

HB 505—"An Act Providing for the Acquisition of Lands Constituting the Bottom of Green's Pond and Appropriating Certain Moneys to the State Highway Department for the Construction of a Dam and Sluiceway at the Old Dam Site," by Keel and Eskridge; to Appropriations.

HB 506—"An Act to Amend Chapter 21, Title 21, Delaware Code, by Providing for the Issuance of Temporary Registration Plates Under Certain Conditions and for Certain Purposes," by Eskridge; unassigned.

HB 507—"An Act to Amend Chapter 37, Title 12, Delaware Code, by Empowering the Court of Chancery to Authorize Charitable Contributions Under Certain Circumstances by Trustees for Mentally Ill Persons," by Tunnell (by request); unassigned.

HB 508—"An Act to Amend Chapters 55 and 57, Title 29, Delaware Code, by Transferring the Duties, Functions, Records, Property and Personnel of the State Tax Department In Its Capacity as State Agency Under the Law Relating to Social Security to the State Auditor and Vesting the State Auditor With All Such Duties, Functions, Records, Property and Personnel and Providing for an Appropriation," by Brogan; unassigned.

HB 509—"An Act to Amend Chapter 45, Title 15, Delaware Code by Repealing the Provisions of the Law Requiring the Printing and Distribution of Official Paper Ballots and Other Election Supplies in New Castle County," by Brogan; to Elections.

HB 510—"An Act to Amend Title 19, Delaware Code, Relating to Workmen's Compensation," by Brogan; unassigned.

HB 511—"An Act to Amend Chapter 59, Title 11, Delaware Code, Empowering Justices of the Peace to Hear and Determine Motor Vehicle Violations by Minors Over Age of 16: Exceptions," by Donovan; to Miscellaneous.

HB 512—"An Act to Amend Chapter 87, Title 9, Delaware Code, in Relation to the Collection of Delinquent Taxes," by Donovan; to Revenue and Taxation.

HB 513—"An Act Authorizing and Directing the State Highway Department to Pay Thirty-Five Hundred Dollars to Carey D. Sapp for Damage to Property in Milton, Sussex County, Delaware, Widening Union and Federal Streets in Said Town," by Pepper; to Claims.

HB 514—"An Act to Amend Chapters 31 and 39, Title 11, Delaware Code, by Providing a New Procedure for Charging and Sentencing Repeating Criminal Offenders," by Pepper; to Judiciary.

HB 515—"An Act to Amend Chapter 7, Title 19, Delaware Code, Relating to Employment Practices by Forbidding Employers to Charge Individuals a Fee for Medical Examination and Records as a Condition of Employment," by Queen; to Public Health.

HB 516—"An Act Creating a State Park, to be Known as Indian River Inlet State Park, and Transferring Lands from the State Highway Department Therefor," by Queen; to Public Buildings and Highways.

HB 517—"An Act Appropriating Certain Moneys to Mary B. Maybee, Widow of Lyle T. Maybee, in the Death of Her Husband While in Performance of Official Duties in Line of Service of the State of Delaware," by Queen, Hicks and Garton; to Claims.

HB 518—"An Act to Amend Title 17, Delaware Code of 1953, Entitled "Highways" by Changing § 504 Thereof, Relating to Drainage of Roads or Causeways," by Queen; to Public Buildings and Highways.

HB 519—"An Act Creating a State Park to be Known and Designated as Indian River Inlet State Park, Transferring Lands and Facilities from the State Highway Department to the State Park Commission Therefor and Appropriating Monies to the State Park Commission for the Development and Maintenance of the Aforementioned Indian River Inlet State Park," by Queen; to Appropriations.

HB 520—"An Act to Permit the Use of Certain Funds for Capital Improvements at Delaware State College," by Queen and Garton; unassigned.

HB 521—"An Act to Amend Chapter 231, Volume 47, Delaware Laws, as Amended, In Respect to Delaware State College," by Queen and Garton; unassigned.

HB 522—"An Act to appropriate Funds for the Payment of State Contributions for Employee Coverage Under the Social Security Act for the Current Fiscal Year," by Rowan; to Appropriations.

The House recessed at 5:15 P. M.

The Speaker called the House to order at 8:15 P. M.

The following bills were introduced, given first and second reading by number only, and referred to committees as follows:

HB 523—"An Act Amending Chapter 51, Title 29, Delaware Code, Relating to Public Officers and Employees, by Authorizing State Agencies and Political Subdivisions to Enter Into Collective Bargaining Agreements With Employees or Their Representatives Concerning Wages, Hours, Conditions of Employment, and Other Mutual Aids and Benefits," by Quigley; to Labor.

HB 524—"An Act to Amend the Charter of the Town of Lewes by Divesting the Interest, Authority, Control and Jurisdiction of the Commissioners of Lewes of All Public and Vacant Lands Lying Within the Corporate Limits of the Town of Lewes and All Public Lands Contiguous to But Outside the Corporate Limits of Said Town and Fronting on the Bay Between the Point of Cape Henlopen on the South and

Vessey's Inlet on the North and Vesting the Interest, Exclusive Authority, Control and Jurisdiction of the Said Public and Vacant Lands in the State Highway Department of the State of Delaware and to Direct Said Commissioners to Turn Over to the State Highway Department All Books, Records, Leases and Information With Respect to Such Public and Vacant Lands," by Walls (by request); unassigned.

HB 525—"An Act to Amend Chapter 55, Title 15, Delaware Code, Relating to Absentee Voting," by Walls, Pepper, Wilkinson and Mayhew; unassigned.

HB 526—"An Act to Amend Chapter 61, Title 9, Delaware Code, Relating to Authorized Appropriations for Ambulance Service; by Tunnell; to Appropriations.

HB 527—"An Act to Amend Chapter 80, Title 9, Delaware Code, Relating to the County Tax Rates," by Tunnell; to Miscellaneous.

HB 528—"An Act to Amend the Charter of the Town of Delmar, Chapter 182, Volume 45, Laws of Delaware, Relative to Sewer Rentals," by Hastings; to Municipal Corporations.

HB 529—"An Act to Amend Chapter 21, Title 21, Delaware Code, Relative to the Registration of Commercial Vehicles of Non-Resident Owners," by Hastings (by request); to Revised Statutes.

HB 530—"An Act to Amend Chapter 23, Title 31, Entitled "Welfare" Relating to Aid to the Blind," by Mayhew (by request); unassigned.

HB 531—"An Act to Amend Chapter 5, Title 31, Delaware Code, Relating to Old Age Welfare," by Mayhew (by request); unassigned.

HB 532—"An Act to Amend Title 12, Delaware Code, Relating to Limitations on Claims Against Estates," by Deputy; to Claims.

HB 533—"An Act to Amend Title 21, Delaware Code, in Regard to the Registration of and License Plates for Antique Motor Vehicles," by Wood (by request); unassigned.

HB 534—"An Act to Amend Chapter 3, Title 9, of the Delaware Code Relating to Staggered Terms of Office of Levy Court Commissioners of New Castle County," by Wood and Deputy; to Municipal Corporations.

HB 535—"An Act to Designate a Permanent Site in the City of Wilmington for the Farmers or Curbstone Market," by Quigley and Hicks; unassigned.

HB 536—"An Act to Amend Chapter 3, Title 22 of the Delaware Code by Designating King Street for the Curbstone Market in Wilmington," by Quigley and Hicks; to Municipal Corporations.

On motion of Mr. Pepper, **HB 356** was stricken.

The following bills were introduced, given first and second reading by number only, and referred to committees as follows:

HB 537—"An Act to Amend Chapter 5, Title 28, Delaware Code, Relating to the Delaware Harness Racing Commission," by Pepper (by request); unassigned.

HB 538—"An Act to Provide for Self-Insurance by the State of Delaware of State Buildings and Property," by Pepper; unassigned.

HB 539—"An Act to Amend Title 21, Delaware Code, Entitled "Motor Vehicles", Relating to Notice by Commissioner of Revocation or Suspension of Driving Privilege," by Pepper (by request); unassigned.

HB 540—"An Act to Amend Chapter 3, Title 31, Delaware Code, Relating to the Amount of Assistance and Supplementary Services for Child Welfare and Prescribing the Duties of the Department Where Sterilization Is Requested by the Mother of Three or More Illegitimate Children," by Rowan, Pepper and Queen; to Public Health.

HB 541—"An Act to Amend Chapter 1, Title 20, Delaware Code, Relating to the Compensation of the Adjutant General," by Quigley; unassigned.

HB 542—"An Act to Amend Chapter 3, Title 14, Delaware Code, Relative to Notice of Annual School Elections," by Macklin; to Elections.

HB 543—"An Act to Amend Chapter 3, Title 14, Delaware Code, Relative to Filling Vacancies on Elected School Boards," by Macklin; to Elections.

HB 544—"An Act to Amend Chapter 19, Title 14, Delaware Code, Relative to Notice of Special Elections for Local School Taxes," by Macklin; to Revenue and Taxation.

HB 545—"An Act to Amend Chapter 21, Title 14, Delaware Code, Relative to Local School Bond Elections," by Macklin; to Appropriations.

HB 546—"An Act to Provide for the Enlargement and Improvement of the System of Free Public Schools of Delaware; Appropriating Money for Said Purposes; Authorizing the Financing of Such Enlargement and Improvement by the Issuance of Bonds and Bond Anticipation Notes of the State and by Contributions from Certain School Districts, and the City of Wilmington, Defining School Districts; Authorizing the Issuance of Bonds of Certain School Districts and the City of Wilmington for the Purpose of Raising Money to Make Such Contributions; and Authorizing the Acceptance of Federal Funds for Building Purposes and Creating Local School Building Commissions," by Macklin, Hastings and Wilkinson; unassigned.

HB 547—"An Act Authorizing the State Highway Department to Expend Funds to Prevent Erosion Along the Shore of Bethany Beach to Protect the Highways and Lands

Near Bethany Beach from Inundation by the Waters of the Atlantic Ocean," by Macklin and Keel (by request); unassigned.

HB 548—"An Act to Amend An Act Entitled, "An Act to Incorporate the Town of Bethany Beach and Give It Authority to Issue Bonds", Being Chapter 212, Volume 25, Laws of Delaware, as Amended Relative to the Election of the Commissioners of Bethany Beach," by Macklin and Keel (by request); unassigned.

HB 549—"An Act to Amend Chapter 21, Title 16, Delaware Code, Relating to Mattresses, Pillows and Bedding," by Donovan; unassigned.

HB 550—"An Act to Appropriate Funds to the State Highway Department for the Protection of Beaches and Shorelines of the State Along the Atlantic Ocean and Along the Delaware Bay and River and to Prevent Erosion," by Snowden; unassigned.

HB 551—"An Act to Amend Chapter 45, Title 10, Delaware Code, Relative to the Compensation of Jury Commissioners," by Wilkinson; to Judiciary.

HB 552—"An Act to Amend Title 14, Delaware Code, Entitled "Education", Relating to Boundaries, Consolidation and Change in Status of School Districts and Special School Districts," by Wilkinson; unassigned.

HB 553—"An Act to Amend Chapter 55, Title 29, Delaware Code, Relating to State Employees' Pension Plan, by Providing for Payments to the Surviving Spouse of an Eligible Employee," by Wilkinson; to Labor.

HB 554—"An Act to Amend Chapter 61, Title 9, Delaware Code, Relating to the Borrowing Power of the Levy Court of Sussex County," by Tunnell; to Revenue and Taxation.

HB 555—"An Act to Amend Titles 11, 14, and 29, Delaware Code, by Creating a Public Employees' Retirement Commission of the State of Delaware to Administer All the Retirement Disability and Pensions Laws of the State of Delaware, Defining the Powers and Duties of the Commission, Transferring Certain Administrative Functions and Duties Thereto, and Abolishing the Arbitration Committee and the Disability Commission," by Tunnell; to Revised Statutes.

HB 556—"An Act to Amend Title 11, Delaware Code, Making the Holding of United States Wagering Stamp Prima Facie Evidence of Gambling Law Violation," by Queen; to Revenue and Taxation.

HB 557—"An Act Creating a Commission to Study the Practicability of Constructing a Marine Terminal at or Near Lewes, in Sussex County, and Make Recommendations Thereon, and Appropriating Funds Therefor," by Queen; unassigned.

HB 558—"An Act to appropriate a Sum of Money to the State Building and Grounds Commission for the Construction of Water Mains and Associated Equipment on State Lands at Dover," by Queen; unassigned.

HB 559—"An Act to appropriate a Sum of Money to the State Building and Grounds Commission for Construction of Sidewalks and Street Lights on State Lands at Dover," by Queen; unassigned.

HB 560—"An Act to Establish the State Fire Prevention Commission and Defining Its Powers and Duties," by Queen; unassigned.

HB 561—"An Act to Amend Chapter 13, Title 24, Delaware Code, by Revising the Provisions for the Licensing and Regulation of Private Detectives and Detective Agencies," by Queen (by request); unassigned.

HB 562—"An Act to Amend Chapter 7, Title 11, Delaware Code, Relative to Penalties for Rape and Attempted Rape," by Queen (by request); unassigned.

HB 563—"An Act to Amend Chapter 9, Title 4, Delaware Code, Relative to Penalties for Certain Offenses," by Queen (by request); unassigned.

HB 564—"An Act to Amend Chapter 23, Title 30, Delaware Code, Relating to Occupational Licenses by Establishing a License Fee for Keepers of Hotels, Tourist Homes, Tourist Courts and Motels," by Queen (by request); unassigned.

HB 565—"An Act to Amend Section 40 of the Charter of the City of Wilmington, as Amended, by Changing the Provisions Relative to the Salary of the City Solicitor," by Brogan; to Revenue and Taxation.

HB 566—"An Act to Amend Title 14, Delaware Code, by Establishing Comprehensive High School Districts Within the State of Delaware and Providing for Construction, Finance, and Administration Thereof," by Bostick; unassigned.

Mr. Walls took over the Chair.

The following bills were introduced, given first and second reading by number only, and referred to committees as follows:

HB 567—"An Act to Authorize the Board of Directors of the Street and Sewer Department of the Mayor and Council of Wilmington to Release Real Estate Which is Part of a Project Area Being Redeveloped in Connection With Any Slum Clearance, Urban Redevelopment or Urban Renewal Program as Provided for by Title 31, Chapter 45, Delaware Code, from Any Sewer, Curb, Paving or Street Liens, or to Waive the Assessment Thereof," by Shockley and Bostick; unassigned.

HB 568—"An Act to Amend Title 19 Delaware Code, by Creating a Department of Labor and Industrial Relations for the State of Delaware Under the Supervision of a Commissioner; Abolishing the Labor Commission of Delaware and

Transferring Its Powers and Duties to Said Department, and Prescribing the Powers and Duties of Said Department, Its Commissioner and Divisions; Providing for Punishment for Violations and Enforcement; Appropriations," by Shockley and Bostick; unassigned.

HB 569—"An Act Proposing an Amendment to Section 21 of Article 3 of the Constitution of the State of Delaware, Relating to the Election and Term of Office of the Attorney-General," by Queen (by request); to Judiciary.

HB 570—"An Act to Amend Chapter 9, Title 4, Delaware Code, Relative to Offenses Concerning Minors," by Queen (by request); unassigned.

HB 571—"An Act to Amend Title 29, Delaware Code, by Providing for Publication of the Salaries of All State Employees," by Queen (by request); unassigned.

HB 572—"An Act to Amend Title 10 and Title 11 of the Delaware Code Relating to Justice of the Peace, by Providing for the Number, Location, Compensation of Justices of the Peace in Each of the Respective Counties, Imposing Upon the State of Delaware the Cost of Maintaining Such Courts, With the Right to Receive All Fees and Costs Collected by the Justices of the Peace, Imposing Certain Duties and Providing Penalties for the Violation of Those Duties by Justices of the Peace, Providing for the Accounting by Justices of the Peace and Constables and Appropriating Funds," by Nechay and Snowden; to Judiciary.

HB 573—"An Act Authorizing the State of Delaware to Borrow a Certain Sum of Money for Sundry Capital Improvements and Expenditures in the Nature of Capital Investments and to Issue Bonds and Notes Therefor," by Nechay and Donovan; unassigned.

HB 574—"An Act to Amend Chapter 11, Title 4, Delaware Code, Relative to the Disposition of Property Used in the Unlawful Manufacture of Alcoholic Liquor," by Nechay; to Temperance.

The House recessed at 9:45 P. M.

The Speaker called the House to order at 10:20 P. M.

The following bills were introduced, given first and second reading by number only, and referred to committees as follows:

HB 575—"An Act to Amend Chapter 3, Title 11, Delaware Code, Relating to Larceny and Embezzlement," by Livingston; unassigned.

HB 576—"An Act Providing for a Park Police Pension Fund for Members of the Park Police of the City of Wilmington," by Livingston; unassigned.

HB 577—"An Act to Amend Title 26, Delaware Code, Relating to Public Service Commission," by Livingston; unassigned.

HB 578—"An Act to Amend Chapter 1, Title 22, Delaware Code, Relating to Municipalities and the Selling of Farm Products in Wilmington Street Markets," by Quigley and Pepper; unassigned.

HB 579—"An Act to Abolish the Board of Game and Fish Commisisoners of the State of Delaware and Creating a New Commission to be Known as the Delaware Fish and Game Commission; Transferring Duties, Powers and Property," by Quigley; unassigned.

HB 580—"An Act to Amend Title 25, Delaware Code of 1953, Entitled "Property" by Adding a New Chapter Relating to Off Site Improvements to be Made in Connection With the Development of Real Property, Such as Installation of Streets, Curbs, Gutters, Sidewalks, Storm Sewers, Sanitary Sewers, Water Systems and Lines as Well as Community Recreational and Commercial Shopping Areas; Providing for the Issuance of Bonds by the State to Cover the Cost Thereof, and Regulating the Installation of Such Improvements," by Quigley; unassigned.

HB 581—"An Act to Amend Part VII, Title 10 of the Delaware Code Relating to Justices of the Peace," by Quigley; unassigned.

HB 582—"An Act to Amend the Charter of the Town of Delmar, Chapter 182, Volume 45, Laws of Delaware, Relative to the Compensation of Certain Officers," by Hastings; to Municipal Corporations.

HB 583—"An Act to Amend Chapter 27, Title 29, Delaware Code, Relating to State Treasurer by Providing Changes in the Bond Serving Procedure," by Hastings; to Insurance and Banking.

HB 584—"An Act to Amend Title 4, Delaware Code, by Creating a State Liquor Stores System for Dispensing Spirits, Wines, and Beer for Consumption Off the Premises," by Mattiford; unassigned.

HB 585—"An Act to Amend Section 6901, Chapter 69, Title 16, Delaware Code, Relating to the Selling or Possessing of Fireworks; Exceptions; by Providing for the Manufacture, Distribution and Sale of Caps, Sparklers, Torches and Colored Lights and the Licensing of Such Manufacturers, Distributors and Retailers," by Donovan; unassigned.

HB 586—"An Act to Authorize the State of Delaware to Borrow a Certain Sum of Money to Provide for Highway Improvements and for Buildings Under the Jurisdiction of the State Highway Department by Acquiring Lands and Rights-of-Ways, Bridges, by Providing Buildings and Improvements Incidental Thereto and to Issue Bonds and Notes Therefor and Appropriating Said Funds," by Donovan; unassigned.

HB 587—"An Act Making Appropriations for Certain Contingencies, for the Respective Years of the Biennium July

1, 1955, to June 30, 1957, and Prescribing Limitations Upon Use Thereof and the Powers and Duties of Budget Commission in Relation Thereto," by Donovan; unassigned.

Mr. Quigley resumed the Chair.

The following bills were introduced, given first and second reading by number only, and referred to committees as follows:

HB 588—"An Act to Amend Chapter 81, Title 9, Delaware Code, Relating to Specific Organizations Exempt from Certain Taxation and Assessment on Real Property," by Quigley; to Revenue and Taxation.

HB 589—"An Act Authorizing and Directing the State Highway Department to Install and Maintain a Traffic Control Light at the Intersection of Chestnut Hill Road and Kingston Street in Brookside Park Near Newark, New Castle County," by B. W. Johnson; to Public Buildings and Highways.

HB 590—"An Act Proposing an Amendment to Section 4A, Article V, of the Constitution of the State of Delaware," by B. W. Johnson; unassigned.

HB 591—"An Act to Amend Title 30, Delaware Code, by Imposing a Highway Use Tax on Certain Motor Vehicles, Requiring a Highway Use Permit for the Operation of Such Motor Vehicles on the Public Highways of This State, Prescribing the Methods of Collecting the Tax, Providing Penalties for Violations of the Provisions of This Act, and Making an Appropriation to the Motor Vehicle Department," by Garton; unassigned.

HB 592—"An Act to Appropriate Monies for New Buildings for the Townsend Consolidated School District Number 81," by Rowan and Alexander; unassigned.

HB 593—"An Act to Amend Chapter 1, Title 7, Delaware Code, Relating to Board of Game and Fish Commissioners by Increasing the Number of Commissioners on the Board of Game and Fish Commissioners," by Rowan (by request; unassigned).

HB 594—"An Act to Amend Title 10, Delaware Code, Relating to Courts and Judicial Procedure," by Massey; unassigned.

HB 595—"An Act to Amend Title 10 of the Delaware Code Relating to the Family Court for New Castle County and the Juvenile Court for Kent and Sussex Counties," by Massey; unassigned.

HB 596—"An Act to Amend Chapter 45, Title 29, Delaware Code, Relating to Compensation of Custodian of State House," by Wilkinson and Lester; to Miscellaneous.

On motion of Mr. Macklin, rules were restored.

The House adjourned at 11:00 P. M. until 1:00 P. M., Tuesday, April 5, 1955.

58TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:10 P. M., on Tuesday, April 5, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present—Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

Members absent—Messrs. Clark, Maclary, Wood—3.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

Mr. Deputy, on behalf of the Committee on Claims, reported the following bills as follows: **HB 354**, on merits; **SB 24**, favorably; **SB 47**, on merits; **SB 49**, on merits; **SB 76**, 4 favorable, 1 on merits; **SB 89**, on merits.

The House recessed at 1:20 P. M.

The Speaker called the House to order at 3:00 P. M.

The Chair announced that he is about to sign: **HCR 18**, **HB 78** with **HA 1**, **HB 203**.

The Secretary of the Senate informed the House that the Senate had concurred in **HCR 20**.

On motion of Mr. Shockley, **HB 327** was stricken from the calendar.

On motion of Mr. B. W. Johnson, **HB 440** was stricken from the calendar.

On motion of Mr. Macklin, **HB 92** was returned to committee.

On motion of Mr. Mayhew, **HB 361** was returned to committee.

Mr. Donovan moved that **HB 164**—"An Act to Amend Title 21, Delaware Code, Entitled "Motor Vehicles" by Providing for a Deputy Director of Safety Responsibility and Such Clerical Help as is Necessary," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Donovan, **HA 1** to **HB 164** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Clark, Maclary, Wood—3.

HB 164 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Massey moved that **HB 241**—"An Act to Amend Chapter 23, Title 11, Delaware Code, Entitled "Search and Seizure", by Eliminating the Exclusive Jurisdiction of Superior Court Judges to Order the Return or Suppression of Things Illegally Seized," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Clark, Maclary, Wood—3.

HB 241 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Massey moved that **HB 248**—"An Act to Amend Title 10, Delaware Code, by Providing That Terms of Superior Court Shall be Fixed by Rule of Court," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Clark, Maclary, Wood—3.

HB 248 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Massey moved that **SB 15**—"An Act Creating a Council on the Administration of Justice," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Clark, Maclary, Wood—3.

SB 15 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Massey moved that SB 16—"An Act to Amend Chapter 43, Title 11, Delaware Code, Relating to Probation," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Brogan, Deputy, Eskridge, Hicks, B. W. Johnson, T. S. Johnson, Lank, Lawson, Lester, Livingston, Macklin, Massey, Mattiford, Nechay, Pepper, Rowan, Snowden, (Mrs.) Tunnell, Wolf, Mr. Speaker Quigley—21.

NAYS—Messrs. Donovan, Layton, Mayhew, Shockley—4.

NOT VOTING—Messrs. Bostick, Garton, Queen, Wilkinson—4.

PRESENT—Messrs. Hastings, Keel, Walls—3.

ABSENT—Messrs. Clark, Maclary, Wood—3.

SB 16 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Massey moved that SB 19—"An Act Proposing Certain Amendments to Article IV of the Constitution of the State of Delaware, Relating to the Judiciary," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Brogan, Deputy, Eskridge, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Lank, Lawson, Lester, Macklin, Queen, Rowan, Snowden, (Mrs.) Tunnell, Wolf—17.

NAYS—Messrs. Alexander, Donovan, Layton, Livingston, Massey, Shockley—6.

Messrs. Massey and Shockley changed their votes for purpose of reconsideration.

NOT VOTING—Messrs. Garton, Keel, Wilkinson—3.

PRESENT—Messrs. Mattiford, Mayhew, Nechay, Pepper, Walls, Mr. Speaker Quigley—6.

ABSENT—Messrs. Clark, Maclary, Wood—3.

SB 19 not having received the constitutional majority, was lost.

On motion of Mr. Massey, SB 19 was restored to the calendar.

