

Legislative Journal

TUESDAY, OCTOBER 11, 1977

Session of 1977

161st of the General Assembly

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SENATE

TUESDAY, October 11, 1977.

The Senate met at 1:00 p.m., Eastern Daylight Saving Time.

The PRESIDENT pro tempore (Martin L. Murray) in the Chair.

PRAYER

The Chaplain, Rabbi JEFFREY A. WOHLBERG of Beth El Temple, Harrisburg, offered the following prayer:

"Justice, justice," spoke the prophet so many centuries ago, yet the call often goes unanswered, its pursuit unfulfilled.

"Peace, peace," called another, but there is no peace; neither was there in his day nor is there in our own.

The world has advanced technologically but man has not progressed. We have the means to heal the body, the ability to mend the soul but we do not use them rightly. We cover our eyes rather than extend our hand while the ancient call rings out begging justice for the poor, equity for the weak, sympathy for those in need. May that call reach our ears and move our hearts, let us heed the ancient calls. Let us act in such a way as to live the ideals in which we believe. Let justice well up as the waters and righteousness as a mighty stream that our lives will not have been lived in vain.

"Justice, justice; peace, peace." May we so live as to make them reality. Amen.

The PRESIDENT pro tempore. The Chair thanks Rabbi Wohlberg, who is the guest this week of Senator Murray.

JOURNAL APPROVED

The PRESIDENT pro tempore. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator MESSINGER, further reading was dispensed with, and the Journal was approved.

SENATOR MESSINGER TO VOTE FOR SENATOR STOUT, SENATOR COPPERSMITH AND SENATOR ZEMPRELLI

Senator MESSINGER. Mr. President, I request a legislative leave of absence for today's Session only for Senator Stout and Senator Coppersmith and a legislative leave of absence for this week's Session for Senator Zemprelli and will be voting them.

The PRESIDENT pro tempore. The Chair hears no objection and the leaves of absence will be granted.

COMMUNICATIONS FROM THE GOVERNOR

NOMINATIONS BY THE GOVERNOR REFERRED TO COMMITTEE

The Secretary to the Governor being introduced, presented communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows, and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE BOARD OF THE PENNSYLVANIA NURSING HOME LOAN AGENCY

October 6, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Mrs. Maxine T. Segal, 2401 North 53d Street, Philadelphia 19131, Philadelphia County, Seventh Senatorial District, for appointment as a member of the Board of the Pennsylvania Nursing Home Loan Agency, to serve until October 10, 1979, and until her successor is appointed and qualified, vice Rev. William H. Gray, III, Philadelphia, resigned.

MILTON J. SHAPP.

SECRETARY OF THE COMMONWEALTH

October 7, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Honorable Barton A. Fields, 912 North Sixteenth Street, Harrisburg 17103, Dauphin County, Fifteenth Senatorial District, for appointment as Secretary of the Commonwealth, to serve until superseded, vice Honorable C. DeLores Tucker, Philadelphia, dismissed.

MILTON J. SHAPP.

COMMONWEALTH TRUSTEE OF TEMPLE UNIVERSITY—OF THE COMMONWEALTH SYSTEM OF HIGHER EDUCATION

October 6, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Samuel Rudofker, 1435 Culton Road, Gladwyne 19035, Montgomery County, Seventeenth Senatorial District for appointment as Commonwealth Trustee of Temple University—of the Commonwealth System of Higher Education, to serve until October 14, 1979, and until his successor is appointed and qualified, vice Carmen

Thomas Bello, M.D., deceased.

MILTON J. SHAPP.

RECALL COMMUNICATION REFERRED TO COMMITTEE

He also presented communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows, and referred to the Committee on Rules and Executive Nominations:

MEMBER OF THE BOARD OF TRUSTEES OF PHILIPSBURG STATE GENERAL HOSPITAL

October 6, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated August 24, 1977, for the appointment of the Very Reverend Monsignor Paul D. Panza, 400 South Fourth Street, Philipsburg 16866, Centre County, Thirty-fourth Senatorial District, for appointment as a member of the Board of Trustees of Philipsburg State General Hospital, to serve until the third Tuesday of January, 1979, and until his successor is appointed and qualified, vice C. Guy Rudy, Centre Hall, resigned.

I respectfully request the return to me of the official message of nomination in the premises.

MILTON J. SHAPP.

HOUSE MESSAGES

HOUSE BILLS FOR CONCURRENCE

The Clerk of the House of Representatives being introduced, presented for concurrence **HB 191**, which was referred to the Committee on Consumer Affairs.

He also presented for concurrence **HB 792**, which was referred to the Committee on Environmental Resources.

He also presented for concurrence **HB 559, 1187 and 1447**, which were referred to the Committee on Local Government.

He also presented for concurrence **HB 1190**, which was referred to the Committee on Military Affairs and Aeronautics.

REPORTS FROM COMMITTEES

Senator NOSZKA, from the Committee on Appropriations, reported, as committed, **HB 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1270, 1272, 1273, 1274, 1275, 1276 and 1279**; as amended, **HB 1283**.

Senator MCKINNEY, from the Committee on Constitutional Changes and Federal Relations, reported, as committed, **SB 968, 1021 and 1088**; as amended, **SB 386**.

Senator REIBMAN, from the Committee on Education, reported, as committed, **SB 1038 and 1048**.

Senator O'PAKE, from the Committee on Aging and Youth, reported, as committed, **SB 1141**.

RESOLUTIONS REPORTED FROM COMMITTEE

Senator MCKINNEY, from the Committee on Constitutional Changes and Federal Relations, reported without amendment,

the following House Resolutions, numbered and entitled:

No. 16—General Assembly memorialize Congress to designate January 15 as a national holiday in memory of Reverend Doctor Martin Luther King, Jr.

No. 119—General Assembly urge Congress expedite construction authorization of Arctic Gas Project.

The PRESIDENT pro tempore. The resolutions will be placed on the Calendar.

BILLS INTRODUCED AND REFERRED

Senators SCHAEFER, ZEMPRELLI, SCANLON, STOUT, MELLOW, ORLANDO, NOLAN and O'PAKE presented to the Chair **SB 1139**, entitled:

An Act amending the act of April 9, 1929 (P. L. 177, No. 175), entitled "The Administrative Code of 1929," increasing membership of professional licensing boards.

Which was committed to the Committee on State Government.

Senators SCHAEFER and EARLY presented to the Chair **SB 1140**, entitled:

An Act authorizing the Department of General Services, with the approval of the Governor and the Secretary of Public Welfare, to sell, at public sale to the highest bidder, a parcel of property located in Collier Township, Allegheny County.

Which was committed to the Committee on State Government.

Senators O'PAKE, MESSINGER, MURRAY, LEWIS, SCHAEFER, EARLY, NOLAN, DUFFIELD, GURZENDA, SCANLON, ROMANELLI, MELLOW, SMITH, STAPLETON, STOUT, ORLANDO, CORMAN and HOPPER presented to the Chair **SB 1141**, entitled:

An Act providing for a referendum on the question of expanding the uses of certain authorized indebtedness to include loans for construction of new nursing home facilities.

Which was committed to the Committee on Aging and Youth.

Senator ZEMPRELLI presented to the Chair **SB 1142**, entitled:

An Act amending the act of June 17, 1913 (P. L. 507, No. 335), entitled "Intangible Personal Property Tax Law," making an exception for second class counties.

Which was committed to the Committee on Local Government.

Senator HOLL presented to the Chair **SB 1143**, entitled:

An Act amending the act of December 6, 1972 (P. L. 1464, No. 333), entitled "Juvenile Act," further providing for police records relating to certain children.

Which was committed to the Committee on Aging and Youth.

Senators STAUFFER, MESSINGER, FLEMING and EARLY presented to the Chair **SB 1144**, entitled:

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, adding provisions relating to creditable nonschool service.

Which was committed to the Committee on Education.

Senators COPPERSMITH and MELLOW presented to the Chair SB 1145, entitled:

An Act providing for the regulation and safety of dams and reservoirs.

Which was committed to the Committee on Public Health and Welfare.

