VETOES BY THE GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA. OR BILLS PASSED BY THE LEGISLATURE AT THE SESSION OF 1885, PP. 1-228

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Vetoes by the Governor of the Commonwealth of Pennsylvania. Or Bills Passed by the Legislature at the Session of 1885, pp. 1-228 by Pennsylvania Governor

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PENNSYLVANIA GOVERNOR

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Trieste

VETOES

BY THE

GOVERNOR

OF THE

COMMONWEALTH OF PENNSYLVANIA.

OF

BILLS PASSED BY THE LEGISLATURE

AT THE

SESSION OF 1885.

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VETOES.

BILLS RETURNED TO THE LEGISLATURE BY THE GOVERNOR, WITH HIS OBJECTIONS THERETO, DURING ITS REGULAR SESSION, ENDING ON JUNE 12, A. D. 1885.

No. 1.

A SUPPLEMENT

To an act entitled "An act relative to the establishment and jurisdiction of magistrates' courts in the city of Philadelphia," approved February fifth, one thousand eight hundred and seventy-five.

WHEREAS, The Constitution of this Commonwealth requires that in Philadelphia there shall be established for each thirty thousand inhabitants one court not of record of police and civil causes with jurisdiction not exceeding one hundred dollars;

And whereas, There are eight hundred and forty-six thousand nine hundred and eighty inhabitants in the said city, as appears by the United States census of one thousand eight hundred and eighty, and there should therefore be established twenty-eight such courts therein, and there are at present established but twenty-four; Now, therefore,

SECTION 1. *Be it enacted, &c.*, That there are hereby established in Philadelphia four additional courts not of record of police and civil causes, with jurisdiction not exceeding one hundred dollars; each of such courts shall be held by one magistrate whose term of office shall be five years.

SECTION 2. The four additional magistrates to preside over the said four additional courts shall be elected at the next municipal election, on general ticket with such other magistrates as are to be then elected, and shall hold their offices for the term of five years from the first Monday of April next succeeding their election.

SECTION 3. The said four additional magistrates shall be paid by the said city for their services the same salary now paid to the other magistrates thereof and in the same way.

SECTION 4. The said four additional magistrates shall draw lots for their courts with the magistrates elected and to be elected to preside over the

twenty-four courts heretofore established, so that the magistrate securing the first choice shall select from the twenty-eight courts.

JAMES L. GRAHAM,
Speaker of the House of Representatives.
CHAUNCEY F. BLACK,
President of the Senate.

EXECUTIVE DEPARTMENT, COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF THE GOVERNOR,
HARRISBURG, *January 30, 1885.*

To the House of Representatives of the Commonwealth of Pennsylvania:

GENTLEMEN: I herewith return without my approval House bill No. 1, entitled "A supplement to an act entitled 'An act relative to the establishment and jurisdiction of magistrates' courts in the city of Philadelphia, approved February 5, 1875.'" As far as I have been able to ascertain, the sentiment of the people of Philadelphia is opposed to the enactment of this bill. The four additional magistrates' courts created by the bill for Philadelphia are not desired by that community. The citizens almost unanimously regard them as an unnecessary and expensive burden.

The bill, therefore, should be disapproved as creating unnecessary offices, and as legislation in defiance of the sentiment of the people of the locality affected, unless there is some other unanswerable reason demanding its enactment. Such a reason is attempted to be set forth in the preamble to the bill, which alleges a constitutional command that the four additional courts created by the bill shall be established. The argument upon which the bill is based is as follows: Section twelve of article five of the Constitution provides that in Philadelphia there shall be established for each thirty thousand inhabitants one court not of record of police and civil causes. The population of Philadelphia at the time of the adoption of this provision was such as, at the rate of one court for every thirty thousand, to require the establishment of twenty-four courts. Accordingly, the act of May 5, 1875, was passed, establishing that number of courts.

It is now maintained by the friends of the bill that the population of Philadelphia is at least one hundred and twenty thousand more than it was in 1875, and that, therefore, the claim of the Constitution above referred to requires that four more courts shall be established because of the increased population. I am obliged to dissent from this interpretation of the law. Section twelve of article five is not in its language a continuing command, and, considered analogously with other parts of the Constitution, it was not intended to be. The command of this section relates only to the first establishment of magistrates' courts.

It does not require the establishing of courts from time to time at the rate of one for every thirty thousand of population, but, having abolished the office of alderman, it commands that there shall be at once established in place thereof magistrate courts to the number of one for every thirty thousand of population. This required twenty-four courts, and no more, and the Constitution might have used that number instead of the ratio of population. Had the definite number instead of the ratio been used, no one would have doubted the meaning of the section; but the ratio is only a method of ascertaining the number, and cannot of itself give a continuing effect to language that otherwise would have no such meaning. In

other parts of the Constitution, where the legislation was made to depend on the increase or decrease of population from time to time, language is used that leaves no doubt of the intention to make a continuing provision; as, for instance, the command that the State shall be apportioned into the legislative districts immediately after each decennial census, and the provision of section five of the judiciary article, that wherever a county shall contain forty thousand inhabitants it shall constitute a separate judicial district. These clauses are both obviously clear and undoubted commands of continuing force.