Mr. Pepper moved that SB 14—"An Act to Amend Chapters 1, 3 and 5 of Title 10 of the Delaware Code, Relating to the Supreme Court, Court of Chancery and Superior Court," be taken up for consideration and read for the third time in order to pass the House.

Action deferred on motion of Mr. Rowan.

Mr. Pepper moved that **SB 17**—"An Act to Amend Sections 7305, 7306 and 7307 of Title 14 of the Delaware Code, Relating to the State Library," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Machkin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Clark, Hicks, Maclary, Wood—4.

SB 17 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Mayhew moved that **SB 161**—"An Act to Amend Chapter 21, Title 18, of the Delaware Code Relating to Agents and Brokers, by Providing for Regulations and Examinations in Licensing of Agents and Brokers; Non-Resident Brokers; Appropriation," be taken up for consideration and read for the third time in order to pass the Senate.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Eskridgt, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Macklin, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—28.

NAYS—None.

PRESENT—Mr. Livingston—1.

NOT VOTING—Mr. Donovan—1.

ABSENT — Messrs. Clark, Hicks, Maclary, Mattiford, Wood—5.

SB 161 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Garton moved that **HB 170**—"An Act to Amend Chapter 3, Title 11, Delaware Code, by Prohibiting Tie-in Sales of Magazines or Books With Comic Books Containing Drawings or Photographs Depicting a Crime Punishable Under the Laws of the State of Delaware, and Providing a Penalty Therefor," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Garton, **HA 1** to **HB 170** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mayhew, Nechay,

Pepper, Rowan, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—22.

NAYS—Messrs. Lawson and Snowden—2.

PRESENT—Messrs. T. S. Johnson, Queen, Shockley, Wolf—4.

ABSENT—Messrs. Clark, Hicks, Lank, Lester, Maclary, Mattiford, Wood—7.

HB 170 with **HA 1** not having received the constitutional majority, was lost.

Mr. Garton moved that **HB 171**—"An Act to Amend Title 11, Section 435, Delaware Code, Entitled "Publication or Distribution of Obscene Pictures Tending to Corrupt Morals of Youth," and Relating to the Sale, Giving or Furnishing to a Minor Any Comic Book Containing Drawings or Photographs Depicting a Crime Punishable Under the Laws of the State of Delaware, and Providing a Penalty Therefor," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Garton, **HA 1** to **HB 171** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mayhew, Pepper, Rowan, Shockley, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—21.

NAYS—Messrs. Lawson and Snowden—2.

PRESENT—Messrs. T. S. Johnson, Lank, Wolf—3.

NOT VOTING—Messrs. Nechay and Queen—2.

ABSENT — Messrs. Clark, Hastings, Hicks, Lester, Maclary, Mattiford, Wood—7.

HB 171 with **HA 1** not having received the constitutional majority, was lost.

Mr. Deputy introduced the following resolution, which upon further motion by him was adopted: **HR 61**—"Appropriating Money Out of the General Fund of the State Treasury to Pay Certain Expenses of the Present Session of the 118th General Assembly."

BE IT RESOLVED, by the House of Representatives of the 118th General Assembly of the State of Delaware, that the following amounts are appropriated out of any money in the General Fund of the State Treasury for the payment of certain expenses connected with the present session of the 118th General Assembly of the State of Delaware, up to and including the Sixtieth Legislative Day, which expenses are declared proper and reasonable expenses actually incurred by the respective members of the House of Representatives for traveling expenses, commonly called mileage expenses, in traveling from their respective homes to Dover and in returning from Dover to their respective homes in the performance

of their duties as members of the House of Representatives, during the present Legislative Session thereof, and the Auditor of Accounts is directed to approve and properly execute warrants for, and the State Treasurer is directed to pay to the respective members of the House of Representatives herein-after named, the respective amounts set opposite their respective names, viz.:

Mrs. Mildred Tunnell	\$219.00
Mr. George T. Macklin	145.00
Mr. Leon E. Donovan	150.20
Mr. Charles W. Bostick	78.00
Mr. Ernest S. Mattiford	93.00
Mr. Joseph B. Walls	294.00
Mr. J. Earl Pepper	279.00
Mr. B. Walter Johnson	213.00
Mr. Roland H. Wilkinson	33.00
Mr. Earl N. Keel	195.00
Mr. Peter Nechay	195.00
Mr. Paul F. Livingston	303.00
Mr. Daniel J. Queen, Jr.	14.30
Mr. James L. Hastings	303.00
Mr. Ebe T. Layton	303.00
Mr. Irving H. Garton	15.00
Mr. Nelson Massey	33.00
Mr. Harry E. Mayhew	123.00
Mr. H. Clifford Clark	69.00
Mr. Thomas C. Rowan	153.00
Mr. Edgar Alexander	153.00
Mr. Earl Deputy	183.00
Mr. Norman A. Eskridge	213.00
Mr. John J. Brogan	303.00
Mr. Paul E. Shockley	323.00
Mr. James R. Quigley	273.00
Mr. James H. Snowden	333.00
Mr. Henry H. Wolf	273.00
Mr. Tilghman S. Johnson	342.00
Mr. Benjamin E. Hicks	303.00
Mr. William E. Lester	207.00
Mr. Harry G. Lawson	303.00
Mr. Robert R. Wood	363.00
Mr. Robert P. Maclary	323.00
Mr. Raymond M. Lank	213.00

Mr. Deputy introduced the following resolution, which upon further motion by him was adopted: **HR 62**—"Authorizing Payment on Account to Attaches and Employees of the House of Representatives."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly that the State Treasurer is hereby authorized and directed to pay to each attache and employee of the House, upon order of the Speaker and Chief Clerk of the

House, the sum of Ten Dollars (\$10.00) for each legislative day of service by such employee since March 24th, 1955, the fiftieth legislative day.

The House adjourned at 5:30 P. M. until 1:00 P. M., Wednesday, April 6, 1955.

59TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:30 P. M., on Wednesday, April 6, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

Members absent—Messrs. Alexander and Maclary—2.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

On motion of Mr. Macklin, **HB 92** was stricken from the calendar.

On motion of Mr. Shockley, stricken bills will be listed by number only.

The Speaker announced he is about to sign: **HCR 20**.

On motion of Mr. Donovan, **HB 205** was recalled to committee.

On motion of Mr. Shockley, **SB 200** was recalled to committee.

On motion of Mr. Garton, **SB 56**—"An Act to Amend the Charter of the Town of Hartly, Chapter 152, Volume 29, Laws of Delaware, by Increasing the Amount Permitted to be Raised in Taxes," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Alexander, Keel, Maclary, Rowan, Wilkinson—5.

SB 56 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Mayhew moved that **HB 182**—"An Act Appropriating a Sum of Money to the Delaware Commission for the Feeble-minded in Order to Pay for Certain Labor and Materials Supplied to the Delaware Colony," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Brogan, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—28.

NAYS—Mr. Donovan—1.

PRESENT—Mr. Macklin—1.

ABSENT — Messrs. Alexander, Lank, Maclary, Rowan, Wilkinson—5.

HB 182 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mrs. Tunnell moved that **HB 214**—"An Act to Amend Chapter 13, Title 13, Delaware Code, by Removing the Monetary Limits Relative to the Support of and Relative to the Medical and Lying-in Expenses Incident to the Birth of an Illegitimate Child," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—28.

NAYS—Mr. Shockley—1.

ABSENT—Messrs. Alexander, Garton, Lank, Maclary, Rowan, Wilkinson—6.

HB 214 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Shockley moved that **HB 266**—"An Act to Amend Title 30, Delaware Code, Entitled "State Taxes" by Providing for Occupational Licenses for Self Service Laundries," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Mattiford, Shockley, Snowden, Wolf, Wood, Mr. Speaker Quigley—23.

NAYS—Messrs. Massey, Nechay, Queen, (Mrs.) Tunnell, Walls—5.

PRESENT—Messrs. Mayhew and Pepper—2.

ABSENT—Messrs. Alexander, Garton, Maclary, Rowan, Wilkinson—5.

HB 266 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Lester moved that **HB 192**—"An Act to Amend Chapter 17, Title 9, Delaware Code, Relating to Eligibility for Retirement Benefits," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Alexander, Bostick, Maclary, Rowan, Wilkinson—5.

HB192 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Nechay moved that **SCR 7**—"In Reference to the Acute Need for Highway Improvements in the Area of the Dover Air Force Base," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Resolution pass the House?" the roll call revealed:

YEAS — Messrs. Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Alexander, Bostick, Maclary, Rowan, Wilkinson—5.

SCR 7 having received the constitutional majority, passed the House and was ordered returned to the Senate.

The Secretary of the Senate informed the House that the Senate had concurred in **HB 94**, and that the Senate had passed and requested the concurrence of the House in the following: **SCR 8**, **SB 111** with **SA 1**, **SB 214** with **SA 1**, **SB 277**, **SB 282**, **SB 284**, **SB 288**, **SB 291** with **SA 1** and **SA 3**, **SB 349** with **SA1**.

The House recessed at 2:20 P. M.

The Speaker called the House to order at 3:30 P. M.

On motion of Mrs. Tunnell, the privilege of the floor was granted to Mrs. Donald R. Hull, who acted as spokesman for the supporters of **HB 162** and introduced several other speakers.

The House recessed at 5:05 P. M.

The Speaker called the House to order at 6:25 P. M.

Mr. B. W. Johnson, on behalf of the Committee on Elections, reported that the House would meet in executive session at 3:00 P. M. on Thursday, April 7, 1955, on the question of the contested seat from the 10th Representative District of Sussex County.

The House adjourned at 6:30 P. M. until 1:00 P. M., Thursday, April 7, 1955.

60TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:15 P. M., on Thursday, April 7, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley —34.

Member absent—Mr. Maclary—1.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

The House recessed at 1:20 P. M.

The Speaker called the House to order at 3:30 P. M.

On motion of Mr. Shockley, **HB 223** was recalled to committee.

The following substitute bill was introduced, given first and second reading by title only, and referred to committee as follows:

HS 1 for **HB 223**—"An Act to Re-Incorporate the Town of Elsmere, New Castle County," by Shockley; to Municipal Corporations.

The Secretary of the Senate informed the House that the Senate had passed: **HB 57**, **HB 58**, **HB 66**, **HB 73**, **HB 74**, **HB 76**, **HB 86**, **HB 95**, **HB 96**, **HB 126**, **HB 139**, **HB 198**, and that the Senate had passed and requested the concurrence of the House in the following: **SB 323**, **SB 324**, **SB 473**.

Mr. Massey, on behalf of the Committee on Judiciary, reported the following: **HB 349**, 3 favorable, 2 on merits; **HB 363**, 4 favorable, 1 on merits; **HB 364**, 3 favorable, 2 on merits;

HB 37, on merits; **HB 372**, 4 favorable, 1 on merits; **HB 382**, 4 favorable, 1 on merits; **HB 384**, 4 favorable, 1 on merits; **SB 254**, 3 favorable, 2 on merits; **SB 265**, favorably.

Mr. Nechay moved that **SB 102**—"An Act to Amend Chapter 45, Title 7 of the Delaware Code by Requiring Public Notice and Public Sale of Public Lands," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lank, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. Maclary—1.

SB 102 having received the constitutional majority, passed the House and was ordered returned to the Senate.

On motion of Mr. B. W. Johnson, chairman of the Committee on Elections, the House took up the contest over the seat from the Tenth Representative District of Sussex County.

Mr. Lawson, as minority member of the Committee on Elections, introduced the following resolution: **HR 63**—"Respectfully Requesting the Supreme Court to Clarify the Rights of the House of Representatives in Respect to the Constitutionality of the Absentee Ballot Law."

WHEREAS, the Supreme Court of the State of Delaware on March 15, 1955 rendered an opinion dismissing the petition for Mandamus in a case entitled:

"THE STATE OF DELAWARE,
ex rel. JAMES W. SMITH,

v.

No. 31, 1954.

JAMES B. CAREY, resident Associate Judge in Sussex County, and DANIEL L. HERRMANN, Associate Judge, who constitute the Superior Court of Sussex County and the Board of Canvass thereof under Section 6 of Article V of the Constitution of the State of Delaware, and RAYMOND M. LANK, Intervener.

MANDAMUS"

AND WHEREAS, said action involved a contest in which James W. Smith claimed to have been elected representative in the House of Representatives of the State of Delaware in the place of Raymond M. Lank, the Intervener, who was seated as a member of this House from the 10th Representative District of Sussex County, the said James W. Smith having

claimed that the Absentee Ballot Law (49 Del. Laws, Chapter 294) is unconstitutional and therefore that all absentee ballots cast in said election were illegal and void; and

WHEREAS, the election contest filed in this House by said James W. Smith challenging the right of said Raymond M. Lank to hold the seat as a member of this House from the 10th Representative District of Sussex County came before this House for public hearing and argument on behalf of the respective contestants on the 30th day of March, A. D. 1955; and

WHEREAS, counsel for the said Smith at said hearing before this House contended that the Supreme Court of the State of Delaware in its opinion dated March 15, 1955 had decided that this House has the right to consider the constitutionality of said Absentee Ballot Law by virtue of the following language used by the Supreme Court in rendering its decision, to-wit:

"In the instant case the House of Representatives has assumed jurisdiction of the contest initiated by Smith. It now has the power and the duty to decide the question that we are asked to decide. Its jurisdiction extends to questions of law as well as of fact. People ex rel. Drake v. Mahaney, 13 Mich. 481."

AND WHEREAS, counsel for Lank contended,

(1) that all legislative acts were presumed to be constitutional and all public officials were bound by the provisions of said act until declared unconstitutional,

(2) that no act could be declared unconstitutional in this State except by the judicial department,

(3) that if the Legislature had the right to declare an act unconstitutional it must be an act by both Houses by joint resolution, and

(4) that when the Court used the following language in its opinion, to-wit: "It now has the power and the duty to decide the question that we are asked to decide," it did not mean to include the question of the unconstitutionality of the Absentee Ballot Law.

WHEREAS, upon the request of this House the Attorney General did attend said hearing and at the request of the Speaker presided over said session; and

WHEREAS, during the argument the following colloquy took place, to-wit:

"ATTORNEY GENERAL CRAVEN: May I ask a question? You have made the point that this House, if it decides to consider the constitutional question or if it should decide in favor of the Relator, Mr. Smith, should do so by a joint resolution rather than by its own action.

"ATTORNEY HASTINGS: If they are going to take upon themselves the right to declare this Act unconstitutional, it can't be done by this House alone.

"ATTORNEY GENERAL CRAVEN: Do you have any authority for that?

"ATTORNEY HASTINGS: Certainly not. Is there any authority anywhere by anybody that the House of Representatives can declare an Act unconstitutional?

"ATTORNEY GENERAL CRAVEN: We have the authority of the Supreme Court of Delaware.

"ATTORNEY HASTINGS: I think you misread that. I don't think that is what they intended at all. No authority anywhere can be found except in the Courts of this country to declare one of our Acts unconstitutional.

"REPRESENTATIVE SNOWDEN: May I ask a hypothetical question of the Attorney General? If this House decides to unseat Mr. Lank on whatever constitutional grounds it can arrive at, would the absentee ballot laws now on our Statutes be in effect on November 1956?

"ATTORNEY GENERAL CRAVEN: No, it would not. If this House declares the law unconstitutional, it will no longer be in effect."

NOW, THEREFORE, the House of Representatives of the State of Delaware in General Assembly met respectfully requests the Supreme Court of the State of Delaware to clarify the language above quoted from its opinion so that the members of this House may know whether they have the right in passing upon this election contest to pass upon the constitutionality or unconstitutionality of the Absentee Ballot Law under which votes were cast for the contesting parties and to reject the absentee ballots cast in the 10th District in the last election for the said Smith and the said Lank solely on the ground that the law permitting those ballots to be cast was unconstitutional.

Mr. Snowden, Mr. Lawson, Mr. Wolf and Mr. Wood discussed the resolution and Mr. Lawson moved for a roll call, which revealed:

YEAS—Messrs. Hicks, T. S. Johnson, Lawson, Lester, Snowden, Wolf, Wood—7.

NAYS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—26.

NOT VOTING—Mr. Lank—1.

ABSENT—Mr. Maclary—1.

HR 63 not having received the constitutional majority, was declared lost by Mr. Speaker Quigley.

Mr. B. W. Johnson, as chairman of the Committee on Elections, introduced the following resolution: **HR 64**—"Relative to the Contested Election for the House Seat from the Tenth Representative District of Sussex County."

WHEREAS, on the opening day of this session of the General Assembly James W. Smith filed with the House his petition contesting the election of Raymond M. Lank as the Representative from the Tenth District of Sussex County, alleging that the Absentee Ballot Law as amended in 1953 is unconstitutional and the ballots cast under the provisions thereof invalid; and

WHEREAS, the House deferred action upon the said contest while awaiting the decision of the Supreme Court in an action of mandamus brought by James W. Smith and involving the same questions of constitutional law; and

WHEREAS, on March 15, 1955, the Supreme Court rendered its decision dismissing the aforesaid action of mandamus and declaring that the House alone has the power and duty under the Constitution of the State to decide the contest pending before it; and

WHEREAS, the House has heard and considered the arguments of both parties to the contest and in addition has sought and obtained the advisory opinion of the Attorney General; and

WHEREAS, it is the opinion of the House that the Absentee Ballot law, which fails to provide for the casting and counting of absentee ballots in the election districts and for the certification of the results thereof by the election officers of the districts, and which further fails to provide any means of challenging an absentee voter, is contrary to the Constitution of the State of Delaware; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that at the general election held November 2, 1954, James W. Smith received 2,484 valid votes for the office of Representative from the Tenth District of Sussex County, while Raymond W. Lank received 2,478 valid votes for said office; and

BE IT THEREFORE FURTHER RESOLVED that James W. Smith was duly elected and is entitled to the said office and upon taking the required oath shall be hereafter recognized as the sole Representative from the said District in this House.

Mr. Snowden moved that action on **HR 64** be deferred. motion lost.

Mr. B. W. Johnson moved for roll call, which revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—26.

NAYS—Messrs. T. S. Johnson, Lawson, Snowden, Wolf, Wood—5.

NOT VOTING—Messrs. Hicks, Lank, Lester—3.

ABSENT—Mr. Maclary—1.

HR 64 having received the constitutional majority, was declared passed by Mr. Speaker Quigley.

Mr. B. W. Johnson moved that Mr. Speaker Quigley administer the Oath of Representative to Mr. James W. Smith.

Mr. Wolf and Mr. Snowden objected on the ground that Mr. James W. Smith had no Certificate of Election.

Mr. Speaker Quigley administered the Oath of Representative to Mr. James W. Smith as the proper and legal representative from the Tenth Representative District of Sussex County.

The House recessed at 4:55 P. M.

The Speaker called the House to order at 5:30 P. M.

The Speaker announced he is about to sign: **SCR 7, SB 15, SB 16, SB 17, SB 55, SB 56, SB 161, HB 94.**

Mr. Macklin moved that the Report of the Committee on Elections be spread upon the Journal. Motion prevailed.

REPORT OF COMMITTEE ON ELECTIONS UPON CONTESTED ELECTION, 10TH REPRESENTATIVE DISTRICT, SUSSEX COUNTY

The Committee on Elections of the House of Representatives of the 118th General Assembly of the State of Delaware, to which was referred the contest filed by James W. Smith against the election of Raymond M. Lank as Representative in said House from the 10th Representative District of Sussex County, makes the following report:

The Committee, upon receiving this election contest in accordance with House Resolution No. 1, took no action while awaiting the decision of the Supreme Court upon the constitutionality of the absentee ballot law. In paragraph 30 of his petition filed with the House the contestant, Mr. Smith, expressed his intention of withdrawing the contest if the Supreme Court should rule that the absentee ballots in question had been lawfully cast, and it appeared to the Committee entirely right and proper that such a question should be argued and decided in the Court.

The Supreme Court has now, in its decision of March 15, 1955, refused to decide the constitutional question. The Court states that its jurisdiction over the cause attached upon the filing of a petition for mandamus in the Court and that the convening of the House did not necessarily strip the Court of that jurisdiction. But the Court's opinion continues as follows:

"In the instant case the House of Representatives has assumed jurisdiction of the contest initiated by Smith. It now has the power and the duty to decide the question that we are asked to decide. Its jurisdiction extends to questions of law as well as fact. *People ex rel. Drake v. Mahaney*, 13 Mich. 481.

"In these circumstances we are of the opinion that we should decline to exercise our jurisdiction over the Board of Canvass. The matter is one for the decision of the House."

The Supreme Court has therefore in its discretion dismissed the contestant's petition for a writ of mandamus to the Sussex County Board of Canvass. In so doing the Court has left to the House the decision on the constitutionality of the absentee ballot law and the validity of the absentee ballots counted in the 10th Representative District of Sussex County. According to the Court's opinion the House must act both as judge and jury and decide all questions, both of law and fact, which may be involved.

As far as questions of fact are concerned the Committee has found that there is no dispute about the facts necessary for a decision of the contest. These necessary facts include all the circumstances of the election itself and the manner in which the ballots were handled, counted, and certified. They are stated in full in the attached Statement of Facts, which the Committee requests be considered a part of this report.

There is some difference of opinion about the precise order of events on the opening day of this Session. The Committee believes that these events are actually not important for a determination of the contest, but it has included a brief account of them in the aforesaid Statement of Facts.

The gist of the important and material facts is that Mr. Smith received 2,484 votes by ballots cast personally and 126 votes by absentee ballots, while Mr. Lank received 2,478 personal votes and 257 absentee votes. If only ballots cast by the voters in person are counted, Mr. Smith won by 6 votes. If absentee ballots are also counted, Mr. Lank won by 125 votes. At the canvass of the Sussex County vote no objection was made to the absentee ballots, and the judges sitting as the Board of Canvass issued a certificate showing that Mr. Lank was elected.

The ground of Mr. Smith's contest is that the absentee ballot law, which is Chapter 55, Title 15, Delaware Code, as amended in 1953, is unconstitutional and that all the absentee ballots were therefore invalid. Mr. Lank opposes Mr. Smith's contention. This is the question of constitutional law which the House is called upon to decide.

The Committee fully realizes the reluctance to decide such a question which will unquestionably be felt by the Members of the House. The duty to do so is imposed by the Constitution of the State, which provides in Article II, Section 8, "Each House shall be the judge of the elections, returns and qualifications of its own members; . . ." The Supreme Court has stated that even if it had considered and reached an opinion in the matter its opinion would have been only an advisory one, not binding upon the House. It therefore appears that the House must decide the election contest which has been filed or that the controversy between Mr. Smith and Mr. Lank will remain forever unsettled. Further delay, moreover, will soon render the question moot for all practical purposes and amount to a decision in favor of Mr. Lank.

A full opportunity for both sides to be heard is, however, of great importance. No question of such difficulty as the one here involved should be decided until all arguments on behalf of both parties have been considered. One of the attorneys representing Mr. Lank has indicated to the Committee that there may be difficulty in either his or his associate's appearance before the House. The Committee believes that Mr. Lank ought to be afforded a reasonable time to make other arrangements, if necessary.

The Committee therefore recommends that a hearing of the election contest involving the seat for the 10th District of Sussex County shall be held in the House of Representatives on Wednesday, March 30, 1955, and that arguments of both parties, either in person or by attorney, shall then be heard and the written briefs of the parties accepted. The House should make available to the parties its facilities for reproduction of the written briefs so that copies may be supplied to every member.

The Committee then recommends that the House, after considering the arguments presented to it and seeking such advice as it deems necessary, decide whether the absentee ballots cast in the 10th District of Sussex County should have been counted and whether Mr. Lank or Mr. Smith should continue to represent that district in this body.

B. WALTER JOHNSON, Chairman

March 23, 1955

STATEMENT OF FACTS

James W. Smith and Raymond M. Lank, respectively, were the opposing candidates of the principal political parties, and the only candidates, for the office of Representative in the General Assembly of Delaware from Representative District Number Ten in Sussex County at the general election held November 2, 1954.

Both were and are duly qualified to be candidates for and to hold such office, if elected.

The Representative District is divided into three (3) Election Districts with one (1) designated polling place in each such Election District.

The election was conducted at the respective polling places in the several Election Districts by duly constituted Election Officers. All the ballots given or cast at the several polling places were given or cast by voting machines and, at the close of the polls, the total of the votes thus given or cast by and registered upon the machines were tabulated, proclaimed and certified to by the respective Election Officers of the several Election Districts.

Prior to the close of the election there had been returned to the Department of Elections, at Georgetown, which is outside of the Representative District in question, certain ab-

sentee ballots in sealed, voucher envelopes, including the 383 absentee ballots in question. After duly endorsing the carrier envelopes thereof, immediately after the polls had closed all such absentee ballots were duly deposited in a ballot box of a type such as has been used at general elections, the inner box was sealed, the outer box was locked, and the box was delivered by the Department to the Prothonotary of the Superior Court of Sussex County within one (1) hour after the close of the election and the Prothonotary retained it in her possession until November 4, 1954, at 12:00 o'clock noon.

The 383 absentee ballots in question were handled in all respects in conformity with the absentee ballot law under attack.