Senators COPPERSMITH, O'PAKE and EARLY presented to the Chair SB 1146, entitled:

An Act providing for the establishing of lifecourses for jogging and imposing powers and duties on various departments.

Which was committed to the Committee on Public Health and Welfare.

RECESS

Senator MESSINGER. Mr. President, I request a recess of the Senate until 4:00 p.m., for the purpose of holding a Democratic caucus and a Republican caucus.

The PRESIDENT pro tempore. Are there any objections? The Chair hears no objection, and declares a recess of the Senate until 4:00 p.m., Eastern Daylight Saving Time.

AFTER RECESS

The PRESIDENT (Lientenant Governor Ernest P. Kline) in the Chair.

The PRESIDENT. The time of recess having elapsed, the Senate will be in order.

COMMUNICATIONS FROM THE GOVERNOR

NOMINATIONS BY THE GOVERNOR REFERRED TO COMMITTEE

The Secretary to the Governor being introduced, presented communications in writing from His Excellency, the Governor of the Commonwealth, which were read as follows, and referred to the Committee on Rules and Executive Nominations:

BRIGADIER GENERAL, PENNSYLVANIA NATIONAL GUARD

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Colonel Cornelius O. Baker, 6234 Christian Street, Philadelphia 19143, Philadelphia County, Eighth Senatorial District, for appointment as Brigadier General, Pennsylvania Army National Guard, to serve until terminated, as Assistant Adjutant General, Headquarters and Headquarters Detachment, Fort Indiantown Gap, vice Brigadier General Clarence D. Bell, Chester, retired.

MILTON J. SHAPP.

MEMBER OF THE BOARD OF TRUSTEES OF CHEYNEY STATE COLLEGE

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Mrs. Audrey S. Pittman, 1227 South Sixty-first Street, Philadelphia 19143, Philadelphia County, Eighth Senatorial District, for appointment as a member of the Board of Trustees of Cheyney State College, to serve until the third Tuesday of January 1983, and until her successor is appointed and qualified, vice Mrs. Bessie Mitchell Collins, Philadelphia, resigned.

MILTON J. SHAPP.

MEMBER OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Dr. J. R. Friend, 18 West State Street, Albion 16401, Erie County, Forty-ninth Senatorial District, for reappointment as a member of the State Board of Chiropractic Examiners, to serve until July 15, 1981, and until his successor is appointed and qualified.

MILTON J. SHAPP.

MEMBER OF THE STATE BOARD OF CHIROPRACTIC EXAMINERS

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Dr. John C. Pammer, Jr., 1104 Sixth Street, North Catasauqua 18032, Northampton County, Eighteenth Senatorial District, for reappointment as a member of the State Board of Chiropractic Examiners, to serve until July 15, 1981, and until his successor is appointed and qualified.

MILTON J. SHAPP.

MEMBER OF THE STATE BOARD OF LANDSCAPE ARCHITECTS

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Mrs. Mary Barnes, 1750 Peachtree Lane, Norristown 19401, Montgomery County, Twenty-fourth Senatorial District, for appointment as a member of the State Board of Landscape Architects, to serve until July 12, 1980, and until her successor is appointed and qualified, vice Ms. Victoria Hunt, Philadelphia, whose term expired.

MILTON J. SHAPP.

MEMBER OF THE STATE BOARD OF LANDSCAPE ARCHITECTS

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate H. Edward Black (Landscape Architect), 1494 Letchworth Road, Camp Hill

17011, Thirty-first Senatorial District, for reappointment as a member of the State Board of Landscape Architects, to serve until July 12, 1980, and until his successor is appointed and qualified.

MILTON J. SHAPP.

SHERIFF IN AND FOR THE COUNTY OF VENANGO

October 11, 1977.

To the Honorable, the Senate of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate Frederick R. Weaver, 510 Hiland Avenue, Oil City 16301, Venango County, Twenty-fifth Senatorial District, for appointment as Sheriff in and for the County of Venango, to serve until the first Monday of January, 1978, vice Edwin M. Thomas, resigned.

MILTON J. SHAPP.

REPORTS FROM COMMITTEE

Senator HILL, from the Committee on Judiciary, reported, as committed, **SB 1001**; as amended, **SB 598, 672, 1042, 1113** and **1117**.

SENATOR STAUFFER TO VOTE FOR SENATOR HOLL

Senator STAUFFER. Mr. President, I will be voting Senator Holl who is on legislative business at a meeting of the Environmental Quality Board.

The PRESIDENT. Without objection, Senator Stauffer will be voting for Senator Holl who is on legislative leave.

CALENDAR

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

BILL OVER IN ORDER

SB 250 — Without objection, the bill was passed over in its order at the request of Senator MESSINGER.

THIRD CONSIDERATION CALENDAR

BILL RECOMMITTED

HB 72 (Pr. No. 2001) — Upon motion of Senator MESSINGER, and agreed to, the bill was recommitted to the Committee on State Government.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 556 (Pr. No. 1346) — Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

Senator BELL. Mr. President, I am going to vote against this bill for this reason: Presently, the moneys which remain from a tax sale after the taxes are paid go into the State Treasury. That is cheap money. This would be a windfall to the municipal-

ities and school districts because this law would divert much needed revenues from the Commonwealth to the municipalities and the school districts.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—46

Andrews,	Hess,	Mellow,	Scanlon,
Arlene,	Hill,	Messinger,	Schaefer,
Coppersmith,	Holl,	Moore,	Smith,
Corman,	Hopper,	Murray,	Snyder,
Dougherty,	Howard,	Nolan,	Stapleton,
Dwyer,	Jubelirer,	Noszka,	Stauffer,
Early,	Kelley,	O'Pake,	Stout,
Fleming,	Kury,	Orlando,	Sweeney,
Gekas,	Kusse,	Reibman,	Tilghman,
Gurzenda,	Lewis,	Romanelli,	Wood,
Hager,	Manbeck,	Ross,	Zemprelli,
Hankins,	McKinney,		

NAYS—1

Bell,

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Clerk present said bill to the House of Representatives for concurrence.

BILLS OVER IN ORDER

HB 767 and **949** — Without objection, the bills were passed over in their order at the request of Senator MESSINGER.

BILL ON THIRD CONSIDERATION AMENDED

RECONSIDERATION OF NOLAN AMENDMENTS

SB 982 (Pr. No. 1313) — Senator KURY. Mr. President, I move to reconsider the vote by which amendments offered by Senator Nolan were passed October 3, 1977.

Senator HILL. Mr. President, I second the motion.

On the question,
Will the Senate agree to the motion?

Senator NOLAN. Mr. President, I ask those who voted for the amendments last week to vote against reconsideration of the amendments.

POINT OF INFORMATION

Senator KURY. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Northumberland, Senator Kury, will state it.

Senator KURY. Mr. President, are we on the subject of voting on whether or not we will reconsider the vote or are we actually voting on the amendments for the second time?

The PRESIDENT. For the information of those Members who may be interested in listening, the only question before the Senate now is whether we reconsider the vote by which the amendments passed. If this motion carries, we will then re-

consider the amendments which will require a second vote on the amendments.

Senator KURY. Mr. President, I would only point out that the usual Rules of the Senate are that we are entitled to a second vote and I ask the Members to vote in favor of my motion.

Senator NOLAN. Mr. President, I ask for a roll call vote on the motion.

Senator ANDREWS. Mr. President, may we be at ease for a moment?

The PRESIDENT. The Senate will be at ease for just a minute.

(The Senate was at ease.)

Senator KELLEY. Mr. President, although I was in the same category as the gentleman from Allegheny, Senator Nolan, who is the sponsor of the amendments which are now sought to be reconsidered, I cannot concur in his recommendation that we nonconcur in the reconsideration motion. I believe we should all pay attention to the fact that our Rules specifically direct themselves to a reconsideration—to which the motion has been properly put—and I believe we should all subscribe to the rule of the majority, that the Rules provide for reconsideration. And so be it, if the majority has changed their minds and their thoughts have shifted, that is part of the purpose of a deliberative body and that is why I join my colleague in the reconsideration motion.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator NOLAN and were as follows, viz:

YEAS—29

Arlene,	Hill,	McKinney,	Romanelli,
Bell,	Hopper,	Mellow,	Scanlon,
Coppersmith,	Howard,	Messinger,	Schaefer,
Early,	Jubelirer,	Moore,	Snyder,
Gekas,	Kelley,	Noszka,	Stapleton,
Gurzenda,	Kury,	O'Pake,	Stout,
Hager,	Lewis,	Reibman,	Zemprelli,
Hankins,			

NAYS—18

Andrews,	Hess,	Nolan,	Stauffer,
Corman,	Holl,	Orlando,	Sweeney,
Dougherty,	Kusse,	Ross,	Tilghman,
Dwyer,	Manbeck,	Smith,	Wood,
Fleming,	Murray,		

So the question was determined in the affirmative, and the motion was agreed to.

