, would constitute the upper branch of the assembly or general court.

As mentioned above, the establishment of new settlements in the colony led to a representative system, wherein deputies were elected to represent their towns in the general court. In 1639, these deputies were first chosen and assembled together from the different towns. The general court, then, consisted of these deputies as well as the governor, deputy governor, and assistants. Sometime about 1644, the two bodies comprising the general court, that is, the assistants on one hand, and the deputies or the representatives on the other, began to sit separately rather than as a single body; so commenced the familiar organization of the legislature into two branches.

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10Ibid., p. 4 (footnote).


The charter granted by Charles I was revoked in 1684. After a period during which Sir Edmund Andros was the governor of all New England, a charter was granted by William and Mary, establishing the "Province of Massachusetts Bay in New England." Under this charter, Plymouth became a part of Massachusetts, and her history a part of the future "Bay State."\(^{13}\)

Meanwhile, Charles I in 1628 had granted to Massachusetts what is known as the Colony Charter. Under this document, the first governor, deputy governor, and assistants were appointed by the crown; their successors were to be annually elected by the freemen of the corporation, which was called "the Governor and Company of Massachusetts Bay . . . ." The governor and his fellow magistrates (the assistants), acted in an administrative and judicial body of the company known as the Court of Assistants, and also constituted the County Courts; they were also members of the General Court, the company's legislative branch.\(^{14}\)

This charter was similar to that granted by British monarchs to other trading companies. When John Winthrop and other settlers arrived in Salem in 1630, the charter was brought with them. Winthrop then became governor over both the company and the colony. Inasmuch as the charter has been brought to New England, and the same man had become governor both of the company and the colony itself, the government of the company became one with that of the colony; and the form of

\(^{13}\)Ibid., pp. 6, 11.

government of the trading company became that of the colony.\textsuperscript{15} This form of government came to be the pattern which was followed in Massachusetts from that time forward; there were modifications, to be sure, but no major change in form. By the terms of the charter, as we have seen, the principal officers were to be chosen directly by the freemen. At first, the freemen chose the assistants, and the assistants chose from among themselves a governor and deputy. This method seemed to many to be too aristocratic, and in 1631 it was provided that the people should make an annual choice of assistants. In the General Court of 1632, it was voted that the governor, deputy governor, and assistants should be chosen every year by the General Court itself.\textsuperscript{16}

The General Court met four times a year. The Court of Assistants (consisting of the governor, deputy governor, and assistants) met monthly or oftener.\textsuperscript{17} In the absence of the General Court, the Court of Assistants could take action with the same legal force as that of acts of the General Court itself. Laws passed by either body were valid, if not contrary to the laws of England.\textsuperscript{18} As in Plymouth it was found inexpedient to attempt to have a general meeting of all freemen of the colony to constitute a legislative body, so in 1634, provision was made for choosing two or three men to represent each town in the colony. These deputies with the governor, deputy governor,

\begin{itemize}
\item \textsuperscript{15}Frothingham, \textit{op. cit.}, p. 7.
\item \textsuperscript{16}\textit{Ibid.}, p. 8.
\item \textsuperscript{17}\textit{Ibid.}, p. 9.
\item \textsuperscript{18}\textit{Ibid.}
\end{itemize}
and assistants constituted the General Court, or colonial legislature.\textsuperscript{19}

The assistants were very influential men and were of the same group in the colony as the governor himself. That is to say, they were leaders, and among them the governor was very much in the position of \textit{prims inter pares}. It is no wonder, then, that a sort of rotation in office took place with various members of the board of assistants, in their turn, serving in the governor's chair. Winthrop, the first governor of the colony in New England, held office from October 20, 1629 to May 14, 1634, when he was succeeded by Thomas Dudley. John Haynes succeeded Dudley in 1635, and Henry Vane became governor the following year. On May 17, 1637, Winthrop commenced his second term and held office until 1640 when Richard Bellingham assumed the governorship. Winthrop succeeded Bellingham in 1642 and served for two years to be followed by John Endicott and Thomas Dudley in the governor's position. Winthrop became governor for the fourth time on May 6, 1646.\textsuperscript{20} In all, Winthrop served four periods as governor, as did Endicott and Dudley. Bellingham was governor for three terms.\textsuperscript{21} When not serving as governor, these gentlemen would generally be found on the board of assistants.\textsuperscript{22}

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\textsuperscript{19} Massachusetts, \textit{Bulletins}, I, 109; Frothingham, \textit{op. cit.}, p. 10
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\textsuperscript{21} Ibid.
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The first Massachusetts charter was annulled by Charles II in 1684. During the inter-charter period that followed, representative government in Massachusetts did not exist, the colony being part of the government of New England first under Joseph Dudley and later under Sir Edmund Andros. The second charter period in Massachusetts commenced in 1691 when the document commonly known as the Province Charter granted by William and Mary came into effect. The new charter took away the right of the colony to elect the governor and provided that the latter, along with a lieutenant-governor and a secretary, would be appointed by the crown.

The charter gave a negative to the governor over all acts of the General Court of the Council. The consent of the governor, in writing, was necessary for the final passage of laws at the colonial level; these were then sent to England for approval or disallowance; they were to take effect if not disallowed within three years after their presentation. The governor was to have command of the militia, but he could not grant commissions for the exercising of martial law without the advice and consent of the assistants, or the council, as this body came to be called. In the absence of the governor or in the case of his death, the lieutenant-governor took his place. If both governor and deputy governor should be absent, the majority in

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23 Frothingham, op. cit., pp. 8, 11.

the council was to take charge of the affairs of the province. 25

Instead of eighteen assistants as under the old charter, twenty-eight "assistants or councillors to be advising and assisting to the governour" were now provided for. 26 Rather than being chosen by the people, they were to be chosen annually by the General Court. At least eighteen of the councillors were to come from what was formerly called the colony of Massachusetts Bay; four at least were to come from Plymouth; three from what had been called the province of Maine, and one from the territory lying between the Sagadahoc River and Nova Scotia. 27 Seven of the councillors constituted a quorum, and they met at the call of the governor. 28

A general court, consisting of the governor and council, and of elected representatives of the freeholders of the several towns in the colony, was to meet annually on the last Wednesday of May. 29

The governor, with the advice and consent of the council, had the power to appoint judges, sheriffs, marshals, justices of the peace, and other officers attached to the council and to the courts of justice. It was required that seven days' notice of each appointment be given to the councillors. 30 The new charter took away most of the judicial powers of the governor and council, leaving them only duties in connection with the probating of wills and the granting of administration of estates. 31 Appeals were now to be taken from the courts

25 Ibid., pp. 1883-1885. 26 Ibid., p. 1878. 27 Ibid., p. 1879.
28 Ibid., p. 1878. 29 Ibid. 30 Ibid., p. 1879.
31 Ibid., p. 1881.
of the province to the king in Privy Council.\textsuperscript{32} Such civil officers as the governor and council did not have the power to appoint, were to be appointed by the general court.\textsuperscript{33} The latter body did not have the power to adjourn itself; the power of prorogation or dissolution was vested in the governor. This state of affairs led to considerable complaint, and in 1726 King George issued a supplementary charter giving to the representatives in any general court of the colony the right to adjourn, but not for more than two days.\textsuperscript{34} This same document gave the governor the negative over the election of the speaker, which was to be signified by written message to the House of Representatives.\textsuperscript{35} The governor, of course, had also the right to nullify the election of counsellors and this privilege had seldom been questioned. As the time of the American Revolution drew near, the election to the council of active patriots was frequently nullified by the governor.\textsuperscript{36}

**Rhode Island**

On July 8, 1663, Charles II granted a charter to the colony of Rhode Island and Providence Plantations. This document created certain persons named therein, and "all such others as now are, or hereafter shall be, admitted and made from of the company and society of our colony of Providence Plantations" a body corporate and politic, to be called "the Governor and Company of the English Colony of Rhode

\begin{align*}
\textsuperscript{32} & \text{Ibid., p. 1881-1882.} \\
\textsuperscript{33} & \text{Ibid., p. 1882.} \\
\textsuperscript{34} & \text{Ibid., p. 1888.} \\
\textsuperscript{35} & \text{Ibid., pp. 1887-1888.} \\
\textsuperscript{36} & \text{Prothingham, op. cit., p. 13.}
\end{align*}
Island and Providence Plantations, in New England, in America. 37

The King ordered that for the managing of the business of the company there should be from time to time elected "a governor, a deputy governor, and ten assistants . . . chosen out of the freemen of the said Company, for the time being." 38 Twice each year, an assembly consisting of the assistants and deputies elected by the freemen in the various towns of the colony as their representatives was to meet, " . . . to consult, advise, and determine, in and about the affairs and business of the said Company and Plantations." 39 The governor and deputy governor were to have places in this legislative body, which was styled the General Assembly. 40 It was granted legislative power over the colony's internal concerns, as well as power to appoint such military and civil officers as might be found necessary from time to time. 41

The assistants provided for in the Rhode Island charter corresponded to the Court of Directors in a trading company, such as those previously adverted to. They functioned, as did their counterparts in Massachusetts Bay and elsewhere, in legislative, executive, and judicial capacities. They served as advisors to the governor, and also as the upper chamber of the general assembly; in the latter capacity they are the forerunner of today's state senate.


38 Ibid.


40 Ibid., pp. 101-102.

41 Ibid., pp. 104-106.
Connecticut

The Fundamental Orders of 1638-1639 comprised the first constitution of Connecticut. Voted on January 14, 1638, they provided that yearly there should be chosen from time to time so many Magistrates and other public Officers as shall be found requisite; Whereof one to be chosen Governor for the year ensuing and until another be chosen, and no other Magistrate to be chosen for more than one year: provided always there be six chosen besides the Governor, which being chosen and sworn according to an Oath recorded for that purpose, shall have power to administer justice according to the laws here established, and for want there-of, according to the rule of the Lord God. . . .

The election of these magistrates was to take place at a Court of Election, which was to be held annually. This was to be one of two annual general assemblies or courts, the other being called together for taking care of legislative matters.43

Charles II granted a charter to the colony of Connecticut in 1662.44 Following the familiar form, it created a body corporate and politic consisting of certain persons named in the charter who were to be styled "the Governour and Company of the English Colony of Connecticut in New England, in America. . . ." It was provided in the charter that there should be a governor, a deputy governor, and twelve assistants to be "from tyme to tyme Constituted, Elected and Chosen out of the Freemen of the said Company for the tyme being. . . ."45

John Winthrop, son of the governor of Massachusetts Bay of the same

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43 Ibid., pp. 27-29.
44 Ibid., p. 29.
name, was appointed in the charter as the first governor. John Mason was chosen to be the deputy governor, and twelve assistants were also named in the document itself. The term of office of all these officials was one year. A general assembly was to meet twice annually, in October and in May, or oftener if necessity arose.

The Assistants and freemen of the said Company or such of them, not exceeding two Persons from each Place, Towne, or Citye whose shall bee from tyme to tyme hereunto Elected or deputed by the major part of the freemen of the respective Townes, Cityyes and Places for which they shall bee soe elected or Deputed, shall have a generall meeting or Assembly, then and their to Consult and advise in and about the Affaires And business of the said Company.

The Governor, or in his absence the Deputy Governour of the said Company for the tyme being, and such of the Assistants and freemen of the said Company as shall be soe Elected or Deputed and bee present att such meeting of Assembly, or the greatest number of them, whereof the Governor or the Deputy Governour and Six of the Assistants at least, to be Seaven, shall be called the General Assembly, and shall have full power and authority to alter and change their dayes and tymes of meeting of Generall Assemblies for Electing the Governour, Deputy Governour and Assistants or other Officers or any other Courts, Assemblies or meetings, and to Choose, Nominate, and appoint such and soe many other Persons as they shall think fitt and shall bee willing to accept the same, to be free of the said Company and Body Politique, and them into the same to Admitt and to Elect.

To this general assembly or legislature, then, was given the power of inducting new freemen into the company; and, in general, the power of managing the affairs of the colony. It had not only legislative authority but also the power to appoint the necessary officials other than those created by the charter itself, who might from time to time be found essential for the administration of the colony's affairs.

\[46\text{Ibid.}, \ p. \ 31. \quad 47\text{Ibid.} \quad 48\text{Ibid.}\]
In considerable detail, the powers and duties of the "governor and company" are outlined in the charter. Connecticut continued to be governed under this document until 1818, when she adopted her first state constitution.49

New Hampshire

Directly to the north of Massachusetts is New Hampshire, which had its first settlement early in the 1620's. By 1640, there were four towns, Portsmouth, Dover, Exeter, and Hampton. In 1641, these four communities put themselves under the protection of Massachusetts. Some years later, New Hampshire became a separate colony presided over by its own royal governor. John Cutts, a wealthy resident of Portsmouth, was in 1679 commissioned as the first governor of New Hampshire by King Charles II. The same document that made Cutts governor named six men as councillors, and further provided that the president (governor) and the six councillors should select three more councillors in order that there might be constituted a council of nine members.50 The oath of office was taken by the first council at Portsmouth, the capital, on January 21, 1680.51

Twice between the years 1690 and 1741, New Hampshire joined Massachusetts and was governed under a common rule with the older


colony. Finally departing once and for all from Massachusetts in 1741, New Hampshire again became a royal province, and continued in this status until its independence from the crown, which was signalized by the adoption of its first state constitution in 1776. 52

The government of colonial New Hampshire followed the pattern of other colonial governments of the time. The council, like that in other colonies, had power in legislative, executive, and judicial areas. With the governor, it constituted the upper house of a bicameral legislature, the lower house of which was made up of representatives elected in the several towns of the province. The council also served in a judicial capacity, as the highest court of appeals in the colony. 53

During the colonial period, the number of members in the New Hampshire council varied from time to time, but rarely did it exceed twelve. 54 Appointments to the council were nominally made by the king, but generally the governor's recommendation was followed by His Majesty, in making an appointment. Councillors had no definite term, serving at the king's pleasure. 55 The king in general appointed councillors who


54 Thorpe, op. cit., IV, 2446.

were wealthy, leading citizens, and favorably disposed toward the royal government. Inasmuch as there was no pay for service as a councillor, it was not always easy to get the type of man desired to serve on the body.\(^{56}\) As in other colonies, assembling a quorum of councillors at a meeting sometimes proved difficult.\(^{57}\) In general, the councillors were well-respected men. For instance, in 1672, Governor Usher was a very unpopular man and yet his councillors were men who had "the confidence and good will of the people."\(^{58}\)

**The Councillors in the Colonial Period**

In the royal colonies, the governor frequently was an official sent over by the mother country to perform the duties of chief executive. His councillors were local men, of long American residence and often of American birth. These local notables, selected from among the elite group in the colony, were usually men of means, as well as of experience and ability. Like the governor, they represented the royal interest in the provincial government. However, being themselves colonials, they were somewhat less apt to feel in all cases firmly attached to the cause of the King if a dispute should arise in which the royal interest and that of the colonists might be in conflict. Nonetheless, the council was a conservative body, and it exerted a conservative influence in the affairs of provincial government. In such colonies as Massachusetts, Rhode Island, and Connecticut, the councillors were not appointed, but were chosen by a method of

\(^{56}\)Ibid. \(^{57}\)Ibid. \(^{58}\)Ibid.
indirect election, and thus may have been somewhat closer, politically speaking, to the freemen as a whole than were the councillors in other colonies, holding office by appointment.

Plural office-holding by councillors was quite common. Councillors as such generally received no salary or allowances; the governor and council, empowered to issue commissions of the peace, sometimes appointed themselves as justices of the peace, an office to which fees might attach. Some councillors held other offices, which were salaried. The plural office-holding found, for example, in Massachusetts Bay is not to be wondered at for the services of these men, chosen as they were from the notables of the colony, from men of affairs, were in many cases desired in other posts, and the office of councillor was not a full-time position. The lack of remuneration for councillors may partly account for the lax attendance at council meetings. The best attendance was usually at legislative sessions, which were held three or four times a year, and were generally rather short.

In the royal colonies, the council was provided for in the commissions and instructions from the Crown to the governor; the first list of councillors for a province was as a rule included in the first instructions to the governor. In these documents were specified the

powers and privileges of the council. Since the councillors did not receive their powers from the people of the province, they were not much inclined to share their feelings, when popular controversies with royal authority arose. The governor had the right to suspend a councillor from office for misconduct, or for failure to perform his duty, but such suspensions had to be reported to the Board of Trade and to the King. The ultimate control over both the governor and council thus was in the hands of the authorities in England.

Early Statehood

With the Declaration of Independence in 1776, most of the now independent states, prompted by the urging of the Continental Congress, drafted constitutions. Two states failed to adopt constitutions during the revolutionary period; these were Rhode Island and Connecticut.

Connecticut and Rhode Island

At the time of the Revolution, Connecticut, operating under the terms of its charter, was virtually a self-governing dependency. The change brought about by the Declaration of Independence, breaking the nominal allegiance to the English Crown, had little effect on the functions of government and the management of public affairs. Full independence and the sovereignty that came with statehood seemed the result of a

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62 Ibid., p. 71
63 Ibid., p. 72.
64 Ibid.
65 Greene, op. cit., p. 48.
natural transition. There was no necessity for a change in the form of government. Heeding the appeal of the Continental Congress, the General Assembly formally approved the Declaration of Independence, proclaiming the colony a free and independent state.\textsuperscript{67} The assembly resolution continued:

\begin{quote}
\textbf{... and be it enacted by the governor, council, and representatives in general court assembled, and by the authority of the same, that the form of civil government in this state shall continue to be as established by the charter received from Charles II, king of England, so far as adherence to the same will be consistent with an absolute independence of this state on the crown of Great Britain, and that all officers, civil and military, heretofore appointed by this state continue in the execution of their several offices; that the laws of this state shall continue in force until otherwise ordered, and as for the future, all writs of process within law or equity shall issue in the name of the Governor and Company of the State of Connecticut, and that in all summonses, attachments, and other processes before any assistant of justice of the peace, "one of his majesty's justice of the peace" be omitted, and instead thereof be inserted "justice of the peace," and that no writ of process shall have or bear any date save year of Our Lord, Christ, only, any law, usage or custom to the contrary notwithstanding. ...}\end{quote}

The resolution substituted oaths of loyalty to the state for those of allegiance to the Crown of England. So, with several small breaks with the past, Connecticut continued under charter government.

Rhode Island followed a similar course. This state declared her independence from England two months to the day before the

\footnote{\textsuperscript{67}Ibid., p. 175.}

\footnote{\textsuperscript{68}Leonard Woods Labaree et al., (eds.), The Public Records of the State of Connecticut (Hartford: 1894-1945), I, 3-4.}
Continental Congress took such action.\textsuperscript{69} Like her neighbor, Connecticut, Rhode Island had a form of government essentially republican and she continued on under this government without any break in its continuity.\textsuperscript{70}

The Rhode Island government consisted of a governor, deputy governor, ten assistants, and deputies elected from the several towns in the state. The assistants constituted an advisory council to the governor, and also the upper house of the general assembly. There were also a supreme and other courts, the judges of which were chosen by the two houses of the legislature sitting in joint convention.\textsuperscript{71}

The number of assistants remained at ten, until the charter government was finally replaced by a state constitution in 1842. However, the functions of the assistants as advisers to the governor gradually dwindled and the board of assistants came to function more and more exclusively as an upper legislative chamber, which began to be called the Senate about the turn of the century, with the replacement of the title "assistant" with that of "senator" taking place at that time.\textsuperscript{72}

The governor was the presiding officer of the senate and the lieutenant-governor was an ex-officio senator. The lieutenant-governor had a vote on all questions; the governor, however, had a casting vote


\textsuperscript{70}Ibid., pp. 13-14, 122-123.


\textsuperscript{72}Rhode Island General Assembly, Schedule, May session, 1799, p.1.
In Connecticut, likewise, the governor and council with the governor presiding constituted the upper house of the state legislature, with the house of representatives, consisting of members chosen from each town in the state, as the lower chamber. We have, therefore, in the states of Rhode Island and Connecticut no essential difference in the composition of the upper house of the legislature in the early years of statehood from that of the colonial period. The governor and council constituted this upper chamber, fulfilling an important legislative function; at the same time they shared the rather limited authority granted to the executive branch of the government, of which the governor was the titular head, but hardly the chief executive officer in the modern sense of that term.

New Hampshire

In 1775, Governor John Wentworth of New Hampshire and a number of his councillors had fled that colony leaving the provincial legislature in control of the government. A congress was summoned, which adopted, in January of 1776, a short constitution for New Hampshire.

73 Gleeson, loc. cit.
74 Connecticut, Charter (1662), passim.
75 Ibid.
76 New Hampshire, Manual for the General Court, No. 32, p. 121.
This document was designed as a temporary expedient; a quotation from it outlines the structure of government provided, and also gives a bit of the flavor of the times:

The sudden and abrupt departure of his excellency John Wentworth, Esq., our late governor, and several of the Council, leaving us destitute of legislation, and no executive courts being open to punish criminal offenders. ... Therefore, for the preservation of peace and good order ... we conceive ourselves reduced to the necessity of establishing A FORM OF GOVERNMENT to continue during the present unhappy and unnatural contest with Great Britain. ... Accordingly pursuant to the trust reposed in us, We Do Resolve, that this Congress assume the name, power and authority of a house of Representatives or Assembly for the Colony of New Hampshire. And that said House then proceed to choose twelve persons, being reputable freeholders and inhabitants within this colony, in the following manner, viz. five in the county of Rockingham, two in the county of Strafford, two in the county of Hillsborough, two in the county of Cheshire, and one in the county of Grafton, to be a distinct and separate branch of the legislature by the name of Council for this colony, to continue as such until the third Wednesday in December next; any seven of whom to be a quorum to do business. ... It was further provided that if trouble with Great Britain lasted over a year, the council should be chosen by the people in the counties, as the council and house might order; that most public officials should be appointed by the council and assembly; and that the council should appoint its president to preside over their meetings. No real chief executive was provided, the president and council approximating this institution of government. 79

The president of the council came to be looked up to as the principal officer in the government of the colony, as New Hampshire

78Thorpe, op. cit., IV, 2452. 79Ibid.
continued to style itself. However, the executive and legislative powers were held jointly by the council and house of representatives. Action was by these two bodies meeting in joint assembly, or in some cases acting in concurrence; otherwise, acting through the Committee of Safety. The latter body was chosen from the council and house to administer the government whenever the legislature was not in session. 80

The temporary constitution of 1776 was intended to last for approximately a year. As events transpired, however, New Hampshire did not adopt a new constitution until June, 1784. There had been proposed draft constitutions in 1778 and 1781, each of which had been rejected by the people of the state voting in town meetings. 81

The constitution of 1784, though amended many times, remains the basic law of New Hampshire today. This constitution originally provided for an executive branch in the state government to be composed of the president and the council. The president was to be elected by the senate and was to be that body's presiding officer. He was to have a vote in the senate as a member thereof, and to cast an additional vote in case of a tie. The section on the council reads in part as follows:

... Annually on the first meeting of the general court, two members of the Senate and three from the House of Representatives shall be chosen by joint ballot of both the houses as a council, for advising the president in the executive part of government, whom the president for the time being, shall have full power and authority to convene from time to time, at his discretion, and the president with the counsellors, or three


81Jeffries and Hazelton, op. cit., pp. 7-8.
of them at least, shall and may from time to time hold and keep a council, for ordering and directing the affairs of the state according to the laws of the land. . . . The qualifications for counsellors shall be the same as those required for senators. The members of the council shall not inter-meddle with the making or trying impeachments, but shall themselves be impeachable by the house, and triable by the senate for malconduct. . . .

This section went on to say that resolutions of the council were to be entered in a register and signed by those present, if they assented; dissenting opinions were to be similarly recorded. This register might be called for by either house of the legislature.

By constitutional provision, the qualifications of a councillor were made identical with those of a member of the state senate. The requirements were that one be a Protestant, be at least thirty years of age, own a freehold estate valued at two hundred pounds, and have resided in the state for seven years immediately prior to election.

The important powers of the executive branch were shared by the president and the council. Appointments provided for under the constitution were to be made by "President and Council"; state moneys were to be paid out "by warrant under the hand of the President . . . by and with the advice and consent of the Council." The legislature could be prorogued for a period of up to ninety days, or summoned into session, by the president, acting with the advice of the council.

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82 Thorpe, op. cit., IV, 2465-2466.
83 Ibid., p. 2466.
84 Ibid., p. 2460.
The pardoning power was to be exercised by the same authority. Neither the president, acting alone, nor the president and council together had a veto power over legislation. A further provision of the constitution directed that "the President and Councillors shall be compensated for their services, from time to time, by such grants as the General Court think reasonable. . . ." When not sitting as members of the council, the individual councillors exercised the functions of ordinary members of the legislature, for their seats therein were not vacated upon their election to the council.

The New Hampshire Constitutional Convention of 1792 proposed numerous changes in the document of 1784. Going into effect in 1793, these changes constituted what is often called "the general revision." Among other things, the vote was given to all male citizens rather than to freeholders only. The title of president was changed to that of governor. The governor would now be elected by the people, would possess an executive veto power, and would no longer preside in the senate. The latter body was empowered to select its own president from among its members. The section on the council was rewritten; the important changes made therein may be said to have set up the council as we have it today. The councillors were to be chosen by popular vote from the five counties, one from each county, instead of from the

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86 Ibid., pp. 2-3

87 New Hampshire, Constitution (1784), passim.
legislature, as heretofore. The legislature was empowered to divide the state into five councillor districts if it seemed desirable to do so. 
(This was done in 1822) Finally, what has been called "the negative concept" was added. This was embodied in Article 47, of Part II, which reads:

The governor and council shall have a negative on each other, both in the nominations and appointments. Every nomination and appointment shall be signed by the Governor and council, and every negative shall also be signed by the governor or council who made the same.90

This article, it appears, was aimed at clarifying beyond doubt the equal status that the governor and council were to have in the matter of nominations and appointments.

Although the council was fundamentally changed in its manner of election, its powers remained practically the same as they had existed under the constitution of 1784. The divided executive was retained. Most action was to be initiated by the governor, and allowed or disallowed by the council.91

Massachusetts

Massachusetts was the last of the original thirteen states to adopt a constitution, but she was the first state to submit her constitution to a vote of the people. The house of representatives in 1776 appointed a committee to take under consideration the matter of a

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88 New Hampshire, Constitution (1793), Part Second, Art. 60.
89 Ibid., Art. 65
90 Ibid., Art. 47.
91 Ibid., passim.
constitution. Subsequently, a resolve was passed by the house, recommending that the towns of the colony vote on the question of empowering the two houses of the legislature as a joint body to draw up a constitution which was then laid before the people, with the provision that a two-thirds vote of approval would be required for the adoption of the document. The people voted, and the constitution was rejected by some ten thousand to two thousand, a five to one vote in the negative.92

The first attempt at a Massachusetts constitution failed for several reasons. Some people felt that a special convention should be called to draw up a constitution; others objected to the present draft inasmuch as no bill of rights was included therein. Still others argued that there was not a proper separation of powers written into the document. The rejection of the constitution was followed by much agitation throughout the colony for another effort at formulating a basic law for Massachusetts.93

Massachusetts was being governed under the provisions of the royal charter. After a period during which a Provincial Congress, essentially consisting of the members of the house of representatives elected at the last colonial election, governed the colony, following the loss of power of the royal governor and his subsequent departure from Massachusetts, a wish to regularize governmental proceedings had

92 Frothingham, op. cit., p. 21.
93 Ibid., pp. 22-24.
led the leaders of the newly independent state to resume government under the old charter. Since there was no governor and no provision for choosing one with the royal governor's departure, the council served as the executive head of the government, decisions being made by a majority vote. The same council continued, as in former times, to serve as the upper chamber of the legislature with the elected representatives of the several towns constituting the lower house. Bills passed by the two houses, then, were approved or disapproved by the council or by a majority of the members thereof, performing their executive function. The council appointed and commissioned civil and military officers, sent an address to the house of representatives at the opening of each session, and in 1777 called a special session of the general court.

On February 19, 1779, the legislature adopted a resolution providing for a vote of the people on two questions; the first, whether the people wanted at this particular juncture in their affairs to have any new form of government at all; the second, whether if such was their wish, they would empower their representatives in the general court to summon a convention for the purpose of drafting a constitution. About half of the towns neglected to answer these questions, but the majority of the rest responded in the affirmative. An election of delegates was held, and on September 1, 1779, they

assembled at Cambridge. The deliberations of this body resulted in a draft constitution which was submitted to the people on March 2, 1780. The electorate approved of this constitution for a "free republic" and the new government commenced operations when the first General Court of Massachusetts under the constitution met at the state house in Boston on October 25, 1780.

The Massachusetts Constitution of 1780 provided for a republican form of government with the powers allotted among three branches, and with a definite provision written into the document securing this "separation of powers." The governor was to be elected by the voters of the state, an unusual provision at that time. He was given veto power over legislation, another unusual provision; the legislature could by a two-thirds vote of both houses override the gubernatorial veto. To the governor with the advice and consent of the council was given the appointment of a number of officers of the government. The legislature would choose some of the more important officers, including the secretary and the treasurer. The members of the council, too, would be chosen by a joint ballot of the two houses of the General Court, as the legislature continued to be called. Under the original provisions of the constitution, councillors would be chosen from among those elected to be senators and councillors; that is to say, out of the total number of state senatorial candidates elected, nine would

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95 Frothingham, op. cit., p. 25.  
96 Ibid., p. 27.  
97 Massachusetts, Constitution (1780), Part the First, Art.
be chosen as councillors. Their senatorial seats would then be vacated and their senatorial districts would not be represented in the senate for that term. The council consisted of nine members, with the lieutenant-governor as an additional ex-officio member. The term of office of governor, lieutenant-governor, councillors, and of both branches of the legislature was one year. 98

The constitution provided that "the governor, with advice of council, shall have full power and authority, during the session of the general court to adjourn or prorogue the same to any time the two houses shall desire; ... and to call it together sooner than the time to which it may be adjourned or prorogued if the welfare of the Commonwealth shall require the same." 99 Approval of state expenditures was given to the governor acting with the consent of the council. 100 In another provision the constitution stated that "The power of pardoning offenses, except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council." 101 The appointing power was provided for in the following terms: "All judicial officers, the attorney-general, the solicitor-general, all sheriffs, coroners, and registers

98 Cushing, op. cit., p. 260.

99 The governor and council could also adjourn or prorogue the legislature for not exceeding ninety days if the two houses should disagree among themselves as to the time of adjournment. Massachusetts, Constitution, Part Second, c. II, Sec. I, Arts. 5 and 6.

100 Massachusetts, Constitution, Part Second, c. II, Sec. I, Art. 11.

of probate, shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment." 102 The powers here granted remain today among the more important constitutional functions of the governor and council in Massachusetts.