On November 4, 1954, at 12:00 o'clock noon the Superior Court of Sussex County, sitting as the Board of Canvass thereof, duly convened, at Georgetown, aforesaid, to publicly ascertain the state of the election throughout such County.

The several Certificates of the Election of the several Election Officers of the several Election Districts of the Representative District in question were duly delivered to the Court and therefrom the Court ascertained that of the total votes given or cast at the polls of the several Election Districts by voting machines, as aforesaid, Mr. Smith received 2,484 votes and Mr. Lank 2,478, or a plurality of six (6) such votes in favor of Mr. Smith.

At the same time and place, however, the box containing the absentee ballots in question, together with its keys, were also delivered unto the Court.

With its appointed representatives of each of the two principal political parties, the Court caused the box to be opened and the voucher envelopes to be taken therefrom.

The registration books and certificates were examined to ascertain if the absentee electors whose absentee ballots such envelopes purportedly contained were registered and, after ascertaining such to be the fact, the word "VOTED" was stamped opposite the name of each such elector upon the registration books and certificates.

Thereupon, the voucher envelopes were opened, the official envelopes containing the absentee ballots were taken therefrom, the absentee ballots were taken from the official envelopes, and the absentee votes accredited and added to the total, calculated votes cast for the several candidates for office at the general election in question.

No challenge whatever was made to the casting of any absentee ballot from Representative District No. 10 in Sussex County, nor was any objection whatever made to the Board of Canvass to the giving, accrediting and adding of any absentee vote to the total, calculated votes cast for the opposing candidates.

By the foregoing procedure, and none other, the Court added 126 absentee votes to the total of Mr. Smith and 257 absentee votes to the total of Mr. Lank in calculating the total vote cast for such persons, and ascertained the state of the election for the office of Representative in question to be that Mr. Smith received 2,610 and Mr. Lank 2,735 votes, *in persona* and *absente*, or a plurality of 125 such votes in favor of Mr. Lank. Whereupon, the Court made and issued duplicate certificates or returns of such election in favor of Mr. Lank.

On December 11, 1954, James W. Smith filed a petition in the Supreme Court of Delaware asserting that the absentee voting laws as amended in 1953 were unconstitutional and that all absentee ballots should have been rejected and asking that a writ of mandamus be issued ordering the judges of the Superior Court, sitting as the Board of Canvass of Sussex County, to reconvene and recanvass the vote and issue a certificate of election to him (Smith).

On December 11, 1954, Mr. Smith also served upon Mr. Lank written notice of his intent to contest the election in accordance with Chapter 59, Title 15, Delaware Code, and thereafter he served written specifications of the grounds of the contest.

On January 4, 1955, the opening day of this Session, following the call of the temporary roll and the election of a temporary Speaker and temporary Clerk of the House, Houston Wilson, attorney for Mr. Smith, presented a petition contesting the election of Mr. Lank, together with copies of the notice and specifications previously served. Mr. Lank thereupon presented counter specifications. Mr. Wilson then offered or suggested a resolution having to do with the seating of Mr. Lank. Action on the resolution was deferred, and the House proceeded with the reading of the certificates of election, taking the oaths of office, and the election of a permanent Speaker and Clerk.

A resolution adopting temporary rules of the House was then introduced, adopted, and rescinded. Mr. Shockley then introduced the resolution previously mentioned, "In Reference to the seating of the Representative of the Tenth District of Sussex County", and this was adopted as House Resolution No. 1 after a motion to defer action was defeated.

WRITTEN ARGUMENTS OF ATTORNEYS
FOR RAYMOND M. LANK
UPON THE CONSTITUTIONALITY OF THE
ABSENTEE BALLOT LAW
SUBMITTED TO THE SUPREME COURT
JANUARY 24, 1955

ARGUMENT

Question 1: Are those Acts of the General Assembly of Delaware, in pursuance of which the absentee ballots in question were returned to the Department of Elec-

tions, by it deposited in a box and delivered to the Superior Court, sitting as a Board of Canvass, and by such Court opened, accredited and added to the total, calculated votes given and cast in persona at the polls of a general election for the respective candidates for the office in question, unconstitutional?

This brief argues the negative of the above question. The relator's brief, in its simplest form, states that the Soldiers' Vote Act of 1898, which provided amongst other things, that the Board of Canvass should count the absentee ballots, provided for under that law, was held to be unconstitutional under the Harrington decision (State ex rel Walker v. Harrington, et al, 1943, 3 Terry 236, 30 A 2d 688), in which Judge Speakman, delivering the opinion of the unanimous Court, stated that the Constitution provided no authority to the Legislature to make any provision for absentee voting. He also stated that the Board of Canvass had no authority except to calculate the aggregate amount of all the votes as given in the districts. He held the Soldiers' Vote Act unconstitutional on these two grounds. In addition, he held, by way of dictum, that the expression in Section* "shall have such other powers as shall be provided by law" provided no additional power in the Board of Canvass except as it related to the carrying out of the express preceding provisions of Section 6*.

The Constitution was subsequently amended as a result of this decision, by Section 4A, which is as follows:

The General Assembly *shall enact general laws* providing that any qualified elector of this State, duly registered, who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, either because of being in the public service of the United States or of this State, or because of the nature of his or her business or occupation, or because of his or her sickness or physical disability, may cast a ballot at such general election to be counted in such election district. (Added 44 Del. Laws, Ch. 1 (1943), approval not required.)

The General Assembly also enacted Chapter 55 of Title 15 Delaware Code Annotated as its particular implementation at that time to that amendment.

We contend that the aforesaid Section 4A, in mandatory terms directs the General Assembly and authorizes it to enact general laws for the purpose of enabling absentee voters, under certain conditions expressed therein, to cast ballots at the regular elections, to be counted.

We contend that that statute gave the General Assembly the right to absolutely control the time, place and manner for electors to cast their ballots and for the mechanics of the counting of the same.

It is a fundamental rule, in the interpretation of Constitutional Amendments, that:

“An amendment duly adopted is a part of the Constitution and is to be construed accordingly. It cannot be questioned on the ground that it conflicts with pre-existing provisions; on the contrary, if there is a real inconsistency, the amendment must prevail because it is the latest expression of the will of the people. In such a case there is no room for the application of the rule as to harmonizing inconsistent provisions.”

(6RCL 48 S. 41)
(11 Am. Jr. S.54)

It is also our contention that the Court, in the Mitchell** case, considered a situation which was totally dissimilar to the one in this case in that the Court was there asked to set aside the entire vote of an election district, based on certain activities of the election officers in the conducting of that election. It has been consistently held throughout all jurisdictions that this is not the purpose of the Board of Canvass nor is the Board of Canvass allowed to examine such situations. The problem of considering exactly what the meaning was of Constitutional Amendment Section 4A, did not come before the Court in that case under the question as is posed herein and is readily distinguishable by that fact.

It is apparent that when the General Assembly passed the laws: 49 Laws of Del. 552, etc. Chap. 278; and 49 Laws of Del. 587, etc. Chap. 294, it was passing the legislation providing for the mechanics of running a general election under the novel situation created by the advent of voting machines in this State. It is also apparent that the Legislature, in its wisdom, decided at the same time, that it would provide a new, orderly system for the counting of absentee ballots which would supplant the previous system as outlined in Title 15, Delaware Code Annotated, Chapter 55.

The Legislature, in addition, for the purpose of preventing any possible fraud in the election procedure, preserved all rights to challenge under Section 5517, Title 15 Rev. Code of Del., wherein it provided the vote may be challenged as provided in the general election laws and proceedings had as provided therein. It also preserved the right of challenge in Chapter 294, Laws of Del. Vol. 49, when it provided that:

“If, upon examination, it is ascertained that for any cause an absentee elector is not qualified to cast a vote then and in that event the voucher envelope shall not be opened but shall be returned to the Board of Canvass together with the reason for its rejection.”

It would seem, therefore, that as to the procedure as carried out in the last general election relative to the relator

and intervener, that the proceedings were valid by proper Constitutional and Legislative authority and that the Petition in Mandamus should be dismissed.

* Art. 5, Sec. 6, Del. Const. of 1897

** State ex rel. Mitchell, et al, v. Wolcott, et al, 1951,
7 Terry 368, 83 A 2d 762

AUTHORITY CITED BY SEN. DANIEL O. HASTINGS IN
HIS ARGUMENT ON BEHALF OF RAYMOND W. LANK
MARCH 30, 1955.

Pennington v. Stewart, (Sup. Ct. Ind.) 10 N. E. 2d 619
at 623:

"The Legislature cannot enact a law and at the same time pass upon its constitutionality. It is for the courts to pass upon this question."

Pennsylvania R. R. Co. v. Philadelphia County, 68 A. 676, 220 Pa. 100, 15 LRA (ns) 108,

"Whether the legislature has attempted to enact a measure prohibited by the Constitution is for the courts."

11 Am. Jr. § 87. Power of the Several Departments of Government, 712 at 713:

"In a doubtful case, the final responsibility of passing upon the constitutionality of a statute rests upon the courts, and they alone are by the organic law empowered authoritatively to declare or adjudge a statute to be in accord or in conflict with the Constitution, so that the statute, if valid, stands, or, if contrary to organic law, will, by the operation of the Constitution, be rendered invalid from its enactment. It has been thoroughly stated that the right to declare an act unconstitutional is purely a judicial power and cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution. ***"

Websters Works, Vol. III, p. 30.

"The Constitution being the supreme law, it follows of course, that every act of the legislature contrary to the law must be void. But who shall decide this question? Shall the legislature itself decide it? If so, then the Constitution ceases to be legal and becomes only a moral restraint for the legislature. If they, and they only, are to judge whether their acts be conformable to the Constitution, then the Constitution is advisory and accessory only, not legally binding; because, if the construction of it rest wholly with them, their discretion, in particular cases, may be in favor of very erroneous constructions. Hence the courts of law, necessarily, when the case arises, must decide upon the validity of particular acts."

Kent Commentaries, Chapter XX.

"The interpretation or construction of the Constitution is as much a judicial act, and requires the exercise of the same legal discretion, as the interpretation or construction of a law. To contend that the courts of justice must obey the requisitions

of an act of the legislature when it appears to them to have been passed in violation of the Constitution, would be to contend that the law was superior to the Constitution, and that the judges had no right to look into it, and regard it as a permanent law. It would be rendering the power of the agent greater than that of his principal and be declaring that the will of only one concurrent and coordinate department of the subordinate authorities under the Constitution was absolute over the other departments, and competent to control, according to its own will and pleasure, the whole fabric of the government, and the fundamental laws on which it rested. ****

16 C. J. S. Constitutional Law, § 115, Declaratory Statutes, b. Construing Constitutions, p. 303:

"The legislature is clearly incompetent to place a binding construction on a constitutional provision, as such function belongs to the judiciary and an interpretation by the court of a constitutional provision is binding on the legislature."

Preveslin v. Derby & Ansonia Developing Co. 151 A. 518 at 522:

"The rule of law promulgated in State v. Carroll, 38 Conn. 449, 472, 9 Am. Rep. 409, is still the law of this state and of this land. 'Every law of the legislature,' we assert, 'however repugnant to the constitution, has not only the appearance and semblance of authority, but the force of law. It cannot be questioned at the bar of private judgment, and if though unconstitutional resisted, but must be received and obeyed, as to all intents and purposes law, until questioned in and set aside by the courts. This principle is essential to the very existence of order in society. It has never been questioned by any jurist to my knowledge'."

State Ex Rel. Atl. C. L. R. Co. v. State Bd. of Equalizers, 30 A. L. R. 362 at 366:

"The right to declare an act unconstitutional is purely a judicial power, and cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution. ****"

BEFORE THE HOUSE OF REPRESENTATIVES OF THE
GENERAL ASSEMBLY OF THE STATE OF DELAWARE
JAMES SMITH

vs.

RAYMOND M. LANK

Contested Election

CONTESTANT'S BRIEF

HOUSTON WILSON
West Market at Front Street
Georgetown, Delaware

NATURE OF THE PROCEEDING

This is a Contested Election Proceeding, instituted by James W. Smith, the contestant, against Raymond M. Lank, a sitting member of this House from Representative District Number Ten in Sussex County.

This proceeding was instituted by Smith pursuant to the provisions of 15 Del. C., Ch. 57, Sub-Ch. I, which defines the procedure to be followed in a contest of the election of a member of the General Assembly of this State. Pursuant to 15 Del. C. § 5901, on December 11, 1954, Smith the contestant, served upon Lank, the sitting member, a written Notice of Intention to Contest his election to the Office in question. On December 17, 1954, Smith served upon Lank a written Specification of the several grounds upon which Smith's contest of the election of Lank is based, pursuant to 15 Del. C. § 5901.

Pursuant to 15 Del. C. § 5902, on or about December 27, 1954, Lank served upon Smith his Counter Specification.

On January 4, 1955, this House was convened in 118th Session, and on that day, acting pursuant to 15 Del. C. § 5904, Smith's attorney delivered to the temporary Speaker, as soon as he was elected and qualified, a verified Petition by Smith contesting the election and return of Lank as a member of this House, together with Smith's Notice of Intention to Contest, and Smith's Specification, aforementioned. Smith's attorney requested the temporary Speaker to turn over and deliver all such contest documents to the permanent Speaker upon his election and qualification. Thereupon, Lank filed with the temporary Speaker a copy of his Counter Specification with the same request.

In compliance with said requests, on January 4, 1955, the temporary Speaker delivered all such contest documents to the permanent Speaker of this House, who acknowledged receipt of the same.

STATEMENT OF FACTS

There are but a few essential facts. Smith and Lank were the opposing candidates for the Office of Representative in the General Assembly of Delaware from Representative District Number Ten in Sussex County at the general election held November 2, 1954.

The local Election Officers who conducted this Election at the respective polling places in the three Election Districts of Representative District Number Ten certified to the Board of Canvass of Sussex County that a total of 4,962 votes had been cast for the Office in question at the polls of said Representative District; that Lank had received 2,478 votes and Smith had received 2,484 votes, or a majority of six.

The Board of Canvass met on November 4, 1954, and ascertained the foregoing results of the voting at the polls of the District to be correct.

However, the Board of Canvass, acting pursuant to 49 Laws of Delaware, Ch. 278 and Ch. 294, § 20, then proceeded to open the Absentee Ballots of Sussex County which the Department of Elections of said County had delivered to the Prothonotary in a sealed, locked box after the polls had closed on

Election Day. Upon opening the Absentee Ballots on Return Day, and tabulating the result thereof, the Board of Canvass then caused the following additional or further absentee votes to be added to those given and cast for Smith and Lank, respectively, at the polls, viz:

TO JAMES W. SMITH 126 votes; and
TO RAYMOND M. LANK 257 votes.

Thus, it was solely by reason of the absentee votes that Lank received a majority and was returned or certified to this House as being duly elected by the Board of Canvass in its Certificate.

Hence, this entire contest boils down to but one question. Smith contends, in his Specification, that the absentee votes are invalid for the reason that 49 Laws of Delaware, Ch. 278 and Ch. 294, § 20, are unconstitutional and void. On the other hand, Lank contends, in his Counter Specification: that the absentee votes are valid for the reason that 49 Laws of Delaware, Ch. 278 and Ch. 294, § 20 are unconstitutional.

It is stated in 15 Del. C. § 5905:

“In the trial of the case of contested election the parties shall be restricted to the grounds of objection in the specifications set forth, and shall not examine into the illegality of any votes other than those specified as illegal, nor impeach such votes for any causes other than those specified.”

Hence, this Brief is written on the assumption that the trial of this Contested Election before the bar of this House, sitting as judge of both the law and the facts, is limited to but one question.

QUESTION INVOLVED

Question (1). Are those acts of the General Assembly of Delaware, in pursuance of which the absentee ballots in question were returned to the Department of Elections, by it deposited in a box and delivered to the Superior Court, sitting as a Board of Canvass, and by such Court opened, accredited and added to the total, calculated votes given and cast in persona at the polls of a general election for the respective candidates for the office in question, unconstitutional?

ARGUMENT

QUESTION (1). Are those Acts of the General Assembly of Delaware, in pursuance of which the absentee ballots in question were returned to the Department of Elections, by it deposited in a box and delivered to the Superior Court, sitting as a Board of Canvass, and by such Court opened, accredited and added to the total, calculated votes given and cast in persona at the polls of a general election for the respective candidates for the office in question, unconstitutional?

This brief argues the affirmative of the above question.

It is not contended that the General Assembly is powerless to enact a valid absentee voting statute, for the Delaware Constitution, Art. V. § 4A, provides:

“The General Assembly shall enact general laws providing that any qualified elector of this State, duly registered, who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, . . . , may cast a ballot at such general election to be counted in such district.”

However, it should be noted at the outset that the Act of the 108th General Assembly proposing this amendment to the Constitution was approved May 9, 1941, (43 Laws of Delaware 3, Ch. 17), following closely upon the heels of Judge Speakman's opinion, with Judge Rodney concurring therein, in *State v. Lyons*, Court of General Sessions, April 12, 1939, 1 Terry 77, 5 A 2d 495, which considered the constitutionality of the Absentee Voting Act of 1923. 33 Laws of Delaware 258, Ch. 103; Revised Code of Delaware 1935, Ch. 60, Art. 5. Moreover, it was agreed to and adopted by the House, January 25, 1943, and the Senate, April 9, 1943, of the 109th General Assembly (44 Laws of Delaware 3, Ch. 1; House Journal; Senate Journal); while on February 22, 1943, the opinion of Judge Speakman, speaking for the unanimous Supreme Court, came down in *State ex rel Walker v. Harrington, et al*, Supreme Court, 3 Terry 236, 30 A 2d 688, which considered the constitutionality of the Soldiers' Vote Act of 1898, as amended. Revised Code of Delaware 1935, Ch. 60, Art. 4.

Nor is it contended that the Absentee Voting Statute enacted as 15 Del. C., Ch. 55, or that the duties delegated to the Superior Court, sitting as a Board of Canvass, by 15 Del. C., Ch. 57, constitute unconstitutional acts on the part of the General Assembly. Any such contention must await another day and another litigant, for by and large those enactments are in keeping with the very construction and meaning of the Constitution hereafter urged upon this House.

Rather, by this brief it is only contended that certain acts and omissions of the General Assembly resulting from the enactment of 49 Laws of Delaware 552, &c, Ch. 278 and 49 Laws of Delaware 587, &c, Ch. 294 are unconstitutional. For it was pursuant to and in strict compliance with this legislation that the absentee ballots in question were returned to the Department of Elections, by it deposited in a box and delivered to the Superior Court, sitting as a Board of Canvass, and by such Court opened, accredited and added to the total, calculated votes given and cast in persona at the polls of the general election for the respective candidates for the office in question, all at the times and in the manner set forth in the foregoing Statement of Facts.

The points of departure from the Delaware Constitution, both by acts commission and omission, upon which this contention is based, follow hereafter.

Point (a). 49 Laws of Delaware, Ch. 294, § 20, is an unconstitutional delegation of duties and authority to the Superior Court, sitting as a Board of Canvass, in that the duties and authority thus reposed in it exceeds the limitations imposed upon its jurisdiction by the Delaware Constitution, Art. 5, § 6.

Upon this point it would seem clear that the General Assembly, by enacting 49 Laws of Delaware, Ch. 294, § 20, at page 592-3, has fallen into a constitutional pitfall which repeatedly has been signposted by the Courts of this State.

Prior to the adoption of the present Constitution, by the Delaware Code, 1893, Ch. 18, § 24 the inspectors of the several hundreds of the county with the sheriff, who presided, were constituted the Board of Canvass, convening at 12:00 o'clock noon on Thursday next following the day of any general election, and to it was delivered by each inspector a certificate of the election in his particular hundred, made and signed by himself and the two judges of the election of his hundred, together with the sealed ballot box thereof containing the ballots, tally lists and a duplicate certificate of the election in the particular hundred. Id. §§ 22, 23, and 25. The statute then provided:

"Sec. 28. The said board of canvass shall publicly . . . , ascertain the state of the election throughout the county, by calculating the aggregate amount of all the votes for each office that shall have been given, in all the hundreds of the county, for every person voted for such office."

Section 26 provided, *inter alia*:

"If the certificate of election for any hundred cannot be produced, the ballot box for that hundred may be opened, and the certificate therein contained taken and used, and again deposited in said box, which shall be secured as before."

Section 27 thereof provided, in the event any inspector should not attend the board, or fail to produce the certificate of election or ballot boxes for any hundred, that the sheriff was empowered to issue a warrant to anyone commanding him to arrest and bring the inspector to the meeting and to obtain, produce and deliver the certificate and ballot boxes to the sheriff, or in lieu of a warrant to arrest, as aforesaid, it could command the person to whom directed to merely obtain and produce to the board the certificate and ballot boxes in question.

Section 29 then provided:

"After the state of the election shall have been ascertained, by calculating the votes as aforesaid, the sheriff . . . and the inspectors present at the said board shall, . . . , make . . . the following certificates . . ."

The limited powers and duties thus conferred upon the Board of Canvass were construed by the Court of Errors and Appeals in an opinion handed down by Judge Grubb, January 4, 1897, in *McCoy v. State*, 2 Marvel 560, 36 A 81, 82, as follows:

"Provision is further made for the delivering of such certificates for the use of the Board of Canvass when engaged in the discharge of its duty to ascertain the state of the election throughout the county as aforesaid. Such certificates, as was properly held by the Court below, are the sole and exclusive evidence from which it, the said Board, can ascertain the state of the election through the county. In discharging said duty the powers of said Board are, in general, ministerial, and not discretionary or judicial in their character. Whilst said Board of Canvass must necessarily determine that such certificates are genuine and not fabricated, and are made and signed in the form and manner prescribed by law, yet said Boards of Canvass in this State are not empowered and have no lawful authority to inquire into the validity of any election in any hundred or election district, nor into the irregularity or misconduct attending any election therein, nor to throw out, nor to refuse or fail to count every vote or votes appearing to have been given therein upon the face of the said certificates of election duly made and delivered and produced before said Boards in the form and manner prescribed by law.

"On the contrary, it is their plain and imperative duty to promptly discharge said task of ascertaining the state of the election throughout the county as aforesaid, and from the evidence furnished exclusively by said certificates. And it is the further duty of every such Board, when it comes to their knowledge that the inspectors and judges of any Hundred or Election District have refused or failed to make and sign the certificates of the votes actually given therein at any election, to take such proceedings, without undue delay, as shall be appropriate for procuring such certificates, and thus enabling such Board to complete their task of ascertaining the state of the election throughout the County as aforesaid.

"For until said Board 'has calculated the aggregate amount of all the votes for each office which shall have been given in all the Hundreds and Election Districts of the County for every person voted for such office.'—to quote the

statutory language—and signed and delivered the prescribed certificates it cannot be deemed in legal contemplation to have fulfilled the purpose of its creation, exhausted its powers and becomes *functus officio*.”

Following this construction of the powers and duties of a Delaware Board of Canvass, on June 4, 1897, the Convention adopted the present Delaware Constitution of 1897. By Article V, § 6 thereof the powers and duties of the Board of Canvass were vested in the Superior Court of the several counties by the following language:

“The presiding election officer of each hundred or election district, on the day next after the general election, shall deliver one of the certificates of the election, made and certified as required by law, together with the ballot box or boxes, containing the ballots, and other papers required by law to be placed therein, to the Prothonotary of the Superior Court of the county, who shall at twelve o'clock noon on the second day after the election present the same to the said court, and the election officer or officers having charge of any other certificate or certificates of the election shall at the same time present the same to the said court, and the court shall at the same time convene for the performance of the duties hereby imposed upon it; and thereupon the said court, with the aid of such of its officers and such sworn assistance as it shall appoint, shall publicly ascertain the state of the election throughout the county, by calculating the aggregate amount of all the votes for each office that shall be given in all the hundreds and election districts of the county for every person voted for for such office.

“In case the certificates of election of any hundred or election district shall not be produced, or in case the certificates do not agree, or in case of complaint under oath of fraud or mistake in any such certificate, or in case fraud or mistake is apparent on the fact of any such certificate, the court shall have the power to issue summary process against the election officers or any other person to bring them forthwith into court with the election papers in their possession or control, and to open the ballot boxes and take therefrom any paper contained therein, and to make a recount of the ballots contained therein, and to correct any fraud or mistake in any certificate or paper relating to such election.

“The court shall have all the other jurisdiction and powers now vested by law in the boards of canvass, and such other powers as shall be provided by law.

“After the state of the election shall have been ascertained as aforesaid, the said court shall make certificates thereof . . .” (emphasis supplied).

The measure and boundaries of the like, as well as the further, powers and duties vested in the Superior Court, sitting as a Board of Canvass, under the above quoted and underlined language, as and when compared to the powers and duties formerly vested in the sheriff and inspectors, sitting as a Board of Canvass, have been well defined by a number of opinions handed down by our Courts both prior and subsequent to the adoption of Section 4A of Article V of the Delaware Constitution quoted at the outset of this Argument.