The Clerk read the amendments as follows:

Amend Title, page 1, line 5, by inserting after "terms," abolishing retention elections,

Amend Sec. 1, page 1, lines 13 and 14, by striking out "and subsection (b)" and inserting: , subsections (b) and (c)

Amend Sec. 1, page 1, line 14, by inserting after "13": and section 15

Amend Sec. 1 (Sec. 13), page 3, by inserting between lines 20 and 21:

(c) [The provisions of section 13(b) shall not apply

either in the case of a vacancy to be filled by retention election as provided in section 15(b), or in the case of a vacancy created by failure of a justice or judge to file a declaration for retention election as provided in section 15(b).] In the case of a vacancy occurring at the expiration of an appointive term under section 13(b), the vacancy shall be filled by election as provided in section 13(a).

Amend Bill, page 3, by inserting between lines 21 and 22:

§ 15. Tenure of justices, judges and justices of the peace.

[(a)] The regular term of office of justices and judges shall be ten years and the regular term of office for judges of the municipal court and traffic court in the City of Philadelphia and of justices of the peace shall be six years. The tenure of any justice or judge shall not be affected by changes in judicial districts or by reduction in the number of judges.

[(b)] A justice or judge elected under section 13 (a), appointed under section 13 (d) or retained under this section 15 (b) may file a declaration of candidacy for retention election with the officer of the Commonwealth who under law shall have supervision over elections on or before the first Monday of January of the year preceding the year in which his term of office expires. If no declaration is filed, a vacancy shall exist upon the expiration of the term of office of such justice or judge, to be filled by election under section 13 (a) or by appointment under section 13 (d) if applicable. If a justice or judge files a declaration, his name shall be submitted to the electors without party designation, on a separate judicial ballot or in a separate column on voting machines, at the municipal election immediately preceding the expiration of the term of office of the justice or judge, to determine only the question whether he shall be retained in office. If a majority is against retention, a vacancy shall exist upon the expiration of his term of office, to be filled by appointment under section 13 (b) or under section 13 (d) if applicable. If a majority favors retention, the justice or judge shall serve for the regular term of office provided herein, unless sooner removed or retired. At the expiration of each term a justice or judge shall be eligible for retention as provided herein, subject only to the retirement provisions of this article.]

And the question recurring,
Will the Senate agree to the amendments?

Senator KURY. Mr. President, very briefly, I would ask my colleagues to reconsider the vote on the Nolan amendments. Throughout the history of the United States and our form of government, we have tried, as much as possible, to take our judges and the judicial system out of partisan politics. That is an ideal which, I guess, we have never reached and I doubt if we ever will reach it. In some sense, I suppose judges will always be in politics.

However, in recent years there have been efforts to take judges out of politics, as far as possible, and to attract the best possible candidates to fill the judges' positions, because of the importance in deciding cases that affect the lives and property of people. One of the difficulties involved has been to attract people and one of the obstacles has been the difficulties and the pressures of partisan political campaigns.

In recent years there has been a trend, after the first campaign when a judge is elected, to allow him, after he has served his term, to run for reelection based on a retention. That is, based on his record as a judge, so that he or she, as the case may be, does not have to go through the pressures of a political

campaign and all that that entails so that the people involved can devote themselves to being a judge in as fair and impartial manner as possible.

Therefore, Mr. President, I believe that the retention system, although it is not perfect, has been a great step forward in removing our incumbent judges from the pressures of partisan politics and in allowing them to work at being a judge and run on that record.

To allow these amendments to become law in Pennsylvania, I believe would be a step backward for our judicial system. It will make it harder to attract a qualified candidate. I think these amendments are not in the best interests of our Commonwealth and our form of government.

Therefore, Mr. President, I respectfully ask the Members on both sides of the aisle to vote "no" on these amendments.

Senator GEKAS. Mr. President, I differ slightly from the presentation made on this issue by the gentleman from Northumberland, Senator Kury. I believe very strongly in partisan politics to elect judges, and, therefore, stand before you as an arch foe of merit selection of judges, in the first instance. Having said that, I feel just as strongly that once a judge is elected and serves on the bench for ten years, the only issue before the electorate then should be whether or not to retain that judge. Merit selection, as we have heard it, has no place, I feel, in the judicial system except for filling interim appointments. However, retention after the partisan election of judges has a proper place in our system and has worked well in its brief history.

Mr. President, I ask for a negative vote on this issue.

Senator NOLAN. Mr. President, I ask that the Members who voted in favor of the amendments last week continue to support them. When these amendments passed, I had many calls from judges. Fortunately, I am not an attorney and I do not have to practice before the judges.

Over the weekend many more people other than the judges called me stating they are in favor of voting for judges after ten years; if they have established the type of record that the general public of this Commonwealth appreciates and feels is a good record, then they should have no fear that they would be reelected by the people of this Commonwealth.

Also being a firm believer that those who sit in judgment should stand to be judged, I would say that it is time that we remove the retention of judges. I think we can all remember back in 1968 when the Constitution of this State was changed very drastically. Five simple paragraphs were placed on the ballot and put before the public in this Commonwealth which were not understood by the people of this Commonwealth; but now they do have an understanding of what they were voting on back in 1968 and they are sorry for the many changes that were voted in the Constitution.

This is one of the opportunities we have in order to remove judges from office who do not perform to the expectation of the people of this Commonwealth. Since this provision was put into the Constitution of this State, there has only been one judge removed in this Commonwealth on a retention vote. He would not have been removed except that the week before his election he had to make a decision on the busing of school pupils; when he made his decision on the busing of school pupils, he was

defeated at the polls. It is time we return to the voters of this State their rights and privileges. This is one of the giant steps we can take by retaining these amendments in the bill and removing retention of judges from the Constitution of this Commonwealth and make them run on their record every ten years.

The people are not only complaining about the retention of judges in this Commonwealth, they are complaining about the Federal judges who are appointed for a lifetime and they would like to see that system changed also. I think it is time we start listening to the constituents whom we serve.

Mr. President, I ask for a "yes" vote, that we keep these amendments in the Constitution and I would ask the President to state the question before the Senate at this time.

The PRESIDENT. The question before the Senate will be on Senator Nolan's amendments.

All those voting "aye," will vote in favor of the amendments. Those voting "no," will vote against the amendments.

Senator BELL. Mr. President, I am going to vote against the amendments of the gentleman from Allegheny, Senator Nolan, as I did before. We have had retention of judges in my county, it has worked properly and I have not heard any complaints about it.

The big reason why we should have retention of judges is that we do not want returned to the Commonwealth this sorry picture. The last three or four years of a judge's term he has to collect a war chest to go through a Primary Election and through a General Election. The simple retention election does remove this necessity.

As I said in a meeting of the Committee on State Government, when I spoke on another bill concerning district justices, we have to take into account that within the last month or so there were new Supreme Court rules as to campaigning and the election of judges. This practically ties the hands of the candidates. It makes it very difficult.

Remember, we, in the Legislature, cannot change Supreme Court rules. I speak very strongly for keeping retention of judges who ran and were elected.

Senator JUBELIRER. Mr. President, I rise in opposition to the amendments of the gentleman from Allegheny, Senator Nolan. I think it would be a travesty to return to those days when politics completely determined who should sit on the bench and who should be elected on the basis of partisan politics. I might call to my colleagues' attention, Mr. President, the conflict that would occur with the Canons of Judicial Ethics if a judge sat for ten years and was forced to run in a partisan election. The Canons of Judicial Ethics strictly prohibit a judge from engaging in political activity. The Canons of Judicial Ethics specifically set forth the manner in which a judge may campaign.