Vermont

The executive council which was found in the governments of all the North American colonies, prior to the Revolution, was retained in each of the thirteen original states in their first constitutions. Vermont, the fourteenth state, likewise included a council as part of its organization of government during its early years. Vermont had a council from 1778 to 1836. It succeeded the Committee of Safety which was in existence from 1776 to 1778. During the period of the Vermont council's history there were fifty-nine councils elected, the term being one year. The body consisted of twelve members, one from each county, with the lieutenant-governor as an ex-officio member. The governor, lieutenant-governor, and the councillors were all popularly elected. The council held an annual session during the meeting of the General Assembly which for the period from 1778 to 1836 was a unicameral body. The council acted as a revisory chamber or "council of revision": bills passed by the assembly were sent to the governor and council for their consideration and revision, and their approval was necessary before a bill became law. The governor and

102 Massachusetts, Constitution, Part Second, c. II. Sec. I, Art. 9.
council could send back to the assembly those bills of which they did not approve, with suggestions for changes to be made therein. If the assembly complied with suggestions for changes, the governor and council would then have another opportunity to approve a measure when it was resubmitted to them. The council held joint sittings with the assembly for the purpose of electing certain state officers, including members of the judicial branch. County officers were chosen by county conventions which consisted of the councillor and the members of the assembly from the county concerned. The governor with consent of the council had some appointing power, filling the office of the secretary to the council and certain minor appointments. 103

The unicameral legislature and the governor's council were retained by Vermont until 1836, when the state constitution was amended. 104 A senate was created, the legislature becoming bicameral; and to the senate was given the ratification of gubernatorial appointments. The council was abolished and all executive power was entrusted to the governor. 105

Maine

The area that became the state of Maine was part of Massachusetts from colonial times until 1820. In that year, with the approval of the legislature of Massachusetts and of the Congress of the United States, 103

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104 Ibid.

105 Vermont, Constitution, Ch. II, sec. 6, 18, 19.
Maine became a separate state, and its state constitution took over the form of government existing in Massachusetts with very little change. The basic structure of the government of the two states has continued ever since to be very much alike. Maine's executive branch, like that of Massachusetts, included a governor and a council; unlike Massachusetts, however, Maine did not have provision for a lieutenant-governor. Her council was to consist of seven members, elected by joint ballot of the two houses of the legislature; the same method of choice of councillors was at this time in effect in Massachusetts, where the number of councillors was nine, exclusive of the lieutenant-governor. 106

Changing Calibre of Councillors

In the colonial governments as established by the trading companies in the seventeenth century, the council or board of assistants was composed of leading men of the colony, who in experience, ability, and social position were in no sense the inferiors of the governor himself and who were indeed the colleagues of the governor, sharing his powers and responsibilities. Each assistant was himself a potential governor, and the rotation in office then practiced gave many of them their turn in the governor's chair. When the early governments were extinguished and were replaced by others operating directly under the crown through royal charters, the governors and councillors were named by the king in royal instructions and commissions. In appointing councillors, to be sure, the king often acted on the recommendation of

the governor and he selected men from the notable personages in the colony. Under the royal charters, however, the council became clearly subordinate in rank to the governor, in whom, as representative of the crown, the principal executive authority was vested. The advice and consent of the council were required for various official acts of the governor, including pardons, and appointments. As we have seen, the governor and council sat also as the upper house of the legislature, and performed judicial duties as well.

With the coming of statehood, the nature of the council underwent a change. Although under the state constitutions the councillors were originally chosen by the legislature, the office became elective in New Hampshire in 1793,\(^\text{107}\) and in Massachusetts in 1855.\(^\text{108}\) But from the beginning it became in effect an elective political office, for under the early constitutional provisions in both New Hampshire and Massachusetts, councillors were chosen from among men originally elected as legislators. For a time, in New Hampshire, legislators continued to hold their seats while serving also on the council. The office rapidly became one filled not by notable personages of the state but by politicians often of the second rank, men who aspired to service in the legislature, but who were not potential governors. The office of councillor was not a stepping-stone to higher office,


although, to be sure, in a few instances councillors of exceptional ability achieved the governorship or other high positions. In general, however, the governor was checked in the exercise of his executive power by a group of men whose interests were local, chosen as they have always been by districts or counties, and who by no means measured up to the chief executive as political leaders or managers of public affairs as did the assistants of John Winthrop's time.

In the pages that follow we shall consider the constitutional basis of the organization, powers, and limitations of the council in the three states. These constitutional features must first be understood in order to evaluate this ancient institution in a twentieth century setting.

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109 New Hampshire, Manual for the General Court, No. 36., pp. 180, 181, 183-198. Of the 69 New Hampshire governors to date, 15 had previous service on the council. Only two twentieth-century governors belong to this group, however: Francis P. Murphy, governor from 1937 to 1941, and Charles M. Dale, governor from 1945 to 1949.
CHAPTER III

CONSTITUTIONAL POWERS OF THE COUNCIL

In the constitutions of Maine, New Hampshire, and Massachusetts the council is created and its fundamental powers prescribed. It is not surprising that the basic provisions regarding the council are similar in each constitution since the three states drew on common colonial experience and precedent. The principal powers granted the council are concerned with the approval of gubernatorial appointments, pardons, and the removal of judges from office upon address of the legislature; but there are also certain other powers held in common by the three councils.

In each of the three states, the powers of the council include those of recording council advice in a register with the right of entering dissenting opinions, swearing in senators and representatives, and canvassing the votes for the various elective officials, including members of the legislature. In New Hampshire and Massachusetts, the

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3Maine, Constitution, Art. V, Part Second, sec. 3; Art. IX, sec. 1; Art. IV, Part First, sec. 5; New Hampshire, Constitution, Part Second, Arts. 64, 85, 33; Massachusetts, Constitution, Part Second, Sec. III, Art. 5; c. VI, Art. 1; c. l, Sec. II, Art. 3.
governor needs the council's consent to adjourn or prorogue the legislature, to call special sessions, or to direct the legislature to meet at some place other than the state capital in case of emergency. In Maine, these powers are exercised by the governor alone. The power to punish contempt is granted the council in the New Hampshire and Massachusetts constitutions. The financial power is stated plainly in the Massachusetts document with the requirement that moneys may be paid out of the state treasury only by authority of the governor and council. A somewhat similar provision is found in the Maine and New Hampshire constitutions.

In Massachusetts and Maine, the governor and council may fill vacancies in the council itself, but in New Hampshire a special election must be called by the governor to fill a vacant council seat. Justices of the peace and notaries public may be removed from office by a provision of the Massachusetts constitution.

1New Hampshire, Constitution, Part Second, Arts. 43, 50; Massachusetts, Constitution, Part Second, c. II, Sec. 1, Arts. 5, 6.


7Massachusetts, Constitution, Part Second, c. II, Sec. I, Art. 11.


11Massachusetts, Constitution, Amendment XXXVII.
A sweeping removal power is granted the governor and council in Maine, where they may remove any state office-holder on address of the legislature. A further provision of the Maine constitution empowers the governor and council to remove county sheriffs after complaint, notice, and public hearing, and to fill the vacancy thus created in this elective office by an interim appointment. In all three states, the governor and council may seek advisory opinions from the state supreme court. In New Hampshire, the governor must secure the consent of the council before proclaiming martial law.

**Appointments**

The confirmation of gubernatorial appointments is one of the most important powers of the council. The constitutions of Maine, New Hampshire, and Massachusetts make provision for the council's power of confirmation of certain major offices; and the list of offices subject to council approval has been expanded greatly by statute. It concludes, in all three states, the heads of the principal departments, the members of boards and commissions in the executive branch, judgeships, and other...

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12 *Maine, Constitution*, Art. IX, sec. 5.
17 See Appendices D, E, and F.
judicial appointments. Gubernatorial interim appointments to fill vacancies in state and county elective offices likewise require council consent.

The function of the council in approving the appointments of the governor is precisely the same as that of the United States Senate in approving nominations to office by the President, or that of state senates in those states where this power is vested in the upper legislative chamber. The governor lays before the council his selection of an appointee for a vacant office. It is then for the council by a majority vote to either approve or disapprove his nomination. The council itself may not propose nominees. The selection of a candidate for a particular position is completely the prerogative of the governor.

However, far more important decisions are made in closed-door meetings of the governor and councillors in the governor's private office than are ever arrived at after full and open debate in regular sessions of the council with the press and public present. The real decision-making process in the council is carried on in executive session or in informal private discussions between the governor and the councillors. This is the case regardless of whether or not the council is politically dominated by the party in opposition to the governor. The open meetings of the council, in general, serve only as a method of ratifying and making official decisions that have already been taken in the privacy of the governor's executive chamber.18

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18 Interview with Hon. Roswell Bates, Chairman of the Council, Maine, October 9, 1958.
So it is in the matter of appointments. A negative vote cast by the council in respect to a particular appointee generally comes as no surprise to the governor who has submitted the name of that appointee for confirmation. The matter has already been thrashed out in the governor's office, and the governor has been told that the council does not intend to approve the appointment. Perhaps he has been informed that only certain individuals more acceptable to the council can expect to be approved for this and other offices. Thus, while constitutionally and legally the council is without power to propose candidates for office, in actual practice precisely this is done. In those instances where the governor has a hostile majority on the council, he is obliged in many instances, in order to secure confirmation of any of his appointments, to grant a *quid pro quo* to certain councillors, and in return for their favorable votes appoint to office men not of his own selection but chosen by the councillors concerned.19

**Maine**

In Maine, the establishment of the state civil service commission in 1937, removed all but a comparatively few positions from direct control or supervision by the council. There are today in Maine some seventy-five hundred positions in the classified civil service of the state which are filled by competitive examination and merit system procedures.20 There are but two hundred positions in the state

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19 Ibid.

20 Communication to the writer, dated May 7, 1959, from Maine State Department of Personnel, Augusta, Maine.
government outside the classified service which are filled by appointment of the governor with the consent of the council. The governor and council also appoint the holders of many minor offices such as notaries public, justices of the peace, dedimus justices, and commissioners of deeds, whose appointments are actually matters of formality contingent upon the payment of fees. Also, the governor and council appoint a large number of unsalaried commissioners and board members. A procedure called "posting" is used in Maine for handling nominations. The governor prepares a list of appointees whom he proposes to nominate at the next council meeting and posts this list on a bulletin board outside the governor's office in the state capital. This is supposed to constitute the official notification to the members of the council of the nominations which will be submitted at their next sitting. The nominations are duly introduced at the meeting; under the prevailing procedure, no action is taken until the session next following, at which time the governor calls the several nominations up for vote. On nominations, as in other matters, the voting is usually done by the time-honored method of the voice vote; but if the nomination is controversial a roll-call very likely be requested, the results of which will be recorded in the minutes.

21 See Appendix D.

22 Ibid.

New Hampshire

In New Hampshire, the appointing power of the governor and council covers approximately one hundred and twenty-five salaried positions in the executive branch, 

the state judiciary, unpaid members of the state boards and commissions, notaries public, commissioners of deeds, and similar lesser appointments. Agenda papers, including a list of appointments to be voted on at the forthcoming bi-monthly meeting, are mailed to each councillor’s home by the secretary of state’s office sometime prior to the meeting.

Massachusetts

In Massachusetts, likewise, most of the governor’s appointments need council consent. The heads of sixteen major state departments, the members of most of the state boards and commissions, as well as the members of the many boards of trustees of state institutions are so appointed. Certain county or district officials, such as medical examiners and masters in chancery, military officers, and, as in the other two states, notaries public and justices of the peace are subject to council approval. Each councillor is supplied with a "nomination

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25 See Appendix E.

26 Interview with Hon. Harry Jackson, Secretary of State, New Hampshire, July 31, 1958.

27 Massachusetts Federation of Taxpayers, Organization of the Executive Branch, Massachusetts State Government (Boston: Massachusetts Federation of Taxpayers, 1957), pp. iv-vi et passim.

28 Ibid.
list" before every council meeting. This list contains the nominees who are to be voted on at the forthcoming meeting. Because of the size of the state and the greater number of state personnel, the appointments in the control of the governor and council in Massachusetts are more numerous than in either Maine or New Hampshire. 29

Judgeships

Judgeships in all three states are included in the governor's appointing powers, and council consent is required. In most of the states of the union, judgeships are elective offices, but in these three states they have always been appointive. In Maine, the term of judges is six years; in the states of New Hampshire and Massachusetts, the judges serve a life tenure during good behavior. This fact makes judgeships the most prized and sought-after appointments that the governor has at his disposal, and the importance of the council power of confirmation in these cases is obvious. Indeed, on more than one occasion, this power has been cited as a compelling reason for the retention of the council in the governments of these two states. 30

It cannot be said, however, that in all cases the councillors have discharged their duty in connection with such appointments with a full consideration of the grave responsibility incumbent upon them. Patronage battles and political arrangements have taken place in connection with judicial appointments, as well as with those more

29 See Appendix F.

prosaic or carrying but a short tenure. In the case of municipal court justices in New Hampshire, it is not required that the appointee be an attorney, and a vacancy in such an office is often the signal for considerable political maneuvering within the council, to secure this local position for a friend or associate of the councillor from the district wherein the job is located. "Councillor courtesy" will often enter the picture at this point. Many governors are inclined to grant to a councillor a voice in selecting nominees for positions, the duties of which relate principally to the councillor's district, and the council's influence on the appointing process is thereupon felt, even in situations where governor and council are working in harmony and where, to all appearances, the governor has not found it necessary for his own advantage to enter into any kind of political deal. 32

Salaries

In Maine, the salaries of some appointive state officials in the unclassified service are set by the governor and council. 33 This leads to considerable negotiation between the governor and councillors


33 Clement E. Vose, The Executive Council of Maine in Decline (Government Research Series No. 21; Brunswick, Maine: Bureau for Research in Municipal Government, Bowdoin College, 1959), p. 16. See also Appendix A infra.
preceding certain appointments, with both salary and office at stake. There may be a number of candidates for a particular position, and the candidates and their supporters will be pressing their cause upon the council members as well as the governor. Contenders for office are often interviewed informally by the council. Agreement is sometimes difficult to reach, appointments are often delayed; and thus the governor and council have an opportunity to compromise several positions at once.34

Three Significant Dangers

Therefore, we may say that the existence of the council in the executive branch, with the power of confirmation of appointments, presents three outstanding dangers to effective administration: the danger of stalemate in the appointing process, if the governor and council are of opposing parties, or if for any reason a majority of the council declines repeatedly to go along with the governor; the danger of patronage disputes on a frank basis of "spoils"; and finally, the danger of the governor, in effect, yielding to the council the nomination as well as the confirmation of appointees, under an abuse of the practice of "councillor courtesy".

Pardons

The granting of pardons to persons convicted of crime is another major duty of the governor and council. In New Hampshire, pardon

34 Ibid.
hearings are held by the governor and council at a regular meeting and
a decision is taken later in executive session and announced at a
subsequent open meeting. In Massachusetts, applications for pardons
are referred to the standing council committee on pardons, which hears
witnesses in the matter in closed session. Their report is submitted
to the council at a subsequent open meeting and vote is then taken
on approval or rejection of the pardon petition.

In Maine, pardon matters are taken up at the first sitting of
the regular two-day session held monthly by the council. A pardon
hearing seems to call into play all the tact and delicacy of which
the governor and council are capable. A separate agenda, listing
the several cases to be considered, has been prepared by the secretary
of state. Seated at the back of the room will be attorneys, relatives,
and friends of those prisoners whose petitions are now to be laid
before the governor and council. Present also is a representative
of the State Parole Board, ready with the recommendations of that
body in each case. Generally, as the governor calls a case, the
attorney for the convict concerned steps forward and presents a
statement supporting his client's plea for clemency. The governor
invites anyone else present who might desire to speak in support of
the plea to do so, and then asks for statements in opposition. After

35 Interview with Hon. Frederic H. Fletcher, Councillor, New
Hampshire, July 31, 1958.

36 Interview with Hon. Charles Gabriel, Councillor, Massachusetts,
October 20, 1958.
all the speakers have been heard, the governor announces that the matter will be considered in executive session, and a decision announced later. At the conclusion of the open council meeting, the governor and council go into closed session, where decisions on the pardon applications are reached. These will be announced the following day, at the regular meeting. 37

The percentage of pardon applications granted varies considerably with different administrations. For example, during the first administration of Governor Horace Hildreth (1945-1946) the percentage of pardons granted was forty-seven percent, while during Governor Edmund Muskie's first term (1955-1956) twenty-two percent of the applications were granted. 38

The business of pardons is the most distasteful part of a councillor's job, and it takes a disproportionate amount of the time he spends on his official duties. Inasmuch as there is considerable turnover in council membership, the chances of a convict securing a pardon vary from time to time; the turnover, however, encourages the re-submission of applications which may have been turned down previously. As a pardon board the council is weak and inadequate, for few members have had any experience which would qualify them for this work, and the high turnover rate prevents service long enough, in most cases, to enable a councillor to learn by experience. 39

37 Minutes, Meeting of Governor and Council, State of Maine, October 8, 1958, p. 1-5.

38 Vose, op. cit., p. 18.

39 Ibid., pp. 19-20.
**Finance and Administration**

The state constitutions provide, in rather ornate language, for a general oversight on the part of the council in collaboration with the governor over the business of the state.\(^{10}\) The state legislatures have implemented this constitutional assignment of power by giving to the council various powers and duties in relation to state administration, particularly in regard to financial and personnel matters. It is in fulfilling these statutory duties that the council most nearly seems to resemble a board of directors for the state administration.

**Maine**

In Maine, one of the most important financial powers of the council is its control of the state contingent account. The statute provides that:

> The governor, with the advice and consent of the council, may allocate from the state contingent account amounts not to exceed in total the sum of \$450,000 in any fiscal year. Such allocations may be made to meet any expense necessarily incurred under any requirement of law, or for the maintenance of government within the scope existing at the time of the previous session of the legislature or contemplated by laws enacted thereafter, or to pay bills arising out of some emergency requiring an expenditure of money not provided by the legislature. The governor and council shall determine the necessity for such allocations, and all such allocations shall be supported by a statement of facts setting forth the necessity for the allocations.\(^{41}\)

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\(^{41}\)Maine, Revised Statutes, c. 16, sec. 26.
This fund is used to take care of emergency expenditures that may arise unexpectedly. In a recent six year period, twenty-five percent of the fund was allocated to cover losses in forest fires and hurricanes. Another twenty-five percent was granted to the education department and the state vocational school. The remaining money was used for such purposes as covering occasional deficits in various state accounts, supporting programs advertising the state, or increasing salaries.42

The state constitution provides that "no money shall be drawn from the treasury but by warrant from the governor and council".43 This provision was meaningful in an earlier era of government, and at one time each state pay-roll was signed and certified by members of the council committee on warrants. But today, with a modern budgetary system in the office of the state controller, such checking by the council is no longer necessary and has been discontinued. To be sure, the council still approves innumerable individual expenditures, but this is a strictly routine procedure. Documents come before it, stamped "approved" by a bureau in the controller's department, and council assent follows as a matter of course. Only occasionally is a question raised by a councillor as to a particular expenditure.

Plans and contracts for public works construction in the state also are subject to council approval. The council acting as a committee of the

42 Vose, op. cit., p. 15.
whole opens bids for contracts and recommends award to the appropriate bidder.

New Hampshire

The financial and administrative duties of the council in the other two states resemble very much those in Maine, with some differences in detail. In New Hampshire, the governor and council supervise borrowing by the state treasurer. The governor and council purchase liability insurance for state vehicles, approve requests for out-of-state travel by state employees, approve fees for special legal counsel temporarily employed by state departments, approve purchases made for the state guard, etc. The approval of the governor and council is necessary for the transfer of funds from one account to another. The granting of unusual holidays and time off from work for state employees is at the discretion of the governor and council. Leaves of absence for state employees, likewise, require approval by the board, as do payments of claims by state employees against the state for personal injuries incurred on the job. In New Hampshire, as in the other two states, the rules and regulations of the state civil service commission, or personnel board, must be approved by the governor and council before becoming effective. 45

44 Interview with Hon. Roswell Bates, Chairman of the Council Maine, October 9, 1958; Minutes, Meeting of Governor and Council, State of Maine, October 8, 1958, p. 6.

45 See Appendix B.
Massachusetts

In Massachusetts, the governor and council are called on to fix the basic salaries, and approve step-rate increases for certain state employees outside the classified service. Included on the agenda of a council meeting are numerous payments for extra work orders which require council approval. Sales, rentals, leases, or gifts of land, buildings, or other property to the state or by the state all require council approval.46

In Massachusetts, council approval is required for warrants issued by the state comptroller for payment by the treasurer of state obligations. The comptroller's warrants are referred to the council committee on finance, accounts, and warrants which scrutinizes them and reports to the full council. Although occasionally a warrant will be questioned, and payment held up for a time, approval is almost invariably granted. At the council meeting, the approved warrants are then divided up among the several councillors who are members of the committee. Each of these councillors signs in behalf of the committee the warrants handed to him for this purpose, and this signature constitutes evidence of the official approval of the warrant by the committee.47 On a voice vote, council approval is then granted to the warrants en bloc. This function, potentially an important responsibility of the council, is manifestly carried out in a strictly routine fashion. The comptroller's

46 See Appendix C.

approval of the warrants for payment has already been given, and his opinion is seldom challenged in the council. 48

However, the council is jealous of the powers confided to it, as is illustrated by an incident that occurred in 1956. The comptroller informed the council finance committee that his office had discontinued the practice of sending to the council a breakdown of land-takings included for payment on the weekly warrants, as his office was overloaded with work. He further pointed that the law did not require such a breakdown specifically, and that no official communication from the council to the comptroller's office directing such a breakdown was on file. In this instance the council felt that, since it had been the custom that such land-takings included in the warrants presented for their approval be itemized, it was their prerogative to require that similar action be continued in the future. Therefore, a motion was made and unanimously passed advising the comptroller that the executive council desired that in future all land-takings included in the warrants be itemized to appear before the council for appropriate action, as had been done in the past. Inasmuch as such itemization had been omitted from the warrants for that day's session, according to the comptroller's proposed new policy in the matter, the council further required that the comptroller should forward to the council a list of all land-takings approved that day. 49

48 Minutes, Meeting of Governor and Council, State of Massachusetts, March 5, 1959, p. 98.

49 Minutes, Meeting of Governor and Council, State of Massachusetts, June 21, 1956, pp. 208, 212.
Council Decision-Making in Executive Session

A member of the Maine Constitutional Convention of 1819, doubting the necessity for an executive council, remarked, "I believe we can get a governor as capable of doing the business of the executive alone as other states. If we give him a council we not only incur a useless expense but divide the responsibility and open the door for intrigue." The meetings in camera at which the council transacts its business give every opportunity for the "intrigue" here mentioned. The present-day trend toward open meetings of public boards and commissions is adhered to by the councils in all three states, as far as their official sessions are concerned. But these meetings would seem often to be a facade.

A citizen observing proceedings at an open council meeting will watch the governor and council transacting official business, but he will not be witnessing the most meaningful part of council decision-making. The fact of the matter is that the real work of the council is done in executive session, or in informal meeting with the governor, with press and public excluded. Decisions to agree or to disagree on all important matters coming before the board are made in private, and the open meetings and the action taken therein, as recorded in the official minutes merely serve to ratify and formalize those decisions.


The very smallness of the council's size, its closeness to the governor in the executive branch, and the secrecy in which its decisions are taken operate against its effectiveness in doing the very job for which it was created in state government. The council is supposed to act as a check-rein on the governor, who is obliged to secure the board's consent for appointments and in other matters. A body of five or seven members is small enough so that the governor may find it comparatively easy to reach behind-the-scenes agreement with a sufficient number of the members to give him the votes he needs in deciding an issue. To do this he will have to use his patronage to secure the support of a few councillors. When faced with a determined opposition, however, he may find that this procedure results in virtually abdicating to the council the power of appointment.

The council function of hearing pardon cases in collaboration with the governor is not properly assigned to a board made up of politicians who serve a term or two, who come and go, and have no expert knowledge in the field of penology. Maine, Massachusetts, and New Hampshire have probation and parole boards which logically should hear all pardon cases and make recommendations for executive clemency, properly exercised by the governor alone.

The financial matters now reviewed by the council are properly the business of the state comptroller or department of finance, the particular state agency involved, and the governor. Modern budgeting and control methods, trained personnel, and machine accounting systems make the council's financial power superfluous, and an opportunity for mischief.
The constitutional assignment of power to the council has been augmented in each state by a considerable vesting of statutory authority. The laws of the three states are replete with authorization to the council to interpose its control over numerous details in administrative decision-making.
CHAPTER IV

STATUTORY POWERS OF THE COUNCIL

It is generally provided in Maine, New Hampshire, and Massachusetts, that rules and regulations issued by state administrative agencies must receive the approval of the governor and council before becoming effective. In each of the three states, it is the duty of the governor and council to approve depositaries of public funds and the awarding of state contracts, to assign rooms in state buildings to various state departments and agencies, to award compensation to state employees for personal injuries, and to authorize borrowing by the state treasurer. All three councils fix pilotage fees in their respective states, and have jurisdiction over special holidays for state employees. The miscellaneous powers and duties of the council do not remain fixed, for changes in statutes from time to time add to or subtract from them. Some of them are of very long standing. An example of a long-continuing duty of the council is that of visiting state institutions. This is not now as important a function of the council as it once was, inasmuch as most state institutions have their own appointive boards of visitors. However, some state institutions in all three states are still visited annually by the council or a committee thereof. For example, in New Hampshire it is provided by law that one councillor shall be appointed by the governor to serve on the board of trustees.

1 See Appendices A, B, and C.
of each state institution; in Maine, state schools and hospitals are inspected once a year by the council; in Massachusetts, the state prison receives such an annual visit.

These numerous, though often trivial, duties give the council the appearance of a board of directors of the state administration with general oversight of the management of the state's affairs. Such a conception is an exaggeration of the actual power of the council, however, in spite of the fact that its activities impinge on many functions of state agencies.

It must be remembered that the council initiates no business. The governor proposes; the council disposes. Governor and council work together as a "bicameral" executive body, not as a plural executive. Insofar as its legal powers and duties go, the influence of the council is essentially negative rather than positive. Councillors may defeat an action proposed by the governor, but they cannot substitute for it any affirmative action of their own.

New Hampshire

In New Hampshire, the term "negative concept" is commonly used in reference to this relationship between the council and the governor.

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2 New Hampshire, Revised Statutes Annotated, c. 10:1.

3 Interview with Hon. Harley D. Welch, Councillor, Maine, September 3, 1958.

4 Boston Herald, December 31, 1959, p. 3.

This concept was recently explicitly described by the Attorney-General of New Hampshire in a letter to one of the councillors who had requested clarification as to the powers and duties of the New Hampshire council. The explanation, as written by Attorney-General Wyman, reads as follows: "... use of the phrase 'Governor and Council' means the Governor with the advice and consent of the Council... the Council cannot initiate executive action but whenever said action is proposed by the Governor a majority of a quorum of the Council can say no."  

This point was clearly set forth by the legislature in a 1957 statute, in these words: "... The phrase 'governor and council' shall mean the governor with the advice and consent of the council."  

The council, therefore, is not a true board of directors as it is without the power to initiate action on its own motion. 

The statutory duties conferred upon the council have become so numerous that councillors themselves have had to check at times to discover where, in fact, they do or do not have authority. The Attorney-General of New Hampshire, upon request from a councillor, drew up a list of the powers and duties of the council of that state. 

The long list includes such items as: approving the extension of old age and survivors insurance coverage to employees of the state agencies,  

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7New Hampshire, Laws of 1957, c. 3.  

8See Appendix B; Report of Attorney-General of New Hampshire to the Council, December 30, 1958 (in files of Council, Department of State, Concord, New Hampshire).
approving bond issues voted by the trustees of the University of New Hampshire, authorizing state institutions to employ temporary help, and the taking of private property in a civil defense emergency.  

An analysis of the work load of the New Hampshire council for the meetings of the first seven months of 1959 reveals the following categories and items of business actually considered by the board. It should be remembered that a vote was necessary to dispose of each item of business; in most cases, a voice vote sufficed and only rarely was a roll-call required.  

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
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<tbody>
<tr>
<td>Awards for Construction</td>
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<tr>
<td>Contracts</td>
<td>1148</td>
</tr>
<tr>
<td>Department of Public Works Miscellaneous Matters</td>
<td>106</td>
</tr>
<tr>
<td>Appointments</td>
<td>1148</td>
</tr>
<tr>
<td>Out-of-state-travel requests</td>
<td>92</td>
</tr>
<tr>
<td>State Personnel matters</td>
<td>79</td>
</tr>
<tr>
<td>Transfer of funds from one account to another</td>
<td>89</td>
</tr>
<tr>
<td>Approval of Treasury warrants</td>
<td>43</td>
</tr>
<tr>
<td>Transfers of state property</td>
<td>49</td>
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<tr>
<td>Approval of issuance of bonds by treasury</td>
<td>24</td>
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<tr>
<td>Miscellaneous departmental matters</td>
<td>60</td>
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<tr>
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<td>11</td>
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<td>Approval of rules and regulations</td>
<td>6</td>
</tr>
<tr>
<td>Pardons</td>
<td>3</td>
</tr>
</tbody>
</table>

9Ibid.; Minutes, Meeting of Governor and Council, New Hampshire, July 31, 1958, passim.

10Data compiled by the author from the Minutes, Meetings of Governor and Council, New Hampshire, January-July 1959.
It will be noted that, except for a few matters under the heading "contracts," all the items in the first three headings in the above list pertain to the department of public works. Included in these items are appointments of special commissions to lay out highways, these commissions usually consist of three members, including one or two councillors. In New Hampshire, council approval of matters related to public works is a statutory duty that has come to be more important and indeed more time consuming than many of the council's constitutional functions. What the council actually does, of course, is grant approval of studies made and decisions taken by state highway engineers and other officials of the public works department.

Council meetings in each of the three states are open to the public, but are not usually largely attended. On one occasion, when the writer was present at a meeting of the New Hampshire council, there were a dozen or fifteen persons in the room as spectators; most were state employees or others directly interested in the operation of a new personnel law as it applied to one of the state commissions, a matter which was to be discussed at that day's meeting. Comfortable chairs placed along the walls of the room accommodated the spectators, but there were not sufficient chairs, nor any apparent provision at all, to care for a large group.

An observer attending a New Hampshire council meeting, not realizing the amount of work that has been previously done by various state agencies on the items of business coming before the council, might well wonder at the rapidity with which the governor proposes and the council disposes. Parliamentary procedure is not strictly formal
in any of the councils. It is simplest in New Hampshire, where the
council of five members is the smallest of the three. The governor,
sitting at the head of a long table around which sit the councillors,
brings up items from the agenda. The secretary of state, sitting at
the governor's left, supplies supporting documents or papers, copies
of which have been distributed to the councillors. The governor may
propose the closing of the shooting season due to a drought or the
establishment of a commission to lay out the extension of a main high-
way. In either case, the council must vote in concurrence with the
governor before any action can be taken. At a meeting on November 30,
1949, the governor brought to the attention of the council an article,
severely critical of the attorney-general of the state, published in
the University of New Hampshire campus newspaper. He wished an
investigation of the matter. The council concurred; a special council
committee was set up with the objective of holding public hearings,
subpoena ing witnesses, and taking sworn testimony. The committee was
to report its findings at a later date to the governor and council for
such action as might be appropriate. Whatever the subject of the
business at hand, the procedure is simple, and as business is disposed
of the secretary of state makes a notation on the pertinent documents
of action taken on each item.