In *State ex rel Walker v. Harrington, et al*, Supreme Court, 1942, 3 Terry 14, 27 A 2d 67, and Supreme Court, 1943, 3 Terry 246, 30 A 2d 688, the constitutionality of the Soldiers' Vote Act of 1898 was measured against the Delaware Constitution of 1897, prior to the adoption of Art: 5, § 4A thereof, and found wanting in an original Mandamus Action instituted against the Superior Court, sitting as a Board of Canvass. There, it appears the relator received 8535 votes and his opponent 8515 votes in all the hundreds and election districts, to which the Superior Court added 26 votes for the relator and 51 votes for his opponent given or cast at Camp Upton, New York, pursuant to such Act, and thereupon certified and returned the opponent as duly elected to office. Relator sought the same relief there as the relator here. *Amici Curiae* suggested relator's petition be dismissed for the reason, among others, that the judges of the Superior Court, having performed all the duties prescribed by law, and, therefore, were *functi officio* as the Superior Court, sitting as a Board of Canvass. The Supreme Court said, 27 A 2nd, at page 75:

"On the other hand, by providing in Section 6 of Article V (Constitution 1897) that 'The said (Superior) court shall have all other the jurisdiction and powers now vested by law in the boards of canvass, . . .,' the (constitutional) convention accepted and gave sanction to, the language of the McCoy case, at least, insofar as it construed the powers, duties and functions of boards of canvass, and this is particularly so in view of the fact that the Constitution was adopted by the Convention and was not subject to subsequent ratification by a vote of the people."

"They (*Amici Curiae*) call attention specifically to said Section 6 of Article V of the Constitution, wherein it is provided that the Superior Court, sitting as a Board of Canvass, 'shall have . . . such other powers as shall be provided by law,' and they say in effect that pursuant to this authority an additional power and duty was vested in Boards of Canvass by the General Assembly by the (Soldiers' Vote) Act, which provided for the canvassing of the votes cast by qualified voters in the . . . service . . . , and as such absent from the election districts of their residence on the days . . . of certain elections . . ."

"The fact that the Court (in the McCoy Case) spoke of

votes given in the Hundreds and Election Districts of the County, and the prescribed certificates of the votes given in the Hundreds, does not destroy the effectiveness of the McCoy Case.

"The important thing to determine is whether the respondents have calculated the aggregate amount of all the votes exclusively in the prescribed manner, and have signed and sealed the prescribed certificates showing the result of the canvass. If they have not done so they would not be *functi officio*."

And in 30 A 2d, at page 693, the Supreme Court further said in resolving the substantive question of unconstitutionality:

"The phrase, 'such other powers as shall be provided by law' is broad and sweeping, but at most it means nothing more than that the legislature was given the authority to grant such additional powers as might be found necessary or desirable for the Court, sitting as a Board of Canvass, to possess to aid it in the performance of its constitutional duty in ascertaining the result of the elections. We do not think that by the use of the phrase, or by the use of any other language in the Constitution, it was the intention of its framers that the legislature should have the power of changing or superseding the express mandate of the Constitution pertaining to the source to which the Court, sitting as a Board of Canvass, could look for the purpose of ascertaining the state of an election.

"By the language of said Section 6, the Court, sitting as a Board of Canvass, is fully and explicitly directed to proceed in a particular manner in ascertaining the state of the election throughout the county, and in the language of the section: 'After the state of the election shall have been ascertained as aforesaid, the said court shall make certificates thereof.' 'Ascertained as aforesaid' means in the manner theretofore prescribed in the section. The meaning cannot be enlarged by legislative action.

"We think it was clearly the intention of the framers of the Constitution to put the 'duty' of the Court, so sitting, as distinguished from the 'powers' necessary to be exercised in the performance of such duty, beyond the reach of legislative control.

"Regardless of the full and explicit directions in the Constitution defining the procedure to be followed in ascertaining the state of the election in the respective counties of the State, the legislature, by the passage of the 'Soldiers' Vote Act,' provided for a departure from such procedure with respect to those voting at the places of encampment."

In *State ex rel Mitchell, et al, v. Walcott, et al*, Supreme Court, 1951, 7 Terry 368, 83 A 2d 762, Chief Justice Southerland posed this very question:

"To what extent were the powers and duties of the boards of canvass enlarged by the Constitution of 1897?"

And the answer is, Terry, 375:

"We agree that to a limited extent the Board of Canvass now exercises quasi-judicial powers (e. g., in rejecting ballots illegal on their face), but it by no means follows that those powers extend to the hearing and determination of every act of fraud or wrong doing in the conduct of the election. The powers of the Board are, as before, primarily directed to the existence of 'fraud or mistake in any such certificate,' e. g., questions of its genuineness, or of a defect apparent on its face, or the like; and what may be called the newly-added powers are largely, if not wholly, limited to an examination of the election papers and of the contents of the ballot box.

"This conclusion is impelled, we think, by several considerations.

"First, the Superior Court is, under the Constitution, still primarily a board of canvass whose function is to count the vote. Granting that it is 'the Superior Court' for the purpose of review of its action by writ of mandamus from this Court, *State ex rel, Walker v. Harrington*, 3 Terry 14, 27 A. 2d 67, it yet remains true that it is a body specially created and constituted for a limited purpose, to perform specified duties, largely ministerial in nature. The framers of the Constitution, in transferring to the Superior Court the powers and duties of the former boards of canvass, added certain specified powers and none others. Had it been the intent to confer upon the new Boards general power over the conduct of elections as affecting the returns, language to that effect would certainly have been included. The McCoy Case was decided prior to the adoption of the Constitution, and the limited powers of a board of canvass well known. The Constitutional Convention of 1897 'accepted and gave sanction to, the language of the McCoy case, at least, insofar as it construed the powers, duties and functions of boards of canvass, * * *.' Per Speakman, Jr., in *State ex. rel. Walker v. Harrington*, 3 Terry 14, 33, 27 A. 2d 67, 75. The rule *expressio unius* is applicable here. It must follow, we think, that there was no intention to expand the powers of the Board of Canvass beyond those clearly enumerated in the Constitution or necessarily implied, and such other powers as the General Assembly might subsequently confer under the third paragraph of Section 6. The act of Assembly of June 1, 1898, 21 Del.

L. Ch. 38, Sec. 23, 1935 Code, Sec. 1866, does nothing more in effect than to reaffirm the constitutional provisions.

"Relators' counsel point to the concluding phrase of the second paragraph of Section 6, conferring power 'to correct any fraud or mistake in any certificate,' as authorizing the Board to correct any fraud in the conduct of the election which may lead to an incorrect result. This language cannot thus be divorced from its contest. Its scope is clearly confined to errors resulting from the examination authorized by the preceding language of the sentence, i. e., the examination of the election papers and the contents of the ballot box."

Hence, on the highest authority of McCoy, Walker, and Mitchell Cases, these conclusions are foregone:

(1) By the Delaware Constitution, Art. V, § 6, the Superior Court, sitting as a Board of Canvass, is fully and explicitly directed to ascertain the state of the elections by a specified and defined procedure.

(2) It is directed to do so by calculating the aggregate amount of all the votes for each office that shall be given or cast in all the hundreds and election districts of the county.

(3) It is directed to do so from the certificates of the election delivered unto it by the election officers of each hundred or election district.

(4) In any given instance where the certificates are not produced, or being produced do not agree, or are fraudulent, or contain a mistake, then and in any such event, and only in such an event it may resort to the ballot boxes of the election district, recount the ballots contained therein, and correct any fraud or mistake in any certificate or paper relating to such election.

(5) Upon ascertaining the state of the election in the manner aforesaid, and none others, it is directed to make certificates or returns thereof.

(6) These are the prescribed, defined and limited "duties" of the Court, sitting as a Board of Canvass; which duties the General Assembly can neither augment by the addition of other duties thereto, nor provide a different procedure by which the Court shall go about the performance of its assigned task, nor detract therefrom, in any manner whatsoever.

(7) As was said by the Supreme Court in the case of the Soldiers' Vote Act, so it should be said of 49 Laws of Delaware, Ch. 294, § 20:

"Regardless of the full and explicit directions of the Constitution defining the procedure to be followed in ascertaining the state of the election in the respective counties of the State, the legislature, by the passage of the . . . Act, provided for a departure from such procedure with respect to those voting (in absente)." (supra);

and such a departure from such procedure is fatal of itself to the Act.

(8) At the very most, the General Assembly can only grant the Superior Court, sitting as a Board of Canvass, such additional "powers" . . . not "duties" . . . , over and beyond those granted by Section 6 itself, as may be found necessary or desirable for it to possess to aid it in the performance of its constitutional duty, as aforesaid.

The General Assembly itself, until the adoption of 49 Laws of Delaware, Ch. 294, § 20, had apparently understood this to be the true and only interpretation of Section 6. It is significant that on June 1, 1898, it adopted 21 Laws of Delaware, Ch. 38, § 23, etc. It reaffirmed and re-enacted the pertinent provisions thereof as 15 Del. C., Ch. 57, entitled "Canvass of Vote and Proclamation of Results of Election." In the words of Chief Justice Southerland:

"The Act of Assembly of June 1, 1898, . . . Sec. 23 . . . does nothing more in effect than to reaffirm the constitutional provisions." (Mitchell Case, *supra*)

If the Act of June 1, 1898, is the General Assembly's re affirmation of the constitutional provisions of Section 6, then the General Assembly has also reaffirmed it again (Code 1915), and again (Code 1935) and again (Code 1953). Hence, 49 Laws of Delaware, Ch. 294, § 20 is nothing more than a belated disaffirmance of the General Assembly's prior declarations of its own contemporaneous construction of the true meaning of Section 6. It comes too late. See: 11 Am. Jur. 699, § 79.

Moreover, the draftsman of 49 Laws of Delaware, Cr. 294, related its title not at all to 15 Del. C., Ch. 57, the title to which clearly expresses its subject to be "Canvass of Vote and Proclamation of Results of Election." This, of course, is the historic field, and the only field, both in Delaware and elsewhere, wherein boards of canvass labor. See: 20 Corpus Juris 199, &c, "Elections" § 251, &c.; 9 Corpus Juris 1275, "Canvassing Board"; 6 Words and Phrases (Per. Ed.) 52, "Canvassing Board"; 29 C. J. S. 340, § 237. Rather, the draftsman of 49 Laws of Delaware, Ch. 294, related its title ". . . to Ballots, Election Supplies, Polling Places, Election Officers, and Conduct of Elections." Not one word in its title relates to boards of canvass, canvassing the vote or proclaiming the result of elections. One is tempted to point to the provisions of the Delaware Constitution, Art. 2, § 16. However, it must be apparent that neither the draftsman nor the General Assembly had any thought in mind that Section 20 of the Act in question bears even remotely upon the historic and constitutional duties of a board of canvass to canvass the vote and proclaim the results of elections. I agree that such is the fact. Section 20 concerns itself with duties and procedures that are

entirely foreign to the duties and procedure of a Delaware Board of Canvass.

Point (b). The provisions of 15 Del. C., Ch. 55, as emasculated by 49 Laws of Delaware, Ch. 278 and Ch. 294, § 20, violate the provisions of Delaware Constitution, Art. V, §§ 1, 2 and 4A, in that thereby it is not provided that a qualified absentee elector (1) shall cast his ballot in absente in the hundred or election district of his residence, nor (2) on the day of election, nor (3) that his absentee ballot be counted in such election district.

Section 4A of Article V of the Delaware Constitution was added thereto, by amendment, at the time and under the circumstances referred to briefly at the outset of this Argument. (Ante pages 8-9). Thus, it is urged, in accord with the general rule that harmony in constitutional construction should prevail whenever possible, that (1) generally an amended Constitution must be read as a whole, as if every part of it had been adopted at the same time and as one law; and, such newly adopted provision, relating as it does to the historical and well defined institutions and system established by the then existing law for free and untainted elections in this State, that (2) such amendment should not be construed as intending to abolish the former institutions and system of law, excepting only insofar as the old order is in manifest repugnance to the new Constitutional provision, but, rather, the provisions of the amendment should be read in the light of the former law and the then existing system. 11 Am. Jr. 663, § 54; 16 C. J. S. 89, § 42b; 16 C. J. S. 66, § 26.

Since the present amendment does not expressly repeal any other provision of Article V, then certainly the intent of the framers of the amendment to repeal prior provisions thereof is one of inference only, to gather from the language of the amendment itself and a look to the history of the times and state of things existing when it was framed and adopted, in order to ascertain the prior law, the mischief, and the remedy. 11 Am. Jr. 676, &c. § 63.

Moreover, just as the Chief Justice invoked the rule of *expressio unius est exclusio alterius* to the duty ascribed to the Superior Court, sitting as a Board of Canvass, pursuant to Section 6 (*State ex rel Mitchell v. Wolcott, et al, supra*, 7 Terry, 376), so it is urged that the General Assembly, in executing the duty ascribed unto it by Section 4A, must proceed in the manner prescribed by that Section as well as all other pertinent provisions of Article V, or else it treads upon unconstitutional ground, 16 C. J. S. 122, § 63.

Also, just as Judge Speakman applied the rules of construction: (1) that the words used, unless technical, are to be understood in their usual and ordinary sense; (2) that in determining the meaning of any particular provisions, the whole instrument must be considered; and (3) that the spirit

of the Constitution, to be gathered chiefly from its words, is to be regarded no less than its words (*State ex rel Walker v. Harrington, et al, supra, 3 Terry 27, &c*), so it is urged that these same rules should apply again to Article V, as amended by Section 4A, in the case sub judice.

Prior to the initial proposal of the amendment in question, the Court of General Sessions construed these underlined words of the Constitution, Art. V, § 2:

"Every . . . citizen of this State . . . who shall have been . . . a resident of the hundred or election district (a) in which he may offer to vote, and in which he shall have been duly registered . . . (b) shall be entitled to vote at such election in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered . . ."

as indicating (a) the action by the elector and (b) the place where the election is to be held, respectively. *State v. Lyons, et al, supra, 1 Terry, 89-90*, (See also: *State ex rel Walker v. Harrington, et al, supra, 3 Terry, 252*).

In holding the Absentee Voting Act of 1923 unconstitutional the learned Judge did not resolve the then novel question upon the weight of authority from other jurisdictions, which he found to be in conflict, but he did not this:

"Much could and has been said as to the thought that under the Delaware statute the ballot, while marked where the voter happens to be, is actually offered or cast when placed in the ballot box by the election officers."

meaning, the election officers of the election district of the voter's residence. *Id.* 91. (See Also: Revised Code of Delaware 1935, Ch. 60, Art. 5, 1953, § 144, 1954, § 145.) Rather, he resolved the question upon two considerations which would seem to be peculiar to our Delaware Constitution.

First, he found that the Constitutional Convention considered and then determined not to provide for absentee voting by the military. This, he says, "does not necessarily operate as a denial of the power of the Legislature to provide for that method of balloting", but it is thereby apparent that the Convention never thought the right so to do existed in the Legislature. *Id.*, 92-94.

Second, he found that Section 4 charged the General Assembly with enacting uniform laws for the registration of voters, which would render moot on election day all question of qualifications of the voter and leave open for determination before the election officers only (a) impersonation of the qualified elector and (b) whether the elector should be denied the privilege of casting his vote because of bribery in any form prescribed by Section 3; upon either of which grounds the right to challenge a voter at the polls is preserved and provided for by the Constitution. *Id.* 94-95.

In view of these latter considerations, Judge Speakman concluded:

"A challenged vote at the polls can only be received and counted when the voter is personally present to meet the challenge."

"Absentee voting would in a large measure affect this Constitutional right of challenge." (Id.)

It is most significant to note that the system for voting in absente adopted by the selfsame 109th Session of the General Assembly which gave the second and final approval to the adoption of Section 4A of Article V of the Constitution was substantially the same system as that provided by the Act of 1923, which *State v. Lyons* had held to be unconstitutional just about one year prior to the 108th Session of the General Assembly first proposing the constitutional amendment in question. See: 44 Laws of Delaware, Ch. 188; this Brief ante, page 8. This same system was re-enacted as 15 Del. C., Ch. 55 and continued in effect until emasculated by the Avts here under attack.

This system would seem to go far along the road of preserving Delaware's historic, well-defined institutions and system of elections established by the law in effect under Article V of the Constitution prior to the adoption of the amendment known as Section 4A. It may be said of both 44 Laws of Delaware, Ch. 118 and of 15 Del. C., Ch. 55, before the latter was emasculated, that they integrate absentee voting into the Constitutional institutions and system adopted by the Constitutional Convention of 1897 with a minimum of change. Obviously, such must have been the intent, and the sole intent, of the framers of Section 4A if the contemporaneous legislative action of the 109th Session of the General Assembly is entitled to any weight, and it is entitled to great weight. 11 Am. Jur. 699, § 79; 16 C. J. S. 72, § 33.

Therefore, when, by the language of Section 4A, it is mandatory upon the General Assembly to enact general laws whereby a duly qualified and registered elector

"... who shall be unable to appear to cast his or her ballot at any general election at the regular polling place of the election district in which he or she is registered, . . ., may cast a ballot at such general election to be counted in such district." (emphasis supplied).

the duty thereby ascribed to the General Assembly is to be defined, limited and circumscribed by

- (1) The wording of the amendment itself, and the ordinary, usual meaning thereof;
- (2) The mischief sought to be remedied thereby;
- (3) The prior existing laws, institutions and system applicable to free and untainted elections not repugnant thereto;

- (4) The spirit as well as the words of all other Constitutional provisions applicable thereto which do not conflict therewith; and
- (5) The contemporaneous action of the 109th Session of the General Assembly.

If this major premise be sound, and I respectfully contend that it is, then it follows as the night the day that the minimum mandatory provisions of any Act adopted pursuant to Section 4A are:

(1) Provision for casting a ballot in absentee on the day of any given general election, as prescribed by Section 1.

(2) Provision for casting a ballot in absente "at such election in the hundred or election district of which he at the time be a resident, and in which he shall be registered", as required by Section 2, being the place where the election is to be held. See: Lyons Case and Walker Case, *supra*.

(3) Provision for preserving the right to challenge an absentee voter at the polls for (a) impersonation, (b) bribery and (c) non-compliance with the absentee voting statute. See: Point (c) of this Argument, *post*.

(4) Provision for an elector to meet and overcome a challenge at the polls in absente. See: Point (c) of this Argument, *post*.

(5) Provision, by the very words of Section 4A, whereby a qualified elector "may cast a ballot (in absente) at such general election"; which, by the preceding words of that Section and of Section 2 can only mean: "at any general election at the regular polling place of the election district in which he or she is registered" (§ 4A); or "at such election in the hundred or election district of which he at the time be a resident, and in which he shall be registered" (§ 2), which is the same thing.

(6) Provision, by the very words of Section 4A, whereby such absentee ballot is "to be counted in such election district." "Such election district" can have but one meaning, which is obvious.

(7) Provisions which in nowise conflict with the prescribed, defined and limited "duties" ascribed by Section 6 to the local Election Officers and to the Board of Canvass, respectively. See: Point (a) of this Argument, *ante*.

Concluding the argument upon this Point, the temptation to point at length to the unconstitutional deviations of 49 Laws of Delaware, Ch. 278 and Ch. 294, § 20, is to be resisted for want of space. A brief review of but a few of the more significant deviations must suffice. By reading 15 Del. C., Ch. 55, and then Chapter 278 and Chapter 294, § 20, others will certainly come to mind. The deviations of Section 20 from mandatory provision (7), *ante*, are dwelt upon at length under Point (a), *ante*. The deviations from mandatory provisions (3) and (4) are the subject of Point (c), *post*.

Wherefore, this Point is rested by merely pointing out that under the authority of 15 Del. C. Ch. 55, as amended by 49 Laws of Delaware, Ch. 278, and of 49 Laws of Delaware, Ch. 294, § 20:

(1) The statute does not provide for casting a ballot in absente on the Tuesday next after the first Monday in the month of November.

(2) The statute does not provide for casting a ballot in absente at the polls in the hundred or election district of which the absentee voter is resident and in which he is registered.

(3) The statute does not provide for the counting of absentee ballots in such election district wherein they might be cast, as aforesaid.

I cannot leave this Point without a note of irony with respect to 49 Laws of Delaware, Ch. 294, § 20, which is amendatory of 15 Del. C., Ch. 49, Sub-Ch. II, entitled "Regulations Governing Conduct of Elections During Hours of Voting." Referring now to 15 Del. C., Ch. 55, which is entitled "Absentee Voting", 49 Laws of Delaware, Ch. 278, leaves § 5523 thereof unchanged; which Section, relating solely to absentee voting by military personnel, provides that on or before September 1st in the year of a general election the Governor, Secretary of State and Attorney General may make certain limited changes in the Absentee Voting Law,

"... to the end that there shall be extended to the absentee voters listed in subsection (b) of this section full opportunity to receive and return a marked ballot to the poll of his residence on election day to be acted upon and counted as other votes personally cast at such poll, . . ."
(emphasis supplied).

Apparently, the 117th Session did not let its left hand know what its right hand was doing.

Point (c). The provisions of 15 Del. C., Ch. 55, as emasculated by 49 Laws of Delaware, Ch. 278 and Cr. 294, § 20, violate the provisions of Delaware Constitution, Art. V, §§ 2, 3 and 4A, in that thereby (1) the right to challenge an absentee voter at the polls for (a) impersonation, (b) bribery, and (c) non-compliance with the requirements of absentee voting is not adequately preserved and (2) no provision whatever is made for an absentee voter to meet and overcome a challenge at the polls in absente.

The effect of amending Article V by the adoption of Section 4A upon the right of challenge, and the manner of meeting that challenge by the voter who may cast his ballot in absente, creates a rather involved problem for the General Assembly to solve in the enactment of general laws whereby a duly qualified, registered elector may cast his ballot in absente.

However, it is not the province of this Argument to resolve such problem, in the light of Section 4A. Rather, it is

here urged that 49 Laws of Delaware, Ch. 278 and Ch. 294, § 20 compound and confound it.

Prior to the adoption of this amendment, the problem was a relatively simple one, for the Constitution then required the personal presence at the polls of both the challenger and the challenged voter with his ballot and limited the grounds of a challenge to (1) impersonation or (2) bribery.

I suggest that the problems relating to preserving the constitutional right of challenge, and providing a workable system by which an absentee voter shall meet that challenge, on the day of and at a general election, as created by the adoption of Section 4A, have not been constitutionally solved by legislation which presently provides the following system therefor:

(1) That prior to and throughout the day of the election, and more especially during the hours that the polls are open, the absentee ballot is to be returned by the absentee voter to, and during all such items shall repose in the hands of, the Department of Elections, at Georgetown, securely and unidentifiably encased in an official envelope, which in turn is ensealed in a voucher envelope, which immediately upon its receipt is ensealed in a special carrier envelope to be opened only by the Board of Canvass some two days later, and which in turn is deposited in a box, which in turn is sealed and locked by the Department of Elections immediately upon the close of the polls. See: 15 Del. C. § 5512: 49 Laws of Delaware 554-6, §§ 8, 9, and 10.

(2) That on the day of the election, while the polls are open, the challenger must be, and make his challenge, at the polls in either Milton, Lewes, or Rehoboth, as the case may be; when and where the voter's right to vote must be determined at once by the local Election Officers and the Inspector along may administer the prescribed constitutional oath to the absentee voter in the event the challenge be for bribery. See: 15 Del. C., §§ 5517, 4934, 4936, 4937, 4944, and 4946, in that order.

(3) That the absentee voter may be in Kalamazoo. I submit that any system of challenge which provides that the ballot shall be here, the challenger and election officers there, and the voter elsewhere, all miles apart, on the very day that the challenge must be made and determined and the ballot either rejected or cast, is no system at all. It is a ridiculous nullity. It can pass no constitutional test whatever. It neither preserves the right of challenge, nor provides a workable plan for the voter to overcome the challenge in absente. If, under the present system, a voter does not cast his ballot either in persona or in absente at the polling place of his election district, then there is nothing to challenge or to be resolved by the Election Officers.

Without conceding in any whatever that the absentee elector who mails or returns his ballot to the Department of Elections, at Georgetown, on or before election day, and thereupon the Department merely takes it from the carrier envelope, encloses it in a special carrier envelope, puts it in a box and delivers it to the Prothonotary of the Superior Court for safekeeping until two days later, has either voted or cast his ballot on election day, yet even if that be considered the "casting of a ballot", then these words aptly apply thereto:

"Regardless of all that might be said of the right of every elector of a district to be present at the polling place in his district to witness the voting of all the qualified voters of his district desiring to vote, and to cause to be challenged any person suspected of bribery or impersonation, we think the right of challenge would be unduly restricted if an elector is authorized to vote, as occasion might permit, at any one of a number of polling places, without notice to those who possessed the right or authority to challenge or to cause him to be challenged for bribery." (State ex rel Walker v. Harrington, et et, supra, 3 Terry 236, 254.)

There remains one more facet to the subject of challenge. By the adoption of Section 49, the right of challenge is thereby increased from two to four grounds, by inference. First, it is necessarily to be implied therefrom that the vote of any absentee elector is subject to challenge for failure to substantially comply with all mandatory provisions of the Absentee Voting Laws enacted by the General Assembly pursuant to Section 4A, See: 29 C. J. S. 303, &c., § 210d, e, f and g; 121 A. L. R. 943, &c. Second, by the express, mandatory language of Section 4A the general laws to be enacted by the General Assembly are to apply only to "qualified electors of this State, duly registered, who shall be unable to appear to cast his or her ballot." Necessarily, it is to be inferred therefrom that if John Doe undertakes to cast his ballot in absente on election day, yet is personally present in the election district and sound in mind and limb, his right to vote in absente is subject to challenge. State ex rel Whitley v. Pinehart, 140 Fla. 645, 192 So. 819. The constitutional right to vote in absente in Delaware is restricted by the mandatory "who shall be absent" not by the more liberal "who may be absent" or "who expects to be absent."