If the Senate adopts these amendments and if they would become law and come before the people, it would be in complete conflict with the rules of the Supreme Court and the Canons of Judicial Ethics. If we are to meet the high standards as set forth by those Canons, then we cannot expect that kind of partisan election after a judge has sat for ten years.

I do think the retention system has been a step in the right

direction; the people do have checks and balances in the fact that they are able to say whether they want to retain a judge or not. I call the Senate's attention to the situation in the State of Wisconsin, which was a very emotional situation concerning the judge who was removed from office because of the manner in which he conducted a single case. I do think there are adequate protections provided by the Constitutional Convention and I would hope that we would not destroy a system which seems to have worked well. Perhaps it is not working well in the metropolitan areas in certain instances, however, I can say that in my travels and my practice before judges upstate it has worked extremely well and, I think, to destroy that system and the Canons and to place us back into an age where partisan politics determine justice would be a travesty in this Commonwealth.

Senator KELLEY. Mr. President, after listening to the debate today, I wonder if we have the perspective of what the true issue is before us. I wonder if we are playing God when we take an issue where all we want to do is present an opportunity to the constituency of the Commonwealth, our joint, combined constituencies, on the issue itself as to whether or not we do or do not allow the people to express themselves on a referendum to the Constitution, I think is very fundamental.

I believe, objectively, if we take the fact of what we had for many, many years with an elected judiciary and coming back for reelection to the constituency, met a test which was changed by a Constitutional Convention. Now we have had almost a decade of it. After that experience factor, I think it is only right and proper that we give the constituents of this Commonwealth an opportunity to evaluate those two experiences while they are fresh in their minds. I think we are doing a disservice to our constituents with anything less than that.

That is all we are asking for, Mr. President, an opportunity for the people to say by what law one of the branches of government shall be and continue to be. From that particular issue, all I can say is that I have never shied away. What do we think of ourselves? We talk about politics. Politics is good enough for us. How can we conceive that we can do anything good if it is bad? Yet we think what we do is good and we cherish it and try to do good and we do good. Somehow, if the other branch is political, because of the process of retention or even election, somehow people say it is bad.

There have been great leaders of both parties, historically. What does the two-party system represent? It represents competition so that we can get to the crux of what is good. I do now know that the jurisprudence that developed in this Commonwealth for almost 300 years under the old system is so bad. Pennsylvania, among her sister states and even the Federal courts, is looked upon as a leader. Did we do so badly by having our judges run for reelection and be reelected by the people? Can anyone assert what better judgments have come forth in the last ten years because of retention? I say we each ought to very fairly say that those people who sent us here should have the same opportunity in seeing what the fundamental law of this Commonwealth is.

Mr. President, I vote "aye."

Senator HOWARD. Mr. President, I do not think that anyone

in this Chamber would disagree with the need for improvement in findings of the bench, particularly in dealing in busing issues and dealing with matters relating to the term of sentences handed out in many instances to felons. However, I think there is another side to the issue that is worth considering because I am afraid we may do more damage with these amendments to the other side than we do in trying to correct the abuses, because I think, to an increasing degree, our judges are confronted with cases today that could be cordially referred to as political dynamite.

I think if a judge is going to be mindful of continuing reelections, it certainly is going to cause his attitude toward those types of cases to be colored. I wonder, for example, if we would have seen the same diligence in the ferreting out of the truth in the Watergate case if Judge Scirica was confronted with reelection realizing that, in effect, he was taking on the establishment of the Federal government.

I think the only way to protect a judge in that kind of a situation is to assure him that he is not going to have to be political in the next election; that, in fact, he is going to be able to run not on the friends that he has but on the record he has achieved and retention will guarantee him that right.

Senator MCKINNEY. Mr. President, I desire to interrogate the gentleman from Westmoreland, Senator Kelley.

The PRESIDENT. Will the gentleman from Westmoreland, Senator Kelley, permit himself to be interrogated?

Senator KELLEY. I will, Mr. President.

Senator MCKINNEY. Mr. President, I would like to ask the gentleman if he is for or against the retention of judges.

Senator KELLEY. Mr. President, I am very strongly for the constituents establishing the third branch of government as they do the other two branches, by election. Therefore, I am against retention. However, I would like to state it in the positive. I am for the electoral process. If it is good enough for our law, if it is good enough for our chief executive and lawmakers, it certainly should be good enough for the adjudicators of the law.

Senator MCKINNEY. Mr. President, I suppose the gentleman has said he is opposed to the retention of judges.

Senator HAGER. Mr. President, I desire to interrogate the gentleman from Westmoreland, Senator Kelley.

The PRESIDENT. Will the gentleman from Westmoreland, Senator Kelley, permit himself to be interrogated?

Senator KELLEY. I will, Mr. President.

Senator HAGER. Mr. President, I would like to ask the same question. Is the gentleman for or against retention? I did not understand his answer, either.

Senator KELLEY. Mr. President, in the preference which I have to always express myself in a positive fashion, it is very difficult to say that I am against something. However, in order to facilitate my answer, I am opposed to it.

Senator DWYER. Mr. President, I do not want to interrogate the gentleman from Westmoreland, Senator Kelley. However, I do want to speak on another viewpoint regarding the retention issue.

As we have heard here today, retention is a very idealistic issue and if it works in an idealistic way, it is a fine improve-

ment to our judicial system. But like so many things, retention elections do not work as idealistically as they are intended to work. I cite an example in a county in this Commonwealth: Last year a judge, in my opinion a very fine judge, was up for retention election. He was a member of a political party that was not the majority party in that particular county, nor the party which held the governorship that would appoint his successor if he was not retained. Thus, the political party in that county set about not to retain that judge. He did not have a formal political opponent to campaign against, he had a political party opposing him, the majority party in that county. Because his hands were tied by the rules of the Supreme Court, he could not, of course, campaign. Basically, he had no one to campaign against. So, he just hung on and hoped. He was barely retained.

At least we do admit that the selection of judges—if there are opponents—even under the retention system—is political. We might as well admit that because it is, regardless of which system we use. We might as well go to the system where a judge can have a legitimate opponent and conduct a legitimate campaign against the issues raised by that opponent rather than having a majority party against him and having his hands tied and unable to combat the attacks made upon him.

For that reason, Mr. President, I would urge that we continue to support the amendments of the gentleman from Allegheny, Senator Nolan.

Senator DOUGHERTY. Mr. President, as a former teacher of government, and not being a lawyer, I view this as being a question of whether or not you have basic trust in the idea that government is of the people. We talk about political parties; we talk about elections; we talk about the political process. But what we are really talking about is the right of the people of the Commonwealth of Pennsylvania to elect the people who are going to sit in judgment.

I support the gentleman from Allegheny, Senator Nolan, because I think that the people have the right to decide. Retention, as stated by the gentleman from Crawford, Senator Dwyer, is an idealistic thing. It is great to talk about getting the judges out of politics and it is bad when politics become involved in judicial elections. However, the bottom line is that government belongs to the people and the people have the right to decide.

And the question recurring,
Will the Senate agree to the amendments?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—17

Andrews,	Hess,	Murray,	Stauffer,
Corman,	Kelley,	Nolan,	Sweeney,
Dougherty,	Kusse,	Ross,	Tilghman,
Dwyer,	Manbeck,	Smith,	Wood,
Early,			

NAYS—30

Arlene,	Hill,	Mellow,	Romanelli,
Bell,	Holl,	Messinger,	Scanlon,
Coppersmith,	Hopper,	Moore,	Schaefer,
Fleming,	Howard,	Noszka,	Snyder,

Gekas,	Jubelirer,	O'Pake,	Stapleton,
Gurzenda,	Kury,	Orlando,	Stout,
Hager,	Lewis,	Reibman,	Zemprelli,
Hankins,	McKinney,		

So the question was determined in the negative, and the amendments were defeated.

And the question recurring,
Will the Senate agree to the bill on third consideration?