Minutes, Meeting of Governor and Council, New Hampshire,
November 30, 1959, 28d-28f.
Maine

The list of miscellaneous powers and duties assigned to the governor and council in Maine is long and varied, and the procedure for disposing of business is slightly more formal than that in New Hampshire. The governor presides, seated in a high-backed chair behind a desk on a slightly raised dais. Facing him are the seven councillors, seated at desks which are arranged in horse shoe shape, the closed end of which is directly opposite him toward the rear of the room. Parliamentary procedure in the Maine council has varied considerably from one administration to another. It has depended very much on the inclinations of the governor. Governor Cross, for example, is credited with having introduced a fairly formal procedure which his successors have retained.12

At a desk directly below that of the governor, and facing the councillors, sits the secretary of state, who acts as clerk or secretary of the council. He keeps the minutes of meetings, and has custody of the working papers and supporting documents for various items on the agenda, which he passes one by one to the governor during the course of a meeting. The governor and each member of the board is supplied with a mimeographed agenda sheet prepared by the secretary of state's office prior to every meeting. The governor, as presiding officer, lays each item on the list before the council for its action. The governor may be seeking council action on such matters as the taking,

leasing or renting of public lands; cession of land (up to ten acres) to the United States; acceptance of gifts to the state; supervision over the state police chief and his subordinates; supervision over the use of state-owned vehicles; approving the removal of the superintendent of a state institution by the board of trustees; approval of borrowing voted by the trustees of the University of Maine; or determining the style and number of various state department reports. An expenditure from the special fund to promote the State of Maine may require approval. At every meeting, considerable time will be spent approving out-of-state travel requests by state personnel. Whether a request involves the expenditure of a few dollars or several hundred dollars, whether the trip proposed involves a journey across the continent or to a city thirty or forty miles away, a council vote is necessary for such travel at state expense. Sometimes, detailed discussions are held as to whether or not the amount of money requested exceeds what will actually be needed.13

The Maine council follows an unusual procedure in awarding state insurance. In recent years, there has been carried $250,000 of insurance yearly, on $90,000,000 of valuation. This insurance is placed by private agents. Each councillor names an agent in his own district. The insurance is divided into twenty-one parts, each policy running three years with one-third renewed every year. The agent and the councillor in a particular district divide the insurance

13 Data compiled by the author from the Minutes, Meetings of Governor and Council, Maine, 1958; See also Appendix A.
so that any licensed insurance agent in the district gets a share of the insurance if he desires it. There is no statutory control over the placement of state insurance. It is usually divided, proportionately, among some sixty agents in a particular district, according to the size of that agent's business. About one-quarter of the agents tend to choose a commission check for no services rendered, rather than write a re-insurance policy. Such checks amount to approximately $40 each. Members of the legislature in the insurance business sometimes receive these checks. This method of awarding state insurance has been both severely criticized and defended by those familiar with the situation.  

Obviously, much of the business of the Maine council is of a routine nature. Nevertheless, the governor will state each matter as it is presented in the communication, report, or other supporting data that accompanies the proposed council order. He will give his views on the subject, and will call for the views of the councillors. Discussion may ensue, after which a vote is taken. Usually the governor proposes the form of the final vote and asks that the council express its wishes. A councillor will then move passage or rejection of the proposal as stated by the governor, and the latter will then ask the council to signify its approval or disapproval of this motion by a show of hands or a voice vote. A councillor may demand a roll-call vote, and use is occasionally made of this method of registering council decisions. In such a case, the secretary of state calls the roll of the councillors by districts, and each answers "yea" or "nay"
when his name is called. If the result of the vote is in the affirmative, the matter is considered disposed of and the next item of business on the agenda is taken up. The governor's approval is assumed, unless he makes a formal statement of disapproval following the council vote. 15

In Maine, it is the practice to embody council decisions in written orders. For business emanating from one or another of the departments of the state government, these orders are drafted in the department concerned and forwarded to the secretary of state to be laid before the council meeting, then, is embodied in a series of draft council orders which are laid before the councillors by the governor, one after another, representing items on the agenda for that day. A uniform blank order form is provided by the secretary of state for the departments for their use in preparing proposed orders, and special forms are provided for certain purposes, such as for requests for transfers of funds between one appropriation and another. 16

Massachusetts

In Massachusetts, the duties delegated to the council by legislation are no less heterogeneous than in the two states already discussed. The governor and council have supervision over the construction of state armories, and over the leasing and renting of buildings to be used as

16 Ibid.
state offices. They must approve the sale of state land by any state agency. Orders of land-taking by authority of the state require council approval, as do payments of claims for damages to private property caused by inmates of state institutions or by employees of the state.17

Much of the business brought before the Massachusetts council is in the form of reports from standing committees. There are six standing committees: a Committee on Pardons, a Committee on Finance, Accounts and Warrants, a Committee on Waterways, Public Lands and Transportation, a Committee on Military and Naval Affairs, a Committee on Public Institutions and the State House, and a Committee on Nominations. Each committee consists of five members and "shall be appointed by the governor, unless the council shall otherwise especially order".18

If the lieutenant-governor is of the same party as the governor, the governor will customarily appoint him as member and chairman of two or three of the most important of the council committees. In modern times, principal committees are those on nominations, on pardons, and on finance, accounts and warrants. During the 1957-1958 term, the lieutenant-governor was chairman of each one of these committees.19

As the spokesman for the committee concerned in bringing reports before the council for action, the lieutenant-governor serves very much as a majority floor leader in the council, assuming of course that he,

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17See Appendix C.


19Ibid., p. 13.
the governor, and the council majority are all of the same party, and that he has been appointed chairman of the important standing committees.

Massachusetts is the only state where the council publishes its rules of procedure. These are issued every two years in pamphlet form, primarily for the use of the councillors themselves, with any changes or revisions that have been made since the last previous publication. The order of business is governed by rule and is as follows:

1. Reading records of last meeting.
2. Confirmation of previous nominations.
3. Communications from His Excellency the Governor.
4. Reports of committees.
5. Unfinished business.

Numbers two, three, and four, on the above list normally constitute by far the greater part of the business taken up by the council at a meeting. Under "confirmation of previous nominations," those nominations which have been handed in by the governor at a previous meeting and at that time referred to the committee on nominations, are now brought forward by the chairman of that committee in the form of a committee report. Usually the report will be favorable, and the fact will be stated by the committee chairman for each individual nominee, whereupon the governor will put the question as to whether

\[20\] Ibid., p. 4.

\[21\] Minutes, Meeting of Governor and Council, Massachusetts, February 26, 1959, pp. 78-80; August 14, 1958, pp. 388-389.
the nomination shall be confirmed. In most cases an affirmative
voice vote will follow. If a nomination is at all controversial, there
may be some debate and discussion, and a roll-call vote will then be
requested by some member, and the result thus determined. Under the
rules, the yeas and nays may be ordered by the governor, or by the
lieutenant-governor when he is presiding, or "shall be ordered upon
the request of any member of the council." 22

The rules provide that if a matter is referred to a committee,
it shall not regularly appear on the calendar until the second
regular meeting following its referral to committee, or until such
time as the chairman makes a report to the executive secretary. 23
The latter will indicate on the calendar that the matter is one that
has been previously referred to committee, and whether the committee
has reported favorably or adversely.

The formality in the Massachusetts council, as distinguished
from the other two states, appears more in certain usages and customs
rather than in strict application of rules of procedure. For example,
the constitution of Massachusetts gives to the governor the style
and title of "His Excellency." 24 Similarly, the lieutenant-governor
is given the title of "His Honor." 25 In council procedure, the custom
has been faithfully followed of addressing the governor as "Your
Excellency," following the constitutional usage, and any reference by

22 Massachusetts, Executive Council, op. cit., p. 8.
23 Ibid., p. 4.
25 Ibid., Part Second, c. II, Sec. II, Art I.
a councillor to the chief executive is couched in the appropriate terminology. If the lieutenant-governor is in the chair, his title is similarly used. Phraseology, then, adds a certain formality and dignity to the proceedings, which they would not otherwise have.

In Massachusetts, as in the other two states, the council chamber adjoins the suite of offices occupied by the governor and his staff. At the commencement of the meeting, the Governor of the Commonwealth enters from his office, and takes his place in the presiding officer's high-backed chair, behind a slightly elevated desk. The desks of the councillors are arranged in an oval shape, so that the councillors, when seated, more or less face the governor, according to their position around the oval. Immediately to the governor's right at the council board is the seat of the lieutenant-governor. His Excellency calls the meeting to order and lays before the council any business he has for its consideration.

Although council proceedings in Massachusetts appear more formal and dignified, action taken in these meetings is in fact no less routine, or superfluous, than it is in the councils of Maine and New Hampshire. Considerable time is spent on land-taking orders, and as has been seen in the previous chapter, the council is most jealous of its "power" to approve the work already carefully scrutinized in the office of the state comptroller. The committee on waterways, public lands, and transportation, as well as the council as a whole, considers items which logically fall under the headings of "natural resources" or "public works" and which because of their very nature require specialized study in the state agencies concerned with such
subjects. Nevertheless such items of business are proposed by the
governor and disposed of by the council in the manner prescribed
by the rules of the council. 26

Committees

We have mentioned the committee system in use in the Massachusetts
council. Historically, the Maine council, too, made great use of
standing committees. A large number of committees existed during the
nineteenth century, but as various administrative agencies of the state
government were created they took over the functions of many of the
committees, and as the need for the latter ceased, they were abolished.
A few were retained, however, and remained a feature of council
procedure until the administration of Governor Summer Sewall, 1941-1945,
who appointed no committees and thus terminated the system, at least
temporarily. A modified type of committee system was begun under the
Muskie administration and has since continued. Under present practice,
the committees are appointed not by the governor as in times past but
by the chairman of the council. 27 The latter, whose function has
traditionally been to preside over council meetings in the absence of the
governor and if there is no acting governor present, today serves as a

26 Minutes, Meeting of Governor and Council, Massachusetts,

27 Clement E. Vose, The Executive Council of Maine in Decline
(Government Research Series No. 21; Brunswick, Maine: Bureau for Research
in Municipal Government, Bowdoin College, 1959), p. 14; Interview with
sort of floor leader. He is himself the chairman of one of the more important council committees, whose function it is to conduct the opening of bids on state contracts. The chairman is elected by the council from among its membership at the beginning of each biennium.28

Standing committees are not at present found in the New Hampshire council, although at various times in the past they have been utilized. Whether or not such committees are appointed seems to depend on the governor's wish in the matter. Some governors at the commencement of their term have appointed a number of standing committees in conformity with practice more common in the nineteenth century. Most recent governors have not done so with the result that there have been no committees other than special or ad hoc committees of one or more members in recent years. For example, Governor Powell at the commencement of his term appointed the Democratic member of the council as a committee of one on claims matters. The fact that the councillor concerned was the only member in the present administration with any previous council experience may have some bearing on this appointment.29

The smallness in size of the New Hampshire council, of course, militates to some extent against the creation of an established committee system. In the past, when committees have been appointed, the governor has designated the members to serve on each committee, as is the practice in Massachusetts and Maine.30

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The Declining Importance of the Council

When state government was small and undeveloped with its few agencies and officials performing but a small number of limited duties, the executive council loomed large in the scheme of government organization. Because of its constitutional and statutory functions, it was a relatively important body in state affairs. But through the years, although the functions of the council have become more numerous, they have also become less and less significant when viewed from the perspective of an ever-expanding state government. It seems inevitable that this trend will persist and will continue to have an adverse effect upon the calibre of councillors and their status in government. Legislatures have shown a tendency to assign functions to the governor and council indiscriminately. Loose legislation, vaguely ordering that things be done "under the direction of the governor and council" has resulted. Consequently, councillors themselves at times have been unaware of the full range and scope of their powers and duties.

The council is clearly ill-fitted to perform much of the work assigned to it. The council, as a part-time body, with its constant turn-over, would appear to be able to offer little competent advice to the governor in connection with its miscellaneous administrative and financial duties, and to exercise but poorly informed judgement when it is required to make decisions in such matters. Many of the tasks assigned to the council have been trivial, and much of its work consists of approval of decisions already taken and work already done by some other state agency or board.
The office of councillor is a political office, and the powers of the council are often exercised by its members with a due regard to political consequences. Far from constituting an elite group as in colonial times, a body of "notables" particularly fitted by their prestige and community standing to perform as virtual assistant governors, the council today comprises a group of political officeholders, acutely aware of the partisan advantage to be derived from their positions. Not only are the councillors politicians, but the council itself is often a subject of political controversy.
CHAPTER V

POLITICAL ASPECTS OF THE COUNCIL

The Councillors

"There shall be a council... to advise the governor in the executive part of the government... and he [the governor] with the councillors... may... hold and keep a council, for ordering and directing the affairs of the state..." (Maine, Constitution, Art. V, Part Second, Sec. 1.)

In each of the three states the governor's council is a body of advisers who are to assist the chief executive in ordering the affairs of the state. The constitutional quotation above embodies the idea of the council as it existed in the minds of the constitution-makers as an outgrowth of colonial practice. But the concept of the council as contained in the above quotation scarcely applies to the institution as it exists today. Its many statutory responsibilities, important and trivial alike, the tremendous complexity of state government today as compared with that of the revolutionary period, and the influence of party politics on the selection of councillors and their own appraisal and performance of their duties, make of the present day council a far different institution from that envisioned by the men who wrote the state constitutions. These documents provide

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the chief executive with a body of advisers. In reality, however, the state governor finds himself provided with a group of political officeholders, not of his own choosing, who may bring to him their advice but who are clothed with powers that may be used to frustrate executive action contemplated by him, and thus weaken his ability to administer the state in an efficient manner and according to the responsibility properly vested in him.

Maine

The state of Maine has had a council for all of the one hundred forty-years of her history to date. The present constitution of the state established the council in the words following:

There shall be a council to consist of seven persons, citizens of the United States, and residents of this state, to advise the governor in the executive part of the government, whom the governor shall have full power at his discretion to assemble; and he with the counsellors, or a majority of them may from time to time, hold and keep a council, for ordering and directing the affairs of state according to law.2

The method of choice of the members of the council is as follows:

The counsellors shall be chosen biennially, on the first Wednesday of January, by joint ballot of the senators and representatives in convention; and vacancies, which shall afterwards happen, shall be filled in the following manner; the governor with the advice and consent of the council shall appoint within thirty days from said vacancy a counsellor from the same district in which the vacancy occurred, and the oath of office shall be administered by the governor; said counsellor shall hold office until the next convening of the legislature; but not more than one counsellor shall be elected or appointed from any district prescribed for the election of senators; they shall be privileged from arrest in the same manner as senators and representatives.3

3Ibid., Art. V, Part Second, sec. 2.
The constitution goes on to provide that the resolutions and advice of the council shall be recorded in a register, and signed by the members agreeing thereto, which register may be called for by either house of the legislature. Any councillor so desiring may enter his dissent to the decision of the majority as recorded in the register.\footnote{\textit{Ibid.}, Art. V, Part Second, sec. 3.}

The constitution further provides:

\begin{quote}
\ldots No member of Congress, or of the legislature of this state, nor any person holding any office under the United States, (post officers excepted) nor any civil officers under this state (justices of the peace and notaries public excepted) shall be counsellors. And no counsellor shall be appointed to office during the time, for which he shall have been elected.\footnote{\textit{Ibid.}, Art. V, Part Second, sec. 4.}
\end{quote}

There are sixteen counties in the State of Maine, and seven councillor districts. A Resolve of the legislature has set up a sequence of representation, so that over a period of time each county has representation on the council. Each councillor district consists of one or more counties; the larger counties are represented on the council for each two-year council term or, in some cases, with an occasional lapse of a term. The smaller counties take their turn in sequence, so that each enjoys representation on the council for one or two terms at least, during a ten-year period.\footnote{\textit{Maine, Resolves of 1951}, ch. 109.} The legislation now in effect governs the sequence of representation through the term commencing in 1961.\footnote{\textit{Ibid.}}

Councillors are paid $1,250 a year plus travelling expenses. This payment is for the period during which the legislature is in
session. At other times, the councillors are paid $20 per meeting plus actual travelling expenses. For service on council committees, councillors are paid $5 a day plus their travelling expenses. 8

The office of the councillor is much sought after in Maine, although of course the statutory sequence of representation described above results in a relatively short tenure of office for this post. During the last forty years, ten councillors have served three terms each, a term being two years in length; twenty-eight have served for two terms, and fifty-four have served a single term in the council. 9

From 1917 to 1960, the membership of the Maine council has been entirely Republican in politics. The Republican Party has controlled both branches of the Maine legislature since 1917. 10 The consequent monopoly by that party of seats on the council during these years is therefore not surprising.

Between the years 1919 and 1938, forty-five councillors served in the office; of these, one-half of the number had no previous legislative experience at the time of their selection to the council. Since 1939, a large percentage of members have had legislative experience; thirty-seven members out of a total of forty-seven had served in one or both houses of the legislature prior to being chosen


10 Ibid.
to membership in the council. Interestingly enough, there were more college graduates in the council during the earlier period. Seventy-five percent of those who served between 1919 and 1938 had college degrees. Since 1939, only fifty percent of the members have been college graduates. In the earlier period, the council proved to be a stepping-stone to other office more often than it has in recent years. For example, during the period ending in 1938, five councillors were elected to the legislature after their council service. More recently, the council has been "the end of the line" politically. From 1939 to 1958, no councillor was elected to the legislature following his term on the council. In 1958, however, Roswell Bates, chairman of the council during the 1957-1958 term, was elected to the state senate for the term commencing in 1959. Some councillors have become registered lobbyists upon the conclusion of their terms of office.

In Maine each councillor represents a district; this provides representation by district in the executive branch of the government, in the same way as election of members by districts does in the legislature. The councillor tends to become an errand boy for his constituents; they look to him for assistance in matters that they desire to bring to the attention of the authorities at the state capital.


\[15\] Interview with Hon. Roswell Bates, Chairman of the Council of the State of Maine, Augusta, Maine, October 9, 1958.
The political complexion of the Maine legislature down through the years, along with the district system of representation, has created a situation in recent years wherein the method of selection of councillors as well as the very existence of the council itself have been challenged.\textsuperscript{16} The district system is representative in theory, but the question has been asked, "How representative is an all-Republican council?" This question has been raised particularly since 1955, when Maine's first Democratic governor in many years assumed office.\textsuperscript{17}

The representative character of the Maine council has been questioned not only because of its unfailingly one-party composition, chosen as it is by a legislature consistently dominated by one party, but also because of the selection system in effect for picking council candidates. Candidacy is tantamount to election, as matters stand, and candidates for the council are chosen by the Republican county caucuses in each county. The membership of these caucuses varies from one county to another, the number having been as few as three members in Lincoln County, while Cumberland county has not had fewer than fourteen in its caucus.\textsuperscript{18} It is obvious that the choice of council candidates is very closely controlled by the county organization of that party which has

\textsuperscript{16}Clement E. Vose, \textit{The Executive Council of Maine in Decline} (Government Research Series No. 21; Brunswick, Maine: Bureau for Research in Municipal Government, Bowdoin College, 1959), pp. 8-10.

\textsuperscript{17}Interview with Hon. Robert Hewes, Administrative Assistant to Governor Edmund Muskie, October 8, 1958.

\textsuperscript{18}Clement E. Vose, "Report on the Council in Maine," Prepared for the Citizen's Committee to Survey the State Government, August, Maine, October 31, 1958 (in the files of the committee).
controlled the Maine legislature for many years. It is a foregone conclusion that a candidate who has been picked by the county caucus will be chosen by the joint convention of the two houses when they meet in January of the odd-numbered years to elect councillors for the ensuing term. Nominations may be, and occasionally are, offered from the floor; but usually there is no opposition to the candidate selected by the caucuses.\(^1\)

New Hampshire

In New Hampshire, the council consists of five members elected from as many districts. The pertinent provisions from the state constitution are as follows:

There shall be biennially elected, by ballot, five councillors, for advising the governor in the executive part of the government. The freeholders and other inhabitants in each county, qualified to vote for senators, shall sometime in the month of November, give in their votes for one councillor; which votes shall be received, sorted, counted, certified, and returned to the secretary's office, in the same manner as the votes for senators, to be by the secretary laid before the senate and house of representatives on the first Wednesday of January.

And the person having a plurality of votes in any county, shall be considered as duly elected a councillor; but if no person shall have a plurality of votes in any county, the senate and house of representatives shall take the names of the two persons who have the highest number of votes in each county, and not elected, and out of those two shall elect by joint ballot, the councillor wanted for such county, and the qualifications for councillors shall be the same as for senator.

If any person thus chosen a councillor, shall be elected governor or member of either branch of the legislature, and shall accept the trust; or if any person elected a councillor

\(^1\) Ibid.
shall refuse to accept the office, or in case of the death, resignation, or removal of any councillor out of the state, the governor may issue a precept for the election of a new councillor in that county, where such vacancy shall happen and the choice shall be in the same manner as before directed. And the governor shall have full power and authority to convene the council, from time to time, at his discretion; from time to time hold a council, for ordering and directing the affairs of the state, according to the laws of the land.

The members of the council may be impeached by the house, and tried by the senate for bribery, corruption, malpractice, or maladministration.

The resolutions and advice of the council shall be recorded by the secretary, in a register, and signed by all members present agreeing thereto; and this record may be called for at any time, by either house of the legislature; and any member of the council may enter his opinion contrary to the resolutions of the majority, with the reasons for such opinion.

The legislature may, if the public good shall hereafter require it, divide the state into five districts, as nearly equal as may be, governing themselves by the number of population, each district to elect a councillor; and, in case of such division, the matter of the choice shall be conformable to the present mode of election in the counties.20

It will be seen, then, that the councillors, once elected by counties, are now elected by districts. Their election takes place at the same time as that of the governor, and like the latter they serve a two-year term; like the chief executive also, they are eligible for re-election. There was for a very long time in New Hampshire a tradition that a governor would serve but a single two-year term. This tradition appears to have extended to the office of councillor also. For many years, a single term in the council apparently sufficed, and members of that body did not seek re-election. The tradition, as far

20New Hampshire, Constitution, Part Second, Arts. 60, 61, 62, 63, 64, 65.
as the governorship was concerned, was broken by John G. Winant, who
was elected in 1924, served a single term, and then in 1930 was
again elected; running for re-election in 1932, he again was successful,
and left office in 1935 having served three terms in all. Governor
Murphy, who took office in 1937, started an apparent new tradition of
two terms in office, which has been in effect, as a general rule, down
to the present. With rare exceptions, councillors adhered to the
one-term tradition for almost a century, until Alphonse Roy of
Manchester, first elected for the term 1933-1935, was re-elected for
the next following term. Since then, several other councillors have
successfully stood for re-election. In recent years, the third coun-
cillor district has regularly returned a Democrat to the council, with
the other four districts displaying a consistent preference for Repub-
licans seeking council seats.

Members of the New Hampshire council often will have had experience
in local government and in the General Court. The councillors in office
during the term 1957-1958, for example, had all served in the legis-
lature, and three of them had been at various times in both branches.

22 Ibid., pp. 236-245.
The salary of New Hampshire councillors is $25.00 a day when attending council meetings or otherwise engaged in council business.24

The office has only occasionally been, in New Hampshire, a step toward higher political preferment. A few members have later achieved judgeships. William H. Sawyer, elected to serve in the council for the 1913-1915 term, was appointed on December 12, 1913 to the Superior Court bench. In a much earlier period of New Hampshire history, Levi Bartlett, who served in the council from 1802-1807, was in 1807 appointed chief justice of the Court of Common Pleas for Rockingham County. In 1836, John Page resigned from the council, having been elected United States Senator. John Hadley resigned as councillor in 1850 to become New Hampshire's secretary of state. In recent years, only one councillor has gone on to serve higher elective office; Charles M. Dale, who was councillor from 1937 to 1939, served as governor of the state from 1945 to 1949.25

Through the years, the council has been a body in which could be found not only practicing politicians with an eye to higher office, but representative citizens from various walks of life, contributing their need of public service. A Granite Monthly article in 1890 had this to say:

"Governor Tuttle will have the benefit, through his term of office, of the advice and assistance of a council of able and experienced man. First on the list is a physician of recognized

24New Hampshire, Revised Statutes Annotated, 4:42; Laws of 1957, c. 274.

financial ability; next, a manufacturer; third, a lawyer of wide experience and great learning; fourth, a businessman; and lastly, an editor. . . . They are of tried ability and undoubted honesty. . . .

A few years later we find in the same periodical the following comment:

As a rule, the members of the council in New Hampshire, like the governor, have been conservative business men, although not infrequently a lawyer or 'practical politician', or the two combined, has been called into that branch of public service. The six men . . . may be relied upon to safely guard and promote the welfare of the state. 27

Since councillors in New Hampshire are popularly elected, the political fortunes of the major parties may be reflected in the outcome of councillor elections. In recent years, the governorship of New Hampshire has, with few exceptions, been held by a Republican. 28 The political complexion of the council likewise has been prevailing Republican, although the third councillor district has consistently returned a Democrat to office for more than two decades. 29 As in Maine, the councillors provide representation of the people by districts in the executive branch of the state government. Since governor and a council majority have both been almost invariably of the same party, partisan conflict has generally been at a minimum in meetings of the board. There has been conflict, but this has essentially arisen due to differences brought about by the fact that councillors represent limited electorates, whereas the governor represents the entire electorate of the state. Local interests and state interests

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26 *Granite Monthly*, XIII (1890), 251.  
28 *Ibid.*.  
29 *Granite Monthly*, XIII (1890), 251.
will often conflict, and this fact will be reflected in some of the matters coming up in the course of council proceedings. However, the governor ordinarily defers to a councillor in a matter of particular local interest to the latter's district. Governors do not fail to show awareness of their responsibilities and prerogatives as heads of the executive branch, and they are properly jealous of their own powers and authority.

Massachusetts

The council in Massachusetts consists of eight members, with the lieutenant-governor as an additional ex-officio member. The term of office, like that of all elected officials in the state government, is two years. There is no limitation on re-eligibility. A rather short tenure is the rule; most councillors since the period of World War I have served one or at the most two terms. The record for service during the last forty years is seven terms, or fourteen years; in this particular instance, the terms were consecutive.

Under Massachusetts law, the state may be redistricted every ten years, following the decennial state census, for the purpose of

\[30\text{Massachusetts, Constitution, Part the Second, Ch. II, Sec. III, Art. I; Amendments, Art. XVI.}\]

\[31\text{Ibid., Amendments, Art. LXIV.}\]

\[32\text{Statistics compiled by the author from the Manuals for the use of the General Court, issues 1921 to 1957-58.}\]
council elections, as well as for elections to the legislature. The present councillor districts were established by Chapter 250 of the Acts of 1948. Each such district consists of several contiguous senatorial districts. The population of the councillor districts varies from 268,347 in the seventh district to 306,667 in the sixth district.

In Massachusetts, the council takes rank next after the governor and lieutenant-governor, in the order of precedence in the official protocol of the commonwealth. That is to say, a councillor is outranked only by the governor and lieutenant-governor in the state government. It may be noted that, since in Maine and New Hampshire the office of lieutenant-governor does not exist, the council in each of those states ranks next after the governor in order of precedence.

The place of the council in the executive branch of Massachusetts is very similar to that of its opposite numbers in New Hampshire and Maine. It has a wide range of powers and duties, some indicated by the constitution, and detailed in many statutes. The section of the

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34 Massachusetts, Manual, p. 153


36 Massachusetts, Constitution, Part the Second, Ch. II, Sec. III, Art. III.

37 This is a matter of custom and tradition.
Massachusetts Constitution dealing with the council reads in part as follows:

There shall be a council for advising the governor in the executive part of government, to consist of nine persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land.

The resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record may be called for at any time by either house of the legislature; and any member of the council may insert his opinion, contrary to the resolution of the majority. 38

By the Sixteenth Amendment to the Massachusetts Constitution, adopted in 1855, the number of councillors was reduced from nine to eight, and the original method of election by joint convention of the legislature was altered, to election by districts by popular vote. 39

Among the councillors in Massachusetts have been many men who were not professional politicians nor frequent seekers after public office. Many of the councillors have served but a single term, and this service constituted their entire career in government. Not infrequently, business men have served for one or two terms, after which they returned to their private pursuits. Some members of the council have had experience in the state legislature prior to taking up their councillorships. Others have had governmental experience

38 Massachusetts, Constitution, Part the Second, Ch. II, Sec. III, Arts. I, V.

39 Ibid., Amendments, Art. XVI.
in other posts at various levels. Of recent councillors, Patrick J.
McDonough and Augustus G. Means had served in the state legislature;
Christian A. Herter, Jr., had been in the legislature and had held
high appointive office in the federal government; M. Edward Viola,
on the council in 1955 and 1956, had been an assistant district
attorney. But often an incoming councillor will be an obscure and
politically unknown figure who has run for public office for the first
time in his successful bid for election to this position of long
established tradition and honor, dating back as it does to colonial
times.

Noticeable within the last decade is a heightening of interest
in the office on the part of both active politicians and newcomers to
politics. An indication of the recent keen competition for the office
of governor's councillor and the interest among office-seekers in the
position in Massachusetts is given by the number of candidates who
sought councillorships in the 1958 election.

With five hundred and sixty legislative nominations to be
filled, there were on an average fewer than two contenders for each
legislative post in the primary elections held in September. But
there were thirty-seven candidates seeking the eight Democratic
nominations for councillor in the September 9th primaries, and twenty-
one candidates contesting for the eight Republican nominations. The

40 Interview with Hon. Charles Gabriel, Councillor, Massachusetts,
October 20, 1958; data compiled by the author from the Manuals, issues
1921- to 1959-60.