Notwithstanding, these two implied, additional grounds of challenge in case of absentee voting, the present system enacted by the General Assembly makes no provision whatsoever for the making or resolving of such a challenge. Without it, the use of the absentee ballot as a means of fraud is apparent.

The difficulty with the legislative enactment by which the absentee ballots here in question were tabulated and added to those cast in persona at the polls, is simply this:

"Where an absentee voting statute is drawn so defectively that under its provisions the purity of the ballot will not be preserved and is as ambiguously and loosely drawn as to defeat enforcement, the courts will hold it invalid even though they may recognize the validity of absentee voting as a general proposition." 29 C. J. S. 300, "Defectively drawn statutes".

Point (d). The arguments made by Lank in support of the constitutionality of the Legislative Acts in question are unsound.

In his Brief before the Supreme Court, Lank undertook to make the point that the Smith's argument, when reduced to its essence, is based solely upon Judge Sepakman's Opinion in *State ex rel Walker v. Harrington, et al*, Supreme Court, 1943, 3 Terry 236, 30 A 3d 688, which held: that the Delaware Constitution Art. V, prior to the adoption of Section 4A, did not authorize the General Assembly to provide for voting in absente; that the Board of Canvass has no authority except to calculate the aggregate number of all the votes given in the Election Districts; and, solely by way of dictum, that the language of Section 6, "shall have such other powers as shall be provided by law," does not authorize the General Assembly to delegate any power to the Board of Canvass which does not aid such Board in the performance of its constitutional duty defined in the preceding provisions of said Section. With respect to this, I have but three comments to make.

It is only Point (a) of this present Brief which undertakes to define the constitutional limitations imposed upon the jurisdiction of a Board of Canvass in Delaware. Such limitations are not to be found solely in the language of Judge Speakman's Opinion in the *Walker Case*, supra, but rather (1) in the language of Delaware Code 1893, Ch. 18, §§ 22, 23, 24, 25, 26, 27, and 29; (2) in the language of Judge Grubb's Opinion in *McCoy v. State*, Court of Errors and Appeals, 1897, 2 Marvel 560, 36 A 81; (3) in the language of Delaware Constitution of 1897, Art. V, § 6; (4) in the language of Judge Speakman in *Walker Case*, supra; and (5) in the language of Chief Justice Southerland's Opinion in *State ex rel Mitchell, et al, v. Wolcott, et al*, Supreme Court, 1951, 7 Terry 368, 83 A 2d 762. It is by the language of these five unimpeachable sources that Smith makes Point (a) of this present Brief.

Nor do I agree that Judge Speakman's holding to the effect that the powers which the General Assembly may repose in a Board of Canvass is limited by the confines of the duty reposed in it, is dictum. Under the Soldiers' Vote Act of 1898, as amended, a Board of Canvass was authorized and directed to tabulate the votes of soldiers absent from the State and which

were not given or cast at the respective polling places of the Election Districts of their residence in this State. Amidi Curiae suggested, and strenuously urged, that the language, "such other powers as shall be provided by law," gives a wide and unlimited authority to the General Assembly to grant powers to the Superior Court, sitting as a Board of Canvass. Thus the interpretation of the phrase was squarely before the Supreme Court in the Walker Case, *supra*. Moreover, Chief Justice Southerland had no difficulty in citing the Walker Case as authority for the constitutional limitations imposed upon the powers and duty of a Board of Canvass in the Mitchell Case, *supra*.

Next, in his Brief before the Supreme Court Lank stated that the Delaware Constitution, Art. V, was amended by the adoption of Section 4A as a result of this Court's decision in the Walker Case, *supra*. With this I cannot agree, and a fortiori, I cannot agree with any inference that the framers of Section 4A thereby intended to give constitutional sanction to any system of absentee voting established by the Soldiers' Vote Act of 1898. Rather, it is Smith's contention that Section 4A resulted from Judge Speakman's Opinion in *State v. Lyons*, Court of General Sessions, 1939, 1 Terry 77, 'A 2d 495, which considered the constitutionality of the Absentee Voting Act of 1923 and found it wanting in one and possibly two respects. In the Terry Report, at Pages 92 and 94, Judge Speakman found that there were two considerations in connection with our Delaware Constitution which plainly indicated the meaning of the then constitutional provisions and were thus determinative of the question of the constitutionality of the Absentee Voting Act of 1923, viz:

"(a) Absentee voting as considered in connection with the debates of the Delaware Constitutional Convention of 1897'."

"(b) Absentee voting as affected by Article 5, Section 3, concerning challenge of voters'."

The Lyon's Case, based upon the foregoing two considerations concluded:

"From a very thorough study of the problem, we are convinced that the Constitution as it exists at present contemplates and requires the personal attendance of the voters at the polls, and no power now exists in the Legislature to provide for absentee voting." (Id. 95-96)

It was these two considerations and this holding which led to the amendment of Article V by the addition of Section 4A. As pointed out on Page ... of this present Brief, the amendatory process was three-quarters completed when the Opinion came down in the Walker Case, *supra*. Thus, the only constitutional limitation which Section 4A was designed to overcome was the prior requirement of the personal attendance of the voter at the polls, (a) to cast his ballot in persona and

(b) to meet a challenge in persona. As pointed out on Page ... of this present Brief, this most certainly seems to have been the construction placed upon Section 4A by the 109th Session of the General Assembly which gave the second and final approval to the adoption of Section 4A, and also by every other session of the General Assembly which considered the matter down until the time that substantially the same system of absentee voting as provided by the original Act of 1923 was emasculated by the Acts here under attack.

It is thus apparent that Lank is driven, no doubt unwillingly, to making this contention as the very essence of his Argument in support of the constitutionality of the Acts here under attack, viz:

"We contend that that statute gave the General Assembly the right to absolutely control the time, place and manner for electors to cast their ballots and for the mechanics of the counting of the same."

(Lank's Brief before the Supreme Court, Page 7)

Such contention, being the very heart of Lank's argument, is untenable. The arguments as to why it is untenable are all those to be found under Points (a), (b) and (c) of this present Brief, *supra*, and I shall not repeat them here. If Lank's contention be sound, then it means that Section 4A is to be construed by this Court as giving the General Assembly a free hand over the time, place, and manner in which all electors of the several named classifications who may be unable to appear in persona should case their ballots, how such ballots should be counted, who should count them, and who should tabulate the total of such votes and ascertain the result thereof, all without any regard whatever to any of the other provisions of the Delaware Constitution.

Happily, Lank's attorneys cited only one rule of construction in support of this forced contention. It is the rule that if there is a real inconsistency between a constitutional amendment and the pre-existing constitutional provisions, the rule of harmonizing, or integrating, the new with the old, so as to have an harmonious whole, does not apply. I have no quarrel with this rule. However, before the rule of inconsistency may be applied, he who urges the rule must first demonstrate that the new and the old cannot be harmonized, else the rule of harmony will prevail.

CONCLUSION

Those Acts of the General Assembly of Delaware, in pursuance of which the absentee ballots in question were returned to the Department of Elections, by it deposited in a box and delivered to the Superior Court, sitting as the Board of Canvass, and by such Court opened, accredited and added to the total, calculated votes given and cast in persona at the polls of the General Election in question, are unconstitutional and

the absentee votes by which Lank received his majority are invalid and should not have been counted. Of the valid ballots cast at the polling places Smith received a majority of six (6) votes. Therefore, Lank should be unseated and Smith should be seated as the duly elected member of this House from Representative District Number Ten of Sussex County.

Respectfully submitted,

(signed) HOUSTON WILSON
Attorney for Contestant
West Market at Front Street
Georgetown, Delaware

Dated: March 21, 1955.

BEFORE THE HOUSE OF REPRESENTATIVES OF THE
GENERAL ASSEMBLY OF THE STATE OF DELAWARE
JAMES SMITH

vs.

Contested Election

RAYMOND M. LANK

ADVISORY OPINION OF JOSEPH DONALD CRAVEN,
ATTORNEY GENERAL OF THE STATE OF DELAWARE

This opinion is submitted pursuant to House Resolution No. 57, which requested "... that the Attorney General ... study the question of constitutional law involved in the said contest and advise the House of his opinion thereof."

It is unnecessary to review the facts of this case. They are set out in detail in the opinion of the Supreme Court of March 15, 1955. State ex rel Smith v. Carey, et al., ... Ter. (....Del.),A. 2d

QUESTIONS INVOLVED

I. Does the House of Representatives sitting as a court to judge the elections, returns and qualifications of its own members have the power to declare a law unconstitutional?

II. Is the Absentee Voting Law unconstitutional?

I answer both questions in the affirmative for the reasons hereinafter set forth.

THE HOUSE OF REPRESENTATIVES HAS THE POWER TO DECLARE A LAW UNCONSTITUTIONAL WHEN SITTING AS A COURT TO JUDGE THE ELECTIONS, RETURNS AND QUALIFICATIONS OF ITS OWN MEMBERS.

Article II, Section 8, of the Constitution of the State of Delaware provides as follows:

"Each House shall be the judge of the elections, returns and qualifications of its own members ..."

The House is sitting as a judicial body in the determination of an election contest, and as such, is empowered to decide

all questions of law as well as of fact necessary to determine the contest. *Barry v. United States*, 279 U. S. 597, 49 S. Ct. 452 (1929).

The questions presently before the House were presented to the Supreme Court in the *Smith* case, *supra*. That the Court was conscious of the fact that these questions would have to be resolved by the House is evident from the Court's opinion:

"In the instant case the House of Representatives has assumed jurisdiction of the contest initiated by *Smith*. It now has the power and the duty to decide the question that we are asked to decide. Its jurisdiction extends to questions of law as well as of fact." (Emphasis supplied.)

The Court referred with approval to the case of *People ex rel Drake v. Mahaney*, 13 Mich. 481. I quote in part from the opinion of the Michigan Court:

"It can make no difference that in this case . . . the question passed upon by the house was purely a question of law. The question of the legal election of a member is usually a question compounded of law and fact, and the house must necessarily pass upon both. If we have the power to review the decision in one case, we have in all. If we can correct their erroneous construction of a law, we have the same power to correct any erroneous decision upon returns, qualifications or majorities. It is sufficient for us to say that the constitution has not conferred upon us this jurisdiction, and whether the decision made is right or wrong, we shall leave it where it has been left by the fundamental law of the state."

I am, therefore, of the opinion that the House has the power to pass upon the constitutionality of the *Absentee Voting Law* in the limited area where it acts as a judicial tribunal judging the elections, returns and qualifications of its own members.

A legislative body admittedly is not the ideal tribunal before which to test the constitutionality of a law. But in this case the House has no choice. Any resulting confusion is unavoidable. As was said in *People ex rel Drake v. Mahaney*, *supra*:

"It may happen, as suggested in the argument, that with each house, not only deciding for itself questions of fact, but also construing for itself the law, we may sometimes witness the extraordinary spectacle of the two bodies construing and enforcing the law differently, while a third construction is enforced by the courts upon the public at large. But with this possibility in view, the evils of allowing the courts a supervisory power over the decision of the houses upon the admission of members, are so great and so obvious that it is not surprising that the framers of the constitution refrained from conferring the power."

II. THE ABSENTEE VOTING LAW IS UNCONSTITUTIONAL

The Court was impressed by the argument of counsel for the contestant that the Absentee Voting Law is unconstitutional:

"The provisions of §§ 4a and 4b of Article V of the Constitution direct the General Assembly to enact laws permitting absentee voting in certain cases. Any law so enacted, must conform as far as possible to the provisions of Section 6 of the same Article, which contemplate that the ballots shall be cast and counted in the election districts, that the results shall be certified by the election officers, and that the state of the election shall be ascertained by the Board of Canvass from the certificates so made. Such a law, says relator, must also afford some reasonable method of exercising the right of challenge for bribery preserved in Section 3 of Article V. The absentee voters' law, at least as amended by the 1953 Act, fails to conform to these requirements, says relator, because it attempts to transfer in part to the Board of Canvass the duties of local election officers, permits a voter (in effect) to cast a ballot at the county seat instead of in his election district as apparently contemplated by Section 4a itself, and contains no provision preserving the right of challenge for bribery guaranteed by Section 3. The statutory scheme, relator asserts, increases the opportunity for electoral frauds.

This argument appears to have considerable force. In the light of the provisions of Section 1 of Article V, it is certainly the duty of the General Assembly, in enacting an absentee voters' law, to take all possible precaution against fraudulent abuse of the privilege." (Emphasis supplied.)

The Court did not finally determine the constitutional question because of its decision that the House had jurisdiction.

Any statutory provisions enacted by the General Assembly must be so drawn as to "preserve the freedom and purity of elections and prevent fraud, corruption and intimidation . . ." Constitution, Article V, Section 1; must not violate the constitutional provisions that the voter "shall be entitled to vote . . . in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered, . . ." Ibid., Article V, Sections 2 and 6; must provide a method of challenging for bribery, Ibid., Article V, Section 3. In all of these respects the Absentee Voting Law is deficient and, therefore, unconstitutional.

There is no statutory requirement that absentee ballots shall be returned to the election districts in which the voters are resident and registered. The ballots are returned to the

county seat—in this case, Georgetown. Consequently, there is no opportunity to challenge. On election day, the voter may be in one place, the ballot in another and the polling booth somewhere else.

Furthermore, the looseness of the Absentee Voting Law is inconsistent and irreconcilable with other statutory provisions.

Title 15, Section 4946, Delaware Code, provides that no person involved in bribery shall vote at an election unless, upon being challenged, he takes and subscribes to an oath or affirmation administered by an inspector.

Title 15, Section 5517 of the Code indicates a legislative intent to safeguard absentee voting: "The vote of any absentee voters may be challenged for the same causes and in the same manner as provided by the general election laws, and upon challenge, proceedings thereon shall be as provided by the general election laws."

Title 15, Section 4944 of the Code provides for challenging a prospective voter on the ground that "the person offering to vote is not the person whose name appears in the Book of Registered Voters."

The Delaware Absentee Voting Law makes no provision for challenging an absentee voter for any cause.

For the foregoing reasons, I am of the opinion that Title 15, Chapter 55, Delaware Code, as amended by 49 Laws of Delaware, Chapter 278 and Chapter 294, Section 20, otherwise known as the Absentee Voting Law, is unconstitutional.

Respectfully submitted,

JOSEPH DONALD CRAVEN
Attorney General

April 5, 1955

Mr. Layton introduced the following resolution, which upon further motion by him, was adopted: **HR 65**—"Relative to the Payment of a Printing Bill for Printing Bill Backers and Oaths for the House of Representatives of the 118th General Assembly of the State of Delaware."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that the sum of Fifty-Eight Dollars (\$58.00) is hereby appropriated out of the monies of the State Treasury for payment to The State Register, Laurel, Delaware, for printing bill backers and oaths, said printing being necessary for the business of the House and the expense thereof being a necessary expense connected with this session.

The following bills were reported by the Committee on Temperance: **HB 417**, favorably; **HB 418**, 3 favorable, 1 on merits; **HB 426**, 3 favorable, 1 on merits.

The following bills were reported by the Committee on Revised Statutes: **HB 216**, 3 on merits, 1 unfavorable; **HB 477**, favorably; **HB 263**, 3 favorable, 1 on merits; **HB 250**, favorably; **SB 35** with **SA 1**, favorably.

The Chair presented the following, which were given first and second readings by title only, and referred to committees as follows:

HB 56 with SA 1—"An Act Directing and Requiring the State Highway Department to Remove a Sluice Gate, Including Its Foundation, in the Canal at or Near Slaughter Beach Canal Bridge; Earth or Dirt Removed to be Used for Parking Accommodations," by Macklin and Mayhew; to Miscellaneous.

SB 77—"An Act Proposing an Amendment to Section 9 of Article 3 of the Constitution of the State of Delaware Relating to the Length of the Unexpired Term to Which a Successor is Elected," to Elections.

SB 111 with SA 1—"An Act Authorizing the Levy Court of Kent County to Borrow on the Credit of the County a Sum of Money Not Exceeding Three Hundred and Seventy-Five Thousand Dollars to be Expended for Acquiring Additional Lands to be Used for the Purpose of Building an Addition or Additions to the Kent County Court House, and for Making Such Alterations and Repairs to the Existing Court House as the Levy Court Shall Deem Necessary and Expedient," to Municipal Corporations.

SB 117—"An Act Authorizing and Directing the Levy Court of Sussex County to Make Available to the Board of Soil District Supervisors of the Soil Conservation District of Sussex County Certain Funds for the Employment of an Equipment Manager," to Revised Statutes.

SB 118—"An Act Appropriating Money to the State Soil Conservation Commission for the Drainage of Tax Ditches in Sussex County," to Revised Statutes.

SB 139 with SA 1—"An Act to Amend Chapter 3, Title 9 of the Delaware Code Relating to the Salary of the Commissioners of the Levy Court of Kent County and Sussex County," to Miscellaneous.

SB 160—"An Act Making an Appropriation to the Delaware Commission of Shell Fisheries for the State's Share of the Initial Costs of the Improvement of the Indian River Bay Channel via Pepper's Creek in Sussex County, and Authorizing and Empowering the Said Commission to Act as the Agency of the State of Delaware to Do All Things Necessary to Comply With the Requirements of the United States Government Relative to the State's Contribution to Said Improvement," to Fish, Oysters and Game.

SB 288—"An Act to Amend Chapter 17, Title 9 of the Delaware Code Relating to Employees Pensions Affecting the City of Wilmington and New Castle County," to Judiciary.

SCR 8—"Recognition of the Eastern Orthodox Church as a Major Faith in Delaware," to Judiciary.

The House adjourned at 5:50 P. M. until 1:00 P. M., Tuesday, April 12, 1955.

61ST LEGISLATIVE DAY

House met pursuant to adjournment at 1:15 P. M., on Tuesday, April 12, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

Member absent—Mr. Maclary—1.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

Mr. Layton introduced the following resolution, which upon further motion by him was adopted: **HR 66**—"Relating to the Placing of a Bronze Tablet in the House Chamber and Making an Appropriation Therefor."

BE IT RESOLVED, by the House of Representatives of the 118th General Assembly of the State of Delaware that the sum of Three Hundred Forty Dollars (\$340.00) be and the same is hereby appropriated out of the General Fund of the State Treasury, from monies not otherwise appropriated, for the payment for a bronze plaque and the installation thereof in the Hall of the House of Representatives, said plaque to contain the names of the Members of the House of the 118th General Assembly; and the State Treasurer is hereby authorized and directed to pay the aforesaid sum upon warrants duly signed by the Speaker and the Chief Clerk of the House, said sum so appropriated being a part of the expenses of the House of Representatives.

The following concurrent resolutions were introduced, given first and second readings by title only, and referred to committees as follows:

HCR 21—"Expressing the Appreciation of the General Assembly to Merton B. Tice, Commander-in-Chief of the Veterans of Foreign Wars of the United States," by Garton; to Military Affairs.

HCR 22—"Appropriation for Postage Stamps and Other Supplies for the 118th General Assembly," by Donovan; to Appropriations.

The Secretary of the Senate informed the House that the Senate had passed **HB 71**, **HB 258** with **HA 1**, **HCR 16**, **HCR 17**, and **HCR 19**; and that the Senate had passed and requested the concurrence of the House in the following: **SB 243**, **SB 249**, **SB 250**, **SB 251**, **SB 252**, **SB 253**, **SB 425**, **SB 436**, **SB 444**, **SB 449**, **SB 464** with **SA 1**, **SB 467**, and **SB 478**.

Mr. Snowden introduced the following resolution: **HR 67** —“A Resolution to Reconsider the Resolution Passed by the House on April 7, 1955, by Which It Seated James Smith as Representative from the 14th District of Sussex County in the Place of Raymond M. Lank, Who Has Occupied a Seat in This House from Said 10th District Since the Beginning of This Session of the General Assembly and to Rescind Said Resolution Pending Further Consideration.”

WHEREAS, the said resolution of April 7 should be reconsidered for the following reasons:

1. It invalidates the 2373 absentee ballots cast at the last election.

2. It violates the wishes of a majority of the voters of the 10th District.

3. It puts the General Assembly in a position where it has failed to comply with Article V, Sec. 4A of the Constitution requiring it to provide for voting by absentee ballot.

4. The members of this House who voted for the Resolution claim the absentee ballot law was unconstitutional and their basis for that was an advisory opinion by the Attorney General.

5. Neither the opinion of the Attorney General, nor the vote passing the Resolution of April 7th can make the absentee ballot law unconstitutional, but the opinion of the Attorney General creates great confusion. The foundation for the opinion of the Attorney General is as follows:

“Any statutory provisions enacted by the General Assembly must be so drawn as to ‘preserve the freedom and purity of elections and prevent fraud, corruption and intimidation . . .’ Constitution, Article V, Section 1; must not violate the constitutional provisions that the voter ‘shall be entitled to vote . . . in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered, . . .’ Ibid., Article V, Sections 2 and 6; must provide a method of challenging for bribery, Ibid., Article V, Section 3. In all of these respects the Absentee Voting Law is deficient and, therefore, unconstitutional.”

AND, WHEREAS, the Attorney General fails to quote an important part of Article V, Section 1. Section 1 reads as follows:

“Section 1. The general election shall be held biennially on the Tuesday next after the first Monday in the month of November, and shall be by ballot; but the General Assembly may by law prescribe the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter, preserve the freedom and purity of elections and prevent fraud, corruption and intimidation thereat.”

AND, WHEREAS, it will be observed that the Attorney General has left out of his consideration the important part of the Constitution which provides that the Legislature shall prescribe,

“the means, methods and instruments of voting so as best to secure secrecy and the independence of the voter.”

AND, WHEREAS, the next complaint is that the Constitution provides that the voter,

“shall be entitled to vote in the hundred or election district of which he shall at the time be a resident, and in which he shall be registered.”

AND, WHEREAS, if the Act is unconstitutional because of this provision the Attorney General would seem to indicate that any absentee ballot law would be unconstitutional because the voter must appear personally and vote.

AND, WHEREAS if this law is unconstitutional on the grounds set forth by the Attorney General then it is impossible to amend the law without making the law providing for voting machines invalid.

AND, WHEREAS, what the last Legislature undertook to do in amending the Absentee Ballot Law was to comply with the provisions of Article V, Section 1 in view of the legislation providing for the voting machine.

AND, WHEREAS, it is impossible to provide that absentee ballots shall be counted at the polling place where the voting machine is in operation and at the same time secure the secrecy of the ballot cast by the absentee voter. If this law is amended to comply with the Attorney General's objection then you are confronted with another serious constitutional question relative to the secrecy of the ballot, NOW, THEREFORE

BE IT RESOLVED that the House hereby reconsiders its resolution of April 7, 1955 and rescinds the same pending further consideration of the constitutionality of the absentee ballot law.

Mr. Shockley moved that **HR 67** be tabled. The roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—25.

NAYS—Messrs. Hicks, T. S. Johnson, Lawson, Lester, Snowden, Wolf, Wood—7.

NOT VOTING—Mr. Smith—1.

ABSENT—Messrs. Garton and Maclary—2.

The motion to table **HR 67** having received the constitutional majority, passed the House and was ordered to be laid on the table.

The House recessed at 2:00 P. M.

The Speaker called the House to order at 4:00 P. M.

Mr. Pepper introduced the following resolution, which upon further motion by him was adopted: **HR 68**—"In Reference to the Removal of a Sergeant-at-Arms and the Election of a Successor for the House of Representatives."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly that the resignation of Allan C. Layton as a Sergeant-at-Arms for the said House, effective April 12, 1955, is accepted and the said Allan C. Layton is hereby removed from the said office as of the close of the legislative day on April 12, 1955; and

BE IT FURTHER RESOLVED by the House of Representatives of the 118th General Assembly that Mabel E. Layton is hereby elected to serve as Sergeant-at-Arms beginning April 13, 1955, at the pleasure of the House.

The following bills were reported by the Committee on Municipal Corporations as follows: **SB 111** with **SA 1**, favorably; **HB 98**, favorably; **HB 212**, favorably; **HB 316**, 3 favorably, 2 on merits; **HB 360**, favorably; **HB 388**, 4 favorable, 1 on merits; **HB 407**, favorably; **HB 416**, 4 favorable, 1 on merits.

The Chair announced that he is about to sign: **HB 57**, **HB 58**, **HB 66**, **HB 71**, **HB 73**, **HB 74**, **HB 76**, **HB 86**, **HB 95**, **HB 96**, **HB 126**, **HB 139**, **HB 198**.

The Chair presented the following Senate Bill, which was given first and second readings by title only and referred to committee as follows:

SB 155—"An Act to Amend Chapter 96 Title 9 of the Delaware Code Relating to the Recordation of Instruments in Kent and Sussex Counties," to Appropriations.