AMENDMENTS OFFERED

Senator NOLAN, by unanimous consent, offered the following amendments:

Amend Title, page 1, lines 1 through 7, by striking out all of said lines and inserting: Proposing an amendment to the Constitution of the Commonwealth of Pennsylvania providing for the election of the Attorney General and providing for his qualifications.

Amend Bill, page 1, lines 10 through 19, page 2 through 4, lines 1 through 30; and page 5, lines 1 through 26, by striking out all of said lines and inserting:

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with the provisions of Article XI thereof:

That a section be added to Article IV and sections 5, 6, 8 and 17 of Article IV of the Constitution of the Commonwealth of Pennsylvania be amended to read:
4.1. Attorney General.

An Attorney General shall be chosen by the qualified electors of the Commonwealth on the day the general election is held for the Auditor General and State Treasurer; he shall hold his office during four years from the third Tuesday of January next ensuing his election and shall not be eligible to serve continuously for more than two successive terms; he shall be the chief law officer of the Commonwealth and shall exercise such powers and perform such duties as may be imposed by law.

§ 5. Qualifications of Governor [and], Lieutenant Governor and Attorney General.

No person shall be eligible to the office of Governor [or], Lieutenant Governor or Attorney General except a citizen of the United States, who shall have attained the age of 30 years, and have been seven years next preceding his election an inhabitant of this Commonwealth, unless he shall have been absent on the public business of the United States or of this Commonwealth. No person shall be eligible to the office of Attorney General except a member of the bar of the Supreme Court of Pennsylvania.

§ 6. Disqualification for offices of Governor [and], Lieutenant Governor and Attorney General.

No member of Congress or person holding any office (except of attorney-at-law or in the National Guard or in a reserve component of the armed forces of the United States) under the United States or this Commonwealth shall exercise the office of Governor [or], Lieutenant Governor or Attorney General.

§ 8. Appointing power.

(a) The Governor shall appoint [an Attorney General,] a Secretary of Education and such other officers as he shall be authorized by law to appoint. The appointment of [the Attorney General,] the Secretary of Education and of such other officers as may be spec-

ified by law, shall be subject to the consent of two-thirds or a majority of the members elected to the Senate as is specified by law.

(b) The Governor shall fill vacancies in offices to which he appoints by nominating to the Senate a proper person to fill the vacancy within 90 days of the first day of the vacancy and not thereafter. The Senate shall act on each executive nomination within 25 legislative days of its submission. If the Senate has not voted upon a nomination within 15 legislative days following such submission, any five members of the Senate may, in writing, request the presiding officer of the Senate to place the nomination before the entire Senate body whereby the nomination must be voted upon prior to the expiration of five legislative days or 25 legislative days following submission by the Governor, whichever occurs first. If the nomination is made during a recess or after adjournment sine die, the Senate shall act upon it within 25 legislative days after its return or reconvening. If the Senate for any reason fails to act upon a nomination submitted to it within the required 25 legislative days, the nominee shall take office as if the appointment had been consented to by the Senate. The Governor shall in a similar manner fill vacancies in the offices of Auditor General, State Treasurer, justice, judge, justice of the peace and in any other elective office he is authorized to fill. In the case of a vacancy in an elective office, a person shall be elected to the office on the next election day appropriate to the office unless the first day of the vacancy is within two calendar months immediately preceding the election day in which case the election shall be held on the second succeeding election day appropriate to the office.

(c) In acting on executive nominations, the Senate shall sit with open doors. The votes shall be taken by yeas and nays and shall be entered on the journal.

§ 17. Contested elections of [Lieutenant Governor and] Governor, Lieutenant Governor and Attorney General; when succeeded.

The Chief Justice of the Supreme Court shall preside upon the trial of any contested election of Governor [or], Lieutenant Governor or Attorney General and shall decide questions regarding the admissibility of evidence, and shall, upon request of the committee, pronounce his opinion upon other questions of law involved in the trial. The Governor [and], Lieutenant Governor and Attorney General shall exercise the duties of their respective offices until their successors shall be duly qualified.

Section 2. Upon approval of this amendment by the electors, there shall be a vacancy in the office of Attorney General which shall be filed as provided herein.

Section 3. The proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the election next held after the advertising requirements of Article XI, section 1 of the Constitution of the Commonwealth of Pennsylvania have been satisfied.

AMENDMENTS RULED OUT OF ORDER

The PRESIDENT. Upon the examination of these amendments, the Chair rules that they are not in order in accordance with the Rules of the Senate, specifically that Rule which states, "No amendments shall be received by the presiding officer or considered by the Senate which destroys the general sense of the original bill, or is not appropriate and closely allied to the original purpose of the bill."

It is the ruling of the Chair that these amendments are not in order.

PARLIAMENTARY INQUIRY

Senator NOLAN. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Allegheny, Senator Nolan, will state it.

Senator NOLAN. Mr. President, did the original Senate Bill No. 982 amend the Constitution of this Commonwealth?

The PRESIDENT. It is a proposed amendment to the Constitution, Senator.

Senator NOLAN. Mr. President, are the amendments which I have offered amendments to the Constitution of this Commonwealth?

The PRESIDENT. They are, Senator.

DECISION OF CHAIR APPEALED

Senator NOLAN. Mr. President, I appeal the ruling of the Chair.

The PRESIDENT. You may, Senator.

Senator NOLAN. Mr. President, I ask for a roll call vote.

The PRESIDENT. Senator Nolan has appealed the decision of the Chair which is that the amendments proposed are not in order in accordance with the Rules of the Senate.

The question is,

Shall the decision of the Chair stand as the judgment of the Senate?

All those voting "aye," would vote in favor of the ruling of the Chair. Those voting "no," vote against the ruling of the Chair.

MOTION TO LAY BILL ON THE TABLE

Senator KELLEY. Mr. President, I had no forewarning prior to the time the Session commenced, it was not discussed in caucus and not having a copy of the amendments, I shall now move that Senate Bill No. 982 be laid on the table and appear on the next day's Calendar so that we will have an opportunity to see the amendments and discuss them with intelligence as well as appealing the decision of the Chair.

The PRESIDENT. It has been properly moved by Senator Kelley that Senate Bill No. 982 be laid on the table.

The question before the Senate is,

Will the Senate agree to the motion to lay the bill on the table?

We will be at ease for just a minute.

(The Senate was at ease.)

The PRESIDENT. This is a nondebatable motion although I will permit limited inquiries in the event anyone should have any question.

We will be at ease for just a minute.

(The Senate was at ease.)

The PRESIDENT. For the information of the Members, there was some reference made by Senator Kelley that the bill would appear on the next day's Calendar. If this motion to lay the bill on the table carries, it will be laid on the table, and then considered when it is called from the table.

We will be at ease for just a minute.

(The Senate was at ease.)

The PRESIDENT. For the information of the the Members, if

this motion carries and the bill is laid on the table, when it is called from the table the question before the Senate will be on the ruling of the Chair.

On the question,

Will the Senate agree to the motion?

POINT OF INFORMATION

Senator BELL. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Delaware, Senator Bell, will state it.

Senator BELL. Mr. President, in other words, a vote to support the gentleman from Westmoreland, Senator Kelley, will deny this Body from being one step closer to the question of electing the Attorney General, is that correct, or am I speaking like the gentleman from Westmoreland, Senator Kelley?

The PRESIDENT. Senator, I speak in my own words, not yours. My words are that Senator Kelley has a right to move that the matter be laid on the table which he has done and which is now the issue before the Senate.

Senator BELL. Mr. President, I will speak in my words. I will vote with my words.

Senator HAGER. Mr. President, I would ask all those who favor the election of an Attorney General to vote against this motion to lay the bill on the table.

And the question recurring,

Will the Senate agree to the motion?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—15

Coppersmith,	Kury,	Noszka,	Smith,
Hankins,	Lewis,	Reibman,	Stout,
Hill,	McKinney,	Romanelli,	Zemprelli,
Kelley,	Messinger,	Scanlon,	

NAYS—32

Andrews,	Gekas,	Kusse,	Ross,
Arlene,	Gurzenda,	Manbeck,	Schaefer,
Bell,	Hager,	Mellow,	Snyder,
Corman,	Hess,	Moore,	Stapleton,
Dougherty,	Holl,	Murray,	Stauffer,
Dwyer,	Hopper,	Nolan,	Sweeney,
Early,	Howard,	O'Pake,	Tilghman,
Fleming,	Jubelirer,	Orlando,	Wood,

So the question was determined in the negative, and the motion was defeated.