41 Boston Traveler, August 26, 1958, p. 42.
competition for governor's council posts in this particular campaign was perhaps stimulated by the retirement of two incumbents who were campaigning for higher offices; Councillor Christian A. Herter, Jr., was seeking the attorney-generalship, and Councillor Charles J. Gabriel was seeking the Republican nomination for Congress in the ninth district. But council nominations have been attracting comparatively large fields of candidates in recent years regardless of retirements. 42

Campaigning for the council is arduous, for the councillor districts are large; only candidates for state-wide office have to cover more ground in their election campaigns. 43 Any notion that the executive council is a political spring-board to higher elective office is not substantiated by the record. There are a few exceptions to the rule, however. Pehr G. Holmes, who served on the council in 1927 and 1928, later served for sixteen years in the House of Representatives of the United States; 44 and Clarence A. Barnes whose service on the council was in 1943 and 1944, went on to two terms as attorney-general of the commonwealth. 45 On the other hand, several well-known councilors have failed in campaigns for state-wide office in recent years. Endicott Peabody, who served on the council in 1955 and 1956, unsuccessfully sought the Democratic nomination for attorney-general in 1958. Christian A. Herter, Jr., in the council in 1957 and

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42 Ibid.
43 Ibid.
45 Boston Traveler, August 26, 1958, p. 42.
1958, was the Republican candidate for attorney-general in the 1958
general elections but was defeated. Patrick J. McDonough of Boston
has established a record for council tenure. He was first elected in
1946 and has served continuously from the 1947-1948 term to date.
However, he was unsuccessful in his bid for nomination for the office
of mayor of Boston in 1949 and was unable to win the Democratic
nomination for governor in the 1956 pre-primary convention. 46

Nevertheless, the governor's council is a magnet for many
politically ambitious men because of its considerable prestige and,
in certain areas, real power. The salary is $6,000 a year and the
councillor generally finds that he has to spend but two days a week
on council business. The council holds one regular meeting weekly,
and usually committee meetings are scheduled for the preceding day.
Of course some councillors find that demands of their constituents put
additional burdens on their time. 47 While the councillors have not
been successful in general in using the office as a jumping-off
place to higher elective posts, some councillors have used this
position as a spring-board to desirable appointive jobs. A governor
finds it expedient to keep on good terms with most of the councillors,
and the disposition of many councillors is sweetened by the promise
of a political plum. Governors have occasionally appointed councillors

46 Ibid.

47 Interview with Hon. Augustus G. Means, Councillor, Massachusetts,
May 14, 1959.
to important state positions. Governor Herter appointed Arthur A. Thompson and M. Edward Viola to the judiciary.\textsuperscript{48} Otis M. Whitney, who served in the council for four terms, was appointed by Governor Herter to be Commissioner of Public Safety, and later became Commissioner of Insurance by appointment of Governor Furcolo.\textsuperscript{49} Inasmuch as dual office-holding is permitted in Massachusetts, it is not unusual to find a councillor who holds a position in local government in addition to his council seat. George Wells and Michael Favulli have each simultaneously served on the governor's council and on the city council of Worcester. (A councillor may hold local office but may not hold other state office, elective or appointive.)\textsuperscript{50}

\textbf{The Governor and Council}

\textbf{Maine}

In Maine and in New Hampshire the original method of choice of councillors was election by the legislature, and this method is still used in Maine. A council chosen by the legislature is in a sense a


\textsuperscript{49}Data compiled by the author from the Manuals, issues 1921 to 1959-60.

\textsuperscript{50}Massachusetts, Constitution, Part the Second, c. VI, Art. II.
legislative committee; it is an arm of the legislature. It has always
been so considered in Maine. Individual councillors consider them-
selves deputed to act as agents and "watchdogs" for the legislature
while that body is out of session, particularly in connection with
expenditures of certain appropriations by the administrative part of
the government. The councillors will point to their duties in regard
to appropriations and financial matters as an important element of a
delegated legislative authority vested in them.\footnote{Interview with Hon. Roswell Bates, Chairman of the Council of
the State of Maine, Augusta, Maine, October 9, 1958.} However, the political
factors involved in selecting councillors for service in Maine negate
to some extent the concept of the Maine council as representing the
legislature.\footnote{Clement E. Vose, The Executive Council of Maine in Decline
(Government Research Series No. 21; Brunswick, Maine; Bureau for
Research in Municipal Government, Bowdoin College, 1959), pp. 8-10.}
While the latter body does elect the councillors, the
actual selection of candidates, as mentioned heretofore, is closely and
narrowly controlled by the Republican Party political caucus in each
county. In effect, a few leaders on the county committee have the
dominant voice in selecting councillors;\footnote{Ibid., pp. 6-9.} and since, with the
Republican control of the legislature unbroken in that state for many
years, Republican councillors have invariably been chosen, the
representativeness of the council has been challenged, at least as
regards those counties where the Democratic Party has shown increasing
It is this lack of representativeness, in fact, that has led to present discussion of possible changes in the method of election of councillors in Maine or indeed the possible abolition of the council altogether.\textsuperscript{55}

Critics of the council have long noted that this body has been plainly not a seat of party power and responsibility. Any party significance of the council has been apparent only when a majority of its members has been of the party of opposition to the governor. In Maine, this situation has seldom been encountered. The Republican Party has had a control of the Maine state government which has been traditional, and the governor and the councillors over many decades have been generally found to be of the Republican persuasion. In 1954, however, a Democrat was elected governor of Maine and a new situation was created so far as the institution of the governor's council in that state was concerned. Edmund Muskie, who was re-elected for a second term in 1956, served throughout his administration with an executive council made up entirely of Republicans, inasmuch as the state legislature which selects the councillors was dominated in both branches by the Republican Party throughout the four years of Mr. Muskie's tenure in office. Governor Muskie appears to have handled the resulting situation with a great deal of delicacy and tact, utilizing the arts

\textsuperscript{54}Ibid., pp. 8-9; Interview with Hon. Robert Hewes, Administrative Assistant to Governor Edmund Muskie, October 8, 1958.

\textsuperscript{55}Maine Citizen's Committee on The Survey of State Government, Recommendations, April 1959, pp. 9-10.
of diplomacy and a winning personality to gain his objectives in office, while always maintaining a position of firmness and relying on his personal popularity with the people and the resulting forces of public opinion which could be expected to operate in his behalf. The results were instructive. During his first two years in office, the first council over which he presided sought at various times to obstruct certain actions which he desired to take, including the making of important appointments. The patronage matter, to be sure, was one of the most important to be dealt with in this delicate political situation. The governor is the only state-wide elective officer in the Maine government, and Mr. Muskie as a Democratic governor was alone in the state government in a position of power and influence, so far as his party was concerned. In a situation where a tactless or belligerent person might have seen his entire program destroyed by the power of his political opposition, Governor Muskie achieved an outstanding success which led to his re-election as governor and then to his election to the United States Senate. So successfully did he marshall the forces of public opinion to assist his own discretion and determination, that in those cases where he was pitted in open conflict with the council he was able finally to wear the opposition down and cause them to retreat without gaining any political advantage for themselves. By reappointing department heads, holdovers from previous administrations who had demonstrated capacity and fitness for their work;

56 Interview with Hon. Robert Hewes, Augusta, Maine, October 8, 1958.
by consulting the councillors on local appointments, and in many cases accepting their recommendations for filling such positions; by selecting as appointees of his own party men of outstanding and demonstrated ability; by appointing members of the opposition party to office when qualified candidates of his own party were lacking, Mr. Muskie achieved success in his relations with his council and brought a degree of harmony that would scarcely have been expected or foreseen when his first term began. 57

The council chosen by the Maine legislature for the term 1957–1958, which was the period of Governor Muskie's second term, proved very cooperative with the governor. The occasional obstructionist tactics of the previous council were not adopted by the new one. It made a record of cooperation with only infrequent displays of antagonism to the chief executive, and when controversy did develop it was not allowed to appear in open meetings but was confined to executive sessions where the problems involved were thrashed out and disposed of. The political ineffectiveness of the former council's obstruction and the obviously strong public opinion supporting the Governor in his policies was not lost upon the 1957–1958 council, and they matched the governor's show of moderation and desire for harmonious relations with a similar display of their own. Thus the governor managed to get along with the council, and the potentially difficult problem of the chief executive of one political party sharing authority in the executive department

57 Ibid.
with a council of the other party was overcome satisfactorily and smoothly.\textsuperscript{58}

But of course, it would not necessarily follow that in other cases similar accommodation would be reached. A great deal depends in any such situation upon the personality and character of the men involved. Opposition of a council to the policies of the chief executive sometimes does arise, even in situations where the council is either completely of the governor's political persuasion or has a majority of members of his party. Conflicts may arise for reasons other than partisan politics. Personality clashes and differences in judgment are occasionally experienced. Disputes within political parties are common and if one party is in complete control of government or a branch of government the very lack of partisan opposition is apt to breed attitudes which lead those in control to dispute among themselves.

\textbf{New Hampshire}

In New Hampshire, the experience of Governor Wesley Powell with his council during the 1959-1960 term exemplifies the difficulty a governor can have with a council, the majority of whose members are of his own political party. Governor Powell was elected in 1958 after a hard fought primary battle in which he defeated the "regular" Republican, former governor Hugh Gregg. The council elected in 1958 was composed of four Republicans and one Democrat. The Republican members of the council were all of the Gregg faction of the party.

\textsuperscript{58}Ibid.
During his first year in office, the Republican councillors, working frequently with the cooperation of the Democratic member, blocked many of Governor Powell's principal appointments. During the first six months of 1959, no major appointment of the Governor had been approved by the council, and the offices concerned were still being filled by holdovers from the previous administration.\(^5^9\) During the second half of the year, the Governor's difficulties continued. On some occasions he nominated the same person two or three times for a particular office, only to have the appointment rejected on each occasion. For example, on August 31st, an appointment of a municipal court justice was negatived by the council, whereupon the Governor renominated the same person for later council action, and on September 15th, the individual was once again rejected.\(^6^0\) A third attempt had the same result, with the council again turning down the appointment on September 30th.\(^6^1\) On the first occasion the vote had been unanimous. The second and third rejections were by four-to-one votes.

In addition to the rejections of numerous municipal court justices, the council turned down the Governor's choices for the positions of labor commissioner on October 14th,\(^6^2\) deputy attorney-general on

\(^{5^9}\) Interview with Hon. Wesley Powell, Governor of New Hampshire, May 29, 1969.

\(^{6^0}\) Minutes, Meeting of Governor and Council, State of New Hampshire, August 31, 1959, p. 21; September 15, 1959, p. 22.

\(^{6^1}\) Ibid., September 30, 1959, p. 23.

\(^{6^2}\) Ibid., October 14, 1959, p. 24.
the same date (and also again on November 16th),

State School on November 30th, Manchester police commissioner on December 15th, liquor commissioner on December 31st, and Dover police commissioner on the same date. Some of these individuals were rejected on more than one occasion, and in addition numerous other nominations were defeated in the council during the first year of Governor Powell's term.

During Governor Powell's first year in office, the council rejected eighteen of his nominations, while confirming seventy-four. However, included in the eighteen rejections were such important salaried positions as those mentioned above. The greater number of the seventy-four appointments approved consisted of un-salaried posts on advisory councils, professional registration boards, and other minor offices. Governor Powell did not bring before the council for a vote the nominations of a number of persons he desired to appoint as heads of departments or to other major offices, having discovered in private meetings with the councillors that they would not approve the

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63Ibid., p. 24a; November 16, 1959, p. 27.
64Ibid., November 30, 1959, p. 28g.
65Ibid., December 15, 1959, p. 29d.
66Ibid., December 21, 1959, p. 30h.
67Ibid.
68Statistics compiled by the author from the Minutes, Meetings of Governor and Council, State of New Hampshire, for the years 1958 and 1959.
nominees, were their names to be presented. In contrast with Governor Powell's experience, Governor Lane Dwinell, during the previous year, 1958, had only thirteen appointments rejected by the council, while securing confirmation of one hundred and forty-five appointees. In six of the thirteen rejections, a seat on the board of registration in medicine was involved, with the council disapproving several prospective appointees due to reasons of local politics. Similarly, the council rejected four different nominees for a seat on the Dover police commission. Such posts carry only a token salary and are not considered major appointments.

In common with most New Hampshire governors in recent years, Governor Powell has had to work with a council composed of four Republicans and one Democrat. But whereas ordinarily the Republican governors have found their councillors to be of the same wing or faction of the party as themselves, Mr. Powell has been an "outsider" who, in his own words, had to fight the party organization for many years and in many campaigns in order to win through to the position he achieved in the 1958 election. His lack of standing as a party regular was apparently the cause of his difficulties with a Republican dominated council.

In a personal interview with the writer, Governor Powell ascribed the difficulties he was facing with his council to intra-party factionalism. Recognizing the ability of the council to thwart

69 Ibid.
his wishes in the matter of appointments, he seemed to feel that for him the best policy to follow in the circumstances was that of a "waiting game." He felt that patience and determination on his part would in the long run have a salutary effect on the situation. 70

The single Democratic member on the New Hampshire council apparently does not, by any means, feel at a disadvantage in his comparatively lonesome position. Indeed, the councillor from the third district told the writer that he was satisfied with the situation of being the single Democratic member, for if there were another he would have to share with that individual the patronage and influence which under the existing circumstances fell to his lot as the sole representative of the minority party. He explained that governors felt it in their interest, in order to secure his cooperation on various issues and his vote on matters important to them, to pay attention to his recommendations for appointments to office which particularly affected his own district, and in general gave a very respectful hearing to his advice on any matter of state business coming before the council pertaining to his district. This he felt gave him a voice in council affairs quite disproportionate to the one vote in five which the minority party, as represented by himself, possessed in the council. 71

70 Interview with Hon. Wesley Powell, Governor of New Hampshire, May 29, 1959.

Massachusetts

The political fortunes of the two major parties in Massachusetts have resulted in a share of victories for each in gubernatorial elections in recent years. The election returns for councillors tend to follow those for governor, and a governor of the commonwealth generally finds his council composed of a majority of members of his own party.72 Occasionally, however, a governor will find his council dominated by members of the opposition party. Such a situation faced James M. Curley when he assumed the governorship in 1935. He felt hampered, indeed harassed, by a Republican-controlled executive council whose members balked at approving some of his recommendations. Governor Curley overcame this difficulty by persuading a Republican councillor to resign his seat in return for an appointment to the superior court bench. This changed a five-to-four Republican council majority to a similar majority for the governor's party.73

Other Massachusetts governors who have faced councils dominated by the opposition were Charles F. Hurley in 1937 and 1938, when the council was composed of five Republicans and four Democrats; and Leverett Saltonstall in 1941 and 1942, when there were five Democrats on the council as against four Republicans. Since 1942, the council has been controlled by the party of the governor in office.74

72 See Appendix H.

73 Boston Herald, July 18, 1958, p. 16.

74 See Appendix H.
A situation such as Governor Curley faced may result in what Curley frankly admitted later was a political deal, but the playing of politics in the Massachusetts council is not confined to those occasions when the governor and the council majority are of opposite parties. The 1958 campaign which resulted in Foster Furcolo's re-election to the governorship for a second term also brought into office a council composed of a Democratic lieutenant-governor, seven Democratic councillors, and a single Republican member. This state of affairs did not result in easy sailing for Governor Furcolo, however. Having already encountered considerable opposition to some of his principal appointments during his first term, at a time when the council had three Republican members, he experienced further difficulties and considerable criticism, coming from the Democratic as well as the Republican side of the council, during the first year of his second term.

The most noteworthy appointment matter to come up during Governor Furcolo's first term was that of the nomination by the governor of Stanley W. Wisnioki to be judge of the superior court. The Massachusetts and Boston Bar Associations openly opposed this appointment and imparted to the council a warning that Mr. Wisnioki's appointment "would inevitably lend to create public distrust of our superior court." It appears that the challenge to Mr. Wisnioki came because of an information filed in the state supreme court twenty-five years previously.

76 Christian Science Monitor, March 5, 1959, p. 2.
77 Boston Herald, July 17, 1958, p. 16; Christian Science Monitor, July 17, 1958, p. 10.
seeking his disbarment on a charge of jury-fixing. At that time, the supreme court returned a verdict of "not proven" but the two bar groups in a letter to the executive council remarked that this verdict left "sufficient doubt as to the innocence of Mr. Wisnioski." In these circumstances, the Republican members of the council decided to vigorously oppose confirmation of the nomination. In the council committee on nominations, the appointment was approved by a vote of three to one, with Lieutenant-Governor Murphy, a Democrat, abstaining, and the Republican member of the committee voting in the negative. After a lengthy debate in the council meeting, in which the Republican members of the council spoke at length in opposition to the appointment, the nomination was finally approved by a vote of five to three. Lieutenant-Governor Murphy was presiding in the absence of the governor, and by this circumstance, lost his right to vote. The three negative votes came from the three Republican councillors.

Governor Furcolo's difficulties with the council in 1959, during the first year of his second term, were highlighted by the case of the appointment of John Maloney as Metropolitan District Commissioner. The appointment of Mr. Maloney was confirmed, but only after several weeks of dispute, some of it of a distinctly partisan nature, in the council and in its committee on nominations. Much of the criticism


79 *Boston Herald*, July 18, 1953, p. 16.

levied at the governor in this dispute came from members of his own party, notably Lieutenant-Governor Murphy, Governor Furcolo had desired to replace Charles Greenough, a Republican, as chairman of the Metropolitan District Commission, the latter's term still having a year to run. In order to accomplish his objective, the governor offered Mr. Greenough an appointment as associate commissioner, if he would resign his chairmanship thus clearing the way for an appointee of the governor's own choosing in the position. The appointment as associate commissioner would be for a full five-year term. The salary would be much less than that of the commissioner's position, but the duties would be far less onerous. Mr. Greenough agreed to this arrangement, and accordingly Governor Furcolo submitted to the council the nominations of John Maloney to be chairman and Charles Greenough to be an associate commissioner of the Metropolitan District Commission. 81

The battle in the council centered around two particular issues, the qualifications of Mr. Maloney for the post of commissioner, and the confirmation of Mr. Greenough as associate commissioner. In the latter case, certain Democratic members of the council fought the issue on a strictly partisan basis. At the meeting of February 26, 1959, when Councillor Favulli moved for confirmation of the governor's nomination of Mr. Greenough as associate commissioner, Councillor Edward Stasiun stated that he could see no advantage to giving a Republican a five-year term and a Democrat a one-year term. 82 (He referred here, of course, to

81 Minutes, Meeting of Governor and Council, State of Massachusetts, February 21, 1958, p.2.
82 Ibid., February 25, 1959, p. 80.
the fact that the unexpired term to which Mr. Maloney was being appointed had but a single year to run.) Republican Councillor Augustus Means raised a point of order as to whether or not Mr. Greenough could be confirmed since he was still serving in the commissionership. Mr. Means apparently did not consider it advantageous to his party for the chairmanship of the commission to pass to Democratic hands any sooner than absolutely necessary, and was not appeased by a five-year term in a lesser post for Mr. Greenough. Mr. Means' point of order was ruled out of order by the governor, and Councillor Means vainly sought a roll call on overturning the ruling of the chair. His request for a roll call was not seconded. Nor had a second been given to Councillor Favulli's motion, and it was finally ruled that it, too, was out of order. Mr. Favulli then requested consent to withdraw his motion, and no action was taken on the confirmation of the Greenough appointment at this meeting.

The battle over the Maloney appointment involved the qualifications of that gentleman for the office to which the governor sought to appoint him. He already held state office, having been appointed by Governor Furcolo sometime previously as chairman of the state housing board, and his administration of that post was now called into question. The spectacle of Democratic and Republican councillors alike opposing

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\(^{83}\) Ibid.\(^ {84}\) Ibid.\(^ {85}\) Ibid.\(^ {86}\) Ibid.
a nomination by a Democratic governor of a Democrat to a very important state position was presented. The Democratic opposition to the appointment was led by Lieutenant-Governor Robert Murphy. In this instance, the lieutenant-governor had been opposing Governor Furcolo on various issues both in and out of the council for some time, having made known the fact that he planned to be a candidate for governor himself at the next election. Criticism of the incumbent governor's official acts seemed to be a part of Mr. Murphy's pre-campaign build-up for his own candidacy. Of course, the lone Republican councillor, Mr. Means, supplied the opposition party's ammunition in the fight against the governor's appointment in this instance as in others. After some weeks of debate, both appointments were finally confirmed and Governor Furcolo's objective of placing a man of his own choosing in the important position of Metropolitan District Commission chairman was finally achieved. 87

**Division Weakens the Executive Branch**

These incidents illustrate the point that, even in a situation where he is working with a council dominated by his own party, a governor is by no means assured of cooperation, nor will his way necessarily be made easy by his colleagues in the executive department. The council is made by the state constitution an integral part of the executive branch of the state government and the position of the councillors is such that, in theory and in practice, they are the

87 Interview with Hon. Augustus G. Means, Councillor, Massachusetts, May 14, 1959.
governor's colleagues, and not by any means his subordinates. They have powers and duties, constitutional and statutory, which make it possible for them to exert considerable influence in administration; and also to play the game of partisan politics for all it is worth on such occasions as it seems to them desirable to do so. Given certain types of men in the offices of governor and members of council, a stalemated situation can easily develop in which the expeditious handling of the people's business would be prevented. Inherent in the division of authority within the executive branch, such as we have in Maine, New Hampshire, and Massachusetts, is the potential for confusion, irresponsibility, and lack of effective leadership and action.

Thus we see a major weakness of the council as a part of the executive department. With one party control of both governorship and council, the citizens of the state are too often presented with one or the other of two different spectacles, neither particularly edifying nor exemplifying good government. They may see their governor and his councillors engaged in a running battle over patronage, awarding of contracts, or some other state business, with consequent petty bickering and "log-rolling," as the governor tries to line up on his side enough councillors to constitute a majority. There are many occasions, however, when the observer may see the council in supine fashion approving everything the governor may chose to lay before it for supposedly thoughtful consideration. All too often the latter scene is presented by the council to its audience, the citizenry of the state.
Where both governor and council are representatives of the same political party, the possibility of the council finding itself relegated to the position of a "rubber stamp" body is always present. To one surveying the operation of the governor and council, this description of the latter body might seem in many cases to be appropriate. There generally will be little debate on the propositions put forth by the governor. A perfunctory vote will be taken, as often as not unanimous, and many items of business will be disposed of in a very short period of time. The assumption is natural, then, that the council is merely approving without question proposals of the governor, behaving towards their leader as faithful party men might be expected to do.

If the governor is of one party and the council is controlled by the opposition, on the other hand, a different scene may present itself, one in which party politics is openly played, either to secure particular advantages for individual council members in the way of appointments in local districts, or possibly a high post for the councillor himself, as exemplified by the incident in the Curley administration, above-mentioned. In other cases, the council opposition for party reasons will simply block desired action on the part of the governor. When Democratic Governor Clinton Clauson of Maine suddenly died, on December 30, 1959, after slightly less than a year in office, during which time he had faced an all Republican executive council, there were pending appointments to four major offices in the Maine state government over which the governor and his councillors had been dead-locked for months. On the very day of his death, a council meeting had
been scheduled at which once again these appointments were to be discussed. The council had twice rejected Governor Clauson's nomination of a member of the state liquor commission. The candidate concerned was a Republican but he had been cooperating with the Democratic majority on that commission. As for the other three offices, the governor had been attempting to fill them with Democrats as successors to Republican incumbents and the council had flatly refused to confirm the governor's nominees. 88 Senate President John Reed, a Republican, succeeded to the governorship on the death of Mr. Clauson and his withdrawal of the pending and unconfirmed nominations made by his predecessor settled the issue. 89

In the council states the opportunity for playing politics with the appointing process under the existing set-up is openly admitted by those closest to the situation. "Sure, I play politics with appointments," one New Hampshire councillor admitted to the writer. "We all do; it is expected that we will. After all, we run as party candidates." 90

"Patronage, undisguised and unembarrassed, has an important role to play in state government." 91 Our political parties rely very

88Boston Herald, December 31, 1959, p. 3.
89Communication to the writer from Department of State, State of Maine, January 20, 1960.
91Vose, op. cit., p. 24.
much on patronage for their continued vigor. From the point of view of the governor, however, it would be far more desirable to share this patronage with a legislative body than with the council. The governor today is of necessity a legislative leader. His program, dependent upon legislative action for realization, is the hallmark of his administration. The council does not share the legislative powers of the governor, and its members are of no assistance to the governor in formulating or winning acceptance of his legislative program. Were the confirming power over gubernatorial appointments vested in the state senate, the governor would use the power of patronage in dealing with legislators, whose assistance he must have in enacting legislation necessary to give effect to his policies. Sharing patronage with the council, as he does at present, accomplished little or nothing in the legislative field. With a legislature controlled in both branches by his party, Governor Foster Furcolo of Massachusetts, in the 1959 and 1960 sessions, was unable to win passage of a sales tax bill, perhaps the most important measure in the governor's program. The powerful opposition of Senate President James Powers of Boston was an important element in Mr. Furcolo's defeat on this issue. Perhaps if the governor had had the important patronage weapon in his arsenal, he might have had greater success in his dealings with the legislature on this and other issues. It is no wonder, then, that governors do not share the satisfaction of the councillors with the existing role of patronage in the appointing process.

The councillor reveals his political motives through partisanship, intrà-party factionalism, "log-rolling," and at times a passive
readiness to approve without question a governor's proposals. Without a doubt, a council dominated by members of the governor's own party is inclined to allow the governor to have his own way on most items of business. However, a council dominated by the governor's political opponents is in a position to thwart him in the carrying out of many administrative responsibilities. In either case, the council fails to measure up to the demands of effective and responsible direction of the state's affairs.

As we have seen, the independent position of the councillor in relation to the governor may lead to difficulties for the latter, even when the councillor is of his own party. Whether the councillor is the hand-picked choice of a party's county caucus, as in Maine, or elected by popular vote in a councillor district, as in New Hampshire and Massachusetts, the governor has nothing to do with selecting him. Allotted a share of the executive power by constitutional mandate, the councillor is jealous of his power and acts with full consciousness of the fact that executive authority is not lodged solely in the governor, but in the governor and council concurrently. The people, however, are looking today to the governor for leadership. He must forego the benefits that would accrue to him as legislative leader were the state senate instead of the council to have the power of confirming appointments. Nor does the essentially negative influence of the council aid the chief executive in carrying out his managerial responsibilities. The council stands today in the way of the chief executive in the exercise of his managerial functions at a number of points, in the important areas of finance, expenditure, salaries and personnel.
In order to improve and strengthen the executive branch of government in Maine, New Hampshire, and Massachusetts many thoughtful observers are convinced that abolition of the council is imperative. The idea of abolition is not new, and although the causes that make it seem desireable have changed to some extent during the last one-hundred and fifty years, the inutility of the council is persistent and has been repeatedly noted down through the years.
CHAPTER VI

ABOLITION OF THE COUNCIL -

PROPOSALS IN CONSTITUTIONAL CONVENTIONS

It is noteworthy that the council has from very early times been looked upon by many citizens as a more or less useless appendage of state government. In many constitutional conventions that have been held in New Hampshire and Massachusetts (Maine has had no convention since the one that drafted her original constitution), amendments have been offered to alter the composition of the council, the method of selection of councillors, and their powers and duties. On numerous occasions, proposals have been introduced designed to abolish the council outright.

Massachusetts

The first Massachusetts Constitutional Convention, after that of 1780, was held in 1820. There was considerable discussion on the subject of the council, its authority and duties, and particularly the method used in selecting councillors. One of the delegates, Henry A. Dearborn of Roxbury, introduced a resolution providing that all duties performed by the governor and council should be performed by the governor and senate. This in effect would have substituted the senate for the

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council, the former body assuming executive functions as well as its legislative responsibilities. Mr. Dearborn argued that the council was no longer necessary under the republican constitution which Massachusetts now enjoyed, with a governor elected by the people. He pointed out that it was an institution originating in colonial days, when it had served a useful purpose as a check on the royal governor. ²

William Sturgis of Boston spoke in opposition to Dearborn's point of view. In the course of his remarks, he pointed out that the governor, requiring some source of information, now relied on the council, a body of intelligent men, of distinguished character, who came from the different parts of the state, and felt the responsibility of their position. "Each feels a particular responsibility to the people of that part of the country from which he comes. They look immediately to him as the advisor, in cases where they are particularly interested."³ He went on to outline the duties that the council performed, which included handling all executive appointments, settling the accounts of county treasurers, superintendence of the state prison, and acting on petitions for pardon, "which engaged the time and attention of a committee of a council for nearly a third of the year."⁴ The council also examined the returns of votes, and took care of the appointments of pilots and regulated their fees; a committee of the


³Ibid., p. 333.

⁴Ibid.
council superintended military affairs, including the departments of the adjutant-general and the quartermaster-general. In this connection, it was worthy of mention that the council often included "men of distinguished military talents and information."\(^5\)

Mr. Dearborn's resolution was not approved by the convention,\(^6\) nor was a resolution introduced by William Gray of Boston; "Resolved, . . . that the council be abolished."\(^7\)

In the course of the debate on the council, Samuel Dana pointed out that proposals to alter the size of the council should be given the most careful scrutiny, inasmuch as this would affect the membership of the board of overseers of Harvard College. At the time, this board consisted of fifteen clergymen, fifteen laymen, and, as ex-officio members, the governor, lieutenant-governor, and the members of the council and senate. There was a proposal before the convention to alter the membership of the council from nine to seven, and to fix the membership of the senate at forty. If this were done, the total membership of the board of overseers of Harvard would then be seventy-nine, with the representatives of the state government on the board having a very decided majority.\(^8\) A considerable debate took place over the question of the number of members the council ought to have, and similarly, over the size of the senate. Up to this time, the following provision of the state constitution had governed the choice

\(^5\)Ibid.  \(^6\)Ibid.  \(^7\)Ibid., p. 493.  \(^8\)Ibid., p. 496.
of councillors:

Nine councillors shall be annually chosen from among the persons returned for councillors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room; and in the case there shall not be found upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate.²

One of the questions before the convention was whether or not to do away with the requirement that the initial choice of councillors should be from among those persons elected to serve as councillors and senators. Benjamin Pickman, chairman of the select committee appointed to consider the subject, stated on the floor of the convention that it was the desire of the select committee to do away with the "farce" of electing councillors from the senate. He pointed out that for some years past it had been the custom for the persons chosen under this provision to decline the office of councillor and continue to serve in the senate, as it was their prerogative to do. Mr. Pickman thought that it was entirely proper that the persons chosen as councillors under the existing procedure should have the right to decline the office, for otherwise it would be within the power of the house of representatives to control the senate by choosing certain senators (whom they would prefer to be out of that body) as councillors, thus

²Massachusetts, Constitution, Part the Second, Ch. II, sec. III, Art. II.
reducing the upper house to a chamber less well able to perform its constitutional function of a check on the lower house. The report of the select committee recommended that the choice of councillors should be made from the people at large by a joint convention of the legislature. This, in practice, had been the method of selection for some years past inasmuch as the persons originally chosen for councillors had regularly declined the office, causing the legislature to then make their choice from the citizenry at large.

The Convention of 1820 adopted fourteen amendments, including one that embraced the select committee's recommendations regarding the method of electing councillors. These amendments were submitted to the people; five were rejected, and the other nine form the first nine amendments to the Massachusetts Constitution. Among those rejected was the article of amendment dealing with the council, which failed to pass by a margin of over 10,800 votes.

However, a change was made in 1840 in the method of choice of councillors. In that year an amendment, proposed by the legislature, was approved by the people, providing that a council of nine members

11 Ibid., p. 336.
13 Ibid., p. 42.
would be chosen from the people at large by joint ballot of the senators and representatives.\textsuperscript{14} In 1855, another constitutional amendment altered this system by providing for a council of eight members to be chosen from as many districts; the election was to be by vote of the people, voting by districts. This method is still in use in Massachusetts.\textsuperscript{15}

Meantime, another constitutional convention had been held, that of 1853.\textsuperscript{16} Again, among the numerous proposals introduced was one that would have abolished the council. It was referred to a standing committee of the convention; the committee report recommended abolition, with only one member dissenting. When this recommendation was brought to the floor, however, it was rejected by the convention.\textsuperscript{17}

From the debates of the convention, one gathers that there was a general expectation at that time that one of the changes in the constitution that would result from the convention would be the elimination of the council.\textsuperscript{18} As matters turned out, the convention did not favor such a step, but adopted a number of proposals for changes in the constitution which, it is interesting to note, were rejected by the people of the state when they came to vote on them a short time later.\textsuperscript{19}

\textsuperscript{14}Massachusetts, Constitution, Article of Amendment XIII.