The following concurrent resolution and bill were reported by the the Committee on Appropriations as follows: **SCR 6**, favorably; **HB 246**, on its merits.

The following bills were reported by the Committee on Miscellaneous as follows: **HB 325**, favorably; **HB 326**, favorably; **HB 362**, favorably; **HB 370**, favorably; **HB 378**, favorably; **HB 379**, favorably.

Mrs. Tunnell moved that **HB 299**—"An Act to Amend Chapter 23, Title 19 of the Delaware Code Relating to Review of Agreements or Awards by the Industrial Accident Board," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mrs. Tunnell, **HA 1** to **HB 299** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston,

Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Hicks and Maclary—2.

HB 299 with **HA 1** having received the constitutional majority, passed the House and was ordered to the House for concurrence.

Mr. Eskridge moved that **HB 308**—"An Act to Amend the Charter of the City of Seaford by Permitting the City Council to Post the Assessment List Within Sixty (60) Days After Receiving the Same from the Board of Assessment Rather Than Within Five (5) Days," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Hicks and Maclary—2.

HB 308 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Shockley moved that **HB 234**—"An Act Appropriating Funds to the American Legion and American Legion Auxiliary for Expenses to be Incurred in Connection With the Holding of Boy's State and Girl's State," be taken up for consideration read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—27.

NAYS—None.

PRESENT—Mr. T. S. Johnson—1.

NOT VOTING—Messrs. Lawson, Lester, Snowden, Wolf, Wood—5.

ABSENT—Messrs. Hicks and Maclary—2.

HB 234 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The following bills were reported by the Committee on Fish, Oysters and Game as follows: **SB 148** with **SA 1**, favorably; **SB 231** with **SA 1**, favorably.

The following bills were reported by the Committee on Private Corporations as follows: **SB 166**, 4 favorable, 1 on merits; **HB 340**, favorably; **HB 459**, 4 favorable, 1 unfavorable; by the Committee on Public Health: **SB 272**, favorably.

Mr. Brogan moved that **HB 319**—"An Act to Amend Chapter 33, Title 19, Delaware Code, Relating to Unemployment Compensation, by Making Certain Changes in the Definitions of Employment," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Hicks, Lester, Maclory—3.

HB 319 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Rowan moved that **HB 286**—"An Act to Amend Chapter 7, Title 7, Delaware Code, Relating to Sale and Possession of Rabbits from Other States or Areas," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Rowan, **HA 1** to **HB 286** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, B. W. Johnson, T. S. Johnson, Keel, Lawson, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood—20.

NAYS—Messrs. Alexander, Clark, Deputy, Garton, Layton, Rowan, Wilkinson, Mr. Speaker Quigley—8.

Messrs. Garton and Rowan changed their votes from yea to nay for purpose of reconsideration.

NOT VOTING—Messrs. Eskridge, Lester, Queen—3.

ABSENT—Messrs. Donovan and Maclary—2.

PRESENT—Messrs. Hastings and Hicks—2.

HB 286 with **HA 1** not having received the constitutional majority, was lost.

Mr. Garton moved that **HB 245**—"An Act Proposing an Amendment to Section 17 of Article II of the Constitution of the State of Delaware Relating to Lotteries," having had its third reading, be taken up for consideration in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, B. W. Johnson, Keel, Layton, Livingston, Massey, Nechay, Queen, Rowan, Shockley, Smith, Walls, Wilkinson—19.

NAYS — Messrs. Garton, Macklin, Mattiford, Mayhew, Pepper, Snowden, (Mrs.) Tunnell, Wolf, Wood, Mr. Speaker Quigley—10.

Messrs. Garton and Pepper changed their votes from yea to nay for purposes of reconsideration.

NOT VOTING—Messrs. Hastings and Lawson—2.

ABSENT—Messrs. T. S. Johnson and Maclary—2.

PRESENT—Messrs. Hicks and Lester—2.

HB 245 not having received the constitutional majority, was lost.

Mr. Livingston moved that **HB 62**—"An Act Appropriating Money to Layton Home for Aged Colored Persons," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—27.

NAYS—None.

PRESENT—Messrs. Hicks, Lawson, Lester, Snowden, Wolf, Wood—6.

ABSENT—Messrs. T. S. Johnson and Maclary—2.

HB 62 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Layton moved that **HB 93**—"An Act Appropriating Money to the United Spanish War Veterans, Department of Delaware," be taken up for consideration and read for the third time in order to pass the House.

YEAS — Messrs. Alexander Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—27.

NAYS—None.

PRESENT—Messrs. Hicks, Lawson, Lester, Wood—4.

NOT VOTING—Mr. Wolf—1.

ABSENT—Messrs. T. S. Johnson, Maclary, Snowden—3.

HB 93 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Eskridge moved that **HB 309**—"An Act to Amend the Charter of the City of Seaford by Deleting the Requirement That the Auditor's Report Must be Printed or Published or

Posted at Least Ten Days Prior to the Annual Election," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Hicks, T. S. Johnson, Maclary—3.

HB 309 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Wilkinson moved that **HB 54**—"An Act to Amend Title 28, Delaware Code, by Providing for the Licensing, Regulation and Control of Dog Racing Within New Castle County in the State of Delaware," be taken up for consideration and read for the third time in order to pass the House.

Mr. Wood introduced **HA 1** to **HB 54** and moved its adoption:

On the question, "Shall the Amendment pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Clark, Hicks, Lawson, Lester, Rowan, Snowden, (Mrs.) Tunnell, Wolf, Wood—10.

NAYS — Messrs. Bostick, Brogan, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Walls, Wilkinson, Mr. Speaker Quigley—23.

ABSENT—Messrs. T. S. Johnson and Maclary—2.

HA 1 to **HB 54** not having received the constitutional majority, was lost.

Mr. Wilkinson moved for roll call on **HB 54**.

Motion to defer action by Mr. Wolf, was lost.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander Bostick, Brogan, Clark, Deputy, Donovan, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Massey, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Walls, Wilkinson, Mr. Speaker Quigley—22.

NAYS—Messrs. Lawson, Macklin, Mayhew, Snowden, (Mrs.) Tunnell, Wolf, Wood—7.

NOT VOTING—Messrs. Eskridge and Mattiford—2.

ABSENT—Messrs. T. S. Johnson and Maclary—2.

PRESENT—Messrs. Hicks and Lester—2.

HB 54 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Wilkinson moved that **HB 271**—"An Act to Amend Chapter 17, Title 7 of the Delaware Code Relating to the Training of Dogs," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Wood, Mr. Speaker Quigley—29.

NAYS—Mr. Snowden—1.

ABSENT—Messrs. Alexander, T. S. Johnson, Maclary, Mattiford, Wolf—5.

HB 271 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Macklin, on behalf of Mr. Speaker Quigley, moved that **HB 296**—"An Act to Amend Chapter 1, Title 23, Delaware Code, Relating to Pilotage Rates, by Increasing the Rates for the Pilotage of Vessels," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Wilkinson, Wood, Mr. Speaker Quigley—29.

NAYS—Mr. Walls—1.

ABSENT—Messrs. Alexander, T. S. Johnson, Maclary, Mattiford, Wolf—5.

HB 296 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The House adjourned at 6:10 P. M. until 1:00 P. M., Wednesday, April 13, 1955.

62ND LEGISLATIVE DAY

House met pursuant to adjournment at 1:40 P. M., on Wednesday, April 13, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—35.

Members absent—None.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

Mr. Wolf's request that his remarks be entered upon the Journal was granted by the Speaker without objection.

STATEMENT BY REPRESENTATIVE HENRY H. WOLF

First, I wish to express regret for leaving the House yesterday before its adjournment; however, I did so in order to cast my ballot at the Newark elections before the closing hour of seven. During my journey home I did a great deal of reflecting on the events of the afternoon, and I am extremely puzzled by the attitude of many members of the majority party to a sincere desire to discuss the problems which come before us.

Through this reflection I have concluded that the members of the minority party are faced with this situation:

Suspicion—Despite having made statements on many issues that we were in favor of the principles involved, any supplemental questions we raised to clarify the issue have generally been met with the answer "roll call" and that in a tone not complimentary to the dignity of the House. What has anyone to fear from an extended and searching debate of any questions?

Inconsistency—Yesterday during the discussion of the agenda, I was chided for making a technical point of a situation—wasting time—and believe, being picayune. On the other hand, later in the afternoon, someone else in the majority party was quick to make a technical point respecting the privileges of the floor. Then, too, there was a faint cry, echoing more vociferous ones of the past, that debate by the minority was delaying the completion of the business by the House, thereby increasing the burden of the taxpayer. What these individuals have shut their eyes to is the real root of the trouble—duplication of bills—look at the calendar—not only have bills of the minority party been duplicated, but also their own bills in the House and Senate. Is there anything consistent about these actions? However, when you are the majority, inconsistency is nothing to be concerned about—you are still always right!

Arrogancy—What greater display of arrogance could be witnessed than that which took place when HB-54 was before the House yesterday? What reasonable explanation was given for denying the motion to defer action? Certainly the speaker's comments indicated he believed that the profit limitation applicable to Horse and Harness Racing was a feature of this bill. The subsequent action of the House was more than a steamroller—in my book it was plain arrogancy. Well, history

doesn't deal very kindly with people who hold to that philosophy, so we in the minority will have to learn to live with the conditions of suspicion—inconsistency—and arrogance.

But rest assured, we will not do it silently, regardless of what tactics the members of the majority party pursue.

The Oath of Employee was administered by the Speaker to Mabel E. Layton.

The Secretary of the Senate informed the House that the Senate had concurred in **HB 217**; and that the Senate had passed and requested the concurrence of the House in the following: **SB 276**, **SB 300**, **SB 350** with **SA 1**, **SB 376**, **SB 403**, **SB 471** with **SA 1**.

The Chair announced he is about to sign: **HB 258** with **HA 1**, **HB 217**, **HCR 16**, **HCR 17**, **HCR 19**.

On motion of Mr. Queen, **HB 179** was stricken from the calendar.

Mr. Layton introduced the following resolution, which upon further motion by him was adopted: **HR 69**—"Relative to the Payment on Account for Collecting Data, Compiling, Editing and Publishing the Daily Calendar for the House of Representatives of the 118th General Assembly of the State of Delaware."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that the sum of Four Thousand Two Hundred Fifty-Two Dollars and Eighty Cents (\$4,252.80) is hereby appropriated out of the moneys of the State Treasury, not otherwise appropriated, for part payment to The Sussex Countian, Inc., of Georgetown, Delaware, the lowest and responsible bidder, for collecting data, compiling, editing and publishing the daily calendar for the House of Representatives of the State of Delaware, from March 1 to and including March 31, 1955, said calendar being necessary to the business of the House and the expenses thereof being a necessary expense connected with this Session.

On motion of Mr. Pepper, **HB 191** was stricken from the calendar.

On motion of Mr. Queen, **HB 276** was recommitted to committee.

Mr. Clark moved that **HB 283**—"An Act Amending Chapter 83, Title 9, Delaware Code, Relating to County Boards of Assessment and Providing for Appeals to the Superior Court," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander Bostick, Brogan, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston,

Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—Mr. Donovan—1.

ABSENT—Mr. Rowan—1.

HB 283 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mrs. Tunnell moved that **HB 246**—"An Act to appropriate Funds to the Department of Public Welfare for the Fiscal Year Ending June 30, 1955," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Eskridge, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wood, Mr. Speaker Quigley—29.

NAYS—Messrs. Donovan, Nechay, Wilkinson—3.

NOT VOTING—Mr. Garton—1.

ABSENT—Messrs. Rowan and Wolf—2.

HB 246 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Brogan moved that **HB 119**—"An Act to Amend Chapter 29, Title 29, Delaware Code, Relating to the "State Treasurer", by Providing That the Salaries of State Officials and Employees be Paid Semi-Monthly," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Brogan, **HA 1** to **HB 119** was adopted. Action deferred on motion of Mr. Queen.

The House recessed at 2:30 P. M.

The Speaker called the House to order at 4:10 P. M.

The following message was delivered to the House from the Governor:

GOVERNOR'S MESSAGE
STATE OF DELAWARE
EXECUTIVE DEPARTMENT

Dover, April 13, 1955

To the Honorable
The House of Representatives of the State of Delaware
Dover, Delaware
Gentlemen:

This will advise you that on the dates indicated I have approved the following legislation:

April 5, 1955, House Concurrent Resolution No. 18—In Reference to a Joint Session to Hear the Commander-In-Chief of the V. F. W.

April 5, 1955, Senate Joint Resolution No. 4—Adopting the Southern Regional Education Compact.

April 6, 1955, Senate Bill No. 78 with H. A. No. 1—An Act to Amend Chapter 5, Title 4, of the Delaware Code Relating to the Rebate of the Excise Tax of this State on Beer Sold to an Instrumentality of the Armed Forces of the United States.

April 7, 1955, House Bill No. 109—An Act to Amend Chapter 23, Title 12, Delaware Code, Relating to Widows' Allowance and the Settlement of Personal Estates.

April 7, 1955, House Bill No. 159 with S. A. No. 1—An Act to Amend Chapter 11, Title 13, Delaware Code Relating to the Termination of Parental Rights.

Respectfully submitted,

J. CALEB BOGGS

The following substitute bill was introduced, given first and second readings by title only and referred to committee:

HS 1 for **HB 443**—"An Act to Amend Chapter 43, Title 21, Delaware Code, Relating to Equipment and Construction of Vehicles, by Revising the Provisions for Lights on Vehicles, and to Repeal Certain Sections of Chapter 41, Title 21, Delaware Code, Relating to Lights on Vehicles," by Mattiford; to Public Buildings and Highways.

The following bill was reported by the Committee on Revenue and Taxation: **SB 34**, favorably.

On motion of Mr. Garton, **HB 245** was restored to the calendar.

On motion of Mr. Rowan, **HB 286** with **HA 1** was restored to the calendar.

The following bills were reported by the Committee on Municipal Corporations: **HB 395**, favorably; **HB 208**, favorably; by the Committee on Private Corporations: **HB 344**, favorably; by the Committee on Public Buildings and Highway: **HB 232**, 3 favorable, 1 on merits; **SB 285** with **SA 1**, 4 favorable, 1 on merits; by the Committee on Revised Statutes: **SB 61**, favorably; **SB 117**, favorably; **SB 118**, favorably; by the Committee on Elections: **HB 405**, 4 favorable, 1 unfavorable; **HB 414**, 4 favorable, 1 unfavorable; by the Committee on Charities: **SB 140**, on merits.

The Chair presented the following Senate Bill, which was given first and second reading by title only, and referred to committee as follows:

SB 191—"An Act to Amend Chapter 27, Title 18 of the Delaware Code Relating to the Rate of Special Tax on Gross Premiums of Fire Companies for the Purpose of Assisting in Maintaining Fire Companies," to Private Corporations.

Mr. Massey moved that **HB 312**—"An Act to Amend Chapter 7, Title 21, Delaware Code, Relating to Motor Vehicles Giving Right to Person Arrested to be Tried in the

Municipal Court for the City of Wilmington or by the Nearest Available Justice of the Peace," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Hicks, Lester, Wood—3.

HB 312 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The House adjourned at 4:55 P. M. until 1:00 P. M., Thursday, April 14, 1955.

63RD LEGISLATIVE DAY

House met pursuant to adjournment at 1:25 P. M., on Thursday, April 14, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—34.

Member absent—Mr. Wilkinson—1.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

The House recessed at 1:30 P. M.

The Speaker called the House to order at 3:20 P. M.

The Secretary of the Senate informed the House that the Senate had concurred in **HB 246**, and that the Senate had passed and requested the concurrence of the House in the following: **SB 125**, **SB 278**, **SB 302**, **SB 307**, **SB 428** with **SA 1**, **SB 442** with **SA 1**, **SB 447**, **SB 486**, **SB 487** with **SA 1**.

The following bills were reported by the Committee on Appropriations as follows: **SB 155**, favorably; by the Committee on Municipal Corporations: **HB 536**, favorably; by the Committee on Revenue and Taxation: **SB 32**, favorably; **SB 33**, favorably; by the Committee on Private Corporations: **SB 191**, favorably; by the Committee on Miscellaneous: **HB 56** with **SA 1**, favorably; **HB 161**, on merits; **HB 254**, on merits; **HB 270**, on merits; **HB 282**, on merits; **SB 62**, favorably; **SB 164**, on merits; **SB 168**, favorably.

Mrs. Tunnell moved that **HB 477**—"An Act to Amend An Act Entitled, "An Act Amending, Revising and Consolidating the Charter of the Town of Georgetown", Being Chapter 166, Volume 43, Laws of Delaware, as Amended, Relative to the Power of the Town Council of Georgetown to Borrow Money and Issue Bonds," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mrs. Tunnell, **HA 1** to **HB 477** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Eskridge, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—31.

NAYS—None.

NOT VOTING—Mr. Garton—1.

ABSENT—Messrs. Donovan, Pepper, Wilkinson—3.

HB 477 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The following message was delivered to the House from the Governor:

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT**

April 14, 1955

The Honorable House of Representatives
Legislative Hall, Dover, Delaware

Gentlemen:

On April 5, 1955, I received the following bill:
House Bill No. 203 entitled, AN ACT AUTHORIZING AND DIRECTING THE STATE HIGHWAY DEPARTMENT TO INSTALL A TRAFFIC CONTROL LIGHT AT THE INTERSECTION STATE ROUTE NUMBER 10 AND U. S. ROUTE NUMBER 13, AT CAMDEN, KENT COUNTY, DELAWARE.

I am returning this bill without my approval.

Throughout the State of Delaware there are a great number of intersections carrying varying volumes of vehicular and pedestrian traffic. In order to cope with the problem of installing traffic signals as may be necessary in the public interest, the Legislative Branch of our State government has in the past permitted broad authority to the Highway Department to meet these needs appropriately and properly.

The Highway Department has a uniform procedure to determine whether or not traffic signals are justified in light of the overall community interest, safety and proper flow of traffic. The Highway Department uses ten warrants, or

criteria, that have been developed by the Institute of Traffic Engineers and the American Association of State Highway Officials. This procedure is in wide and general use throughout the nation. It is recognized as the best and approved way for meeting this problem.

It is my opinion that it is a better policy to have the Highway Department continue to administer this function on the basis of its surveys and nationally recognized criteria. As may be recalled, in the last session of the legislature several bills on this subject were passed which I was unable to approve for the same reasons which I am giving here.

If, however, the Legislative Branch wishes to take over this function, I would recommend that all the various bills carry necessary supplemental appropriations to meet the installation and maintenance costs.

I believe that upon reflection you will agree this is not a matter in which the Legislative Branch has the time or the means to administer effectively.

The latest study and survey of this particular location was prepared during the last week of March of this year. Of the ten warrents, four were in favor of this installation and six were unfavorable. However, periodic surveys will be made and as traffic, pedestrian, residential and commercial activities increase in this area, no doubt a traffic signal will be justified at some future time, although it is not justified now on the basis of the present studies.

In this particular case, the intersection is located within the limits of the City of Camden. The City of Camden has actual jurisdiction over this traffic control point. Ordinarily, any traffic control arrangements in any city are worked out on a mutual agreement basis between the city and the State Highway Department as to the necessity of the signal and on a 50/50 basis.

The estimated cost of installing a traffic signal at the location in question is \$3300.00. The annual maintenance cost would be approximately \$300.00 per year. This particular bill fails to carry any appropriation for installation and makes no provision for subsequent maintenance costs.

However, I assure you that in every instance of a request for a traffic control signal anywhere in the State the Highway Department will give each request its full and careful study and consideration in the interest of the public based upon what appears to be the soundest and best approach to this important problem.

Respectfully submitted,

J. CALEB BOGGS, Governor

Mrs. Tunnell moved that **HB 335**—"An Act Authorizing the Levy Court of Sussex County to Appropriate County Moneys to Pay Its Share of Ditch Taxes Assessed for Construction and Maintenance Purposes on the Eli Wall's Tax Ditch," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Donovan and Wilkinson—2.

HB 335 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Massey moved that **SB 85**—"An Act to Amend Chapter 15, Title 10 of the Delaware Code Relating to the Term of the Judge of the Court of Common Pleas for Kent County," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Mr. Speaker Quigley—26.

NAYS—Messrs. Hicks, Lawson, Lester, Maclary, Snowden, Wolf, Wood—7.

ABSENT—Mr. Wilkinson—1.

PRESENT—Mr. T. S. Johnson

SB 85 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Pepper moved that **SB 35** with **SA 1** be taken up for consideration and read for third time in order to pass the House.

Mr. Pepper introduced **HA 1** to **SB 35** as amended by **SA 1**.

On motion of Mr. Donovan, action was deferred.

The Chair announced he is about to sign: **HB 246**.

Mr. B. W. Johnson moved that **SB 128**—"An Act to Amend Chapter 3, Title 14 of the Delaware Code by Changing the Time During Which Polls are to Remain Open for Election of School Board Members in Kent, Sussex, and Part of New Castle Counties," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. Wilkinson—1.

SB 128 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Nechay moved that **SB 93**—"An Act to Amend Chapter 5, Title 17 of the Delaware Code, Relating to the Penalties for Casting Glass or Injurious Obstructions on Public Highways," be taken up for consideration read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Mattiford, Wilkinson, Wood—3.

SB 93 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mrs. Tunnell moved that **HB 382**—"An Act to Amend Chapter 3, Title 11, Subchapters IX and X, Delaware Code, by Providing That Breaking and Entering the Dwelling House or Other Buildings of Another With Intent to Commit a Crime is Burglary, or Breaking Out of Any Building After Committing a Crime Therein is Burglary; Defining and Providing for the Punishment of the Crimes of Burglary in the First, Second, Third and Fourth Degrees; Defining and Providing for the Punishment of the Crime of Unlawful Entry of a Building With Intent to Commit a Crime; Defining and Providing for the Punishment of the Crime of Simple Breaking and Entering of a Building; Providing for the Punishment and Manner of Prosecution for Separate Crime Committed in Building by Burglar; and Providing That No Act Committed or Criminal Proceeding Commenced Prior to the Approval of This Act Shall be Affected Hereby," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Mattiford, Wilkinson, Wood—3.

HB 382 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Pepper moved that **SB 80**—"An Act to Amend Title 29, Delaware Code, Entitled "State Government" by Increasing the Authorized Number of Notaries Public and Providing for Minimum Qualifications for Those Holding Such Office; and Increasing the Fees," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—29.

NAYS—Messrs. Hicks, Lawson, Snowden—3.

ABSENT—Messrs. Alexander, Keel, Wilkinson—3.

SB 80 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mrs. Tunnell moved that **SB 22** with **SA 1**—"An Act to Amend Title 14, of the Delaware Code, Relating to "Education" by Providing for the Issuance of a Professional Status Certificate for Teachers and for Regulations Concerning Certificate Renewal," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Garton, Hastings, B. W. Johnson, Layton, Livingston, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Walls, Mr. Speaker Quigley—21.

NAYS—Messrs. Donovan, Hicks, Keel, Lawson, Lester, Macklin, Maclary, Snowden, (Mrs.) Tunnell, Wolf, Wood—11.

NOT VOTING—Mr. Eskridge—1.

ABSENT—Messrs. T. S. Johnson and Wilkinson—2.

SB 22 with **SA 1** having received the constitutional majority, passed the House and was ordered returned to the Senate.

The Speaker granted the request of Mr. Macklin to have the following statement of Elbert N. Carvel, Chairman of the Democratic State Committee, entered into the Journal:

STATEMENT OF DEMOCRATIC STATE CHAIRMAN
ELBERT N. CARVEL

April 14, 1955

I am sure that there are thousands of Delaware Citizens all over our state who are shocked by, and deeply resent, the irresponsible statements that the former president of the Congress of Delaware Parent and Teachers has stooped to make on the floor of the House of Representatives recently.

Before any bills, to which he refers, have passed the whole Legislature he assumes that these bills will become law.

For my part, I do not claim to be adept at spellbinding or inventing slick sounding phrases, but I have had close contact with the Delaware Legislature ever since 1945, and I have learned through experience with 5 previous Legislatures, and this present one, that these public servants who are our Senators and Representatives can be trusted to work for the welfare of the people of Delaware and to pass legislation which is for the greatest good of the greatest number of our people.

As the Democratic State Chairman, I wish to reemphasize the position our party has taken on certain issues. On Bingo, we are for a referendum on that question with the hope that such a referendum will be held during the present session so that the Legislature might be informed and give effect to the will of the people and pass constitutional Legislation in accordance with that mandate. For the former acting minority floor leaders information, his own Republican Governor stated last year before the Fall Election, that he, the Governor, was for Bingo.

As for any race track legislation, the Democratic Party, as such, has not as yet taken a position on any race track bills, and they are presently a matter of individual preference as far as the Democratic members of the Legislature are concerned. I have stated on a number of occasions, and I again sincerely say, that this is the most sober, orderly, and dedicated Legislature with which I have ever been associated, and I consider it to be a real credit to the State of Delaware.