Moreover, the debates in the Constitutional Convention upon the clause as to magistrate courts, though repeatedly referring to the number of courts to be first established, do not allude to any possibility of an increase in their number from time to time by virtue of any provision of the section. (See Debates of Convention, volume IV, 277, 278, 291, 292, 302.) It seems to me, therefore, that there is no reason to give to the section any other meaning than what its language plainly conveys on its face. It was a direction to establish one magistrate court for every thirty thousand of its population then and there. This the Legislature did by the act of 1875, and the force of the command ceased with the legislative obedience.

Besides, there was no need for the framers of the Constitution to do more than provide for the immediate requirements of the city of Philadelphia as to magistrate courts, the judiciary article containing elsewhere ample authority to make provision for any necessities that might arise for additional courts without inserting in the Constitution an inflexible and continuing rule requiring new courts to be constantly established with each increase of thirty thousand in population. There is, therefore, no reason either in the language of the section or in the necessities of the subject requiring a continuing effect to be given to the command to establish a given number of courts. Believing that there is no constitutional command requiring the passage of this bill, and that the offices created by it are needless and not desired by the people, I would for these reasons alone withhold my approval.

There are other reasons, however, which induce me to decline signing this bill. The Constitution, in section seven of Article III, prohibits absolutely the passage of certain kinds of special legislation. Among others, it prohibits the passing of any local or special law "regulating the affairs of counties, cities, townships, wards, boroughs, or school-districts, and creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school-districts."

The bill herewith returned is undoubtedly a local and special law, and if it is true that there is no constitutional command requiring its passage, then it is clearly prohibited by the section above quoted. It seems to me beyond dispute that, in the absence of any such peremptory command, this bill could not be lawfully passed under any circumstances. Suppose, however, that such a command exists—does that command exempt the bill from the necessity of previous publication required for all forms of special legislation by section 8 of Article III? This may well be doubted. Section 8 provides that no local or special laws shall be passed without publication. Notice of the intention to apply for the passage of this bill was not published. What immunity has it from the provisions governing all other special bills? Section 8 contains no such exemption. I confess a doubt, however, whether a clear command of the organic law for the passage of an enactment is not equivalent or superior to notice by publica-

tion—whether it is not of itself publication. Another objection suggests itself as to the manner in which this bill underwent the preliminary stages of passage.

The 2nd Section of Article III provides that no bill shall be considered unless referred to a committee, returned therefrom, and printed for the use of the members. The journals of the Legislature show that when this bill was introduced in the House it was referred for consideration to the members from Philadelphia and in the Senate to the Senators from that city. This action took place before the presiding officers had announced the committees of the two Houses. Was this a compliance with the section of the Constitution last quoted? That section recognizes the committees of the two bodies as a necessary part of their organization, with specified functions. Is a reference to a delegation or a part of a delegation a reference to a committee within the meaning of the Constitution? The bill throughout its passage was subjected to phenomenal haste, and in one of the Houses, at least, not more than fifteen minutes elapsed from its reference to its first reading, and this before a complete organization was effected. As establishing a precedent for future imitation this unwonted speed should be subjected to careful scrutiny.

Moreover, suppose all the objections suggested should be determined in favor of the bill, what evidence is there that the present population of Philadelphia entitles it to the four additional courts created? The preamble to the bill bases the right to these courts upon the census of 1880. Since then over four years have elapsed, and a decrease of but six thousand nine hundred and eighty-one inhabitants would make this bill unlawful upon the theory on which it is founded. Two Legislatures have been in session since the census of 1880, and neither of them seem to have regarded the population of the city as sufficient to call for an increase of courts. Are these two Legislatures to be charged with a failure to perform their bounden duty in this respect, or is their inaction to be taken as a legislative declaration that the population of the city was insufficient to justify an addition to the number of magistrates? Is not the Executive bound, when so tardy an assertion of right is made, to inquire carefully upon what it is now based? As a matter of fact, I question whether the population of 1880 is now maintained, and the preamble to the bill studiously abstains from declaring that the population is now what it was in 1880.

In this respect the preamble lacks completeness, and I feel obliged to regard the failure to assert a necessary fact as evidence that such fact could not be truthfully asserted. For the four reasons above set forth I withhold my approval. If I have been solicitous to discover objections to this legislation, it is because of my unhesitating belief that the measure is opposed by an overwhelming majority of the people of Philadelphia, and because it imposes on that community a needless and expensive burden. I would be gratified to coöperate with the Legislature in the prompt passage of all the legislation commanded by the Constitution, of which there is much of the most important nature that has for a decade remained unenacted. The bill now returned, however, I do not believe to come within that description.