\textsuperscript{15}Ibid., XVI.

\textsuperscript{16}Frothingham, op.cit., p. 50.

\textsuperscript{17}Massachusetts, Bulletins for the Constitutional Convention 1917-1918, I, Bulletin No. 3, p. 111.

\textsuperscript{18}Ibid.

\textsuperscript{19}Ibid.
A considerable list of arguments in favor of abolishing the council was brought forward in the debates of the convention. It was alleged that the council, as a relic of the old board of assistants which had approximated a privy council in colonial days, having been a body of advisors surrounding the representative of the Crown but who could be held responsible by the people, was out of place in a form of government where the governor himself was responsible to the people. (The royal governors, of course, had been responsible to the King, rather than to the people they governed.)

A further argument made much of the point that the council did not, by reason of the duties it performed, make unnecessary any other officials or bodies in the state government. Further, it led to loose legislation.

... In consequence of the historical character of the council, legislators are now in the habit of making the laws in reference to it, and when they have elaborated those laws down to certain lines of detail, where specific provisions become difficult or intricate, to be rid of the labor they put in a sweeping clause: "to be done under the direction of the governor and council;" instead of directing by law how things should be done, things are left to be done under the direction of the governor and council that ought to be done by direction of law, and therein your governor and council practically participate in the legislative power, although they do it according to law.20

It was also said that the council had a prejudicial effect on the judiciary, in that the power of revising sentences weakened the

courts. Furthermore, the council tended to destroy the unity of the executive and the concentration of responsibility, which made efficient administration difficult. The governor did not rely on it for information, but looked for that to the heads of departments. The practice of other states showed that it was safe to concentrate executive power and responsibility in the governor. Certain economies in the operation of the government would be effected by saving the salaries and expenses of the councillors. The fact that the council meetings were held in secret was objectionable, in the view of many. The constitutional duties performed by the council could be as efficiently performed by other officers or bodies already existing in the state government, as shown by practice in those states that either had abolished the council or had never had one. Particularly objectionable, in the minds of many, was the concentration of responsibility in the matter of pardons in the council. It was thought that it would be better to place this responsibility in the governor himself, or in a board of pardons of which he would be a member. The senate would be a better body to ratify the appointments of the governor than was the council. Practice in the Federal Government and in nearly all of the state governments indicated this as a fact. If the governor and council were of the same political party, the appointments under the existing system could well be a mere distribution of spoils. If, on the other hand, the governor and the council disagreed, no action could be taken on appointments. The financial duties of the council were mostly
minor, and could easily be handled by other state officials. 21

There were many arguments on the other side of the question. It was argued that it was not safe to concentrate executive power in one individual; that if this were done, the duties of the governor would be increased and he would be seriously burdened. A governor needed either a check or support according to circumstances. The council was far more accessible than the governor to convicts seeking pardons, and it was a matter of justice that this access should be kept open. The existing system had worked well, the council had performed its duties acceptably over the years, and more than earned its salary by the work that it did. 22

As mentioned above, the proposal to abolish the council was not adopted by the convention. There were other resolutions introduced relating to the council. One of these, to give power to the legislature to provide by law for public notice to be given on all applications to the governor and the council for the remission of the sentences of persons imprisoned for crime, was introduced by Joseph Churchill of Milton. 23 It was supported by George S. Boutwell of Berlin, Edward Keyes of Abington, and Charles R. Train of Framingham; and opposed by Whitney Griswold of Erving, and Daniel S. Whitney of Boylston. 24

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22 Ibid., p. 114.

23 Massachusetts, Debates and Proceedings in the State Convention, 1853, III, 267.

24 Ibid., pp. 267-268.
In his remarks on the resolution, Mr. Train stated: "If it were not a foregone conclusion, I should be happy to aid in lopping off and out of the constitution what I consider a useless portion of the government of the state, to wit: the executive council." George Nixon Briggs of Pittsfield speaking on the resolution saw no objection to it, nor any necessity for it.

Another resolution provided for making the proceedings of the council subject to public examination. George B. Upton of Boston moved to reject this proposal stating that inasmuch as jurors are sworn to secrecy, councillors in a similar situation (they often dealt with judicial matters) ought to be similarly privileged. The Upton motion was rejected by vote of ninety-seven to one hundred and sixty-four. A resolution providing for eight councillors, to be elected by the people voting by districts, was passed. Another, providing that no councillor should be appointed to any place for which he should receive compensation other than what he received as councillor was also passed.

The convention approved the resolution making the records of the council open to public inspection, and gave tentative approval to the Churchill amendment. This last was finally rejected, however, by a vote of one-hundred twenty-nine to one-hundred thirty-five.

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25 Ibid., p. 269  
26 Ibid., p. 270  
27 Ibid., p. 274  
28 Ibid.  
29 Ibid.  
30 Ibid.  
31 Ibid.
One function of the council of Massachusetts, that obtained in 1853 and for many years thereafter, was that of the succession to the governorship. The arrangement continued to be that of the period during the revolution and immediately prior to the writing of the constitution of 1780. The latter document had added a lieutenant-governor to the executive branch, but the order of succession under the constitution provided for the council or a majority of the same to function as governor in case of a vacancy in both the governorship and the lieutenant-governorship.³² (It will be remembered that during the period after the departure of the last of the royal governors, the major part of the council had officiated as head of the executive branch in the Massachusetts government.)³³

It was pointed out in the 1853 Convention that the function of the council in the matter of succession could readily be transferred to some other officer of the state government and might, for example, be assumed by the Speaker of the House, or the President of the Senate, in conformity with the practice in other states. However, it was left for an amendment to the constitution passed years later to alter the arrangements regarding succession.³⁴

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³²Massachusetts, Constitution, Part the Second, Ch. II, sec. III,


³⁴Massachusetts, Constitution, Articles of Amendment, IV.
The Convention of 1853 had among its members many famous men. They included Henry Wilson who was later a Senator from Massachusetts and Vice-President of the United States; John Davis who had been governor and Senator in Congress; Henry L. Dawes who was afterwards United States Senator; Charles Sumner, then United States Senator; former governors Marcus Morton, George N. Briggs, and George Boutwell; and Messrs. Nathaniel Banks and Benjamin Butler, later to be Governors of the Commonwealth. Another notable member was the famous attorney and orator Rufus Choate.35

The work of the convention, when placed before the people as propositions for their approval, was rejected.36 However, several of these propositions were later adopted as separate amendments. As above-mentioned, in 1855 an amendment was accepted providing for eight councillors to be chosen by districts. At the same time, an amendment providing for popular election of the secretary, the treasurer, the auditor, the attorney-general, and for the election of certain county officers was also approved by the voters.37

Massachusetts did not have another constitutional convention until 1917, and this is the last that she has had.38 In the meantime, thirty-one amendments, numbers fourteen to forty-four inclusive, had been adopted by the people, altering the original document of 1780.

35 Frothingham, op. cit., p. 52.


37 Ibid., pp. 138-139.

38 Ibid., p. 141.
In many particulars. In 1916, the General Court passed a law placing before the people the question: "Shall there be a convention to revise, alter, or amend the constitution of the Commonwealth?" This question received 217,293 votes in the affirmative; 120,979 votes were cast in the negative. The result was proclaimed by the governor, and a special election for delegates called for the first Tuesday in May, 1917. The delegates then elected met at the State House in Boston on June 6, 1917. Former Governor John L. Bates was chosen president of the convention. The body included many well-known and capable men, and the debates on the floor reflect their thoughtful and discerning approach to their work as delegates. The convention sat until November 28, then adjourned to meet subject to the call of the president or secretary, but "not later than within ten days of the prorogation of the General Court of 1918." 

On June 12, 1918, the convention reassembled. It now sat until August 21, when an adjournment was taken subject to call which should be issued "not later than within twenty days after the prorogation of the General Court of 1919, for the purpose of taking action on the report of the Special Committee on Rearrangement of the Constitution." The 1918 session of the convention had set up the latter committee to prepare a draft rearrangement of the entire constitutional document including all amendments previously adopted, as well as the ones passed

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39 Ibid., pp. 138-140  
40 Ibid., pp. 140-141.  
41 Ibid., p. 141.  
42 Ibid.
by this convention and adopted by the people in the elections of 1917 and 1918. We should note that at this time, Massachusetts still had annual elections, the terms of office of the governor, legislature and other elected officers continuing to be for one year. The convention met for the last time on August 12, 1919. It adopted the rearrangement which was reported by the Special Committee, and finally adjourned on the following day. The people approved the rearrangement at the November election of 1919. Subsequently, however, the Supreme Judicial Court of Massachusetts ruled that this rearrangement of the constitution was not a new constitution, but that the old constitution of 1780, as amended, continued to be the constitution of Massachusetts.

As it had in 1853, the subject of the council figured in the debates of the convention of the 1917-1918 period. There was sentiment for the abolition of the council, and a bulletin on the subject was prepared by the commission established to compile information and data for the use of the convention.

Resolutions were presented to the convention by Messrs. Francis P. McKeon of Worcester, John L. Murphy of Chelsea, and David I. Walsh of Fitchburg, designed to abolish the council. These resolutions

\[^{43}\text{Ibid.}\]
\[^{44}\text{Ibid., pp. 141-142}\]
\[^{45}\text{Opinion of the Justices, 233 Mass. Reports, 603; Loring v. Young, 239 Mass. Reports, 349.}\]
\[^{46}\text{Massachusetts, Bulletins for the Constitutional Convention 1917-1918, I, Bulletin No. 3.}\]
\[^{47}\text{Massachusetts, Debates in the Massachusetts Constitutional Convention 1917-1918 (Boston: Wright and Potter Printing Co., 1920), I, 1016.}\]
were referred to the Committees on State Administration and the Executive. The committees reported that the resolutions ought not be adopted, and they were considered by the convention on Tuesday, August 6, 1918. The only discussion was in connection with Resolution 162; "Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined, ARTICLE OF AMENDMENT. The Council is hereby abolished." The other resolutions were similar in tenor. All three were rejected by the convention on August 6, after a brief debate. The importance of the confirming power of the Council in general, and its power to confirm judicial appointments in particular, was a principal argument in favor of its retention.

Proposals to reorganize the administrative branch of the state government were discussed at some length at the 1917 Convention. Among the measures deemed necessary by some for effective reorganization, was the abolition of the council's power of confirmation of gubernatorial appointment of department heads. The committee of the convention to which this proposition was referred considered it carefully, but rejected it, feeling that some check should be retained as to the selection and removal of heads of departments. Also rejected was a suggestion that the Governor and Council be empowered to enact a reorganization plan, in case the state legislature, at its first session should fail to do so, after the adoption of the proposed reorganization amendment.

\[48\text{Ibid.}\] \[49\text{Ibid.}\] \[50\text{Ibid., pp. 889-894, 1021ff.}\]
It was rejected on the grounds already familiar; that no body should set up to enact laws additional to the General Court, which has the distinct and exclusive prerogative as direct representatives of the people elected for that particular purpose. 51

A number of resolutions dealing with the council were introduced in the 1917 convention, in addition to those already discussed. Roland D. Sawyer, of Ware, introduced a proposition which would have radically altered the nature of the council. It provided that the governor, on the first Wednesday in January after his inauguration, should appoint seven councillors, one each for a one year, two year, three year, four year, five year, six year, and seven year term. Successors to the original appointees should be appointed, as terms expired, for seven years. No two councillors should come from any one county. Vacancies should be filled for unexpired terms, at the meeting following the creation of a vacancy. Councillors would be paid a salary of $1,000 a year. One councillor was to be a lawyer, one a business man, one a clergyman, one a farmer, one a manufacturer, and one a wage-worker. It was provided that "no councillor shall be eligible for any elective or appointive office whatsoever until the expiration of the full seven years from the date of his original appointment by the governor." 52

The powers and duties of this council were to be similar to those of

51 Ibid., p. 1022.

52 Massachusetts, Constitutional Convention of 1917-1918, Document No. 4.
the council as it then existed.53

Louis Swig, of Taunton, introduced a measure providing that the Governor and Council were to "have the ordering and directing of the affairs of the counties in the Commonwealth, possessing all the powers heretofore exercised by county commissioners."54 The office of county commissioner was to be abolished.55

John Q. A. Brackett, of Arlington, introduced a resolution altering the succession to the governorship. Without mentioning the council in the line of succession, he would have provided that the president of the senate and the speaker of the house, in that order, should succeed in case of a vacancy in both the governorship and office of lieutenant-governor.56

Joseph J. Murley, of Boston, filed a proposal which would have vested the pardoning power in the governor alone, removing the council completely from any function in connection with the granting of pardons.57

Mr. H. H. Newton, of Everett, brought in a proposed amendment which would have provided for an appointive council very similar in character to the cabinet of the President of the United States. Under

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53 Ibid.
54 Massachusetts, Constitutional Convention of 1917-1918, Document No. 23.
55 Ibid.
56 Massachusetts, Constitutional Convention of 1917-1918, Document No. 74.
57 Massachusetts, Constitutional Convention of 1917-1918, Document No. 77.
This proposal, the council would have consisted of the lieutenant-governor and nine appointed members. These were to include a commissioner of finance, a commissioner of natural resources, a commissioner of manufacturing industries, a commissioner of commerce and transportation, a commissioner of social welfare, a commissioner of charities and corrections, a commissioner of public utilities, the secretary of the commonwealth, and the attorney-general. The latter two officers were to become appointive, instead of elective as heretofore; and all of this group of nine were to be appointed by the governor, without confirmation by any other body, and were to hold office at his pleasure. All administrative agencies in the state were to be grouped into nine departments, each of which would be headed by one of the members of the council. The similarity to the commission form of city government, so popular in the United States at that period, is apparent. There would have been no real plural executive in this arrangement, however, since the councillors would owe their appointment and tenure to the governor, and serving at his pleasure, the council would obviously have become a body of "cabinet members," as the term is understood in the United States government.

Daniel R. Donovan of Springfield filed a measure which would have had an important effect upon the confirming power of the Council, and would indeed have removed what was considered by many in and out of the convention one of its most important raisons d'etre. Mr. Donovan's

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58 Massachusetts, Constitutional Convention of 1917-1918, Document No. 78.
proposal provided for elective judges in the courts of the Commonwealth, who would be chosen for terms of not over five years, to be fixed by the legislature.59 This measure, as well as Mr. Sawyer's and the others above-mentioned, were all referred to one or another of the convention's standing committees; none of them received a favorable committee report; none came to the floor for debate or vote.60

The Massachusetts Convention of 1917 left the council where it has found it; no major changes were made by this body in the composition, method of election, powers and duties of the council.61

New Hampshire

The State of New Hampshire has had more constitutional conventions than any other state in the union. It has had no less than fifteen conventions, some of which have had several sessions extending over a period of as long as four years. The constitution of the State of New Hampshire was drafted by the body known as the Third Constitutional Convention, which met in 1781, 1782, and 1783. The document produced by this body, known as the constitution of 1784, remains the basic law of the state, although it has often been amended. Important amendments were added by the convention of 1791-1792. New Hampshire then had no further conventions until 1850. Since that date, ten conventions have

59 Massachusetts, Constitutional Convention of 1917-1918, Document No. 95.

60 Massachusetts, Debates 1917-1918, p. 890.

61 Ibid., p. 1016.
been called into session, at intervals usually not more than a decade apart. 62

During the period from 1850 to 1950, ninety-five amendments were proposed to the New Hampshire Constitution, of which thirty-two were approved by the people. 63 The abolition of the governor's council and the creation of the office of lieutenant-governor are two matters that have been considered in most of the conventions, but they have been submitted to the people as proposed amendments only once. This was in 1850, and on that occasion the people rejected the propositions by a vote of 12,500 to 26,531. 64 Thus the council survived its first and only public test.

The amendment rejected by the people in 1850 provided that the senate should take over the council's function of confirming appointments; it gave to the governor the power of handling other duties currently being managed by governor and council; it provided for a lieutenant-governor to be chosen at the same election as the governor, who would preside in the senate and who would succeed to the office of governor if the governor should become disabled, or the governorship become vacant. 65

In 1852, a constitutional change pertaining to the council did become effective. It abolished the property qualifications that candidates for governor, council, senate, or house previously had to


63 Ibid.

64 Ibid., p. 26.

meet. A few years later, the religious qualification for office was stricken out. This change occurred in 1877, and at the same time, biennial elections were substituted for the annual elections which had been the practice up to that time.67

In each of the conventions of 1876, 1889, 1902, 1912, 1918, 1938, and 1948, a resolution was brought before the delegates assembled, designed to abolish the council. These resolutions were invariably referred to committee, and the committees invariably reported that it was inexpedient to pass said resolutions. The committee's reports were in every case accepted without recorded vote or debate.68

From the 1912 convention came two proposals regarding the council, which were ratified by the people. One of these substituted "population" for "ratable polls and proportion of public taxes" in Article LXV of Part II of the Constitution. The other provided for election of governor, councillors, and senators by plurality vote instead of majority vote.69 A resolution aimed at abolishing the council by indirection was introduced into this convention. It provided that the duties of the council should be conferred upon the governor. This


67 Ibid., pp. 2491-2492.

68 Jeffries and Hazelton, op. cit., pp. 28, 29, 32, 37, 42, 49.

resolution was reported by the committee to which it had been referred as "inexpedient to adopt," and the report was accepted. 70

In the convention that commenced in 1918 and which had sessions in 1920, 1921, and 1922 before adjourning finally, a resolution was introduced at the first session which was to have abolished the council and was to allow the governor to nominate and to appoint officials on his own authority. This resolution, however, was withdrawn. 71 In the 1920 session, a proposed salary of $5,000 for the governor and $500 a year for councillors was rejected after some debate on the matter. 72

Henry H. Metcalf, the sponsor of the resolution, spoke thus:

... I don't believe in any Council, I wish it could be wiped out, I hope it will be. But if we have to have councillors to advise the Governor and trip the wheels occasionally, I don't know why they should not receive a stated salary... 73

Resolution No. 16 in the 1920 session stirred up considerable debate on the floor of the convention. It proposed to eliminate the council by striking out the section on the council in the constitution, as well as all references to the council in other sections. Mr. Metcalf spoke again and delivered a long and vehement oration against the council. He said in part:

... But such a body is absolutely useless. It meets no good purpose. Every Governor in this state now living is

70 Ibid., p. 475.
73 Ibid., pp. 363-364.
aware that a council is nothing but a drag and an encumbrance... They can do nothing but advise the Governor in the matter of appointments, or oppose him in the matter of appointments. Let us wipe out this unnecessary body which is only maintained in three states of the Union, so far as I know, which does no good anywhere except to furnish a soft office for aspirants for office.\textsuperscript{74}

Opposed to this point of view was James O. Lyford:

The Governor's Council has been a stepping stone and training school to higher positions. I have never known of any serious friction between Governors and their councils.\textsuperscript{75}

The sharp tongue of James F. Brennan, who favored council abolition, was heard in describing the council as "sort of an inflamed, veriform appendix, from which the body politic should be relieved." He called it "a body of party controversy and discord" which obstructed the governor from carrying out policies sanctioned by the voters.\textsuperscript{76}

After the debate was over, the convention accepted a committee report declaring resolution No. 16 as "inexpedient to adopt.\textsuperscript{77}

In the 1938 Convention, Alvah M. Stevens introduced a resolution to abolish the council by striking out the section on the council in the constitution. In support of his resolution, Mr. Stevens said of the council:

... [It] has turned the appointment of public officials into private dickering in the Council Chamber, involving personal and partisan motives that ought to have nothing to do with appointments...\textsuperscript{78}

\textsuperscript{74}Ibid., pp. 363-364. \hspace{1cm} \textsuperscript{75}Ibid., p. 367
\textsuperscript{76}Ibid., p. 369. \hspace{1cm} \textsuperscript{77}Ibid.
\textsuperscript{78}New Hampshire, Journal of the New Hampshire Constitutional Convention, 1938 (Concord: 1938), p. 76.
Rising in opposition to the resolution, Calvin Page warned the convention that a number of new administrative boards would be necessary if the council were abolished. The resolution suffered defeat, as had so many others of like tenor.\textsuperscript{79}

Again in the 1948 Convention, a proposal was introduced to abolish the council, transferring all functions of the governor and council to the governor alone except for appointments, which would be confirmed by the state senate. An article was submitted for inclusion in the Constitution which reads very much like the provision in the United States Constitution dealing with the power of the President to nominate and appoint public officials with the advice and consent of the senate.\textsuperscript{80} An unfavorable committee report was given on these proposed changes, and without debate was accepted by the convention.\textsuperscript{81}

\textbf{Maine}

The area that became the state of Maine was part of Massachusetts from colonial times until 1820. In that year, with the approval of the legislature of Massachusetts and of the Congress of the United States, Maine became a separate state, and in its state constitution, took over the form of government existing in Massachusetts with very little change. The basic structure of the government of the two states has

\textsuperscript{79}Ibid., p. 77.


\textsuperscript{81}Ibid.
continued ever since to be very much alike. Maine’s executive branch, like that of Massachusetts, included a governor and a council; unlike Massachusetts, however, Maine did not make provision for a lieutenant-governor. Her council was to consist of seven members elected by joint ballot of the two houses of the legislature; the same method of choice of councillors was at this time in effect in Massachusetts. As mentioned earlier in this chapter, Maine has had no constitutional conventions since the one which drafted her original constitution. Resolutions for constitutional amendments to abolish the council in Maine have from time to time been introduced into the legislature of that state, most recently in the 1959 session. The 1959 proposal met the same fate as its forerunners; referred to committee, it was allowed to "die" there. 

Such have been the attempts to abolish the council in New England. For more than a hundred years, in constitutional conventions and legislatures, members of those bodies have stressed the archaic character of the council, its disturbing and diffusing influence on effective administration, its ineffectiveness as a group of councillors or advisers, its inutility as a real check in the government structure. A myriad of arguments for abolition have been brought forward on repeated occasions. Present-day spokesmen for this point of view advance these same arguments, and stress the increasingly anachronistic character of the council in the ever-developing complexity of state government.


CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

The Theory and Practice of the Council

Governor Nathaniel P. Banks of Massachusetts, on the occasion of the organization meeting of the Executive Council of that state for the political year of 1859, delivered an address to the assembled councillors, in which he sketched the history of the body up to that time, and described its functions. Among other things, the governor said:

After the declaration of independence, until the organization of the government under the constitution of 1780—the office of governor being vacant—the executive council was charged with direction of public affairs.

Throughout the whole of this history the Council has exercised important, and sometimes exclusive political power, representing at one time the crown, and at another the people, and supported or assailed by the crown or the people as prerogative or liberty was affected.

Notwithstanding the important part the institution of the Council has performed in every period of our history, it now remains as an element of political power only in three states. Thus, this institution which was the earliest form of political organization planted upon this continent, out of which every existing government has grown; which has been assailed as the enemy or defended as the supporter of freedom,—either for the purpose of simplifying the process, or obtaining more direct responsibility in the exercise of political power, has disappeared from every constitution except that of our own State, and the States of Maine and New Hampshire, originally parts of our own territory. With such a history, of course it could not fail to bear upon its rolls the names of some of the most distinguished men of the Colony and the Commonwealth.

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In these transitions, its duties and character have been necessarily much changed; under colonial charters it represented the people against the crown; under the present constitution it originally represented the corporate democracies, the towns and cities, and also stood for the counties and the legislature, as a balance against the governor, who represented the popular element merely, and was elected by a majority only of the popular vote. The Council is now as elective body, representing districts organized solely upon the principle of population.1

The governor of Massachusetts in these remarks touched upon matters which involve the theory and practice of the council. He reminded the councillors that their office was one in which, in colonial times, the interests of the people of the colony at large might be represented as against the interests of the crown. He pointed out that when the state constitution was written the council was retained as an executive body which, due to the manner of its election, represented the corporate bodies within the commonwealth as well as the counties and the General Court itself. It was designed to give representation to a variety of interests in the executive branch and to act as a "balance" against the governor. Indeed, it was designed as a deliberate check against the popular element in government, for the governor, elected by a majority of the popular vote, represented the people of the commonwealth at large. Since the lower house of the legislature was chosen on the

1 Massachusetts, Governor, 1858-61 (Banks), "Address to the Council, January 11, 1859", Acts and Resolves passed by the General Court of Massachusetts (Boston: William White, Printer to the State, 1859), pp. 574-575.
basis of town representation and since the upper house represented
the counties, under the original constitution, we may say that the
council was, in theory at least, designed to represent the towns and
counties in the executive branch. Since the council was elected by
the legislature in joint session, it represented the General Court
as well. 2

It is well to remember that Massachusetts, like her sister
New England states, was at the beginning a kind of federal system;
a federation of towns, each of which from long usage exerted a
considerable amount of "home rule" over its affairs, and acting by its
voters or "freemen" (this implied a property qualification), elected
representatives to legislatures and to constitutional conventions,
instructed such "delegates," and in town meetings passed upon the results:
of their labors regarding draft constitutions, and amendments thereto--
the fundamental documents of their government. 3

When popular election was substituted for election by the
legislature, the character of the council changed, as Governor Banks
stated in his address quoted above. The council became, through
election by the people, a body representing "districts organized
solely upon the principle of population." (The only outward sign

2Massachusetts, Journal of Debates and Proceedings of the
Convention, [182], p. 336.

3Harry A. Cushing, History of the Transition from Provincial
to Commonwealth Government in Massachusetts ("Studies in History,
Economics, and Public Law, edited by the Faculty of Political Science
of Columbia University in the City of New York," VII, no. 1; New
which remains today of the council as a legislative arm in Massachusetts is the duty of the President of the Senate to swear into office newly elected councillors.) The change in character of the council meant that it would hereafter play a very different role in the state government, even though its assigned duties and responsibilities might remain essentially unchanged.

In Maine and in New Hampshire, the original method of choice of councillors was election by the legislature; this method is still used in Maine, but in New Hampshire it was given up in 1793 in favor of popular election by districts. In New Hampshire therefore, as in Massachusetts, the popularly-elected councils achieved an independence of legislative control, not only in respect to the choice of councillors, but also as regards the exercise of the powers of the council.

A council chosen by the legislature is, in a sense, a legislative committee; it is an agent of the legislature. It was evidently so designed and regarded by early constitution-makers. John Adams, who had so large a share in drafting the Massachusetts constitution, was a strong exponent of the necessity and utility of a council in the executive branch, where it could act as a sort of connecting link or arbiter between the several branches of government. As the product of the draftsmanship of the constitution-writers, the council emerged

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1 New Hampshire, Constitution, Part Second, Art. 60.

as a tool for legislative oversight of the official acts of the government that he might not by any means exceed the powers granted to him.

In Maine, where the council continues to be elected by the legislature, the former body has always been looked upon as an arm of the latter. Individual councillors consider themselves deputed to act as agents and "watchdogs" for the legislature while that body is out of session, particularly in connection with expenditures of certain appropriations by the administrative part of the government. 6

Regardless of whether the council represents or is considered as representing the legislative branch, or whether it is thought of as representing the people directly, providing district representation in the executive, it continues to fulfill important constitutional and statutory functions which combine to give it considerable power to check the governor in certain areas of executive activity. In confirming the governor's appointments, in sharing with the governor the pardoning power, and in exercising the power of approval of contracts, warrants, transfers of appropriations, and so on, the council continues to play the role assigned to it in the early state constitutions, a role that has, however, become more difficult over the years due to the increasing complexity of state government, and particularly of the administrative side of state government. It is in this latter area of state government that the council is likely to make its influence most decisively felt.

6 Interview with Hon. Harley D. Welch, Councillor, Maine, September 3, 1958.
It was the view of Alexander Hamilton that "a council to a magistrate, who is himself responsible for what he does, are generally nothing better than a clog upon his good intentions, and are often the instruments and accomplices of his bad, and are almost always a cloak to conceal his faults."⁷ Charles Pinckney in offering a plan for an advisory council to the President, in the federal constitutional convention of 1787, remarked that the relationship of the council to the President had better be a voluntary one, on the latter's part; "Give him [the President] an able council and it will thwart him; a weak one, and he will shelter himself under their sanction."⁸ Pinckney's plan for an advisory council was not adopted; the framers of the constitution decided that an executive characterized by "unity" and "energy" should be provided for. They felt that a formalized council might lead to plural responsibility and lack of vigor in the executive.⁹ The cabinet as it later developed in the federal executive branch came into being without any formal constitutional provisions for such a body. It is a secondary political institution upon the primary institution of the presidency. It exists to promote the effective exercise of the president's authority and to assist him


⁹Fenno, op. cit., p. 13.
in carrying out his responsibilities. Its members, department heads holding office at his pleasure, have in consequence an attachment to him which makes them collectively the president's instrument to use as he sees fit. By virtue of their relationship to him, he may seek and value their advice; he may rely on their assistance in reaching important national decisions. If there is disagreement, the president's word is final, for he is elected and responsible to the people for his administration. If cabinet members make improper decisions, or unpopular ones, the president is again responsible.

The executive council, on the other hand, is not an advisory cabinet to the governor. The councillors are not responsible to the governor, and accordingly he is not apt to seek their advice nor be guided by it. In some instances, members of the council belong to the party politically opposed to the governor. The council as an institution has a vested interest in its own continued existence, and seeks to take political positions which will meet popular favor, although it may differ from the chief executive in doing so. The council has been called a headline-gatherer, "coming once or twice a month to the governor with a mandate from the people, a mandate to tell the governor what they think, and to tell him that they don't like his judicial or other major appointments, and that they won't behave until he appoints their candidates because they, like he,"

\[10\text{Ibid.}, \text{p. 5.}\]
were elected by the people."\footnote{Statement of Joseph J. Freeman, member of the committee, regarding Executive Council at meeting of Maine Citizen's Committee on the Survey of State Government, Augusta, Maine, November 28, 1956.}

If it be argued that the council serves an advisory function, nevertheless, it may be pointed out that career officials in the state government who have made government their profession might serve better in this capacity, or it might be pointed out that in any event, governors would prefer to have advisers of their own choosing, their appointed department heads, for example. To the argument that the council must be retained because of its importance as confirming body for the judicial appointments made by the governor, it may be replied that the best qualified persons to pass on the selection of judges are lawyers and judges themselves. In the United States government, all appointments by the President to the Federal bench must be approved by the Judiciary Committee of the United States Senate, whose membership is restricted to lawyers. But there is no requirement that councillors be lawyers, and often they are not. They are, however, politicians. A councillor's vote to confirm or not confirm a gubernatorial appointment may not be primarily his own decision; it may be influenced by the wishes of his party or influential party leaders. As to the financial powers of the council, regardless of the particular financial abilities of an individual councillor, there is no good purpose in having the council "make" financial decisions which independent and objective state officials have already made with the
benefit of machine accounting systems and competent staff assistance.