For many years, our party has stood for a multi-membered bi-partisan Liquor Commission to replace the present one man Republican dictatorship, which has been in effect for over 14 years, and under whose administration Delaware has reached among the highest number of Liquor outlets per capital in the United States. Yes, we Democrats are for doing something about this condition and I hope and believe that a bill will pass this legislature which will give Wilmington and

the three counties representation on a bi-partisan Liquor Commission. May I remind the former acting Minority Floor Leader of the House, and the people of Delaware, that it was the Organized Liquor interest of the State of Delaware which sent a letter to all of the Liquor outlets throughout the State urging their owners to vote for the Republican Attorney General and Republican candidates for the Legislature.

The Democratic Party's platform is for changes in the Liquor Board, for changes in the Election Laws and Boards of the State, for the elimination of the Board of Trustees of Sussex County (a ripper act by the Republican Legislature and administration of 1941) and for a new Labor Department.

I sincerely hope, and believe, that all these measures will pass as the Sussex County Trustee elimination bill has already passed. They are called for in our platform, and as the Democratic State Cahirman I will fight for their enactment.

It is understandable in view of the Republican record of ripper legislation in the past, that some of our party in the Legislature wish to retaliate in kind.

I sincerely hope, and it is the belief of the overwhelming majority of the Democratic Party Leadership in our state, that we should refrain from following the Republican example of Ripping when in power. As has been our record in the past we shall work for, and provide responsible and forward looking leadership for the welfare of all of the people of Delaware.

The house adjourned at 5:15 P. M. until 1:00 P. M., Friday, April 15, 1955.

64TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:30 P. M., on Friday, April 15, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawton, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

Members absent—Messrs. Alevander, Hicks, Mattiford—3.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

The Secretary of the Senate informed the House that the Senate had concurred in HB 77 with HA 1, HB 149, HB 184, HB 188, HB 257, and that the Senate had passed and request-

ed the concurrence of the House in the following: SB 220, SB 221, SB 274, SB 375 with SA 1, SB 387, SB 417, SB 458, SB 459.

On motion of Mr. Queen, **HB 276** was stricken from the calendar.

The following substitute bill was introduced, given first and second reading by title only and referred to committee:

HS 1 for **HB 561**—"An Act to Amend Chapter 13, Title 24, Delaware Code, by Revising the Provisions for the Licensing and Regulation of Private Detectives and Detective Agencies," by Queen (by request); to Revised Statutes.

Mr. Donovan moved that **SB 3**—"An Act Appropriating Certain Moneys to the Delaware Commission for Shell Fisheries to Purchase and Install Two Diesel Engines on the Guard Boat "Delaware," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Brogan, Clark, Deputy, Donovan, Eskridge, Hastings, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—28.

NAYS—None.

NOT VOTING—Messrs. Garton and B. W. Johnson—2.

ABSENT—Messrs. Alexander, Bostick, Hicks, Mattiford, Wood—5.

SB 3 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Donovan moved that **SB 8**—"An Act Appropriating Funds to the State Board of Education for the Current Fiscal Year on Account of an Unanticipated Increase in the School Population," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Donovan, **HA 1** to **SB 8** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—29.

NAYS—None.

NOT VOTING—Messrs. Garton and Rowan—2.

ABSENT—Messrs. Alexander, Hicks, Mattiford, Wood—4.

SB 8 with **HA 1** having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence.

The following bills were reported by the Committee on Public Buildings and Highways: **HB 337**, on merits; **HB 393**, on merits; by the Committee on Appropriations: **HCR 22**, favorably; by the Committee on Insurance and Banking: **SB 182**, 4 favorable, 1 unfavorable; **SB 206**, favorably; **HB 380**, favorably; **HB 383**, favorably; **HB 436**, favorably; **HB 583**, favorably.

Mr. Pepper moved that **SB 61**—"An Act to Amend Chapter 61, Title 29 of the Delaware Code Relating to the "General Fund," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Alexander, Hicks, Mattiford, Rowan, Wood—5.

SB 61 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Bostick moved that **SB 62**—"An Act to Amend Chapter 55, Title 16 of the Delaware Code, by Authorizing the Delaware Commission for the Feeble-Minded to Sell Excess Farm Produce and Live Stock; Deposit the Funds so Derived in a Special Fund and Permitting Expenditures to be Made from Said Special Fund for the Use of the Commission in Connection With the Operation of the Home for Feeble-Minded," be taken up for consideration and read for the third time in order to pass the House.

Mr. Donovan moved adoption of **HA 1** to **SB 62**.

"On the question, "Shall the Amendment be adopted?" the roll call revealed.

YEAS—Messrs. Bostick, Brogan, Clark, Donovan, Eskridge, Garton, T. S. Johnson, Keel, Lester, Livingston, Massey, Mayhew, Nechay, Shockley, Wilkinson—15.

NAYS — Messrs. Deputy, Hastings, Lawson, Layton, Macklin, Maclary, Pepper, Queen, Smith, Snowden, (Mrs.) Tunnell, Walls, Mr. Speaker Quigley—13.

NOT VOTING—Mr. B. W. Johnson—1.

ABSENT—Messrs. Alexander, Hicks, Mattiford, Rowan, Wolf, Wood—6.

HA 1 to **SB 62** not having received the constitutional majority, was lost.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Brogan, Clark, Deputy, Hastings, Lawson, Layton, Macklin, Maclary, Massey, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnel, Walls, Wolf, Mr. Speaker Quigley—20.

NAYS—Messrs. Donovan and Keel—2.

NOT VOTING—Messrs. Eskridge and B. W. Johnson—2.

ABSENT—Messrs. Alexander, Garton, Hicks, Mattiford—4.

PRESENT—Messrs. T. S. Johnson, Lester, Livingston, Mayhew, Smith, Wilkinson, Wood—7.

SB 62 having received the constitutional majority, passed the House and was ordered returned to the Senate.

The House recessed at 2:35 P. M.

The Speaker called the House to order at 3:30 P. M.

The following substitute bill was introduced, given first and second readings by title only and referred to committee as follows:

HS 1 for HB 361—"An Act to Amend Chapter 27, Title 18 of the Delaware Code by Providing for a Special Tax on Certain Gross Premiums of Insurance Companies, the Distribution Thereof and Requiring Certain Police Departments or Bureaus to Make Certain Registrations With the State Treasurer," by Deputy; to Revised Statutes.

The following bills were reported by the Committee on Judiciary: **SCR 8**, favorably; **HB 415**, 4 favorable, 1 on merits; **HB 427**, 4 on merits, 1 favorable; **HB 442**, 3 on merits, 2 favorable; **HB 479**, 4 favorable, 1 on merits; **HB 482**, on merits; **HB 483**, 4 favorable, 1 on merits; **HB 502**, 3 on merits, 2 favorable; **HB 514**, favorably; **HB 551**, 4 on merits, 1 favorable; **HB 569**, 4 favorable, 1 on merits; **HB 572**, 4 favorable, 1 on merits; by the Committee on Revised Statutes: **HS 1 for HB 361**, favorably.

The House adjourned at 3:45 P. M. until 1:00 P. M., Monday, April 18, 1955.

65TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:30 P. M., on Monday, April 18, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, T. S. Johnson, Keel, Lawton, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

Member absent—Mr. B. W. Johnson—1.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

The following bills were reported by the Committee on Public Buildings and Highways: **HB 334**, on merits; **HB 448**, favorably.

The Chair presented the following bill, which was given its first and second readings by title only, and referred to committee:

SB 192—"An Act to Amend the Charter of the City of Seaford by Requiring that All City Employees "Be Bonded" Rather than "Give Bond", to Municipal Corporations.

Mr. Wolf moved that **HB 209**—"An Act to Amend An Act Entitled "An Act Changing the Name of the 'Town of Newark' to the 'City of Newark' and Establishing a Charter Therefor" by Providing for the Vacation of City Streets," be taken up for consideration in order to pass the House.

On motion of Mr. Wolf, **HA 1** to **HB 209** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Clark, Deputy, Eskridge, Hicks, T. S. Johnson, Keel, Lawson, Macklin, Maclary, Massey, (Mrs.) Tunnell, Wood.—12.

NAYS—Messrs. Alexander, Brogan, Hastings, Layton, Lester, Livingston, Snowden, Wolf—8.

Messrs. Lester and Wolf changed their votes from yea to nay for purpose of reconsideration.

NOT VOTING—Messrs. Shockley and Smith—2.

ABSENT—Messrs. Bostick, Donovan, Garton, B. W. Johnson, Nechay, Rowan—6.

PRESENT—Messrs. Mattiford, Mayhew, Pepper, Queen, Walls, Wilkinson, Mr. Speaker Quigley—7.

HB 209 with **HA 1** not having received the constitutional majority, was lost.

On motion of Mr. Wolf, **HB 209** with **HA 1** was restored to the Calendar.

The House recessed at 1:50 P. M.

The Speaker called the House to order at 4:30 P. M.

Mr. Deputy introduced the following resolution, which upon further motion by him was adopted: **HR 70**—"Expressing the Best Wishes of the House of Representatives to Representatives Irving H. Garton and Harry E. Mayhew Upon Their Birthdays."

WHEREAS, the House of Representatives of the 118th General Assembly is pleased to learn that Sunday, April 17, was the birthday of Representatives Irving H. Garton and Harry E. Mayhew; and

WHEREAS, the Members of the House wish to express their best wishes to Representatives Garton and Mayhew; NOW, THEREFORE,

BE IT RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that the best wishes of its members for the good health and continued happiness of Representatives Irving H. Garton and Harry E. Mayhew are hereby extended to them; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be entered on the Journal of the House, a copy delivered to the press and a copy given to each of the Representatives herein mentioned.

The following bills were reported by the Committee on Fish, Oysters and Game: **HB 201**, 4 favorable, 1 unfavorable; **HS 1** for **HB 228**, favorably; **HB 390**, on merits.

Mr. Queen moved that **SB 191**—"An Act to Amend Chapter 27, Title 18 of the Delaware Code Relating to the Rate of Special Tax on Gross Premiums of Fire Companies for the Purpose of Assisting in Maintaining Fire Companies," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—32.

NAYS—Mr. Wood—1.

NOT VOTING—Mr. Wolf—1.

ABSENT—Mr. B. W. Johnson—1.

SB 191 having received the constitutional majority, passed the House and was ordered returned to the Senate.

The following bills were reported by the Committee on Education: **SB 87**, 4 favorable, 1 on merits; **SB 127**, favorably; **HB 125**, on merits; **HB 357**, favorably; **HB 373**, favorably; **HB 375**, 4 favorable, 1 on merits; **HB 377**, 4 favorable, 1 on merits; **HB 391**, favorably.

The following message was delivered to the House from the Governor:

**GOVERNOR'S MESSAGE
STATE OF DELAWARE
EXECUTIVE DEPARTMENT**

Dover, April 18, 1955

To the Honorable
The House of Representatives of the State of Delaware
Dover, Delaware

Gentlemen:

This will advise you that on the dates indicated I have approved the following legislation:

April 13, 1955, Senate Concurrent Resolution No. 7—In Reference to the Acute Need for Highway Improvements in the Area of the Dover Air Force Base.

April 13, 1955, Senate Bill No. 15—An Act Creating a Council on the Administration of Justice.

April 13, 1955, Senate Bill No. 16—An Act to Amend Chapter 43, Title 11, Delaware Code, Relating to Probation.

April 13, 1955, Senate Bill No. 17—An Act to Amend Sections 7305, 7306 and 7307 of Title 14 of the Delaware Code, Relating to the State Library.

April 13, 1955, Senate Bill No. 25—An Act to Amend and Supplement Chapter 33 of Volume 49 Laws of Delaware, Relating to the Disinterment, Removal and Reinterment of Bodies in the Cemetery Located at Twelfth and Madison Streets in Wilmington.

April 13, 1955, Senate Bill No. 55—An Act to Amend Chapter 49, Title 15, of the Delaware Code, by Providing that the Polls Shall be Open from Seven O'Clock A. M., Until Eight O'clock P. M.

April 13, 1955, Senate Bill No. 56—An Act to Amend the Charter of the Town of Hartly, Chapter 152, Volume 29, Laws of Delaware, by Increasing the Amount Permitted to be Raised in Taxes.

April 14, 1955, House Bill No. 78 with H. A. No. 1—An Act Authorizing the State Highway Department to Execute Trust Indentures with Trustees Authorizing the Creation of a War Memorial Fund and the Transfer and Allocation of Monies Thereto and Directing the State Highway Department to Construct a Memorial Adjacent to the Delaware Memorial Bridge to Commemorate the Supreme Sacrifice of the Residents of the State of Delaware and of the State of New Jersey Who Died While Serving in the Armed Forces of the United States During World War II and During the Korean Campaign and to Honor the Persons Who Lost Their Lives in the Construction of the Delaware Memorial Bridge.

Respectfully submitted,

J. CALEB BOGGS, Governor

The Secretary of the Senate informed the House that the Senate had passed: **SB 488** with **SA 1**, **SB 489**, and requested the concurrence of the House.

Mr. Clark moved that **SB 272**—"An Act to Amend and Revise Chapter 19, Title 24, Delaware Code, by Clarifying and Defining the Power of Examiners of Graduate Nurses as Therein Established, and by Providing for the Supervised Training and Licensing of Practical Nurses on a Voluntary Basis," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. B. W. Johnson—1.

SB 272 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Deputy moved that **HS 1** for **HB 361**—"An Act to Amend Chapter 27, Title 18 of the Delaware Code by Providing for a Special Tax on Certain Gross Premiums of Insurance Companies, the Distribution Thereof and Requiring Certain Police Department or Bureaus to Make Certain Registrations With the State Treasurer," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Mattiford, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—28.

NAYS—Mr. Wood—1.

NOT VOTING—Mr. Wolf—1.

ABSENT—Messrs. Hicks, B. W. Johnson, T. S. Johnson—3.

PRESENT—Messrs. Massey and Mayhew—2.

HS 1 for **HB 361** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Shockley moved that **HB 417**—"An Act to Amend Chapter 1, Title 4, Delaware Code, Entitled "Alcoholic Liquors", by Changing the Definition of "Importer," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Keel, Lawson, Livingston, Macklin, Maclary, Mattiford, Nechay, Pepper, Queen, Rowan, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—26.

NAYS — Messrs. Hastings, Layton, Massey, Mayhew, Smith—5.

ABSENT—Messrs. Hicks, B. W. Johnson, T. S. Johnson, Lester—4.

HB 417 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Shockley moved that **HB 418**—"An Act to Amend Chapter 5, Chapter 7, and Chapter 11, Title 4, Delaware Code, Relating to Alcoholic Liquors," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bosticfl, Brogan, Clark, Donovan, Eskridge, Garton, Keel, Lawson, Livingston, Macklin, Mattiford, Pepper, Queen, Rowan, Shockley, Smith, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—22.

NAYS—Messrs. Deputy, Hastings, Layton, Lester, Massey, Nechay, Snowden—7.

ABSENT—Messrs. Hicks, B. W. Johnson, T. S. Johnson—3.

PRESENT—Messrs. Maclary, Mayhew, Mrs. Tunnell—3.

HB 418 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Donovan moved that **SCR 6**—"Appropriating Money to Reimburse John N. McDowell, Secretary of the State, for Certain Monies Expended for Certain Telephone Services Paid Out, Needed, Furnished to and Used by the Senate and House of Representatives of the 118th General Assembly," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Resolution pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bosticfl, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Hicks, B. W. Johnson, T. S. Johnson, Mrs. Tunnell—4.

SCR 6 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Pepper moved that **HB 426**—"An Act to Amend Chapter 3, Title 4, Delaware Code, Relating to the Delaware Liquor Commission, and Increasing the Membership Thereof," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Brogan, Clark, Hastings, Keel, Layton, Livingston, Mattiford, Smith, Walls, Mr. Speaker Quigley—11.

NAYS—Messrs. Deputy, Eskridge, Lawson, Lester, Maclary, Pepper, Queen, Shockley, Snowden, Wolf, Wood—11.

Messrs. Deputy, Pepper and Queen changed their votes from yea to nay for purpose of reconsideration.

ABSENT—Messrs. Hicks, B. W. Johnson, T. S. Johnson, Mrs. Tunnell—4.

PRESENT—Messrs. Bostick, Donovan, Garton, Macklin, Massey, Mayhew, Nechay, Rowan, Wilkinson—9.

HB 426 not having received the constitutional majority, was lost.

Mr. Garton moved that **SB 111** with **SA 1**—"An Act Authorizing the Levy Court of Kent County to Borrow on the Credit of the County a Sum of Money Not Exceeding Three Hundred and Seventy-Five Thousand Dollars to be Expended for Acquiring Additional Lands to be Used for the Purpose of Building an Addition or Additions to the Kent County Court House, and for Making Such Alterations and Repairs to the Existing Court House as the Levy Court Shall Deem Necessary and Expedient," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Donovan, action was deferred.

Mr. Hastings moved that **HB 416**—"An Act to Amend Chapter 277, Volume 49, Laws of Delaware, Being the Charter of the Town of Laurel, in Relation to Capitation Taxes," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—29.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Hicks, B. W. Johnson, T. S. Johnson, Mrs. Tunnell—6.

HB 416 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Nechay moved that **SB 181**—"An Act Authorizing and Directing the State Highway Department to Install a Traffic Control Light at the Intersection of Front Street and Route Number 113 in the Town of Frederica, Kent County, Delaware," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Donovan, Garton, Hastings, Livingston, Mattiford, Mayhew, Nechay, Queen, Rowan, Shockley, Walls, Wilkinson, Mr. Speaker Quigley—15.

NAYS—Messrs. Deputy, Keel, Lawson, Layton, Lester, Macklin, Maclary, Massey, Pepper, Smith, Snowden, Wolf, Wood—13.

NOT VOTING—Mr. Eskridge—1.

ABSENT — Messrs. Alexander, Brogan, Hicks, B. W. Johnson, T. S. Johnson, Mrs. Tunnell—6.

SB 181 not having received the constitutional majority, was lost.

On motion of Mr. Pepper, **HB 426** was restored to the calendar.

The following bills were reported by the Committee on Labor: **HB 553**, favorably; by the Committee on Military Affairs: **HCR 21**, 4 favorable, 1 on merits; by the Committee on Municipal Corporations: **SB 192**, 3 favorable, 1 on merits; **HB 324**, favorably.

The House adjourned at 6:25 P. M. until 10:00 A. M., Tuesday, April 19, 1955.

66TH LEGISLATIVE DAY

House met pursuant to adjournment at 10:00 A. M., on Tuesday, April 19, 1955.

Prayer by Mr. Donovan.

Members present—Messrs. Donovan, Nechay, Queen—3.

Members absent — Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Pepper, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

The members of the House of Representatives went on a visit to the Winterthur Museum.

There being no quorum present, the House adjourned until 1:00 P. M., Wednesday, April 20, 1955.

67TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:15 P. M., on Wednesday, April 20, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley —34.

Member absent—Mr. Brogan—1.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

Mr. Mayhew moved that **HB 230**—"An Act Appropriating Money to the Memorial Volunteer Fire Company, at Slaughter Beach," having had its third reading, be taken up for consideration in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Brogan, Nechay, Rowan, Wood—4.

HB 230 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Donovan moved that **HB 330**—"An Act to Amend Chapter 21 and Chapter 23, Title 21, Delaware Code, Relating to Motor Vehicles by Eliminating the Necessity for the Recording of the Engine Number on an Application for Registration and on an Application for a Certificate of Title," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT — Messrs. Brogan, Nechay, Pepper, Rowan, Wood—5.

HB 330 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Shockley moved that **HB 395**—"An Act to Amend Chapter 17, Title 9, Delaware Code, Relating to Employees Pensions in New Castle County," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Brogan, Rowan, Wood—3.

HB 395 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mrs. Tunnell moved that **HB 98**—"An Act to Amend An Act Entitled, "An Act Amending, Revising and Consolidating the Charter of the Town of Georgetown", Being Chapter 166, Volume 43, Laws of Delaware, as Amended, by Authorizing the Town Council of Georgetown to Appoint a Vice-Mayor and Prescribing His Duties," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT — Messrs. Brogan, Clary, Maclary, Snowden, Wood—5.

HB 98 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Mayhew moved that **HB 360**—"An Act to Amend the Charter of the Town of Houston, Chapter 240, Volume 27, Laws of Delaware, With Respect to Town Police," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Brogan, Maclary, Snowden, Wood—4.

HB 360 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The Secretary of the Senate informed the House that the Senate had concurred in: **HB 174, HB 235, HB 241, HB 248**, and that the Senate had passed and requested the concurrence of the House in the following bills: **SB 84, SB 258, SB 259, SB 260 with SA 1, SB 138 with SA 1, SB 342 with SA 1, SB 377, SB 384.**

The following bill was reported by the Committee on Revenue and Taxation: **HB 554**, favorably.

The Chair announced he is about to sign: **HB 257, HB 77 with HA 1, HB 188, HB 184, HB 149, SB 102, SB 93, SB 85, SB 80, SB 62, SB 61, SB 22 with SA 1, SB 3, SB 128.**

On motion of Mr. Rowan, **HR 25** was stricken from the calendar.

The following bill was reported by the Committee on Municipal Corporations: **HB 381**, favorably.

On motion of Mr. Donovan, **HB 205** was stricken from the calendar.

On motion of Mr. Shockley, **SB 144** was recalled to committee.

Mr. T. S. Johnson moved that **HB 326**—"An Act to Amend Chapter 212 Volume 25, Laws of Delaware, 1909, Entitled "An Act to Incorporate the Town of Bethany Beach and Give It Authority to Issue Bonds", as Amended, Providing for an Increase in the Amount to be Raised by Taxation," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Brogan, Deputy, Wood—3.

PRESENT—Mr. Lester—1.

HB 326 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Donovan moved that **SB 55**—"An Act to Amend Chapter 49, Title 15, of the Delaware Code, by Providing That the Polls Shall be Open from Seven O'clock A. M. Until Eight O'clock P. M., be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Brogan, Shockley, Wood—3.

SB 55 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Massey moved that SB 254—"An Act to Amend Chapter 19, Title 9 of the Delaware Code Relating to Fire and Police Protection in New Castle County," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Massey, action was deferred.

Mr. Garton moved that SB 111 with SA 1—"An Act Authorizing the Levy Court of Kent County to Borrow on the Credit of the County a Sum of Money Not Exceeding Three Hundred and Seventy-Five Thousand Dollars to be Expended for Acquiring Additional Lands to be Used for the Purpose of Building an Addition or Additions to the Kent County Court House, and for Making Such Alterations and Repairs to the Existing Court House as the Levy Court Shall Deem Necessary and Expedient," having had its third reading, be taken up for consideration in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. Brogan—1.

SB 111 with SA 1 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Mayhew moved that HB 56 with SA 1—"An Act Directing and Requiring the State Highway Department to Remove a Sluice Gate, Including Its Foundation, in the Canal at or Near Slaughter Beach Canal Bridge; Earth or Dirt Removed to be Used for Parking Accommodation," having had its third reading, be taken up for consideration in order to pass the House as amended.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawton, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Brogan and Rowan—2.

HB 56 with **SA 1** having received the constitutional majority, passed the House.

Mr. Garton moved that **SB 145**—"An Act to Amend Chapter 282 of Volume 21 of the Laws of Delaware Relating to the Town of Leipsic by Providing for an Increase in the Limit of Taxation," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Rowan, Snowden—4.

SB 145 having received the constitutional majority, passed the House and was ordered returned to the Senate.

The following message from the Governor was delivered to the House:

GOVERNOR'S MESSAGE
STATE OF DELAWARE
EXECUTIVE DEPARTMENT

April 20, 1955

To the Honorable
The House of Representatives of the State of Delaware
Dover, Delaware

Gentlemen:

This will advise you that on the date indicated I have approved the following legislation:

April 18, 1955, House Bill No. 57—An Act Appropriating Money to Certain Fire Companies in the State of Delaware.

April 18, 1955, House Bill No. 58—An Act Appropriating Money to the Disabled American Veterans in Delaware.

April 18, 1955, House Bill No. 66—An Act Appropriating Certain Money to Palmer Home, Incorporated.

April 18, 1955, House Bill No. 73—An Act Appropriating Money to American Legion, Sussex Post Number 8, in Sussex County, with Which to Operate and Maintain an Ambulance.

April 18, 1955, House Bill No. 74—An Act Appropriating Money to the American Legion, Department of Delaware.

April 18, 1955, House Bill No. 76—An Act Appropriating Money to the Delaware Society for the Prevention of Cruelty to Animals.

April 18, 1955, House Bill No. 86—An Act Appropriating Money to Certain Fire Companies in the State of Delaware Which Maintain and Operate a Rescue Truck.

April 18, 1955, House Bill No. 94—An Act to Amend Chapter 41, Title 21, Delaware Code, Relating to Motor Vehicles by Providing a Speed Limit in School Zones.

April 18, 1955, House Bill No. 96—An Act Making Appropriations to the American Legion, Department of Delaware, for the Furnishing of Services to Veterans and Their Dependents.

April 18, 1955, House Bill No. 126—An Act Making an Appropriation to the State Board of Education to Provide for the Payment of Costs and Expenses of Transportation of School Pupils Over and Above the Present Appropriations Available to the State Board of Education for Such Purposes.

April 18, 1955, House Bill No. 95—An Act Appropriating Money to the Veterans of Foreign Wars, Department of Delaware.