ROBT. E. PATTISON.

No. 2.

AN ACT

To provide for an additional law judge in the Fifteenth judicial district.

SECTION 1. *Be it enacted, &c.*, That in the Fifteenth judicial district, comprising the county of Chester, there shall be an additional law judge, who shall possess the same qualifications which are required by the Constitution and laws for the president judge of said district, and who shall hold his office for a like term and by the same tenure and shall have the same powers, authority and jurisdiction, and shall be subject to the same duties, restrictions, and penalties, and shall receive the same compensation as the president judge of said district.

SECTION 2. Either of the judges of the Fifteenth judicial district shall have authority to execute all the powers and perform all the duties now conferred by the Constitution and laws upon the president judge of said district and shall have equal jurisdiction.

SECTION. 3. It shall be lawful for any one of the said judges to reserve questions of law which may arise on the trial of a cause for the consideration of both of said judges sitting together, and if the said judges shall disagree on any question reserved as aforesaid, the opinion of the judge before whom the cause was tried shall stand as the judgment of the court, and either party shall have a right to a bill of exceptions to the opinion of the court as if the point had been ruled and decided on the trial of the cause, and, in all other matters that shall be heard before both of said judges, in case of their disagreement, the decision of the president judge shall stand as the judgment of the court.

SECTION 4. At the next general election after the passage of this act, the qualified electors of the said Fifteenth judicial district shall elect, in the manner prescribed by law for the election of a president judge, a competent person learned in the law to serve as said additional law judge in said district; vacancies in the office hereby created, whether caused by death, resignation, expiration of term, or otherwise, shall be filled in the same manner as is required by law in case of a similar vacancy in the office of president judge.

SECTION 5. The judge in said district whose commission shall first expire shall be the president judge thereof, except when the president judge shall be reëlected, in which case he shall continue to be president judge.

SECTION 6. The Governor is hereby authorized, by and with the consent of the Senate, to appoint some competent person learned in the law as an additional law judge of said judicial district until the first Monday in January succeeding the next general election.

CHAUNCEY F. BLACK,
President of the Senate.
JAMES L. GRAHAM,
Speaker of the House of Representatives.

EXECUTIVE DEPARTMENT, COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF THE GOVERNOR.
HARRISBURG, *April 13, 1885.*

To the Senate of the Commonwealth of Pennsylvania:

GENTLEMEN: I herewith return without my signature Senate bill No. 15, entitled "An act to provide an additional law judge in the Fifteenth judicial district."

The number of judges in the Commonwealth is already so large, and the expenses of maintaining the judicial system so great, that an addition to either can only be justified by the most urgent necessity or the plainest constitutional command. In the judgment of the Executive no such reason exists for the passage of the bill. The judicial apportionment act was passed at the extra session of the Legislature a little more than eighteen months ago. The Fifteenth judicial district as at present existing was constituted by that act. Is it reasonable to suppose that anything has occurred since requiring the additional judge given to that district by this bill? The county of Chester has not since then increased its population to any considerable extent, nor has anything occurred to appreciably augment its judicial business.

For all practical purposes it is correct to regard the condition of that county to day as being the same that it was at the time of the extra session. Why, then, should the general law passed at that session be now changed by the addition of another judge? I can conceive no reason for the increase, and, therefore, decline giving it the sanction of my signature. The habit of frequently tinkering at general apportionment laws is to be condemned. The Constitution commands that the judicial districts of the State shall be apportioned every ten years. While authority is also given to create additional courts and judges from time to time, the fundamental law undoubtedly contemplates that, except in rare cases and for urgent reasons, the decennial apportionment should remain unchanged for ten years. The idea of a permanent general statute to be of force for a decade underlies the Constitutional provision commanding the decennial apportionment. The present bill conflicts with that purpose without, to my mind, any adequate reason.

Experience and the judgment of the most thoughtful men concur in the belief that the judicial system suffers in dignity, usefulness, and public respect by having too numerous a body of judges. The people, I believe, would welcome a change which would reduce the number of judges. It is certain that no increase is demanded, and none, I think, would be useful. We have almost reached the extreme limit where any addition to the ranks of judges is very likely to cheapen the judicial office and impair its dignity. For these reasons I withhold my approval.

ROBT. E. PATTISON.

No. 3.

AN ACT

Providing for additional copies of Smull's Legislative Hand-Book.

SECTION 1. *Be it enacted, &c.*, That the State Printer be and is hereby authorized to furnish fifteen thousand additional copies of Smull's Legislative Hand-Book for the use of the Senate and House of Representatives, five thousand thereof for the Senators and ten thousand for the members of the House of Representatives, the work to be done at the prices prescribed in the contract for such work.

JAMES L. GRAHAM,
Speaker of the House of Representatives.

CHAUNCEY F. BLACK,
President of the Senate.