An Outmoded Institution

Time has passed the council by. This relic of the old board of assistants developed during the colonial period into an executive council, a body of advisers surrounding and to some extent checking a governor whose responsibility was to the crown. It is out of place in a form of government where the governor is responsible to the people. Originally a group of notable personages in the colony, sharing with the governor legislative and judicial powers as well as executive, it rapidly became after the coming of statehood an agency of government providing office for politicians of the second rank, and finally an arena for party bickering over the spoils of office. As long ago as the Massachusetts Convention of 1853, it was pointed out that the council rendered no essential services to state government, but rather, constituted an unnecessary obstacle to efficient executive administration, and was productive of loose legislation. Legislators had fallen into the habit of making laws in reference to it, and by sweeping clauses had ordered that things should be done "under the direction of the governor and council." This further confused the lines of responsibility between the legislative and executive, and between the council and the governor. In all three

states, the power of approving rules and regulations issued by executive departments and agencies has been assigned by statute not to the chief executive, as in the Federal Government, but to the governor and council. The distinguished political scientist, Arthur Holcombe, writing in 1915, was apparently trying to give the council something useful to do, when he expressed the view that the council might properly be given this power. I do not agree with Dr. Holcombe on this point. This is properly a function of the governor as chief executive and chief administrator. To divide and disperse this power, as has been done in Maine, New Hampshire, and Massachusetts, is to place another needless check on the governor, to dilute his administrative authority over agencies subordinate to him and on which he relies to carry out his program, and to blur the lines of responsibility within the state government.

The entire history of the council from its inception to the present has dramatized its negative role. It is not constructive and is not concerned with progress or programs. As a consequence, the governor does not rely on the council for information; it is not in a real sense a body of advisers to whom the governor looks for guidance and assistance in formulating administrative policy. He

13 See Appendices A, B, And C.

must turn to the heads of departments for such information. The council destroys the unity of the executive, the concentration of responsibility, and thus militates against efficiency. It exists in defiance of the theory of executive responsibility.

Findings of the Maine Citizens Committee

The Citizens Committee to Study the State Government, created by act of the Maine Legislature in 1957, reported to the 1959 session of the legislature recommending, regarding the governor's council, that the latter should be abolished. The committee's investigation had led it to conclusions with which this writer agrees. The report, in cogent summation of the thinking of the committee and of its subcommittee which had made a particular study of the council, presented the following points:

a) It is to be recognized that the Council was organized at a time when all feasible steps were taken to check the power of the Executive. However, the present tendency has been to give the elected executive adequate power to cope with his responsibilities while not departing from any of the necessary balancing elements provided by the other branches of a democratic government.

b) It is apparent that though the functions of the Council have become more numerous, they have also become less and less significant. It seems inevitable that this will continue and this trend can only have a deleterious effect upon the quality of the Councillors and their status in state government.

16 Ibid.
c) Such functions as could be legitimately left with the Council are ones that can be performed equally well by some other branch of the government.

d) At present the citizens throughout Maine rarely know who their Councillor is. Popular election would probably bring the Councillor into greater contact with those he represents. However, there is much to be said for enabling the voter to concentrate on fewer, rather than more candidates. Likewise, in view of the shortage of good candidates it is desirable not to proliferate the offices to be filled. It does not seem, therefore, from a political viewpoint, that the Council fulfills a valid or necessary role.

e) Though improvements could be made in the selection as well as in the functions of the Council, it would still leave a withered vestige of government which no amount of alteration could make into a lasting or really effective branch of government.17

The report further points out that the financial powers and duties of the council, among the body's principal functions, "are an unnecessary review of matters which are properly the business of the financial department, the particular state agency concerned, and the governor."18

The following views of the more significant functions of the council are contained in the report of the Subcommittee on the Executive Council, which forms the basis of the Citizen's Committee

a) Pardons. The final approval in the granting of any pardons and reprieves must be given by the governor. At best, the Council can only advise him. The limitations of time and procedure used by the Council seriously reduce the effectiveness of this function. While it may be agreed


that the Council can, together with the Governor, collectively arrive at a better "lay" decision than that of one individual, it must be recognized that the real work and decision should rest with the Probation and Parole Board. This Board should hear all cases and make recommendations, and only in most unusual cases would these be set aside by the Governor.

b) Appointments. Many of the appointments presently handled by the Council should be relegated either to the Personnel Department, other State Agencies, or to the Governor. There remain, however, a number of appointments of the Governor which should be confirmed by some additional body. These are chiefly those of Justices and the Commissioners of the various departments.

c) Salaries. The report of the earlier Subcommittee of the Executive Council to the Citizen's Committee (November 28, 1956) stated that it "does not recommend that the Council share with the Governor the power to approve salary schedules since this task inevitably covers political implications. It is properly an administrative function, and when not entrusted to the Director of Personnel, should rest in the hands of the Governor with the advice of the Personnel Director. Control is still exercised sufficiently through the legislature's power over appropriations." This report endorses this viewpoint.19

The Subcommittee pointed out that the present requirement of council consent to actions by the governor has frequently led the departments of the executive branch to consider the council as a source of approval, which has unwisely weakened the legitimate control the governor as chief administrator should have over the departments.20

The remarks of the Citizen's Committee concerning the consequences of a change to popular election of councillors in Maine have no pertinence to Massachusetts and New Hampshire, of course,


20 Ibid., p. 4.
since the office in those states has long been filled by popular vote. With this exception, the views embodies in the report apply with equal force to the councils in all three states. The writer concurs with the recommendation of the Maine Citizen's Committee that the council be abolished.

Recommendations for Reassigning the Powers of the Council

If we abolish the council, where shall we place its functions? The confirming power may be granted to the state senate as is the practice in most of the American states, paralleling the practice in the federal government. It may be objected that state senates are in session for relatively short periods of time and that such sessions are biennial rather than annual affairs in Maine and New Hampshire, and that consequently hasty consideration of a large number of appointments would take place at each regular senate session. The problem might be solved by giving the power of confirmation to a senate committee on appointments, empowered to sit during the period between legislative sessions. Such a committee might consist of the senate president, the majority and minority floor leaders, and a few other leading senators, representing both major parties. Another alternative may be found in special sessions of the senate to be called by the governor, from time to time, perhaps three or four

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21 The Oregon senate has set up such a committee. See Oregon Revised Statutes, Sec. 351.030.
times a year, for the purpose of considering nominations. Ample precedent exists in the federal government for this. In the cases of Maine and New Hampshire, there would be little more trouble and expense involved in assembling the senates of these states once every quarter than is connected with the bi-monthly meetings of the council at the present time. As far as Massachusetts is concerned, the problem does not arise, for Massachusetts has annual legislative sessions which customarily are lengthy, often running nine or ten months. The senate would have ample opportunity during these long sessions to consider appointments by the governor.

In dealing with the appointing problem, it would be wise to vest in the governor alone the appointment of unpaid boards and commissions, licensing and professional registration boards, and boards of visitors to state institutions. The necessity for the numerous boards of the latter type has often been questioned. Such boards have no administrative functions and are unsalaried; membership on them is of an honorary nature. They are commonly found throughout the American states, but there is no particular reason why such appointments need confirmation. The appointment of notaries public could be transferred to the secretary of state, inasmuch as such appointments are strictly routing matters contingent upon the payment of a fee. The minor judicial office of justice of the peace should be abolished altogether, having no place in modern judicial system.

\[22\] As long ago as 1909, the American Bar Association recommended that justices of the peace be replaced by a single unified court for the whole state for the trial of lesser cases, with branches in each county. See William Franklin Willoughby, Principles of Judicial Administration (Washington: The Brookings Institution, 1929), pp. 305-306.
The confirming power that is retained should be restricted in its application to policy-making positions: department heads, and salaried members of important boards and commissions. In all three states, the terms of department heads should be made co-terminous with that of the governor, and the present system of over-lapping terms abolished. In this way, centralization of responsibility for administration would be achieved; the responsibility of the department head to the governor who appointed him would be direct, immediate, and obvious.

The question of judicial appointments in Massachusetts and New Hampshire may require special attention due to the long tenure of judges in those two states. (Tenure of judges is for life during good behavior in Massachusetts, and permanent until compulsory retirement at age seventy in New Hampshire. Such long judicial tenure is most unusual among the American states.) As has been previously noted, the importance of a check on a governor's power of appointing judges has been brought forward as a justification for the retention of the council, particularly in Massachusetts. However, with the confirming power vested in the state senate, the judiciary committee of that body, normally composed of lawyers, would have jurisdiction over the scrutiny of candidates for judicial appointments, and could reasonably be expected to exercise more expert judgement in this field than does the council at present.

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If we abolish the council, we may vest the power of pardon in the governor alone, or in the governor acting with consent of a board of pardons in which may be placed the power formerly held by the council in this field; or, the power may be vested in a pardon board of which the governor is a member with a vote equal to that of each other member of the board. In any event, such a board should be made up largely of persons with professional competence and experience in the field of penology.

The financial powers of the council may be appropriately lodged in certain administrative agencies of the state government, including the department of finance, the state comptroller's office, of the office of the state auditor. In point of fact, the actual checking in matters of finance now performed by the council is repetitious because the same work has already been done more thoroughly and with professional competence by the appropriate administrative agency.

The duty of canvassing election returns may be vested in a canvassing board, made up of ex-officio members as is the practice

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24 In line with the growing tendency to vest post-auditing functions in an official responsible to the legislature, Massachusetts and other states that elect their state auditors ought to consider the wisdom of making this official appointive, giving him a long term, and permitting his removal by the legislature only. Legislative election of the auditor might serve the same purpose. This method is used in Maine, but the auditor has only a two-year term. In New Hampshire, the post-auditing function is performed by an executive agency, the Division of Accounts.
in many states.\textsuperscript{25} Such a board may be made up of elected executive officials, such as the secretary of state and attorney-general, and it may have in its membership some state legislators as well.\textsuperscript{26} The fact is that the actual canvassing work in each of the three states is already done in the secretary of state's office, and the function of the council here is once again that of a "rubber-stamp." Where the election of state legislators is concerned, each house of the legislature is the judge of the election returns of its own members in any event.

**Abolition is Essential**

As mentioned above, the Maine Citizen's Committee on the Survey of State Government in its report to the legislature of 1959 recommended, as had a predecessor committee two years earlier, that the council be abolished. The committee found it to be a relic of the time when the state government was being deliberately organized in such a way as to check the power of the chief executive in every possible way. Today it exists in a scheme of government where it is desired to give the elected executive the necessary power to cope with his increasingly large and complex responsibilities. Governors Lane Dwinell of New Hampshire and Clinton Clauson of Maine have likewise urged abolition.\textsuperscript{27}

\begin{footnotes}
\footnotetext{25}{Connecticut, Constitution, Art. IV, sec. 3.}
\footnotetext{26}{New York, Laws of 1927, Ch. 526.}
\footnotetext{27}{Interview with Hon. Lane Dwinell, Governor of New Hampshire, Concord, New Hampshire, July 31, 1958.}
\end{footnotes}
These chief executives have complained particularly about the difficulties created for them by the council in the appointing process, and have stated that in their view the council was a decided hindrance and by no means a help to them in administering the affairs of their states. Congressman Frank Coffin, Democratic candidate for governor of Maine in 1960, has also come out strongly in favor of abolition of the council.  

Duane Lockard in his fine book, _New England State Politics_, describes a meeting of the governor and council in New Hampshire that he attended, and comments on the trivial and inconsequential matters dealt with at that meeting. He observes that the council seems to be merely, "an elective Republican patronage approval body," having no other apparent reason for existence.  

I agree with the Maine Citizen's Committee and with the various state governors and others who have felt that the council must go. As an administrative body it performs unnecessary and trivial functions and needlessly hampers the governor. Politically, the council, where elective, is a "long-ballot oddity": the average voter has no idea who his councillor is nor what the function of this official might be. In Massachusetts, we might say that it has been an attractive "soft job" for politicians of lesser rank; the salary has been increased.

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28 Interview with Hon. Clinton Clauson, Governor of Maine, Augusta, Maine, May 27, 1959.

to respectable proportions, and only a few hours, one or two days a week, are required to perform a councillor's duties. One Massachusetts councillor told the writer that when he was in the legislature he had insufficient time to attend to his private business interests, but now that he was serving on the council he had plenty of time to manage two business enterprises! The same councillor remarked that in his candid opinion the council would not be missed were it to be eliminated from the state government.

I have called the council an historical anachronism. In the early years of American state government, the office of governor was itself a part-time job. The governor did little, having little to do. Such duties as he had were prescribed in the state constitutions, and the executive councils shared with him in these, legislative functions excepted. Council meetings were then more frequent than they are today. The governor and council, sitting together, handled at these meetings virtually all the state's executive business. Today, however, the duties and responsibilities of the governor have undergone a tremendous expansion. A part-time council, meeting three or four days a month, obviously is ill-suited to render worthwhile assistance to him, or even to perform effectively the role which is the council's chief raison d'etre, that of checking the chief executive.

Given the existing councils in Maine, New Hampshire, and Massachusetts, with constitutional and statutory powers as at present arranged, we have in these three states bifurcated executive departments displaying several serious weaknesses:
1. Today, the office of governor so far overshadows the council that the council has just enough power to obstruct the governor, if it is so minded, in such important areas as finance and personnel. As we have seen, it sometimes does so because of its part-time status, its lack of staff, and its consequent superficial approach to its work, it is unable to wield in an informed way its theoretically important financial powers.

2. The power of approving pardons is vested in a body ill-equipped for the task through a lack of expert knowledge, compounded by a high turnover rate in council membership.

3. Lodging in the council the power of confirming appointments weakens the governor in his control of patronage, properly his as party legislative leader; and he is deprived of the advantage that would be his in dealing with the legislature were the confirming power to be vested in the senate.

These weaknesses can best be eliminated by abolishing the council. It is remarkable that this institution, which has always exemplified a negative approach to the operation of government, has survived three centuries. There is little justification for retaining such an impediment today, when government and especially its executive branch must assume a leadership unconceived in 1620.
APPENDICES
APPENDIX A

Statutory Powers of the Executive Council of Maine 1

Approval of Gubernatorial Actions and Miscellaneous Functions of Council

Sovereignty and Jurisdiction

Governor with advice and consent of the council may cede not exceeding 10 acres of land to United States. 1:6

Governor with advice and consent of council may purchase or take land for forts, etc. and may cede them to United States. 1:7

Governor and council may cause survey to be made of land taken for forts, etc. as above and plan thereof and council order of taking to be recorded with secretary of state. 1:8

Governor and council authorized to make leases of right to take kelp on submerged lands, and determine rental to be paid. 1:21

Governor and council may adopt an order of taking of land being taken by eminent domain. 1:23

Governor and council may purchase or take by eminent domain real estate adjacent to the state house in Augusta. 1:24-A

Primaries

Governor and council to tabulate votes, be present at examination of returns by candidates and count and declare votes to accord with the intention of the voters. 4:31

Governor and council in open meeting shall examine disputed ballots and hold recounts. 4:32

Governor and council may accept as fact conclusions agreed to by candidates to facilitate recounts. 4:33

1 Citations are to Maine, Revised Statutes.
Elections

Town clerks obliged on demand without charge to furnish the governor and council with a certified copy of voting check lists. 5:25

Secretary of State, Attorney General and one member of Council designated by Governor to inspect and approve ballot boxes when provided by cities and towns. 5:26

Same in case of voting machines. 5:29

Governor and council to tabulate votes cast in state and presidential elections. Governor and council, or either of them or any member of the council to be present during examination of returns. Governor and council in open meeting to make recount in case of contested election and count and declare votes to accord with the intention of the voters. 5:50

Provisions of law governing the determination of the results of an election stated not to give governor and council authority to determine questions of eligibility in cases of senators and representatives to the legislature. 5:51

Governor and council may examine in open meeting the ballots cast on any referendum question or constitutional amendment. 5:52

Pending special election to fill U. S. Senate vacancy, governor with the advice and consent of the council shall make a temporary appointment to fill the vacancy. 5:70

Governor and council to open and canvass the returns and declare the results of the special election to fill vacancy in U. S Senate or House. 5:72

Governor and council to open, examine and count the returns in the presidential election and send a certification of election to persons elected. 5:78

Expense of sending to cities and towns for delinquent returns to be audited and allowed by the governor and council and paid by the state, but in certain cases the expense is to be repaid the state by the town or city if the governor and council so determine. If in such cases messenger is sent to two or more towns on the same route, amount payable by each is apportioned by the governor and council according to distance and expense of travel. 5:79
Executive Department. Council

"Any order issued by the governor and council, except orders relating to the appointment of officers and employees of the state authorized by law, of fixing their compensation, and orders authorizing contracts which may not be wholly performed during the term of the council passing such orders, shall cease to be of any effect or validity at the end of the biennium for which the council passing the order was elected". 11:4

"All civil officers, appointed by the governor and council, whose tenure of office is not fixed by law or limited by the constitution, otherwise than during the pleasure of the governor and council, except ministers of the gospel appointed to solemnize marriages and persons appointed to qualify civil officers, shall hold their respective offices for 4 years and no longer, unless reappointed, and shall be subject to removal at any time within said term by the governor and council." 11:5

"The justices of the supreme judicial court and of the superior court, and all state officials elected by the legislature shall take and subscribe the oath or affirmation required by the constitution, before the governor and council, when in session, and in their recess, before any 2 members of the council; and every other person elected or appointed to any civil office shall take and subscribe the oath before any one member of the council, or before any magistrate commissioned by the governor for that purpose, except when the constitution otherwise provides." 11:8

"All public officers appointed by the governor and council shall, within 30 days after being commissioned, qualify to perform the duties of their office and the certificate of such qualification shall be filed in the office of the secretary of state. Any such officer who fails to qualify and file a certificate of qualification in the office of the secretary of state within 30 days, as above provided, shall be deemed to have forfeited his appointment and the office may be declared vacant by the governor and council and a new appointment made." 11:9

"When the governor and council deem it necessary to protect the coast of the state from invasion, they may procure, equip, officer and man, such armed vessels as they think expedient, to cruise along the coast of the state for the purpose of protecting the inhabitants thereof; and fix the relative rank and compensation of the officers, and the number and compensation of seamen employed." 11:11
Special account for promotion of Maine to be under the complete supervision and control of governor and council who is authorized to designate any part thereof for expenses in promoting of Maine. Provisions of law concerning this account stated not to be construed as authorizing governor and council to create any new department or function. 11:12-A

Insurance on public buildings and property to be placed by the several department heads having said property in charge, subject to the approval of the governor and council. Governor and council to keep record of insurance so placed. 11:13

After fire loss, insurance proceeds shall with approval of governor and council be made available for replacing destroyed property. 11:14

Governor with the advice and consent of the council is authorized to accept federal grants and direct state agencies to expend such moneys and do such acts as are necessary to meet federal requirements. 11:15

Governor and council to authorize audit of the books and accounts of the state. 11:17

"The governor, with advice and consent of the council, is authorized to accept in the name of the state any and all gifts, grants of conveyances to the state of Maine." 11:16

Civil Defense

Director of civil defense and public safety and his assistants to receive such compensation as shall be fixed by governor and council. 12:4

Rules and regulations of Director of Department of Civil Defense and Public Safety shall become effective when approved in writing by governor and council. 12:4-A

Governor with approval of the council shall award reasonable compensation to owners of property taken or used for public necessity and convenience after a state of emergency is proclaimed. 12:7

When such emergency is proclaimed, governor, with advice and consent of council, is authorized to transfer general fund moneys to Emergency Civil Defense and Public Safety Fund. 12:20

Military Law

Salaries of property officer and plans and training officer to be fixed by governor and council. 11:11
Upon order of the governor and council and under regulations prescribed by them, quartermaster general is authorized to issue field ordinance of obsolete pattern to municipal officers. 14:50

State Police

Chief of State Police to execute duties of his office under direction and subject to approval of governor and council; and make rules and regulations and designate a member of the state police to act as his deputy subject to approval of governor and council. 15:1

Governor and council shall determine the salary of the chief and deputy chief. 15:5

Chief shall, of his own motion or by order of the governor and council, designate stations for weighing trucks along the main state highways and certain officers who will be empowered to examine and reseal loads. 15:8

Upon request of governor and council, law enforcement agencies authorized to take fingerprints of school children and others requesting it for identification purposes. 15:21

Benefits under State Police Retirement System available to chief upon his request for retirement made in writing to the governor and council. 15:22

Department of Finance and Administration

Salary of commissioner of finance and administration shall be fixed by governor and council. 15-A:1

Commissioner has duty and authority "to coordinate financial planning and programming activities of departments and agencies of the state government for review and action by the governor and council." 15-A:2

No appropriations to any state department or agency shall become available for expenditure until allotted upon the basis of the work program duly approved by the governor and council. 15-A:12

Governor and council may transfer unexpended appropriations on recommendation of department head concerned and state budget officer. 15-A:15

Governor and council, with assistance of budget officer, shall review requested allotments with respect to the work program of each department or agency. Allotments approved by governor and council shall be transmitted by budget officer to head of department or agency concerned.
The allotment is subject to revision under certain conditions with the approval of the governor and council. The state budget officer with approval of the governor and council may require a department head to set aside a reserve from the total allotment to meet emergencies. 15-A: 16

"Any amounts authorized for allocation by the governor and council or representing permanent working capital advances shall be removed from unappropriated surplus and set up in separate accounts. Governor and council may allocate from unappropriated surplus amounts not to exceed $500,000 for the purpose of real estate adjacent to the state house." 15-A:20

Monthly newspapers may be used in publishing the official annual report of the state government on authorization of the governor and council. 15-A:23

Department of Finance and Administration is authorized "to provide, with the consent of the governor and council, food service in the state office buildings at the seat of government and elsewhere in the state as may be determined by the governor and council." 15-A:25

Contracts for public improvements to be awarded by competitive bids under such conditions and restrictions as the governor and council may prescribe. 15-A:26

Advertisements for sealed proposals to be made in such papers as the governor and council may direct. Proposals received shall remain sealed "until opened in the presence of a committee of the executive council at such time as the governor and council may direct. 15-A:28

Funds appropriated by legislature to the Construction Reserve Fund may be allocated by the governor, with the advice and consent of the council, under certain stated circumstances. Any such allocation made by the governor and council shall constitute a continuous carrying account for the purposes designated by the governor and council. 15-A: 33-A

State owned vehicles available to such agencies, boards, commissions and departments as the governor and council may from time to time designate. Governor and council may designate the use of certain state owned cars without the said insignia thereon. 15-A:43

Governor, with the advice and consent of the council, may suspend payment of mileage by state on privately-owned automobiles and require travel in state owned automobiles if available. 15-A:44

Form of bonds required of state officials to be prescribed by insurance commissioner subject to the approval of the governor and council. Amount of bond to be determined by state auditor and commissioner of finance and administration with the approval of the
governor and council. In event blanket bond not obtainable, state auditor and commissioner of finance and administration shall list annually for approval of governor and council those state officials and employees recommended to be bonded. 15-A:45

Funds appropriated by legislature to the construction reserve fund may be allocated by the governor with advice and consent of council under certain stated circumstances. Any allocation of funds so made by governor and council shall constitute a continuous carrying account for the purposes designated by governor and council. 15-A:45-A

Certification as to uncollectibility of accounts receivable to be made by attorney general, commissioner of finance and state treasurer subject to the approval of the governor and council. 15-A:47

Working capital advances no longer needed may be returned to the fund from which advanced on recommendation of department head concerned with approval of commissioner of finance and governor and council. 15-A:50

The governor, with the advice and consent of the council, may allocate from state contingent account sums not exceeding $450,000 total amount in any fiscal year. Governor and council to determine the necessity for such allocations. 15-A:51

With exceptions, commissioner of finance, with the approval of the governor and council, shall have authority to discontinue any or all special expendable state funds and transfer balances to general fund. 15-A:52

**Taxation**

Per diem payable to associate members of Board of Equalization to be fixed by governor and council. 16:65

Subject to approval of governor and council, state tax assessor may make abatement of forestry district taxes. 16:74

Subject to approval of governor and council, state tax assessor may abate tax when property has been doubly taxed. 16:75

**Treasurer of State**

Deputy treasurer of state, while acting in event of disability or vacancy in office of treasurer, shall give surety bond to the state, to the satisfaction of the governor and council. 18:1

Condition of treasurer's bond among other things is that he render an account at stated times "and at any other time when required by the legislature or the governor and council." 18:2
When it appears to governor and council that treasurer's bond is not sufficient they may require new bond; and if he neglects to file such bond to their satisfaction, they shall remove him and declare the office vacant. 18:4

Governor and council may hear complaints against treasurer and if any are found to be true, remove him and declare the office vacant. 18:7

In case of vacancy in office of treasurer, governor, with advice and consent of council, shall appoint a commissioner to fill vacancy, which commissioner shall give bond acceptable to governor and council. 18:8

Treasurer may deposit government bonds for safekeeping in banks of this or any other state with approval of governor and council. All custodial contracts and agreements shall be subject to approval of governor and council. 18:15

Treasurer may, with advice and consent of governor and council, purchase unmatured bonds of state. 18:17

All contracts and agreements for safekeeping and custodial care for trust investments shall have approval of governor and council. 18:18

All contracts and agreements for safekeeping or custodial care of negotiable securities derived from sale and lease of lands reserved for public purposes shall have approval of governor and council. 18:19

All contracts and agreements for safekeeping or custodial care of negotiable securities representing investment of sinking funds shall have approval of governor and council. 18:22

Treasurer is authorized, in any year in which he and the governor and council may deem the same necessary, to negotiate temporary loans in anticipation of taxes. The treasurer and governor and council are directed to pay such loans during such year. For the purpose of paying such loans, there is appropriated for any year in which the treasurer and governor and council may deem it necessary to borrow in anticipation of taxes, the sum of $2,000,000. Treasurer is also authorized, in any fiscal year in which the governor and council deem it necessary, to make loans for use of state highway commission for highway purposes. 18:30

Any board or commission charged with issuing licenses for conduct of profession, trade or business, may, with approval of governor and council, suspend payment or reduce amount of statute fees for renewal if funds accumulated are in excess of needs. 18:31
Attorney General

Attorney general shall give his written opinion upon questions of law submitted to him by the governor and council. 20:5

Compensation of deputy attorney general and assistant attorneys general to be fixed by attorney general with approval of the governor and council. 20:6

Compensation of assistants, clerks or attorneys, as approved by governor and council, may be paid, if governor and council so direct, from moneys collected by attorney general's department. 20:8

Secretary of State

When vacancy occurs in office of secretary of state during recess of legislature, governor with advice and consent of council shall appoint suitable person to act as secretary of state. 21:1

Motor Vehicles

Secretary of state shall, from time to time as required by the governor and council, make report of his doings and fees received from motor vehicle registration and licensing. 22:2

Secretary of state may make rules and regulations effective when approved by governor and council. 22:8

State Highway Department

Salary of chairman of state highway commission to be fixed by governor and council. Commission to make annual report to governor and council. 23:3

Governor and council on recommendation of the commission may sell or lease land taken for highway purposes but no longer needed therefor. 23:24

When state highways are closed for construction, commission shall establish and properly mark detour roads, and if commission neglects to do so, same shall be done by order of the governor and council. 23:26

Commission may with approval of governor and council award state highway construction contracts without advertising for bids. 23:40

The governor and council, with special authorization of legislature, may direct commission to lay out and construct, any state highways as a parkway or a freeway road. 23:98
Commission, with approval of governor and council, may provide for bridge construction without advertising for bids. 23:110

Treasurer of state by direction of the governor and council shall negotiate the sale of all highway and bridge bonds. 23:127

If commission unable to agree on a particular expenditure or apportionment, any member may appeal to the governor and council who shall then make the final decision. 23:128

State, under proper authorization of governor and council, shall issue all highway and bridge bonds. Governor and council shall consult with Economic Advisory Board for its recommendations as to whether conditions are favorable for any such issuance. 23:130

Transfers of one account of the general highway fund to another shall only be made with approval of governor and council. 23:132

Aviation

Governor and council may authorize an advance of working capital to aeronautics commission. 24:5

Salary of aeronautical director to be fixed by aeronautics commission, subject to the approval of the governor and council. 24:6

Aeronautics director may recommend to governor and council that state acquire land and interests therein for air navigation facilities. Such land may be acquired by purchase or condemnation in the manner provided by law by which governor and council are authorized to acquire property for public purposes. Land so acquired may be conveyed to a town for use in establishment of air navigation facilities for such a consideration as governor and council may determine. 24:7

All payments made out of airport construction fund shall be made on order of the commission with the approval of governor and council. The commission with consent of governor and council may from airport construction fund grant state aid to aid in construction and improvement of airports. 24:20

Department of Health and Welfare

Commissioner of health and welfare may employ, with approval of governor and council, such bureau chiefs as may be necessary to carry out the work of the department. Compensation of commissioner and his bureau chiefs shall be fixed by governor and council. 25:1

Commissioner shall give to governor or council or to the legislature or any committee thereof at any time upon their request information with reference to charitable or correctional institutions. 25:10
Commissioner, with the approval of governor and council, is authorized to cooperate with U. S. Department of Agriculture in matter of surplus food distribution. A revolving fund for use in connection with participation in such federal program shall be established by authority of governor and council. Fund must consist at all times in cash or credit items the aggregate of which shall equal total fund established by order of governor and council. The fund as approved by governor and council shall be segregated from general fund. Fund shall continue in effect until governor and council determine the necessity therefor no longer exists. 25:11

Appropriated funds transferrable by authority of governor and council when deemed necessary. 25:17

Department under direction of governor and council may conduct rehabilitation work. 25:30

Department, subject to approval of governor and council, may fix charges to be made by diagnostic laboratory when deemed advisable or necessary. 25:32

Department, subject to approval of governor and council, shall have authority to accept funds for public health services. 25:35

Department, with approval of governor and council, may distribute antitoxins in time of emergency. 25:67

Salary of chief clerk of state board of barbers and hairdressers subject to approval of governor and council. 25:213

Subject to approval of governor and council, department authorized to apply for assistance under federal social security act and make such reports as federal government may from time to time require. 25:279

Whenever the federal matching maximum (old age assistance) is changed, department may change the maximum grant by state with approval of governor and council. 25:281

Whenever the federal matching maximum (aid to blind) is changed, department may change the maximum grant by state with approval of governor and council. 25:302

Whenever federal matching maximum (aid to disabled) is changed, department may change the maximum grant by state with approval of governor and council. 25:319-B

Governor and council may draw warrants on state treasurer for such amounts as are payable to Indians for the bounties on agricultural products. 25:330
Governor and council may draw warrants on treasurer for interest on purchase price of four townships purchased from Penobscot tribe and rents. 25:368

**Division of Veterans Affairs**

Director shall receive such salary as shall be fixed by governor and council. 26:1

**Division of Institutional Services**

Warden with consent of governor and council may erect additional buildings and make alterations within the state prison. 27:50