And the question recurring,

Shall the decision of the Chair stand as the judgment of the Senate?

POINT OF INFORMATION

Senator KELLEY. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Westmoreland, Senator Kelley, will state it.

Senator KELLEY. Mr. President, do I understand we are now on the appeal of the decision of the Chair?

The PRESIDENT. We are, Senator.

Senator KELLEY. Mr. President, was the decision of the Chair based upon the proposed amendments of the gentleman from Allegheny, Senator Nolan?

The PRESIDENT. It was, Senator.

Senator KELLEY. Mr. President, I invoke Rule 15 on Amendments, Section 1, and ask for circulation of the amendments to me and any other Member who wants them to have an opportunity to examine the same before voting on the appeal of the decision of the Chair.

The PRESIDENT. We will be at ease while the Secretary prepares copies of the amendments for the purpose of examination by the Members.

(The Senate was at ease.)

The PRESIDENT. It is the understanding of the Chair that copies of the amendments have now been distributed to the Members.

Senator MCKINNEY. Mr. President, as I see this move, it goes far beyond the election of an Attorney General. It goes to the very heart, the very basis of the Senate itself. Every time we disagree with any particular issue we change the Rules in the middle of the game. That is what is being done.

Secondly, Mr. President, as the Minority Leader, Senator Hager, said, "Are you for an elected Attorney General or are you against?" That is the way he pictures this issue.

We had a duly legal, bona fide committee meeting last Tuesday. The committee voted six to four against reporting the bill out of committee.

I would just like to remind all the committee chairmen on my side of the aisle that maybe tomorrow they will be confronted with the same kind of issue. When someone disagrees with the way the committee acted, someone will come along with some rip-out kind of amendment to usurp the committee system. That is what it amounts to.

Mr. President, I would certainly ask my colleagues on this side of the aisle to sustain the Chair. Let us not change the Rules in the middle of the game.

POINT OF INFORMATION

Senator TILGHMAN. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Montgomery, Senator Tilghman, will state it.

Senator TILGHMAN. Mr. President, I understand we are not voting on the amendments at the present time, we are voting on the President's ruling that the amendments are out of order because it is not germane to the bill, is that correct?

The PRESIDENT. That is correct, Senator.

Senator TILGHMAN. Mr. President, if we will all look at the first bill on the Calendar, Senate Bill No. 250, you will find a bill that was gutted which changed it. We have done this from time immemorial. Whether it is good or bad, we have done it. This was originally a bill for capital projects and you can look at the first two or three pages and you will see "Renovate Behavior Adjustment Unit," and they have all been gutted out. The House put into this bill the institutional assistance grants. Is it germane? I do not know whether it is germane or not, but

we are not arguing about this.

However, if the Lieutenant Governor wants to say that when we want to change an amendment to the Constitution we cannot do it in this manner, then this bill should never have come out of committee.

Senator NOLAN. Mr. President, I have the assurance of the Legislative Reference Bureau that drew up this bill that it is germane to this bill and has to be accepted by the Secretary of State and advertised as a constitutional change so it can be placed on the ballot. To the question as to whether it is germane or not, I have the assurance of the Legislative Reference Bureau that it is.

Senator BELL. Mr. President, I want to answer the gentleman from Philadelphia, Senator McKinney. The vote was six to four and the gentleman's position is that two Senators should prevent the entire Body from voting on this most important issue. I say no two Senators should deny this Body the right to vote on any issue.

Senator MESSINGER. Mr. President, if we do this, then we might just as well now abolish the committee system and every time a bill is introduced, put it to the floor and see whether or not the Senate and the House agree to it.

Mr. President, there are other avenues for getting these proposed amendments to the floor. I think we should sustain the ruling of the Chair in this particular matter, especially since we were not made aware of the amendments until we reached the floor.

The amendments should have been proposed, as I think all amendments should be, so that the caucus would have time to discuss them. They were not proposed to the caucus. I feel we would be making a grave mistake to turn down the opinion of the Chair on this matter because of two sections of that particular Rule and that is, that the general sense of the bill was destroyed and, secondly, that the Members were not furnished with a copy of the proposed amendments. Of course, the Rule does not say when; we have now been supplied with the amendments. However, it is a lengthy bill and I think certainly time should have been given for the caucus to discuss this whole matter.

Mr. President, I appeal to the Members of the Senate to sustain the ruling of the Chair.

Senator NOLAN. Mr. President, we have seen here today a reversal by the Members of the Senate on an amendment that I offered last week on the basis that they were not made aware of that amendment. Again we are being told that the caucus was not made aware of these amendments.

All I can say, Mr. President, is that both amendments, the amendment last week and the amendments this week, were in the hands of the Majority Leader. If the Majority Leader did not discuss that in caucus, then that is too bad. However, they all now have a copy of the amendments before them.

Senator TILGHMAN. Mr. President, on the statement of the gentleman from Lehigh, Senator Messinger, if it was not such a serious matter, I think it would have to be classified as ludicrous. What the gentleman has said is that if a committee turns down a piece of legislation, it may never be considered again under any circumstances. That is just not true. I am not

on these committees.

Mr. President, I desire to interrogate the gentleman from Lehigh, Senator Messinger.

The PRESIDENT. Will the gentleman from Lehigh, Senator Messinger, permit himself to be interrogated?

Senator MESSINGER. I will, Mr. President.

Senator TILGHMAN. Mr. President, did the gentleman understand what I was saying and is that what he said?

Senator MESSINGER. No, Mr. President, that is not what I said.

Senator TILGHMAN. Mr. President, what did the gentleman say?

Senator MESSINGER. Mr. President, I said if this is the procedure we are going to use, we will no longer need a committee system.

Senator TILGHMAN. If that is the procedure we are going to use, Mr. President, what is the gentleman talking about, these amendments?

Senator MESSINGER. Mr. President, if we amend, by this procedure on the floor, a bill that was defeated in committee at that time, and if we are always going to bypass the committee chairman, then there is no use for a committee.

Senator TILGHMAN. Mr. President, do I understand that I may not submit an amendment dealing with some type of bill turned down in one of the many committees?

Senator MESSINGER. No, Mr. President, not as long as the amendment is germane and is presented to the caucus so they can have a discussion on it.

Senator TILGHMAN. Mr. President, the gentleman is walking on very thin ice because he has not convinced me that he did not say what I thought he said, which is: that once a committee has decided not to bring out a bill, we cannot do anything. We are not talking about that. We are talking about a ruling of the Chair.

And the question recurring,

Shall the decision of the Chair stand as the judgment of the Senate?

The yeas and nays were required by Senator NOLAN and were as follows, viz:

YEAS—20

Arlene,	Kelley,	Murray,	Ross,
Coppersmith,	Kury,	Noszka,	Scanlon,
Guizenda,	Lewis,	O'Pake,	Smith,
Hankins,	McKinney,	Reibman,	Stout,
Hill,	Messinger,	Romanelli,	Zemprelli,

NAYS—27

Andrews,	Gekas,	Kusse,	Snyder,
Bell,	Hager,	Manbeck,	Stapleton,
Corman,	Hess,	Mellow,	Stauffer,
Dougherty,	Holl,	Moore,	Sweeney,
Dwyer,	Hopper,	Nolan,	Tilghman,
Early,	Howard,	Orlando,	Wood,
Fleming,	Jubelirer,	Schaefer,	

So the question was determined in the negative, and the decision of the Chair was not sustained.

And the question recurring,
Will the Senate agree to the amendments introduced by Senator Nolan?

Senator KELLEY. Mr. President, I desire to interrogate the gentleman from Allegheny, Senator Nolan.

The PRESIDENT. Will the gentleman from Allegheny, Senator Nolan, permit himself to be interrogated?

Senator NOLAN. I will, Mr. President.

Senator KELLEY. Mr. President, as the sponsor of the amendments which incorporate the election of the Attorney General, is it the intention that the Attorney General will have the same powers as the presently appointed Attorney General?

Senator NOLAN. Mr. President, it would be my intention that he would have more power than the presently appointed Attorney General who happens to be a rubber stamp for the Governor.

Senator KELLEY. Mr. President, do I gather from the answer of the gentleman from Allegheny, Senator Nolan, that he sees the elected Attorney General, as intended to be created by the proposed amendments, as including all the powers presently in the Attorney General and then some?

Senator NOLAN. Mr. President, I would say that he would have all the powers which the present Attorney General has and all other powers which may be spelled out in the Constitution which the present Attorney General does not enforce.

Senator KELLEY. I thank the gentleman, Mr. President.

PARLIAMENTARY INQUIRY

Senator KURY. Mr. President, I rise to a question of parliamentary inquiry.

The PRESIDENT. The gentleman from Northumberland, Senator Kury, will state it.

Senator KURY. Mr. President, do these amendments strike out the entire existing bill and deal only with the question of the Attorney General or does it add the question of the Attorney General to the existing bill?

The PRESIDENT. The amendments strike out everything and only has the issue of the Attorney General which is why I had ruled it not germane, but the Senate thought otherwise.

POINT OF INFORMATION

Senator MCKINNEY. Mr. President, I rise to a point of information.

The PRESIDENT. The gentleman from Philadelphia, Senator McKinney, will state it.

Senator MCKINNEY. Mr. President, is the language concerning the election of an Attorney General the very same language?

The PRESIDENT. Senator, I did not understand the question.

Senator MCKINNEY. Mr. President, is the language the same in the amendments of the gentleman from Allegheny, Senator Nolan, the same language as the elected Attorney General?

The PRESIDENT. Senator, I am hard pressed to reply to you. We have distributed copies to the Members and the language—

We will be at ease for just a minute.

(The Senate was at ease.)

The PRESIDENT. Senator McKinney's inquiry was as to whether or not the language in these amendments are precise and the same language as was passed by a past Session of the Legislature. After consulting with Senator Nolan he assures us, Senator McKinney, that it is.

Senator HAGER. Mr. President, before I came up, there was something I wanted to point out in response to the inquiry of the gentleman from Westmoreland, Senator Kelley.

It would appear pretty obvious that this is merely enabling legislation. This would amend the Constitution and the scope of the duties of the Attorney General would have to be set forth by implementing legislation which this Body and the House of Representatives would have to pass. Therefore, we will have the opportunity to determine just what the scope of the Attorney General's duties shall be.

Senator KELLEY. Mr. President, in light of the comments of the gentleman from Lycoming, Senator Hager, for years the learned judiciary has well established that the more authoritative legislative history would be the comments and expressions of the chief sponsor of a bill or an amendment. That was why my inquiry was directed to the chief sponsor. Regardless of what the gentleman from Lycoming, Senator Hager, says, it is the prevailing opinion through court decisions that the opinion of the chief sponsor, the gentleman from Allegheny, Senator Nolan, would prevail.

I am quite disheartened by the answers from the gentleman from Allegheny, Senator Nolan, because I had hoped to have the same point of view expressed by the gentleman from Lycoming, Senator Hager. However, since the gentleman from Allegheny, Senator Nolan, expressed to the contrary, I have no choice but to vote against these amendments and have the bill come out through the regular legislative process where we can have committee reports printed in the Journal which will give us a good legislative history which would be authoritative for the courts.

Therefore, Mr. President, I urge those who seem to favor the concept of an elected Attorney General—and I do within the purviews—to do it in the correct manner, because here we do not have a good legislative history except the comments of the gentleman from Allegheny, Senator Nolan, and I disagree with that as does the gentleman from Lycoming, Senator Hager. The courts would be quite perplexed to satisfy that dilemma. I, therefore, urge a negative vote.

Senator HAGER. Mr. President, I suppose it depends. The gentleman from Westmoreland, Senator Kelley, wants the people of Pennsylvania to elect judges but he does not want them to elect Attorneys General.

And the question recurring,
Will the Senate agree to the amendments?

(During the calling of the roll, the following occurred:)

Senator MESSINGER. Mr. President, I would prefer that I not vote for Senator Coppersmith or Senator Zemprelli because they did not foresee this, and I do not know how they would wish to be recorded.

The PRESIDENT. Without objection, Senator Coppersmith and Senator Zemprelli will not be recorded on this issue.

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—33

Andrews,	Hager,	Manbeck,	Schaefer,
Bell,	Hess,	Mellow,	Snyder,
Corman,	Holl,	Moore,	Stapleton,
Dougherty,	Hopper,	Nolan,	Stauffer,
Dwyer,	Howard,	O'Pake,	Stout,
Early,	Jubelirer,	Orlando,	Sweeney,
Fleming,	Kury,	Romanelli,	Tilghman,
Gekas,	Kusse,	Ross,	Wood,
Gurzenda,			

NAYS—12

Arlene,	Kelley,	Messinger,	Reibman,
Hankins,	Lewis,	Murray,	Scanlon,
Hill,	McKinney,	Noszka,	Smith,

So the question was determined in the affirmative, and the amendments were agreed to.

The PRESIDENT. Senate Bill No. 982 will go over, as amended.

SECOND CONSIDERATION CALENDAR

BILLS OVER IN ORDER

SB 204, 539, 665, 1040, 1068, 1101, 1103, 1104, 1114, 1116, 1118, 1121, 1122 and 1123 — Without objection, the bills were passed over in their order at the request of Senator MESSINGER.

UNFINISHED BUSINESS

REPORT FROM COMMITTEE

Senator O'PAKE, from the Committee on Aging and Youth, reported, as amended, **SB 678**.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered and adopted:

Congratulations of the Senate were extended to the Polish American Citizen's Harmonia and Oswiata Club by Senator Smith.

Congratulations of the Senate were extended to Edward T. Nangle, the Hampden Fire Company of Reading and to Stewart L. Moyer by Senator O'Pake.

Congratulations of the Senate were extended to Mr. and Mrs. Millard D. Kunkle, Mr. and Mrs. Melvin E. Carl and to Mr. and Mrs. Harry Haas, Jr., by Senator Hess.

Congratulations of the Senate were extended to Mr. Donald Ulp by Senator Kury.

Congratulations of the Senate were extended to Mr. and Mrs. Joseph W. Drakes, Mr. and Mrs. Willard Johnson, Mr. and Mrs. Merchie Calabrese, Mr. and Mrs. Sam Randazzo, Mr. and Mrs. Frank Navecky, Mr. and Mrs. Fred J. Buhl, Mr. and Mrs. Guy Davino, Mr. and Mrs. Lester V. Evans, Mr. and Mrs. Frank J. Kieklak, Luanne Phillips and to Grace Gunster Tullio by Senator Orlando.

Congratulations of the Senate were extended to Reverend

Lester J. Karschner by Senator Jubelirer.

Congratulations of the Senate were extended to Corporal James J. Corbett by Senator Mellow.

Congratulations of the Senate were extended to Monsignor Joseph S. Altany by Senator Romanelli.

Congratulations of the Senate were extended to Mr. and Mrs. Charles Hocker, Mr. and Mrs. Laurence M. Biddle, Mr. and Mrs. Adolph E. Franke and to Mr. and Mrs. Samuel Murray by Senator Hager.

Congratulations of the Senate were extended to the Honorable Daniel H. DeOrzio by Senator Tilghman.

Congratulations of the Senate were extended to Mrs. Mary Elvira Main Springer by Senators Dwyer and Kusse.

Congratulations of the Senate were extended to Louis Puskar by Senator Dwyer.

Congratulations of the Senate were extended to Mr. and Mrs. George C. Moore, Mr. and Mrs. Raymond Bowers, Mr. and Mrs. Carl Hoy, Sr., Mr. and Mrs. John H. Fowler, Mr. and Mrs. Clarence Yates and to Mr. and Mrs. Willis Shriver by Senator Stout.

CONDOLENCE RESOLUTION

The PRESIDENT laid before the Senate the following resolution, which was read, considered and adopted:

Condolences of the Senate were extended to the family of the late Mildred Nicklas by Senator Ross.