Provisions of law governing reformatory for women not to be construed to interfere with power of governor with advice and consent of council to grant pardon or commutation. 27:63

Provisions of law governing reformatory for men not to be construed to interfere with power of governor with advice and consent of council to grant pardon or commutation. 27:74

Superintendent of a state institution within the jurisdiction of the department may be removed by the commissioner, with approval of governor and council, for cause. Before removal, superintendent shall be given hearing before commissioner and governor and council. Removal action of commissioner and governor and council is reviewable by superior court. Upon notice to commissioner and governor and council court shall affirm decision of commissioner and governor and council unless it shall appear that such decision was made without proper cause or in bad faith. 27:96

**Probation and Parole Law**

Board to make recommendations to governor and council in reference to the granting of reprieves, commutations and pardons when requested. 27-A:3

Provisions of law governing parole not to deprive governor, with advice and consent of council, of power to grant pardon or commutation. 27-A:19

**Maine Employment Security Law**

Subject to approval of governor and council, services and expenses of special counsel shall be paid from funds provided for administration of employment security law. 29:5 sub-par IV
Department of Labor and Industry

Commissioner of labor and industry shall appoint chief inspector of boilers with approval of governor and council. 30:68

Six of eight members of board of construction safety rules and regulations to be appointed by commissioner of labor and industry subject to approval of governor and council. Vacancies in board membership also filled by such appointment with approval of governor and council. 30:88-A

Commissioner of labor and industry to appoint members of board of elevator rules and regulations, subject to approval of governor and council. Vacancies in board membership also filled by such appointment with approval of governor and council. 30:115

Commissioner, with approval of governor and council, shall appoint a supervising inspector. 30:118

Department of Agriculture

Commissioner of agriculture may, with approval of governor and council, appoint a deputy commissioner of agriculture. 32:1

Commissioner, with approval of governor and council, may appoint and fix compensation of a chief deputy and other deputies. 32:7

Commissioner of agriculture shall certify to governor and council the amount of stipend due agricultural societies. 32:17

Rules and regulations promulgated by commissioner shall become effective when approved in writing by governor and council. 32:86

Maine Milk Commission

Members of Maine milk commission shall receive per diem determined by governor and council. 32:2

Forestry

Forest commissioner authorized, with approval of governor and council, to grant leases and rights to cut timber and grass on state lands. 36:3

Commissioner with advice of governor and council may sell and convey state lands acquired by certain mortgage foreclosures. 36:4
Commissioner may, with advice and consent of governor and council, accept on part of state gifts of land for forest and park purposes. 36:11

Commissioner, under direction of governor and council, shall sell rights to cut timber, mining rights, grant camp leases and mill privileges. 36:12

State park commission to study and ascertain and report to governor and council from time to time regarding the state's park resources and facilities, needs therefor, probably course of acquiring facilities and so forth. 36:34 sub-par II

Park commission authorized, with consent of governor and council, to set apart and publicly proclaim areas of land as parks. 36:34 sub-par III

Park commission authorized, with approval of governor and council, to establish and maintain provisions for fire prevention in park areas. 36:34 sub-par V

Park commission authorized, with consent of governor and council, to negotiate any lease or other agreement for use and development of state parks. 36:34 sub-par VI

Forest commissioner, with approval of governor and council, may sell warden headquarters sites no longer in use. 36:90

Persons summoned and assisting in extinguishing forest fires to be paid at rate set by commissioner with approval of governor and council. 36:104

Governor and council may authorize state controller to draw warrant on funds raised by forestry district tax to pay claims, accounts and demands. 36:110

Inland Fisheries and Game

Whenever entire state is closed to hunting, commissioner with consent of governor and council authorized to extend open season for deer hunting. 37:2

Governor and council on recommendation of commissioner may sell and convey interests of state in property acquired for purposes of fish and game and no longer necessary therefor. 37:8

Persons summoned to assist in finding lost persons shall be paid at rate set by commissioner, with approval of governor and council. 37:26
Department of Sea and Shore Fisheries

Commissioner of sea and shore fisheries shall receive such compensation as shall be fixed by governor and council; and shall make biennial report to governor and council. 38:1

Department of Economic Development

Commissioner of department of economic development shall receive such salary as governor and council may determine. 38-A:1

Commissioner may employ or engage with approval of governor and council outside technical or professional consultants and without consent of governor and council may employ consultants. 38-A:2

Maine Industrial Building Authority Act

Manager shall receive such compensation as shall be fixed by the Authority with approval of the governor and council. 38-B:4

"If from time to time in the opinion of the authority the addition of moneys to the mortgage insurance fund may be required to meet obligations, the authority shall in writing request the Governor and Council to provide moneys in such amounts as may be necessary for the purpose. The Governor and Council shall transfer to said fund sufficient moneys for said purpose from the State contingent account or from the proceeds of bonds to be issued as provided in this section. If bonds are to be issued, the Governor and Council shall order the Treasurer of State to issue bonds in the amount requested, but not exceeding in the aggregate $20,000,000 at any one time outstanding, to mature serially or made to run for such periods as the Governor and Council may determine, but none of them shall run for a longer period than 20 years, and at such rates of interest and on such terms and conditions as the Governor and Council shall determine." 38-B:14

Department of Education

Commissioner of education to carry out provisions upon which gifts to public schools are conditioned, when conditions are approved by governor and council. 41:11 sub-par IX

When governor and council has reason to believe town or school district is delinquent, school funds shall be withheld and amount so withheld shall not be paid until governor and council satisfied that school money has been expended as required by law. 41:31
Commissioner of education may issue to governor and council a recommendation regarding assistance to school supervisory unit and on approval of governor and council, state controller may draw warrant for payment out of the sum appropriated for superintendents. 41:80

If satisfied that provisions regarding free high schools have been complied with, commissioner shall certify to governor and council the sum which each administrative unit is entitled to receive from the state; and any unit dissatisfied may appeal to governor and council who shall issue a certificate for such amount as they adjudge such unit is entitled to. 41:110

Treasurer of University of Maine shall have no authority to contract debts except loans when directed by vote of trustees and duly and properly authorized by governor and council. 41:134

School holidays to include Thanksgiving and Arbor Days, as appointed by governor and council but Arbor Day not to be recognized as school holiday unless observed by teacher and pupils for purposes for which it is designated by governor and council. 41:154

Children in unorganized territory entitled to school privileges which shall be provided under direction of commissioner under such rules and regulations made by him and approved by governor and council. 41:159

School privileges to be provided for children on U. S. government reservation under rules and regulations made by commissioner and approved by governor and council. 41:163

State aid available for general industrial schools when it shall be made to appear to governor and council that unit has provided instruction in trades and industries, in which case governor and council shall direct payment. 41:194

Reimbursement from state and federal funds for operation of part-time schools on recommendation of commissioner to governor and council. 41:206

Board of education shall have authority, by and with consent of governor and council, to dispose of and acquire property for improvement of plants and grounds of normal schools and teachers' colleges and render biennial report to governor and council of receipts and expenditures. 41:227

Members of Maine School Building Authority appointed by governor may be removed by governor and council for cause. 41:246
Determination as to eligibility for federal loans and grants shall be under rules and regulations as the School Building Authority shall make and its determination shall be final upon approval of governor and council.  

State Library

State librarian shall receive such salary as shall be set by the governor and council.

State librarian, with approval of governor and council, may make regulations enabling state to comply with federal laws promoting public library services.

Governor and council to determine number and style reports of state departments to be printed at state expense. Such reports to be printed biennially unless deemed advisable by governor and council or directed by legislature that they be printed annually.

State librarian, subject to approval of governor and council, to fix sale price of revised statutes, supplements thereto and session laws.

State Historian

Any portion of the fund available for expenses incurred by state librarian may be expended by him, under the direction of the governor and council, in the publication of history of state or cataloging state's historical materials.

Public Utilities Commission

Salary of clerk shall be left to the discretion of the commission, subject to approval of the governor and council.

Any willful violation of the public utilities law by any commissioner shall constitute sufficient cause for his removal by the governor with the advice and consent of the council.

Commission may, with consent of governor and council, hold joint hearings with Interstate Commerce Commission.

Peaceful Uses of Atomic Energy

The coordinator of atomic development activities shall keep the governor and council informed as to private and public activities affecting atomic industrial development.
Cooperations without Capital Stock

If after complaint, notice and hearing, governor and council shall find corporation which is not entitled to has used the name of the state in its title, such corporation shall forfeit its right to any appropriation from the state. 54:12

Banks and Banking

Lawful claimants of inactive savings bank deposits paid into state treasury may petition governor and council therefor and after hearing governor and council shall determine who are entitled and authorize state treasurer to pay them. 59:10-9 sub-par IX

Lawful claimants of inactive savings deposit in trust company paid into state treasury may petition governor and council therefor and after hearing governor and council shall determine who are entitled and authorize state treasurer to pay them. 59:120

Any day of public thanksgiving, appointed by the governor and council to be deemed bank holiday. 59:155

Insurance

Substitution of securities deposited by insurance companies with state treasurer permitted when governor and council find and certify that the market value of securities offered is not less than the value of those proposed to be withdrawn. 60:20

Same requirement as above pertaining to securities deposited for a different purpose. 60:22

Casulty insurance reserve fund permitted to be deposited in such interest-bearing securities as governor and council may approve. 60:227

Liquor Laws

Governor and council to canvass votes on local option referendum election. 61:2

Business administrator subject to removal for cause by majority vote of governor, individual members of council and commission, acting as one body. 61:6

Director of licensing and enforcement subject to removal for cause by majority vote of governor, individual members of council and commission, acting as one body. 61:7
Permanent advances of working capital up to $3,000,000 may be authorized by governor and council. Temporary loans from other state funds permitted by approval of governor and council. 61:13

Compensation of hearing examiner to be set by governor and council. 61:56 sub-par I

Maine State Retirement System

Members reaching retirement at age of 70 may be permitted to continue at work on request of governor with approval of council. 63-A:6 sub-par IB

Other members reaching retirement at age 60 permitted to continue at work on request of governor and council. 63-A:6 sub-par IVB

Contracts for custody and safekeeping of securities shall have approval of governor and council. 63-A:13 sub-par XVI

Board of Sanitation, Licensing and Inspection

"Whenever the governor and council shall find that the state or any of its departments, divisions or bureaus is incurring and using funds of the state in connection with the carrying on of the work of any board or commission which collects fees from the persons so supervised and licensed . . . they are authorized and empowered to transfer from any funds now or hereafter held by any such board or commission, such sums of money as shall reimburse the state . . ." 78:2

Water Improvement Commission

". . . The commission is authorized, subject to the approval of the governor and council, to accept federal funds available for water pollution control and water resources and meet such requirements with respect to the administration of such funds, not inconsistent with the provisions of this chapter, as are required as conditions precedent to receiving federal funds." 79:1-A

Harness Racing Commission

The commission, with the approval of the governor and council, is authorized to employ such assistants and employees as it may deem necessary to provide adequate policing and carry out the purposes of this chapter and fix their compensation on a per diem basis, subject to the provisions of the personnel law. 86:4
County Officers
(County Commissioners)

"... shall be elected, or in case of a vacancy, appointed by the governor with the advice and consent of the council." 89:1

"When no choice is effected or a vacancy happens in the office of county commissioner by death, resignation or removal from the county, the governor with the advice and consent of the council shall appoint a person to fill the vacancy..." 89:3

"From the time of his induction into such service, he shall be regarded as on leave of absence without pay from his said office, and the governor with the advice and consent of the council shall appoint a competent citizen, a resident of the county so affected, to fill said office while said county commissioner is in the federal service..." 89:4

"When the meridian line or standard of length is established, repaired or rebuilt in any county, the governor with the advice and consent of the council shall appoint a competent commissioner, not necessarily a resident of this state, to inspect and verify the same. ** Such commissioner shall receive from the state such just compensation as the governor and council shall allow." 89:93

(Clerk of Courts)

Vacancy created by clerk of courts entering federal service to be filled by temporary appointment by governor with advice and consent of council. 89:96

"Whenever the office of clerk shall be vacant by reason of death or resignation, the chief justice of the supreme court shall appoint a suitable person to act as clerk until an appointment is made by the governor and council." 89:106

(County Attorneys)

Vacancies to be filled in same manner as provided in case of county commissioners. Whenever the governor and council, upon complaint and due notice and hearing, shall find that a county attorney has violated any statute or is not performing his duties faithfully and efficiently, they may remove him from office and appoint another attorney in his place for the remainder of the term for which he was elected. 89:112

Governor with advice and consent of council to appoint a competent attorney, a resident of the county so affected, to fill office while county attorney is in federal service. 89:113
The governor with the advice and consent of the council shall appoint a competent attorney, a resident of the county affected, to fill out the term of office of said incumbent. 89:121

(County Treasurers)

"If a person so chosen declines to accept or a vacancy occurs, the governor with the advice and consent of the council may appoint . . . " 89:126

(Elections)

". . . and the governor and council shall forthwith notify the county commissioners of the county where such person resides of his election." 89:127

(Sheriffs)

Neglect of sheriff to furnish required bond - fact to be certified to the governor and council. Unless sheriff gives bond "to the satisfaction of the governor and council," he thereby vacates office. 89:146

"When the treasurer of state certifies to the governor and council that moneys due to the state on warrants of any other sums or balances are in the hands of a sheriff . . . and it appears to them that the sureties are insufficient or have removed from the state, they may require him to give a new bond with sufficient sureties. . . ." 89:147

If judgment against sheriff for official delinquency is not paid, creditor may file copy of execution with governor and council, whereupon sheriff has 40 days to pay or he vacates his office. 89:169

When office of sheriff is vacant, jailer performs his duties "until a new sheriff is qualified, or the governor and council, remove such jailer and appoint another, which they may do. . . ." 89:175

(Register of Deeds)

Pending election to fill vacancy governor with the advice and consent of council may fill vacancy by appointment. 89:212

"The governor and council shall, by the 1st day of December following, open and examine the same and the list of votes of citizens in the military service returned to said office. They have the same power to correct errors as is conferred by section 50 of chapter 5; and they shall forthwith issue certificates of election. . . ." 89:213
Owner of original records delivered to Maine Historical Society shall be reimbursed when the Society certifies and governor and council approve. Cost of reproducing and recording records shall be paid by the treasurer of state when certified by society and approved by governor and council. 89:232

Fire Departments and Fire Prevention

Rules and regulations relating to explosives or inflammable liquids shall become effective when approved in writing by the governor and council. 97:43

Pilots, Ship Owners, Port Wardens, Lighters and Harbors

"The governor and council may fix the fees of pilotage; specify the same in the branch of each pilot; transmit to each collector of customs in said ports a schedule thereof to be hung up by him for public inspection; hear and determine all complaints against such pilots for misconduct; and suspend or remove them and appoint others in their places." 99:3

Miscellaneous Provisions Relating to Towns

Excess of receipts from dog licenses over authorized expenditures, to be prorated among towns "if the governor and council deem it expedient." 100:21

"Such rules and regulations (of insurance commissioner respecting motor vehicle racing structures) shall become effective when approved in writing by the governor and council. . ." 100:60

Supreme Judicial Court

". . . the chief justice shall certify said fact (that a justice is permanently and totally disabled) to the governor and council. Upon receipt of such certificate from the court, the governor and council shall make due inquiry into the matter and, if they confirm the finding of said court, the governor with the advice and consent of the council shall appoint an additional justice of the supreme judicial or superior court, as the case may be." 103:2

"The governor with the advice and consent of the council may upon being notified of the retirement of any such justice (attaining 70 years with at least 7 years service) . . . appoint such justice to be an active retired justice. . ." 103:6
"He shall publish periodic advance sheets and at least one volume of the size required by this section, and furnish current copies to the state and to the public at a price to be fixed by the governor and council." 104:2

**Superior Court**

"The governor with the advice and consent of the council may, upon being notified of the retirement of any such justice (attaining 70 years with at least 7 years service) . . . appoint such justice to be an active retired justice of the superior court. . . ." 106:4

**Habeas Corpus**

Gives court right to admit persons to bail "except persons committed by the governor and council . . . for causes mentioned in the constitution." 126:33

**Forgery, Counterfeiting, False Pretenses, Frauds**

(Rewards for conviction of counterfeiters) . . . "shall be paid by the treasurer of state on warrant of the governor and council. . . ." 133:10

**Crimes against the Sovereignty of the State**

Criminal offense to remove books and papers from custody of governor and council (and others). 143:9

**Proceedings in Court in Criminal Cases**

"A copy of the indictment, plea, evidence and charge of the presiding justice (in murder cases) . . . shall also be filed in the office of the secretary of state, so that it may be used in any pardon hearing before the governor and council." 148:31

**Sentence, Probation Officers, Parole, Pardons, Fugitives from Justice**

". . . (I)f the crime for which such pardon is asked is punishable by imprisonment in the state prison, the county attorney for the county where the case was tried, shall upon the request of the governor and council, attend the meeting of the governor and council at which the
petition is to be heard, and the governor and council shall allow him his necessary expenses for such attendance and a reasonable compensation for his services... The governor and council may require the judge and prosecuting officer who tried the case to furnish them a concise statement thereof." 149:45

"When a person is sentenced to confinement in the state prison, the governor with the advice and consent of the council may, if he deems it consistent with the public interest and the welfare of the convict, commute said sentence to imprisonment in any county jail." 149:46

"In any case in which the governor is authorized by the constitution to grant a pardon, he may, with the advice and consent of the council and upon petition of the person convicted, grant it upon such conditions and with such restrictions and under such limitations as he deems proper..." 149:47

Governor and council to examine case of alleged breach of pardon condition. Governor with advice and consent of council shall order respondent remanded if they find him in default. If it appears to governor and council that he has not broken the conditions of his pardon, he shall be discharged. 149:48

(Fugitives from justice) Governor may offer reward not exceeding $1,000 and if terms of offer are complied with "he (governor) may, with the advice and consent of the council, draw his warrant upon the treasurer of state for the payment thereof." 149:51

Courts of Probate

(Commission to make probate rules, etc.) "The expenses of such commission... upon approval of the same by the governor and council... shall be allowed and paid..." 153:50

Executors and Administrators

Undistributed funds to be deposited by public administrator with treasurer of state... "and the governor and council, on application and proof, may order the treasurer to pay it over..." 154:52

Inheritance, Succession and Estate Taxes

"In the absence or disability of the state tax assessor, the governor and council may, if deemed feasible, authorize the commissioner of finance and administration to exercise all the powers of and perform all the duties of the state tax assessor with respect to such taxes (inheritance taxes) during such absence of disability." 155:1
Inquest of Office and Information for Intrusion

"When the legislature or governor and council direct, the attorney general shall file an information in the superior court in the county where the lands lie stating the grant and conditions, the breaches and the claims of the state." (Revisionary interest of state in lands granted) 173:2
APPENDIX B

Statutory Powers of the Executive Council of New Hampshire

Administration of Justice

Attorney general -
assistants, employment to be approved 7:12
requiring appearance by 7:9
Commitment of sentence 4:23
proceedings on application for 4:21, 22
Contempt, power to punish Const., Pt. 2nd, Art. 23
Reprieves, granting of 4:24
Approval of institution for detention and treatment of sexual psychopaths 173:8

Civil Service

Employees of state, when approval of appointment and salary unnecessary 98:1
Personnel system, exemption of appointees 98:2
Retirement annuity for public employees, discretionary powers as to 100:6
Retirement system for state employees -
financing 100:15
transfer of funds to, from certain departments and commissions 100:14 (VI)
warrants for amounts due 100:11 (V)
Power to award workman's compensation to state employees 281:5

Corrections

Industrial school -
authority over 10:1
board of trustees, supervision over 621:2
examination of books of 621:3
Insane prisoner, discharge or transfer from prison 607:4
Pardons
conditional 4:25
power to grant Const., Pt. 2nd, Art. 52
procedure on application for 4:21, 22

1Citations are to New Hampshire, Revised Statutes Annotated

203
State prison -
  authority over 10:1
  supervision and direction of trustees of 622:5
  visitation of 622:6
  approval of contracts of other states for confinement of female
carcinots 622:33

Department of Labor and Industries

Labor commissioner -
  pro tem -
  audit and allowance of account of 273:8

Education

Bonds for teachers' retirement purposes, determination of details 192:18
Audit of teacher institute expense 186:38
University funds, payable on manifests approved by 187:26

Military Affairs and Public Safety

Armorries -
  approval of funds for construction or alteration of 110:93
  approval of non-military use 110:100-103
  bonds or notes issued for funds, power as to 110:95
  rental as requiring approval of 110:28
  supervision of expenditures for 110:93
Civil defense emergency, taking of private property during 107:7
Approval of military drill and instruction 110:90
Militia, accounting of disbursements 110:29
Motor fuel distributors, appeal from cancelation of license 265:11
Motor vehicle commissioner, approval of seal 259:5
Motor vehicle road toll regulations, appeal from 265:26
Placing in force sabotage prevention act 589:14
Approval of purchase of equipment and supplies for state guard 111:8

Natural Resources

Aerial survey of state 2:1-4
Cannon Mountain Aerial Tramway, approval of plans as to 227:3
Fish and Game, acquisition of land or waters by condemnation 212:2,3
Flowage of public lands, powers as to 482:33,
Forestry and recreation commission -
  custody of certain historic places, transfer to commission 216:5
  federal funds, approval of expenditure of 216:4
Forests -
approval of acts of director of forestry as to 218:5
closing by proclamation 207:31-35
excess over state tax of abatement allowed on account of public
forest lands, approval of payment of 219:30
exchange of state forest lands for U. S. lands 219:35
land conveyed to state for reforesting, approval of sale of land
or timber 221:4
national forest funds, determination of expenditures in un-
organized places 219:25
prohibiting smoking or kindling of fires during draught 224:32
recreational areas, approval of services and accommodations and
development of 219:12
approval of reservations 219:1
United States, agreement for administration and maintenance
121:5
white pine blister, ordering towns to carry out control measures
223:9
Lake levels investigation to be reported to 484:2
Approval of mining claim on state forest lands or reservations 219:19
Recreational facilities, approval of acts of director of recreation
218:5
Recreation director's acts as requiring approval 218:5 (III)
Water resource board -
approval of projects 481:7
approval of contracts for construction of projects, or for use
of stored water 481:8
approval of weather modifying experimentation 432:1
white pine blister control measures 223:9

Public Works

Eminent domain, powers of 4:30-38
Highways -
approval of disposal of land or property acquired for 229:10
approval of improvement of class II highway 240:1
laying out -
commission to lay out -
appointment of 232:1
to public waters 232:3, 235:2
report 233:19
damages for, review of 233:18
hearing on 233:1, 2
occasion for, determination of 233:1
to public waters 234:1
limited access, determination of occasion 236:2
public waters to -
discontinuance, as requiring consent 238:1
laying out 232:3, 235:1, 2
sale of excess land to be approved by 233:23
Public works and highway commissioner, expenditures to be approved 229:7
Public works contracts -
  approval of 228:4
  review of rejection of bid 228:4

State Administration

Accounting procedures of state departments to be approved 8:13
Aircraft, approval of purchase and operation of by the aeromastics commission 422:10
Appropriations, transfer to be approved 9:16,17
Athletic commission -
  participants' fees to be approved 285:17
  approval of regulations 285:9,12,13
Athletic fund, disbursement of 285:5
Approval of bond of members of liquor commission 176:5
Buildings repairs, emergency 4:19,20
Competitive bidding, power to dispense with 8:19
Expenditures, departmental, control over 4:15
Federal aid -
  application for and administration of 124:4
  authority to seek 124:1
Fees of special counsel in proceedings against public utility to be approved 374:47
Fireman's relief fund, regulations for appointment and disbursement to be approved 402:70
Incidental expenses of state, allowance of 4:16
Inheritance tax division bills to be approved 86:4
Institutional lands, powers in respect of 10:4
Interstate bridge contracts, approval by 229:15
Memorials in state buildings, powers in respect of 4:9
Officers appointed by Const. Pt. 2nd, Art. 46,47
Postage bills, allowances of 4:16
Prosecution of violation of liquor laws, approval of compensation of 182:2
Purchase and property, director of, to be approved 8:15
Purchases by state agencies, direct, power to approve 8:23
Real Estate, acquisition and disposal 4:29-40
Records, early printing of to be approved 20:9
Removal of public officers 4:1, 91:3
Reports, departmental, to be submitted to 20:6
Rooms to departments, assignment of 4:6, 4:7
Salaries, fixing for new appointees to certain state offices 94:6
Stationary, departmental, allowance for 4:16
Supreme Court, retirement of justices 490:2
Superior Court, retirement of justices 491:2
Surveyors maps and records, purchase of 4:17
Tax abatement, approval of amount to towns containing forest reserves 219:30
Tax commission, approval of employment of experts by, in determining
franchise taxes  63:17
Terms of department heads, power to designate  4:5
Terms of office of members of boards, commissions, or committees,
staggering of  4:1
United States, approval of acquisition of land by  121:3
Vacancies, anticipated, power to fill  4:3
Vacating office of trustee of state institution  4:2
Witnesses before tax commission, approval of fees of  71:9
Witnesses, summoning of  4:28

Treasury

Borrowing -
by state treasurer, supervision of  6:13
for emergency repairs  4:20
Debt limit, power to authorize excess for purpose of obtaining federal aid  121:3
Depositaries of state funds to be approved  6:7
Emergency borrowing by counties, towns, or cities, supervision over  13:2,3,5,6, 33:6
Emergency fund  4:18
Investigatory powers concerning state funds etc.  9:12
Investment of state funds, duties as to  6:8,9
Revolving funds, authorization for  9:15
School bond issues, approval of  196:7
Supervision of administration of state trust funds  11:1,2,4
Warrants on state treasury -
  power and duty to draw  4:14
  damages awarded for taking by state  4:38
  to pay money due any state under New England Interstate Forest Fire Protection Compact  226:8

Welfare and Health

Fuel administrator, regulations, reviewability  339:1,3
Funeral directors and embalmers, accounting of receipts and expenditures
by board of  325:39
Hospital, state -
  authority over  10:1
  supervision of  10:1, 135:2,3,7,9
Daconia state school, authority over  10:1
Mental health commission to report to  135:38
Mental health council to report to  133:3
Nursing -
  approval of advisory committee to board of examiners  326:14
  approval of appointment of director of nursing education  326:2
Pharmacy and practical chemistry commission, inspectors, approval of
employment of  318:9
Psychopathic institution, plans and specifications as requiring approval of 173:7 (1)
Veterinary examiners, board of, allowances of expenses 332:5

Miscellaneous
Arbor Day, proclamation of 221:19
Canvass of election returns -
  congressional runoff elections 62:11
  Senatorial election Const., Pt. 2nd, Art. 33
Children's study home, expenditures for, as requiring approval 134:2
Dairying, account of expenditures for promotion of 441:6
General Court, prorogation of Const., Pt. 2nd, Art. 50
Granite State Dairymen's Association, accounting of expenditures for promotion of dairying 441:6
Hawkers and peddlers licenses, approving expense of help in issuing 320:16
Legislative council, reference to 17:4
Legislature, power to adjourn or prorogue Const., Pt. 2nd, Art. 50
  special sessions 16:6
Officers or employees, state, disqualification of persons entering armed services of United States 112:5
Pilotage fees, fixing of 271:3
APPENDIX C

Statutory Powers of the Executive Council of Massachusetts

Administration of Justice

Discharge or release of person acquitted of murder on ground of insanity 123:88, 101
Reprieve or respite of execution of death penalty 279:47-49
Approval of salary of probation commissioner 276:98
Reward for apprehension of criminals 276:9
Removal from office of sheriff 37:7

Civil Service

Approval of civil service rules 31:3

Corrections

Classification of prisoners in state prisons 127:20
Approval of rules and regulations for penal institutions 124:1
Approval of transfer of prisoners 127:98, 108
Visits to state prison 125:12
Approval of sites for camps for male prisoners prior to release or parole 127:83-E
Approval of rules and regulations as to outside employment of female prisoners 127:85
Approval of matters as to prisoners confined for drunkenness employed in outside day work 127:86-A, 86-B

Department of Labor and Industries

Approval of bond, director of employment security 151-A:35
Approval of establishment of free employment offices 149:160
Approval of destruction or sale of old records of statistics of labor and manufactures 149:173
Regulations for continued operation of industries in industrial disputes endangering public safety or health 150-B:4

1 Citations are to Massachusetts, Massachusetts Statutes Annotated
Education

Approval of leases by trustees of University of Massachusetts 75:27
Approval of investment of Massachusetts school fund 70:2
Approval of lease, Lowell Technological Institute 75-A:20
Approval of schools and workshops for training and employment of the blind 69:14
Approval of advances to director of division of the blind 69:24

Military Affairs and Public Safety

Acquisition of property for armories and drill grounds 33:33-35
Approval of rules and regulations for fire department equipment 48:87

Natural Resources

Approval of establishment of shellfish purification plants 130:76
Approval of state park regulations 132-A:7
Approval of open season on deer 131:80
Approval of agreements with other states by division of marine fisheries 21:8-A
Approval of establishment of trout restriction areas 131:14
Approval of receipt of trust funds for wild life sanctuaries 131:90
Approval of location of state parks and reservations 132-A:3-A

Public Works

Approval of expense of removal of obstruction to navigation 91:41
Discharge of public works bonds 30:40
Approval of purchase of land by Department of Public Works 81:3
Approval of deed upon sale of property acquired for highway purposes 81:7-E
Taking by eminent domain to be made by governor and council 79:2
Approval of acts beyond the line of riparian ownership, affecting level of waters of great ponds 91:13
Approval of contracts for preservation of harbors and repair of storm damages on coast line or river banks 91:31
Approval of contracts for repair of storm damage on state highways 81:8

State Administration

Accounts and demands against Commonwealth 7:13
Action for breach of condition of public grant or conveyance 245:2
Appeals in cases of conflicting jurisdiction of powers or departments 30:5
Approval of conveyance, contracts, and leases of Commonwealth lands 91:2
Appointment of emergency commissions with respect to food, fuel, etc.  
23:9-H
Approval of leases of port facilities  91:9-A
Approval of leases of state property to federal government for purpose of rehabilitation of veterans  74:41
Fixing compensation of commissioners appointed by governor  6:12
Fixing compensation of legal counsel appointed by governor  6:12
Removal of state officers appointed by governor and council  30:9
Salaries of land court officers  185:14

Treasury

Approval of investment of state funds  29:38
Approval of participation by state treasurer in bank reorganization  167:20-A

Miscellaneous

Concurrence in sale of park lands by Metropolitan District Commission  92:85
Reimbursement of delegates to national conventions  6:11
Approval of rules of practice before Department of Public Utilities  25:4
Licensing of warehousemen  105:1
Approval of rules and regulations of Youth Service Board  120:4
Approval of costs of conservatorship of trust companies  172:87
Approval of rules and regulations for Tewksbury State Hospital  122:2
Removal of notaries public  Const., Amends., Art. XXXVII
Examination and certification of election results  54:115,116,118,123
Approval of regulations establishing grades of milk  94:13-A
## APPENDIX D