BILLS ON FIRST CONSIDERATION

Senator NOSZKA. Mr. President, I move that the Senate do now proceed to consideration of all bills reported from committees for the first time at today's Session.

The motion was agreed to.

The bills were as follows:

SB 386, 598, 672, 678, 968, 1001, 1021, 1038, 1042, 1048, 1088, 1113, 1117, 1141, HB 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1270, 1272, 1273, 1274, 1275, 1276, 1279 and 1283.

And said bills having been considered for the first time, Ordered, To be laid aside for second consideration.

PETITIONS AND REMONSTRANCES

Senator HAGER. Mr. President, for as long as I have been here in the Senate, which is not a real long time, just five years, the Senate has had a hard time, at least most of the Members, getting a handle on the budget. I was particularly aggravated this year when we were going through quite a fight, most of which was due, I think, to the inability to get information. For that reason I went to Charles McIntosh, the Secretary of the Budget, as I have mentioned on this floor a couple of times before.

I asked him for information, specifically about encumbrances which this year amounted to some \$265 million. Today I talked with some members of the press about it at a press conference and said that I would be introducing some legislation today to

try to cure that problem. Apparently, some of them went to the Secretary, because I noticed in the UPI news release that Secretary McIntosh suggested that I could not understand it because I was an amateur. I agree; I am an amateur and it was for that reason that I went to him, the professional, to get the answers. I must confess that he, at least for a while, kept me from getting those answers. On that day, he told me none of the money was available, that none of it was available to be used to solve this year's fiscal crisis. However, on that very same day, the Lieutenant Governor was able to pry \$10 million from him for a proposed solution to the budget crisis.

Because I became interested, I decided to take a look at that and a number of evils have occurred to me in the process. For that reason I have introduced a piece of legislation today with some fifteen cosponsors. I also had intended to offer an amendment to Senate Bill No. 250, but after discussion with the Majority Leader—because it is a fairly complicated matter—we decided to allow that bill to go over in its order. My hope is that the Majority will come to some of the same questions I have come to and decide to demand those answers from the Governor, from whom, of course, I have gotten no response to two letters in which I requested just that. One was written on August 23rd and one on September 30th.

It is my hope that if we cannot solve this year's budget crisis with encumbered money—and I think there is a good chance we might be able to—we, at least, will be able to stop this practice which makes it impossible for the Members of the Legislature to get their hands on this thing and get some kind of an understanding.

For instance, we discovered some funds which had been encumbered in 1966 and 1967 for an institution which no longer exists, but yet that money appears to be tied up and not available to the Commonwealth in any of the succeeding years. We found others where literally millions of dollars has been carried as an encumbrance for four and five fiscal years. That money seems to be unavailable to us. We take a look at departments which lapsed tens of millions of dollars last year and we find from the reports we are able to see that even two months into this fiscal year, over \$100 million from last and succeeding years was still tied up and unavailable to solve this year's fiscal crisis.

The piece of legislation which was introduced by a number of us today offers as a solution to that a prohibition against any department of government encumbering any funds at all in the final quarter of the year, which is when they appear to take a look around to see how much money they have left, without the prior approval of the Legislative Budget and Finance Committee. This would at least give us some warning three months before the budget must be final. It gives us some opportunity to look at what the departments are doing with this money.

It was suggested at the news conference today, "Why don't you go back and do it for a half year, won't that just push back the practice?" I think not; I think none of them are industrious enough to really figure out six months ahead of time how much they are going to have left at the end of the year.

The Budget Secretary's answer was, "Well, some bills really do not come due during the fiscal year." This answer is really

totally unacceptable to me. Certainly they come due two, three four and five years later. If, in fact, they are legitimate, is it not a rather strange way to run this operation? Why not lapse that money and reappropriate it if it is necessary in the year in which those bills do come due?

These are some of the questions we are trying to answer by the legislation and we are playing it very straight. We really are not trying to embarrass anyone; we have just tried to get some answers and have been unable to get them. We are in an honest attempt to try to come to grips with how much money is necessary to run this State this year following this route.

I have every confidence that the Majority will join us in the inquiry.

Senator MESSINGER. Mr. President, while I have heard the allegations that hundreds of millions of dollars are tied up in encumbrances, I know that one of the largest ones of these is one which certainly could not be discontinued at the end of the fiscal year and lapsed and that is money that is encumbered to pay subsidies to school districts after their final quarterly report to the Department of Education.

Mr. President, if funds were cut off at the end of the fiscal year, it would seriously damage funds that go to the school districts of the Commonwealth of Pennsylvania and this is a very large amount of money.

Mr. President, even though the gentleman alleges these things, I think it is incumbent upon him to make public the things he has found as far as those funds which have been encumbered for many years.

Senator HAGER. Mr. President, we have done just that. We did it today at the press conference and all of these items will be delivered to the Majority Leader.

What we are really doing, Mr. President, is asking questions, not coming up with answers. We can say that the item to which the Majority Leader refers is a very small item compared to the total amount of encumbered funds.

Mr. President, one of the suggestions we are making is that in some of those areas where funds have been tied up from budget to budget for four or five years, we really have the bureaucracy operating on a different fiscal basis than we are. We, in the Legislature, are given a twelve-month period for which we must come up with a budget, which is based upon estimated revenues and proposed expenditures. It appears that the bureaucracy really stretches that as far as they want and, in some cases, four or five years. Actually, all of these numbers originally came from a Commonwealth publication, which is the General Fund Status of Appropriations issued on August 31, 1977, which shows all of the line items and shows that, as of that date, there was still well over \$100 million of prior years' appropriated money which had still not been spent, some of it going back three, four and five years. We will be very happy to share that with anybody on the other side because our hope is that we can do this in strictly a bipartisan effort and follow it wherever it leads. If it leads to the fact that all this money is actually necessary, all of the contracts are justifiable, so be it. I doubt very much that that is where it is going to lead us, because some of the things we ran into, for instance, were contracts to buy beef last year to be delivered some time next year,

using last year's money for this year's real expenditures.

The gentleman from Montgomery, Senator Tilghman, unearthed buying uniforms for guards at a prison which has not even been built yet. Of course the instructions were: "Tie it up before June 30th, before we lose the money." I think there are going to be all kinds of items like that which we really owe it to ourselves to dig out. That is where the inquiry is aimed.

ANNOUNCEMENTS BY THE SECRETARY

The following announcements were read by the Secretary of the Senate:

SENATE OF PENNSYLVANIA

COMMITTEE MEETINGS

WEDNESDAY, OCTOBER 12, 1977

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| 9:00 A.M. Seminar on Zero Based Budgeting and Senate Bill No. 1055 | Senate Majority Caucus Room |
| 10:00 A.M. MILITARY AFFAIRS AND AERONAUTICS (to discuss future direction of investigations of the Military Affairs and Aeronautics Committee) | Room 168 |

THURSDAY, OCTOBER 13, 1977

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| 10:00 A.M. JUDICIARY (to consider Senate Bill No. 585) | Senate Majority Caucus Room |
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MONDAY, OCTOBER 17, 1977

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| 11:00 A.M. LABOR AND INDUSTRY (to consider Senate Bills No. 316, 511, 644 and House Bill No. 711) | Senate Majority Caucus Room |
| 12:00 Noon JUDICIARY (to consider Senate Bill No. 1000) | Room 172 |

WEDNESDAY, OCTOBER 19, 1977

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|---|----------------------------------|
| 9:30 A.M. PUBLIC HEALTH AND WELFARE (to consider Senate Bills No. 959, 1105, 1106 and House Bill No. 274) | Joint State Govt. Comm. Room 450 |
| 9:30 A.M. CONSUMER AFFAIRS (Hearing on Senate Bill No. 995) | Senate Majority Caucus Room |

THURSDAY, OCTOBER 27, 1977

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| 9:00 A.M. Special Senate Committee to investigate Drug Law Enforcement (Public Hearing) | Wm. Penn Auditorium |
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ADJOURNMENT

Senator MESSINGER. Mr. President, I move that the Senate do now adjourn until Wednesday, October 12, 1977, at 11:00 a.m., Eastern Daylight Saving Time.

The motion was agreed to.

The Senate adjourned at 6:26 p.m., Eastern Daylight Saving Time.