### Appointments made by the Governor, with the Advice and Consent of the Council, State of Maine

#### DEPARTMENT HEADS

<table>
<thead>
<tr>
<th>Position</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief of State Police</td>
<td>15:1</td>
</tr>
<tr>
<td>Commissioner of Finance and Administration</td>
<td>15-A:1</td>
</tr>
<tr>
<td>Commissioner of Health and Welfare</td>
<td>25:1</td>
</tr>
<tr>
<td>Commissioner of Labor and Industry</td>
<td>30:1</td>
</tr>
<tr>
<td>Forest Commissioner</td>
<td>36:1</td>
</tr>
<tr>
<td>Commissioner of Inland Fisheries and Game</td>
<td>37:1</td>
</tr>
<tr>
<td>Commissioner of Sea and Shore Fisheries</td>
<td>38:1</td>
</tr>
<tr>
<td>Commissioner of Department of Economic Development</td>
<td>38-A:1</td>
</tr>
<tr>
<td>Bank Commissioner</td>
<td>59:1</td>
</tr>
<tr>
<td>Insurance Commissioner</td>
<td>60:2</td>
</tr>
<tr>
<td>Commissioner of Institutional Service</td>
<td>27:1</td>
</tr>
<tr>
<td>Director of Department of Civil Defense and Public Safety</td>
<td>12:4</td>
</tr>
</tbody>
</table>

#### BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Board Name</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Board of Education</td>
<td>41:2</td>
</tr>
<tr>
<td>Board of Equalization</td>
<td>16:65</td>
</tr>
<tr>
<td>Board of Arbitration and Conciliation</td>
<td>30:15</td>
</tr>
<tr>
<td>Board of Boiler Rules</td>
<td>30:64</td>
</tr>
<tr>
<td>State Highway Commission</td>
<td>23:3</td>
</tr>
<tr>
<td>Public Safety Council</td>
<td>12:5</td>
</tr>
<tr>
<td>State Probation and Parole Board</td>
<td>27-A:2</td>
</tr>
<tr>
<td>Maine Employment Security Commission</td>
<td>29:1</td>
</tr>
<tr>
<td>Industrial Accident Commission</td>
<td>31:29</td>
</tr>
<tr>
<td>Maine Milk Commission</td>
<td>32:2</td>
</tr>
<tr>
<td>Public Utilities Commission</td>
<td>44:1</td>
</tr>
<tr>
<td>Liquor Commission</td>
<td>61:3</td>
</tr>
<tr>
<td>State Personnel Board</td>
<td>63:3</td>
</tr>
<tr>
<td>State Harness Racing Commission</td>
<td>86:1</td>
</tr>
<tr>
<td>State Running Horse Racing Commission</td>
<td>87:1</td>
</tr>
<tr>
<td>Maine State Boxing Commission</td>
<td>88:1</td>
</tr>
<tr>
<td>Maine State Park Commission</td>
<td>36:31</td>
</tr>
<tr>
<td>Boards of Registration (of Voters)</td>
<td>3:11</td>
</tr>
</tbody>
</table>

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1Citations are to Maine, Revised Statutes

212
Registration Commissioner of Peter Dana Point Voters 5:65-B
Registration Commissioner of Indian Island Voters 5:65-A
Registration Commissioner of Pleasant Point Voters 5:65-C
Commission of Uniform State Laws 10:33-A
Maine Motor Vehicle Dealer Registration Board 22:21
Aeronautics Commission 24:1
Plumbers' Examining Board 25:180
Board of Examiners of Funeral Directors 25:196
State Board of Barbers and Hairdressers 25:216
Panel of Mediators 30:11
Seed Potato Board 32:146
State Soil Conservation Committee 34:3
Atlantic Sea Run Salmon Commission 38:38
New England Board of Higher Education 41-A:4
Board of Registration in Medicine 66:1
Board of Examiners of Psychologists 67:1
Board of Commissioners of the Profession of Pharmacy 68:1
Board of Registration of Nurses 69:1
Board of Osteopathic Examination and Registration 71:1
Board of Chiropractic Examination and Registration 72:1
Board of Dental Examiners 73:1
Examiners of Podiatrists 74:1
Board of Registration and Examination in Optometry 76:1
Board of Veterinary Examiners 77:1
Water Improvement Commission 79:1
New England Interstate Water Pollution Control Commission 79-A:5
Art Commission 85:1
Judicial Council 113:195
Advisory Hospital Council 25:36
Advisory Committee on Alcoholism 25:92
Advisory Council, Department of Inland Fisheries and Game 37:4
Advisory Council, Department of Sea and Shore Fisheries 38:4
Advisory Board, Department of Economic Development 38-A:7
School District Commission 41:111-B
Economia Advisory Board of the State Highway Commission 23:129
Approving Committee of the Board of Registration of Nurses 69:8

MISCELLANEOUS

State Librarian 42:1
State Historian 43:1
Deputy Commissioner of Inland Fisheries and Game 37:1
Administrative and Operative Assistants, Department of Civil Defense and Public Safety 12:4
Hearing Examiner for the State Liquor Commission 61:56
Coordinator of Atomic Development Activities 52-A:5
Reporter of Decisions (of the Supreme Judicial Court) 104:1
Inspector of Dams and Reservoirs 180:46
Director of Division of Veterans Affairs 26:1
Dedimus Justices 11:7
Medical Examiners 89:243
Pilots 99:1
Trial Justices 110:1
Commissioners to Take Depositions 117:30
State Humane Agents 140:23
Private Detectives 144:14
Probation Officers 144:24
Public Administrators 154:48
Notaries Public Const., Pt. 1st, Art. V:8

Tri-State Authority 28:2
Maine Industrial Building Authority 38-B:4
APPENDIX E

Appointments made by the Governor, with the
Advice and Consent of the Council,
State of New Hampshire

DEPARTMENT OF STATE

State Board of Accountancy (3) 309:2
State Board of Registration for Architects (3) 310:2
State Athletic Commission (3) 213:1
Ballot-Law Commissioners (2) 68:1
Board of Chiropractic Examiners (3) 319:3
State Board of Registration for Professional Engineers (5) 319:3
Board of Registration in Optometry (5) 327:3

Adjutant-General 110:23,25

DEPARTMENT OF ADMINISTRATION AND CONTROL

Comptroller 8:2
New Hampshire Aeronautics Commission (5) 422:4
Trustees of the University of New Hampshire (8) 187:5

DEPARTMENT OF AGRICULTURE

Commissioner of Agriculture 426:1
Board of Veterinary Examiners (3) 332:2
Milk Control Board (3) 183:3
Agricultural Advisory Board (10) 429:1

Atlantic States Marine Fisheries Commission (1) 285:1
Coordinator of Atomic Development Activities L.1955/281

1 Citations are to New Hampshire, Revised Statutes Annotated
Attorney-General 7:1
Deputy Attorney-General 7:1
Director of Chritable Trusts 7:20
Commission to Study Uniform State Laws (2) 18:1

Bank Commissioner 383:1
Deputy Bank Commissioner 383:1

State Cancer Commission (5) 139:1

Civil Defense Advisory Council (10) 107:5
State Director of Civil Defense 107:3

Connecticut River Valley Flood Control Commission (3) 487:3

DEPARTMENT OF EDUCATION

State Board of Education (7) 186:2
Finance Commission of Manchester (3) L.1921/226 and L.1957/434
State Board of Fire Control (5) 153:2
The Permanent Firemen's Retirement Board (2) 102:3

Fish and Game Commission (10) 206:2
Advisory Committee on Shore Fisheries (3) L.1957/176

Forestry and Recreation Commission (5) 216:1
Northeastern Forest Fire Protection Commission (2) 226:4

STATE HEALTH DEPARTMENT

State Board of Health (7) 125:6
Commission on Alcoholism (6) 172:3
Barbers' Examining and Licensing Board (3) 313:3
State Board of Examiners in Chiropody (2) 315:2
New Hampshire State Dental Board (3) 312:1
State Board of Registration of Funeral Directors and Embalmers (4) 325:3,7,5
Board of Registration of Hairdressers (3) 314:2
Board of Registration in Medicine (4) 329:4
Commission of Pharmacy and Practical Chemistry (3) 318:2
Tuberculosis Commission (6) 136:1
Hospital Advisory Council (8) 151:10

Industrial Park Authority (8) 162-A:4,5
Boards of Trustees of State Institutions:
State Prison (6) 10:1, 615:3
Industrial School (6) 621:6

Board of Probation (3) 504:7

Boards of Trustees of State Institutions (Hospitals):
New Hampshire State Hospital (6) 10:1
Laconia State School (7) 10:26
New Hampshire State Sanatorium (3) 10:2, 138:2

Board of Managers of the New Hampshire Soldiers' Home (5) 119:2

INSURANCE DEPARTMENT

Commissioner of Insurance 400:1
Deputy Commissioner of Insurance 400:4

Judicial Council (7) 494:1

DEPARTMENT OF LABOR

Commissioner of Labor 273:1
State Board of Conciliation and Arbitration (3) 273:12
Advisory Council on Unemployment Compensation (7) 282:9-R
State Apprenticeship Council (8) 278:2
Board of Appeal (2) 280:3

State Library Commission (5) 201:2

State Liquor Commission (3) 176:1

Maine-New Hampshire Interstate Bridge Authority (3) 258:4

Medical Referees 611:1
Rockingham (2)
Strafford (1)
Belknap (1)
Carroll (1)
Merrimack (1)
Hillsborough (3)
Cheshire (1)
Sullivan (1)
Grafton (3)
Coos (3)

Merrimack River Valley Flood Control Commission (3) 487-A:3
MOTOR VEHICLE DEPARTMENT

Commissioner of Motor Vehicles 259:2
Passenger Tramway Safety Board (4) 225-A:3
Personnel Commission (3) 98:5,6
State Planning and Development Commission (5) 12:1
Police Commissions L.1913/148 and L.1947/342
Berlin (3)
Claremont (3)
Dover (3)
Laconia (3)
Manchester (3)
Nashua (3)
Portsmouth (3)
Somersworth (3)

New Hampshire Police Retirement Board (5) 103:3

DEPARTMENT OF STATE POLICE

Superintendent (1) 166:2
New Hampshire State Port Authority (5) 271-A:1
Board of Examiners of Psychologists (3) L.1957/121
Public Utilities Commission (3) 363:3,7,10

DEPARTMENT OF PUBLIC WELFARE

Board of Public Welfare (3) 161:3
State Veterans' Council (3) 116:1,4

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

Commissioner of Public Works and Highways 229:1
State Racing Commission (3) 264:6
Board of Trustees of the Employees' Retirement System (5) 100:12
Seacoast Water Commission (23) L.1957/364
State Soil Conservation Committee (2) 430:2
Board of Trustees, New Hampshire Teachers' Retirement System (2) 192:10(I)

New Hampshire Water Pollution Commission (4) 149:2,4

New England Interstate Water Pollution Control Commission (5) 229:15

New Hampshire Water Resources Board (5) 481:11
APPENDIX F

Appointments made by the Governor, with the Advice and Consent of the Council, Commonwealth of Massachusetts

OFFICE OF THE GOVERNOR

Executive Secretary 6:6
Stenographer 6:6
Assistant Stenographer 6:6
Messenger 6:6
Administrative Secretary 6:6-A
Executive Stenographer 6:6-A

CIVIL DEFENSE ADVISORY COUNCIL

Director, Division of Civil Defense L.1950/639:2

COMMISSION ON ADMINISTRATION AND FINANCE

Commissioner of Administration 7:3
Comptroller 7:4
Budget Commissioner 7:4
State Purchasing Agent 7:4
Advisory Committee, Division of Hospital Costs and Finances (7) 7:6-D
State Employees' Group Insurance Commission (3) 32-A:3

STATE SUPERINTENDENT OF BUILDINGS

Superintendent 8:1,2

1This table is based on Massachusetts Federation of Taxpayers, Organization of the Executive Branch, Massachusetts State Government. (Boston: Massachusetts Federation of Taxpayers, 1957). Citations are to Massachusetts, Massachusetts Statutes Annotated.
BOARD OF TRUSTEES OF THE STATE LIBRARY
Members of the Board (3)  6:33
Librarian       6:35

STATE BALLOT LAW COMMISSION
Commissioners (3)  6:29

COMMISSIONER OF VETERANS' SERVICES
Commissioner  6:22
Deputy Commissioner  6:24
Second Deputy Commissioner  6:24
Supervisor of Benefits  6:22

BOARD OF COMMISSIONERS ON UNIFORM STATE LAWS
Members of Board (3)  6:26

BOARD OF TRUSTEES OF THE SOLDIERS' HOME IN MASSACHUSETTS (CHELSEA)
Members of the Board (7)  6:40

BOARD OF TRUSTEES OF THE SOLDIERS' HOME IN HOLYOKE
Members of the Board (7)  6:70

COUNCIL FOR THE AGING
Members (4)  6:73

YOUTH SERVICE BOARD
Members (3)  6:75

ADVISORY COMMITTEE ON SERVICE TO YOUTH
Members (15)  6:69

STATE HOUSING BOARD
Members (5)  6:64
ALCOHOLIC BEVERAGES CONTROL COMMISSION

Commissioners (3) 6:43

STATE RACING COMMISSION

Commissioners (3) 6:48

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Commissioners (3) 6:56

ART COMMISSION

Commissioners (5) 6:19

GREYLOCK RESERVATION COMMISSION

Commissioners (3) 6:16

MASSACHUSETTS REHABILITATION COMMISSION

Commissioner of Rehabilitation 6:75
Advisory Council (5) 6:76

MASSACHUSETTS COMMISSION ON ATOMIC ENERGY

Members (6) 6:86
Co-ordinator of Atomic Development Activities 6:87

ADVISORY COUNCIL ON ALCOHOLISM

Commissioner on Alcoholism 6:94

FINANCE ADVISORY BOARD

Members (1) 6:97

MASSACHUSETTS PORT AUTHORITY

Members (7) L.1956/465
NEW ENGLAND INTERSTATE WATER POLLUTION COMMISSION
Members (4) L.1947/421

NEW ENGLAND BOARD OF HIGHER EDUCATION
Members (3) L.1954/589

MOUNT EVERETT RESERVATION COMMISSION
Members (3) L.1908/571

PURATORY CHASM STATE RESERVATION COMMISSION
Members (3) L.1919/327

WACHUSETT MOUNTAIN STATE RESERVATION COMMISSION
Members (3) L.1899/378

MASPHEE ADVISORY COMMISSION
Members (3) L.1932/223

CONNECTICUT RIVER VALLEY FLOOD CONTROL COMMISSION
Member for Massachusetts (1) L.1951/692:3

DEPARTMENT OF THE STATE TREASURER

COMMISSIONERS ON FIREMEN'S RELIEF
Commissioners (2) 10:21

EMERGENCY FINANCE BOARD
Members (3) L.1933/49

DEPARTMENT OF AGRICULTURE
Board of Agriculture (7) 20:1
Commissioner of Agriculture 20:1
Assistant Commissioner 20:4
Milk Control Commission 20:7
DEPARTMENT OF BANKING AND INSURANCE

Commissioner of Banks 26:2
Small Loans Regulatory Board (2) 26:5-A
Commissioner of Insurance 26:6
Board of Appeal on Fire Insurance Rates (2) 26:8
General Insurance Guaranty Fund Trustees (7) 26:10

DEPARTMENT OF CIVIL SERVICE AND REGISTRATION

Civil Service Commission (5) 13:2,2-A
Director, Division of Registration 13:8
Board of Registration in Medicine (7) 13:10
Approving Authority for Colleges or Universities Giving Pre-Medical Work and for Medical Schools (1) 112:2
Board of Registration in Chiropody (5) 13:12-A
Board of Dental Examiners (5) 13:19
Board of Registration in Nursing (6) 13:15
Approving Authority for Schools for Nurses and Schools for Practical Nurses (3) 13:15-A
Approving Authority for Schools for the Training of Medical Laboratory Technologists (3) 112:2-B
Board of Registration in Optometry (5) 13:16
Board of Registration in Pharmacy (5) 13:22
Board of Registration in Veterinary Medicine (5) 13:26
Board of Registration in Embalming and Funeral Directing (5) 13:29
State Examiners of Electricians (2) 13:32
Board of Registration of Certified Accountants (5) 13:33
Board of State Examiners of Plumbers (3) 13:36
Board of Registration of Barbers (3) 13:39
Board of Registration of Hairdressers (3) 13:42
Board of Registration of Architects (5) 13:44-A
Board of Registration of Professional Engineers and Land Surveyors (6) 13:45
Board of Registration of Dispensing Opticians (5) 13:48

DEPARTMENT OF COMMERCE

Commissioner 23-A:1.2

DEPARTMENT OF CORPORATIONS AND TAXATION

State Tax Commission (Commissioner, 2 Associate Commissioners) 14:2
Appellate Tax Board (5) 58-A:1
DEPARTMENT OF CORRECTION

Commissioner  27:1
Parole Board  (5)  27:4

DEPARTMENT OF EDUCATION

Board of Education  (9)  15:1-A
Director, Division of the Blind  15:4, 13
Advisory Board, Division of the Blind  (5)  15:13
State Board for Vocational Education  (1)  15:6-A
Board of Collegiate Authority  (4)  15:3-A
Board of Library Commissioners  (5)  15:9
Massachusetts Board of Educational Television  (4)
L.1953/662:1,2
Board of Immigration and Americanization  (6)  15:12
School Building Assistance Commission  (3)  L.1948/645
Board of Trustees, University of Massachusetts  (14)  15:19,20
Board of Trustees, Bradford Durfee (Fall River) Technical Institute  (15)  15:19,21
Board of Trustees, New Bedford Institute of Textiles and Technology  (15)  15:19,21
Board of Trustees, Lowell Technological Institute of Massachusetts  (15)  15:19,24
Board of Commissioners, Massachusetts Maritime Academy  (5)  15:19,22
Deputy Directors, Division of Youth Service  (2)  6:65

DEPARTMENT OF LABOR AND INDUSTRIES

Commissioner  23:1,2
Associate Commissioners  (3)  23:1,2
Assistant Commissioner  23:1,2
Labor Relations Commission  (3)  23:9-0
Director, Division of Employment Security  23:9-I
State Advisory Council, Division of Employment Security  (6)  23:9-N
Board of Review  (3)  23:9-N
Industrial Accident Board  (11)  23:15
Industrial Accident Rehabilitation Board  (5)  23:24

DEPARTMENT OF MENTAL HEALTH

Commissioner  19:1,2
Boards of Trustees:  19:5,6
Boston State Hospital  (7)
Cushing Hospital  (7)
Danvers State Hospital  (7)
Foxborough State Hospital  (7)
Gardner State Hospital (7)
Grafton State Hospital (7)
Massachusetts Mental Health Center (7)
Medfield State Hospital (7)
Metropolitan State Hospital (7)
Monson State Hospital (7)
Norfolk State Hospital (7)
Northampton State Hospital (7)
Taunton State Hospital (7)
Westborough State Hospital (7)
Worcester State Hospital (7)
Belchertown State School (7)
Myles Standish State School (7)
Walter E. Fenald State School (6)
Wrentham State School (7)

DEPARTMENT OF NATURAL RESOURCES

Board of Natural Resources (5) 21:2,2-A,2-B,2-C
Fish and Game Board (5) 21:7,7-B,7-E
Atlantic States Marine Fisheries Commission (1) L.1941/489:3
Water Resources Commission (3) 21:8,9

DEPARTMENT OF PUBLIC HEALTH

Public Health Council (6) 17:3
Commissioner 17:2
Board of Trustees of Massachusetts Hospital School and Hospital for State Minor Wards (5) 111:3-A
Commission on Hypertension (3) 17:11

DEPARTMENT OF PUBLIC SAFETY

Commissioner 22:1,2
State Fire Marshal 22:4
Board of Elevator Regulations (8) 22:11
Board of Fire Prevention Regulations (6) 22:14
Board of Standards (7) 22:13
Board of Teletypewriter Regulations (2) 22:9-F
State Boxing Commission (2) 22:12
Board of Schoolhouse Structural Standards (4) L.1955/675

DEPARTMENT OF PUBLIC UTILITIES

Public Utilities Commission (7) 25:2
DEPARTMENT OF PUBLIC WELFARE

Advisory Board (15) 18:2,3
Commissioner 18:2
Board of Trustees, Tewksbury State Hospital and Infirmary (7) 18:8

DEPARTMENT OF PUBLIC WORKS

Commissioner 16:2
Associate Commissioners (2) 16:2
Outdoor Advertising Board (2) 16:5-D
Registrar of Motor Vehicles 16:5

METROPOLITAN DISTRICT COMMISSION

Commissioner 28:1
Associate Commissioners (4) 28:1

MASSACHUSETTS TURNPIKE AUTHORITY

Members (3) L.1952/354:3

MOUNT GREYLOCK TRAMWAY AUTHORITY

Members (4) L.1953/606

BOSTON ARENA AUTHORITY

Members (4) L.1953/669:2

NEW BEDFORD, WOODS HOLE, MARTHA'S VINEYARD AND NANTUCKET STEAMSHIP AUTHORITY

Members (5) L.1948/544:3

METROPOLITAN TRANSIT AUTHORITY

Trustees (3) L.1953/197:2 and L.1955/725:2

BOSTON METROPOLITAN (TRANSIT) DISTRICT

Trustees (4) L.1929/383
BOSTON FINANCE COMMISSION

Members (5) L.1909/486

BOSTON LICENSING BOARD

Members (3) L.1906/291

POLICE COMMISSIONER OF THE CITY OF BOSTON

Commissioner L.1906/291:7

SALEM-BEVERLY WATER SUPPLY BOARD

Chairman L.1913/700

BOARD OF EXCISE FOR CITY OF CHELSEA

Members (3) Spec. L.1916/310

COUNTY OFFICERS AND AGENCIES

Medical Examiners 38:1
Associate Medical Examiners 38:1
Suffolk County Court House Commission (1) L.1939/383:1
Commissioners of Pilots, Districts 1, 2, 3, 4 (5) 103:2
Merrimack River Valley Sewerage Board (Inactive) (5)
L.1936/420:2
South Essex Sewerage Board (1) L.1925/339:2
Blackstone River Valley District Board (inactive) (5)
L.1936/248:2
Trustees, Bristol County Tuberculosis Hospital (3) 111:87-A
Trustees, Bristol County Agricultural School (4) 74:26
Trustees, Essex County Agricultural School (4) 74:26
Trustees, Norfolk County Agricultural School (4) 74:26

MERRIMACK RIVER VALLEY FLOOD CONTROL COMMISSION

Member for Massachusetts (1) L.1956/608:2,3
APPENDIX G

Political Composition of the Executive Council

State of New Hampshire

1901-1960, by Councillor Districts

<table>
<thead>
<tr>
<th>Term</th>
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R = Republican
D = Democrat

229
# APPENDIX H

## Political Composition of the Executive Council

Commonwealth of Massachusetts

1900-1960, by Councillor Districts

<table>
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<th>Year</th>
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230
## APPENDIX H--Continued

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R-Republican  
D-Democrat  
D-P - Democrat-Progressive
BIBLIOGRAPHY
BIBLIOGRAPHY

Books and Monographs


Ransome, Coleman B., Jr. *The Office of Governor in the South,* University, Alabama: Bureau of Public Administration, University of Alabama, 1951.


**Articles and Periodicals**


Portland (Me.) Press Herald. 1959.


Public Documents


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Maine, Register of the Executive Department, 1929. Augusta: [The State], 1929.

Massachusetts. Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay; to which are prefixed the Charters of the Province, 21 vols. Boston: Wright and Potter, Printers to the State, 1869-1922.

---


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Documents Printed by Order of the Constitutional Convention of the Commonwealth of Massachusetts, during the Session A.D. 1853. Boston: Wright and Potter, Printers to the State, 1853.

---

Governor, 1858-61 (Banks), "Address to the Council, January 11, 1859, "Acts and Resolves passed by the General Court of Massachusetts. Boston: William White, Printer to the State, 1859.


Document No. 23.

Document No. 74.

Document No. 77.

Document No. 78.

Document No. 95.


U. S. Congressional Directory. 79th Congress, 2d. session, 1946. 2d. ed.

Richmond: Division of Purchase and Printing, 1958

Laws, Constitutions, and Cases


Colorado. Revised Statutes 1953.


——. Charter (1662).


Loring v. Young, 239 Massachusetts Reports, 349, (1921).

Kentucky. Revised Statutes.


Minnesota. Statutes 1957.

Murphy v. Casey, 300 Massachusetts Reports, 232.

- Public Laws of the State of New Hampshire, 1926.
  Manchester: The Clarke Press, 1925.

- Public Statutes of the State of New Hampshire, 1891.
  Concord: Edson C. Eastman, 1891.

- Public Statutes of the State of New Hampshire, 1901.
  Concord: Edson C. Eastman, 1900.

- General Laws of New Hampshire, 1878.
  Manchester: John B. Clarke, State Printer, 1878.

- Revised Laws of the State of New Hampshire, 1942.
  Concord: Rumford Press, 1942.

- Revised Statutes Annotated 1955.

- Supplement to the Public Statutes of New Hampshire, 1901.
  Concord: Edson C. Eastman, 1914.


- Constitution of the State of New York as Amended and in Force, January 1, 1952.

- Laws of 1927, Chapter 526.
- Laws of 1946, Chapter 433.
- Laws of 1949, Chapter 352.

North Carolina, Constitution.

Opinion of the Justices, 131 Maine Reports, 511.
Opinion of the Justices, 211 Massachusetts Reports, 632, 635.
Opinion of the Justices, 231 Massachusetts Reports, 603.
Opinion of the Justices, 98 New Hampshire Reports, 530, 533.

Pennsylvania, Constitution (1776).

- Purdon's Pennsylvania Statutes.
Rhode Island, Constitution of the State of Rhode Island and Providence Plantations.

Tennessee, Code.

U. S. Constitution.

Vermont, Constitution.


Unpublished Material

Communication to the writer, dated May 6, 1959, from Maine State Department of Personnel, Augusta, Maine.

Communication to the writer, dated January 20, 1959, from Department of State, State of Maine, Augusta, Maine.


Maine, Council Files, meeting of October 8, 1958.

Journals of the Council (1820-).

Registers of the Council (1820-).


Massachusetts, Executive Department, Nomination List, September 17, 1958.

Minutes of the Meetings of His Excellency the Governor and Council Council Chamber, Boston, Mass., (1953-1959).


Report on Governor's Councils, Cabinets, etc., in the states of the Union, prepared by Maine State Library, Augusta, Maine, 1958.


Statistics on membership of Council, Commonwealth of Massachusetts, compiled by the author.

Statistics on membership of Council, State of New Hampshire, compiled by the author.


Interviews

In addition to the sources listed above, the author obtained much data for this paper in interviews with the following persons:


Hon. Clinton Clason, Governor of Maine, Augusta, Maine, May 27, 1959.
Hon. Lane Dwinell, Governor of New Hampshire, Concord, New Hampshire, July 31, 1958.


Hon. Charles Gabriel, Councillor, Commonwealth of Massachusetts, Boston, Massachusetts, October 20, 1958.


Hon. Elizabeth Shortbridge, Executive Secretary pro tem, Commonwealth of Massachusetts, Boston, Massachusetts, October 24, 1958.


ABSTRACT

When the thirteen American colonies won their independence from Great Britain, their early state constitutions made provision for an institution of government familiar to them through long colonial experience: the governor's council. Maine, New Hampshire and Massachusetts have retained the council to the present time. This dissertation presents the thesis that the council is an anachronism in modern state government, diffusing power and responsibility in the executive branch, and hindering the governor in effectively functioning as the state's chief administrator.

The council, originating in the boards of directors of the early English trading companies which sent out colonists to North America, served in colonial times as the upper house of the legislature, as a judicial court, and as an advisory council to the governor in the administration of the colony. The councillors, originally called "assistants," and usually appointed by the Crown or by the governor, were drawn from the upper classes and exercised a markedly conservative influence in colonial government, the colonists, in setting up state governments during the revolution, placed a definite check on the authority of the chief executive by retaining the council and making it elective by and responsible to the legislature. Nevertheless, the council was often under attack during the nineteenth century as outmoded and unnecessary.
The council is not properly speaking a cabinet. It performs advisory functions, but its members are not selected by the governor, are not department heads, and may not hold other state office. They continue to be chosen by the legislature in Maine, but have long been popularly elected in New Hampshire and Massachusetts. In these three states executive power is divided. Although the governor has sole authority to bring measures before the council for consideration, action requires the concurrent approval of both governor and council.

The abolition of the council in states other than Maine, New Hampshire, and Massachusetts was impelled by the steady growth of state government in size and scope. In the early days, a state's executive business could be handled by a part-time governor and council at occasional meetings. As state government has developed into an ever more active, complex instrument of public service, the council, deliberately designed to diffuse authority in the executive branch, has appeared increasingly an impediment to efficient administration, existing in defiance of the theory of executive responsibility.

Meeting briefly three or four times a month, without adequate staff, and composed of politicians not usually of gubernatorial calibre, the council lacks the expert knowledge that such functions as granting pardons and approving executive expenditures imperatively demand. Its power of approving appointments sometimes forces a virtual abdication by the governor of his constitutional prerogative to make appointments, and deprives him of the use of patronage as a tool of legislative leadership.
Surveys of state administration have called for either the abolition of the council altogether, or a sharp diminution of its powers. The writer believes that abolition would best serve the requirements of efficient state administration. The council's powers and duties, including the important powers of confirming the governor's appointments, of approving pardons and of awarding or approving state contracts, should be assigned to other state agencies or in some cases to the governor himself. Often under fire as a mere "rubber stamp" or as a partisan body obstructing the work of the governor, the responsible head of the state administration, the council fills no essential role in modern state government.
The author was born in Boston, Massachusetts, July 17, 1917. He was educated in the public schools of Boston, of Kansas City, Missouri, and of Watertown, Massachusetts. He attended Cambridge Junior College, and graduated from Columbia University in 1941 with an A. B. degree. After service in the Coast Artillery Corps and the Army Air Forces from 1942 to 1945, he attended Tufts College Graduate School, where he received the degree of A. M. in History in 1947. He attended Boston University Graduate School, commencing in 1950, and received the degree of A. M. in Political Science there in 1951. He is presently a candidate for the Ph. D. degree in Political Science at Boston University.

The author is at present Assistant Professor of Political Science at Citadel, in Charleston, South Carolina. His teaching experience began in 1948, when he was appointed to the faculty of Calvin Coolidge College in Boston, where he taught Government and History. He has subsequently taught at the University of Rhode Island (1951-1953), the University of Miami (1955-1956), and the University of Tampa (1956-1958). He has held a Falk Foundation Fellowship at Boston University (1953), a Teaching Fellowship at the same institution (1953-1954), and has served as visiting lecturer at Suffolk University, Boston, (1955), and at Northeastern University, Boston, (1958-1959).

He is a member of the Cum Laude Society, the Southern Political Science Association, and the Florida Historical Society. He is married, and at present resides in Charleston, South Carolina.