April 18, 1955, House Bill No. 139—An Act to Amend Section 2710 (a), Title 10, Delaware Code, by Increasing the Term of Office of Constables, Appointed by the Levy Courts.

April 18, 1955, House Bill No. 217—An Act to Amend Chapter 43, Title 29, Delaware Code, Relating to the Appointment of Notaries for Certain Service Organizations.

April 18, 1955, House Concurrent Resolution No. 16—Expressing the Concern of the General Assembly Over the Illness of State Treasurer Howard H. Dickerson.

April 18, 1955, House Concurrent Resolution No. 19—Wishing a Speedy Recovery to Representative Maclary.

April 18, 1955, House Concurrent Resolution No. 20—Expressing the Sympathy of the General Assembly to the Honorable Elbert N. Carvel, Former Governor of Delaware, Upon His Illness.

Respectfully submitted,

J. CALEB BOGGS, Governor

The following bills were reported by the Committee on Elections: SB 40, favorably; SB 77, favorably; SB 239, favorably; SB 240, favorably.

The House recessed at 2:30 P. M.

The Speaker of the House called the House to order at 5:15 P. M.

On motion of Mrs. Tunnell, House rules were suspended.

Mrs. Tunnell moved that **HB 554**—"An Act to Amend Chapter 61, Title 9, Delaware Code, Relating to the Borrowing Power of the Levy Court of Sussex County," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mrs. Tunnell, **HA 1** to **HB 554** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Alexander, Bostick, Brogan—3.

HB 554 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

On motion of Mrs. Tunnell, the House rules were restored.

The following bills were reported by the Committee on Municipal Corporations: **HB 206**, favorably; **HB 207**, favorably; **HB 528**, favorably; by the Committee on Revised Statutes: **HB 269**, favorably; **HB 341**, on merits.

Mr. Queen assumed the Chair as Mr. Speaker Quigley relinquished the Rostrum.

Mr. Rowan moved that **HB 286** with **HA 1**—"An Act to Amend Chapter 7, Title 7, Delaware Code, Relating to Sale and Possession of Rabbits from Other States or Areas," having had its third reading, be taken up for consideration in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—30.

NAYS—Mr. Livingston—1.

NOT VOTING—Messrs. Lester and Wilkinson—2.

ABSENT—Messrs. Alexander and Brogan—2.

HB 286 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. T. S. Johnson moved that **HB 325**—"An Act to Amend An Act Entitled "An Act to Incorporate the Town of Ocean View in Sussex County, Delaware", Being Chapter 645, Vol-

ume 18, Laws of Delaware and All Acts Amendatory Thereof and Supplementary Thereto," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Alexander and Brogan—2.

HB 325 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Eskridge moved that SB 192—"An Act to Amend the Charter of the City of Seaford by Requiring That All City Employees "Be Bonded" Rather Than "Give Bond," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Hicks, Lester—4.

SB 192 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The House recessed at 6:00 P. M.

The Speaker called the House to order at 8:40 P. M.

The following bills were reported by the Committee on Fish, Oysters and Game: HB 441, favorably; by the Committee on Public Buildings and Highways: SB 241, 3 favorable, 1 on merits; HB 589, on merits.

Mr. Shockley moved that SB 177—"An Act to Amend Chapter 55, Title 29 of the Delaware Code Relating to Certain Definitions Contained in the State Employees' Pension Plan," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Shockley, HA 1 to SB 177 was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Eskridge, Hastings, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Mattiford, Nechay, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Wilkinson, Wolf, Wood—23.

NAYS—None.

NOT VOTING—Messrs. Garton, B. W. Johnson, Massey, Pepper—4.

ABSENT—Messrs. Brogan, Donovan, Hicks—3.

PRESENT—Messrs. Alexander, Mayhew, Rowan, Walls, Mr. Speaker Quigley—5.

SB 177 with HA 1 having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence.

Mr. Shockley moved that SB 203 with SA 1—"An Act to Amend Chapter 55, Title 29 of the Delaware Code Relating to Disability Pensions," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Brogan, Donovan, Hicks—3.

SB 203 with SA 1 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Shockley moved that SB 204—"An Act to Amend Chapter 55, Title 29 of the Delaware Code Relating to the Definition of "Covered Employment" Contained in the State Employers' Pension Plan," be taken up for consideration and read for the third time in order to pass the House.

Mr. Shockley introduced HA 1 to SB 204.

On motion of Mr. Snowden, action was deferred.

Mrs. Tunnell moved that HB 383—"An Act to Amend Section 2316, Title 12, Delaware Code, Relating to Distribution of Funds Where Person Entitled to Legacy, Distributive Share or Trust Fund, Refuses Same or is Out of State, Unknown, Incompetent or Shares Uncertain," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—30.

NAYS—None.

NOT VOTING—Mr. Lester—1.

ABSENT—Messrs. Brogan, Donovan, Hicks, Mattiford—4.

HB 383 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Garton moved that SB 101—"An Act to Amend Chapter 19, Title 9, Section 1902 of the Delaware Code by Increasing the Amount Paid by the Levy Court of New Castle County to Certain Fire Companies," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Wolf to defer action on SB 101, the roll call revealed:

YEAS—Messrs. Hicks, Lawson, Lester, Maclary, Shockley, Snowden, Wolf, Wood—8.

NAYS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—24.

ABSENT—Messrs. Brogan, Donovan, T. S. Johnson—3.

The motion to defer action on SB 101 not having received the constitutional majority, was lost.

In order to pass the House, Mr. Garton moved for a roll call on SB 101.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Layton, Lester, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wood, Mr. Speaker Quigley—27.

NAYS—Mr. Livingston—1.

NOT VOTING—Mr. Shockley—1.

ABSENT—Messrs. Brogan, Donovan, Hicks, T. S. Johnson—4.

PRESENT—Messrs. Maclary and Wolf—2.

SB 101 having received the constitutional majority, passed the House and was ordered returned to the Senate.

The House adjourned at 10:00 P. M. until 1:00 P. M., Thursday, April 21, 1955.

68TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:40 P. M., on Thursday, April 21, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay,

Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

Member absent—Mr. Brogan—1.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

Boys' State, sponsored by the American Legion, Department of Delaware, is in session today. Each member of the House has a boy representative sitting alongside observing.

The following bills were reported by the Committee on Appropriations: **SB 219**, on merits; **HB 526**, on merits; **HB 545**, on merits; by the Committee on Municipal Corporations: **HB 582**, favorably.

The Chair presented the following Senate Bills, which were given first and second readings by title only and referred to committees as follows:

SB 125—"An Act to Amend Chapter 23, Title 21 of the Delaware Code Relating to the Recording of Liens on Encumbrances," to Insurance and Banking.

SB 178—"An Act Authorizing the Payment of the Sum of \$3,000.00 to William Austin Tyding for Expenses and Damages Incurred as a Result of Injuries Received by the Negligence of a Delaware National Guardsman," to Claims.

SB 179—"An Act to Amend the Charter of the City of Rehoboth as Established by Chapter 161, Volume 41, Laws of Delaware, and as Amended by Chapter 200, Volume 49, Laws of Delaware by Increasing the Amount of Taxes That May be Raised for Municipal Purposes," to Municipal Corporations.

SB 180—"An Act to Amend the Charter of Rehoboth Beach, in Sussex County, as Established by Chapter 161, Volume 41, by Providing for the Improvement of the City and Abutting Property Owners," to Municipal Corporations.

SB 234—"An Act to Amend An Act Entitled "An Act Changing the Name of 'The Town of Milford', to 'The City of Milford' and Establishing a Charter Therefor", Being Chapter 162, Volume 37, Laws of Delaware, as Amended," to Municipal Corporations.

SB 235—"An Act to Amend An Act Entitled "An Act Changing the Name of 'The Town of Milford', to 'The City of Milford' and Establishing a Charter Therefor", Being Chapter 162 of Volume 37, Laws of Delaware, as Amended, Relating to Floating Debt," to Municipal Corporations.

SB 243—"An Act to Amend Title 19, Delaware Code, Relating to Unemployment Compensation: to Modify Definition of "Employing Unit", to Define "Work", to Provide Benefits in Case of Illness or Disability Under Certain Conditions, to Change Certain Disqualifications for Benefits, to

Change Provisions Relating to Variations from the Standard Tax Rate, to Provide for Order of Crediting Employer Contribution Payments and to Provide for Jeopardy Assessments," to Revised Statutes.

SB 274—"An Act Making an Appropriation to the State Soil Conservation Commission for the Purchase of Heavy Earth-Moving Machinery and Other Equipment Needed in the Soil Conservation Work of the State, Making Provision for the Re-Payment Thereof, and Designating the Boards of Soil District Supervisors to Oversee the Use of Said Equipment and Machinery," to Appropriations.

SB 302—"An Act to Appropriate Certain Funds to the State Board of Education for the Education, Training or Transportation of Handicapped Children," to Education.

The House recessed at 2:05 P. M.

The Speaker called the House to order at 3:15 P. M.

The Secretary of the Senate informed the House that the Senate had passed and requested the concurrence of the House in the following: **SB 171**, **SB 233**, **SB 297**, **SB 299**, **SB 329** with **SA 1**, **SB 330** with **SA 1**, **SB 331**, **SB 332**, **SB 333** with **SA 1**, **SB 334** with **SA 1**, **SB 335** with **SA 1** and **SA 2**, **SB 336**, **SB 337**, **SB 338** with **SA 1**, **SB 339**, and **SR 65** and **SCR 9**.

The Chair presented the following concurrent resolution, which was given its first and second readings by title only and referred to committee:

SCR 9—"That the Two Houses Meet in Joint Session to Hear the Message of the Governor of the "Boys' State", to Private Corporations.

On motion of Mr. Alexander, the House rules were suspended.

The following concurrent resolution was reported by the Committee on Private Corporations: **SCR 9**, favorably.

Mr. Queen moved that **SCR 9**—"That the Two Houses Meet in Joint Session to Hear the Message of the Governor of the "Boys' State".

BE IT RESOLVED, by the Senate of the 118th General Assembly of the State of Delaware, the House of Representatives concurring therein, that the two Houses of the 118th General Assembly of the State of Delaware, meet in joint session in the Senate Chamber at 2:00 P. M. on the twenty-first day of April, 1955, or as soon thereafter as is convenient for the purpose of hearing the message of the Governor of the "Boys' State".

be given its third and final reading in order to pass the House and upon further motion by him was adopted, and ordered returned to the Senate.

On motion of Mr. Livingston, the House rules were restored.

The following bills were reported by the Committee on Elections: **SB 160**, favorably; **SB 255** with **SA 1**, 4 favorable, 1 on merits.

Mr. Queen moved that **HB 201**—"An Act Amending Chapter 5, Title 7, Delaware Code, Relating to Hunting, Trapping and Fishing Licenses, by Changing the Expiration Date of Such Licenses" be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Queen, **HA 1** to **HB 201** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, Keel, Lawson, Layton, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—24.

NAYS—Messrs. Wolf and Wood—2.

NOT VOTING—Messrs. Livingston and Shockley—2.

ABSENT—Messrs. Brogan, Clark, Snowden—3.

PRESENT—Messrs. Donovan, Keel, Lester, Maclary—4.

HB 201 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

JOINT SESSION

The Sergeant-at-Arms announced the Speaker and Members of the House of Representatives. They were admitted and seated. President Pro Tem Moore invited the Speaker of the House to a seat on the Rostrum.

Mr. Lammot moved that the House and Senate convene in Joint Session. Motion prevailed.

Mr. Lammot moved that the President of the Senate preside over the Joint Session. Motion prevailed.

Mr. Lammot moved that the Secretary of the Senate and the Chief Clerk of the House act as Secretaries of the Joint Session. Motion prevailed.

Mr. Lammot moved that Senate Rule 36 be suspended during the Joint Session. Motion prevailed.

The President Pro Tem appointed the following committee to escort His Excellency, J. Caleb Boggs, Governor of Delaware, and Jay Allen Trowill, Boys' State Governor into the Senate Chamber: Mr. Macklin and Boy Representative; Mr. Maclary and Boy Representative; Mr. Lammot and Boy Senator; Mr. Johnson and Boy Senator.

The Joint Session was addressed by the Boys' State Governor, Jay Allen Trowill, and by Governor J. Caleb Boggs.

Mr. Lammot moved that the Secretary of the Senate and the Chief Clerk of the House compare their Journals. Motion prevailed.

The Secretary of the Senate and the Chief Clerk of the House compared their Journals, found them to agree, and so notified the President.

Mr. Lammot moved the two Houses now separate to reconvene in their respective chambers. Motion prevailed.

The House returned to its chamber and recessed at 4:15 P. M.

The House was called to order at 8:40 P. M. by Mr. Donovan, who occupied the Rostrum upon instruction from the Speaker.

Mr. Deputy introduced the following resolution, which upon further motion by him was adopted: **HR 71**—"Authorizing Payment on Account to Attaches and Employees of the House of Representatives."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly that the State Treasurer is hereby authorized and directed to pay to each attache and employee of the House, upon order of the Speaker and Chief Clerk of the House, the sum of Ten Dollars (\$10.00) for each legislative day of service by such employee since April 7th, 1955, the sixtieth legislative day.

The following message from the Governor was delivered to the House:

GOVERNOR'S MESSAGE

April 21, 1955

To the House of Representatives, 118th General Assembly
State of Delaware

On April 13, 1955, I received House Bill No. 258 as amended by House Amendment No. 1, entitled:

AN ACT TO AMEND THE CHARTER OF THE CITY OF WILMINGTON AS AMENDED BY CHANGING THE TERM OF OFFICE OF THE MAYOR AND OTHER ELECTED CITY OFFICERS, BY RECONSTITUTING COUNCIL, BY CHANGING THE NUMBER OF ELECTIVE OFFICERS, AND BY PROVIDING FOR THE ELECTION OF SUCH OFFICERS.

I respectfully return herewith this Bill without my approval.

In addition to being of questionable constitutionality, this Bill creates confusion and innumerable problems of administration, and is unwise for many other reasons.

Municipal elections should be held at such a time and under such conditions as to enable and encourage the people to express, by use of the secret ballot, their views and wishes of local issues. At general elections, National or State issues are predominant. The proposed legislation would confust or obliterate local issues in Wilmington and thus defeat an important purpose of municipal elections. Surely the opportunity to cast their ballots on purely local issues is a right more important to the people than such savings as might result from combining local and general elections.

Any arguments in favor of this Bill should apply with equal force to all other municipalities of the State. Yet this Bill applies only to Wilmington. Thus one can easily envision the possibility that there are other motivating factors in connection with this Bill which have not been publicly announced.

This Bill seeks to establish a principle inconsistent with the premise that municipal home rule is desirable. Home rule has been endorsed by both major political parties and is provided for in legislation now before the General Assembly which I have recommended. Under home rule it will be possible for the citizens of Wilmington, and of our other municipalities, to determine for themselves the date of their municipal election without intervention by those living outside the municipality.

If the members of the General Assembly adopt home rule legislation in accordance with their platform pledge, it is probable that only one election would be held under this Bill. Furthermore, under this Bill officials elected at that election would not take office until eight months after the election. Such a long time lag is wholly undesirable.

No evidence has been submitted or is known to exist to support a contention that this Bill reflects the wishes or preference of a majority—or even a substantial minority—of the people of the City of Wilmington.

This Bill seeks to place Wilmington's municipal elections under laws which were not designed for, and are not applicable to, municipal elections. There is no recognition of this fact in the Bill and no attempt is made to solve or reconcile the legal problems bound to arise from an effort to conduct municipal elections in accordance with laws governing general elections. The result is a bill of questionable constitutionality creating innumerable administrative problems because of its confusing mixture of local and State laws.

This conflict of laws is illustrated by two of many possible examples. There is no provision for nominations to be certified to the Clerk of the Peace as in general elections nor is he authorized to receive municipal nominations. The general election laws specify what may appear on the ballot and in no way provide or authorize the ballot's use for municipal elections.

The title of the Bill states that it amends the Charter of the City of Wilmington. In fact, however, the bill goes much further. It requires State and County officials, and the Board of Canvass, all of whom derive authority from other sources, to perform many duties in connection with Wilmington's municipal elections. This cannot legally be done by an amendment to a municipal charter. Therefore, there are additional questions as to its constitutionality.

Respectfully submitted,

J. CALEB BOGGS, Governor

Mr. Garton moved that **SB 103**—"An Act to Amend Chapter 3, Title 9, Section 249 of the Delaware Code by Increasing the Amount Paid by the Levy Courts of the Several Counties to Each Fire Company for Ambulance Service," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—27.

NAYS—Messrs. Lawson and Layton—2.

ABSENT — Messrs. Alexander, Brogan, Hicks, Lester, Maclary, Wood—6.

SB 103 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Garton moved that **SB 121**—"An Act Authorizing and Directing the Levy Court of New Castle County to Appoint and Station a Crossing Guard at Lambson's Lane and New Castle Avenue in New Castle Hundred," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wood, Mr. Speaker Quigley—28.

Nays—Mr. Wolf—1.

ABSENT—Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary—6.

SB 121 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Queen moved that **HB 405**—"An Act to Amend Chapter 1, Title 15, Delaware Code, Relating to the Department of Elections for Kent County," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—25.

NAYS—Messrs. Lawson, Snowden, Wolf, Wood—4.

ABSENT — Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary—6.

HB 405 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Mattiford moved that **HB 436**—"An Act Providing for the Sale of 114 Shares of the Capital Stock of the National Bank of Smyrna, Owned by the State of Delaware," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—28.

NAYS—None.

ABSENT — Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary, Snowden—7.

HB 436 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Pepper moved that **HB 366**—"An Act to Amend Chapter 65, Title 3, Delaware Code, Relating to the Purchase of Poultry, by Lowering the Time for Payment by Licensees," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—29.

NAYS—None.

ABSENT — Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary—6.

HB 366 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Queen moved that **HB 448**—"An Act to Amend Title 21, Delaware Code, Entitled, "Motor Vehicles" in Regard to the Color of Lights Visible from the Front of Vehicles," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson,

Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnel, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—28.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary, Nechay—7.

HB 448 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Massey moved, that SCR 8—"Recognition of the Eastern Orthodox Church as a Major Faith in Delaware," be taken up for consideration and read for the third time in order to pass the House.

WHEREAS, the Eastern Orthodox Church is a major faith in the State of Delaware; and

WHEREAS, the said Eastern Orthodox Church is not generally included among the religious confessions of the State of Delaware; and

WHEREAS, it is the desire of the General Assembly to properly recognize the Eastern Orthodox Church as another major faith; and

WHEREAS, it is desired hereby to also express approval of such an Act as evidenced by the United States Senate Bill No. S. 3872 as introduced in the 83rd Congress on August 16, 1954,

NOW, THEREFORE

BE IT RESOLVED by the Senate of the 118th General Assembly of the State of Delaware, the House of Representatives concurring therein as follows:

1. That the Eastern Orthodox Church be recognized as a major faith in the State of Delaware; and

2. That it be included among the religious confessions of this State; and

3. That the forms and official papers of the State, and local government units which refer to the major faiths and now limit same to Protestants, Catholics and Jews, be changed to: Protestants, Catholics, Jews and Eastern Orthodox; and

BE IT FURTHER RESOLVED that all media of communication and individuals are hereby requested to include the Eastern Orthodox Church when referred to the major faiths; and

BE IT FURTHER RESOLVED that the text of this resolution be spread upon the Journals of both Houses of the 118th General Assembly and that copies hereof be sent to the members of the Congressional delegation from the State of Delaware.

On the question, "Shall the Resolution pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson,

Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—29.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary—6.

SCR 8 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Pepper moved that **SB 117**—"An Act Authorizing and Directing the Levy Court of Sussex County to Make Available to the Board of Soil District Supervisors of the Soil Conservation District of Sussex County Certain Funds for the Employment of an Equipment Manager," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wood, Mr. Speaker Quigley—27.

NAYS—Mr. Layton—1.

ABSENT—Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary, Wolf—7.

SB 117 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Pepper moved that **SB 118**—"An Act Appropriating Money to the State Soil Conservation Commission for the Drainage of Tax Ditches in Sussex County," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Pepper, **HA 1** to **SB 118** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Lawson, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—28.

NAYS—Mr. Layton—1.

ABSENT—Messrs. Alexander, Brogan, Hicks, T. S. Johnson, Lester, Maclary—6.

SB 118 with **HA 1** having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence.

The following bill was reported by the Committee on Municipal Corporations: **HB 225**, favorably.

The following resolution was introduced by Mr. Deputy, and upon further motion by him was adopted: **HR 72**—"Authorizing the Payment of Certain Expenses for Telephone Service."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that the hereinafter named amount is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, on account of expenses connected with the present session and necessary to the work of the session, as follows:

The Diamond State Telephone Company, for local service and equipment and calls on telephone numbered Dover 9636, covering the period from February 10, 1955 to and including April 11th, 1955 \$38.01

The House adjourned at 10:00 P. M. until 1:00 P. M., Friday, April 22, 1955.

69TH LEGISLATIVE DAY

House met pursuant to adjournment at 1:30 P. M., on Friday, April 22, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—31.

Members absent—Messrs. Brogan, Hicks, Rowan, Wood—4.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

The Chair announced he is about to sign: **HB 235, HB 241, HB 248, HB 56 with SA 1, HB 174.**

The following bills were reported by the Committee on Miscellaneous: **SB 57**, favorably; **SB 256**, 3 favorable, 2 on merits; **HB 49**, 3 on merits, 2 favorable; **HB 132**, favorably; **HB 231**, favorably.

The Chair presented the following Senate Bills, which were given first and second readings by title only, and referred to committee as follows:

SB 377—"An Act to Amend Chapter 13, Title 10 of the Delaware Code Relating to the Court of Common Pleas for New Castle County," to Elections.

SB 276—"An Act to Amend Chapter 87, Title 10, of the Delaware Code Entitled "Courts and Judicial Procedure" in Respect to Mileage Fees for the Sheriff of New Castle County," to Miscellaneous.

The Chair presented the following Senate Resolution: **SR 65**—"Requesting Return of Senate Bill No. 200 from the House of Representatives of the 118th General Assembly of the State of Delaware."

BE IT RESOLVED by the Senate of the 118th General Assembly of the State of Delaware, that the House of Representatives of the 118th General Assembly of the State of Delaware is requested to return to the Senate for reconsideration Senate Bill No. 200.

On motion of Mr. Macklin, **SR 65** was adopted and **SB 200** was ordered returned to the Senate.

The Secretary of the Senate informed the House that the Senate had concurred in the following: **HB 299** with **HA 1**, and that the Senate had passed and requested the concurrence of the House in the following bills: **SB 126**, **SB 298**, **SB 303**, **SB 304** with **SA 1**, **SB 421** and **SB 443** with **SA 1**.

The following bill was reported by the Committee on Municipal Corporations: **HS 1** for **HB 223**, favorably.

The following substitute bill was introduced, given first and second readings by title only and referred to committee:

HS 1 for **HB 481**—"An Act to Amend Chapter 4, Part II, Title 16, Delaware Code, by Empowering the State Fire Marshal to Adopt, Amend, and Repeal Codes, Rules and Regulations to Safeguard Persons and Property from the Hazards of Fire and Explosion, Providing the Method of Adoption Thereof, Permitting Variations Therefrom, and Providing Penalties," by Deputy; to Revised Statutes.

The following message from the Governor was delivered to the House:

GOVERNOR'S MESSAGE
STATE OF DELAWARE
EXECUTIVE DEPARTMENT

Dover, April 21, 1955

To the Honorable
The House of Representatives of the State of Delaware
Dover, Delaware

Gentlemen:

This will advise you that on the date indicated I have approved the following legislation:

April 20, 1955, House Concurrent Resolution No. 17—Creating a Special Committee of the Members of the House and the Senate of the 118th General Assembly to Study the Critical Highway Fatality Situation.

April 20, 1955, House Bill No. 71—An Act to Amend Title 14, Delaware Code, by Adding Thereto a New Chapter Entitled "Procedures for The Termination of Services of Professional Employees", and by Repealing Certain Provisions of Title 14.

April 20, 1955, House Bill No. 246—An Act to Appropriate Funds to the Department of Public Welfare for the Fiscal Year Ending June 30, 1955.

April 20, 1955, House Bill No. 257—An Act to Amend Chapter 3, Title 11, Delaware Code, Relating to Trespassing With Intent to Peer or Peep Into a Window or Door of Another; Providing Penalty Therefor.

April 20, 1955, House Bill No. 77 with H. A. No. 1—An Act to Amend Subchapter XIII, Chapter 3, Title 11, Delaware Code, by Requiring Certain Precautions With Regard to Abandoned Refrigerators and Imposing Penalties for Violations.

April 20, 1955, Senate Bill No. 3—An Act Appropriating Certain Moneys to the Delaware Commission for Shell Fisheries to Purchase and Install Two Diesel Engines on the Guard Boat "Delaware".

April 20, 1955, Senate Bill No. 80—An Act to Amend Title 29, Delaware Code, Entitled "State Government" by Increasing the Authorized Number of Notaries Public and Providing for Minimum Qualifications for Those Holding Such Office; and Increasing the Fees.

April 20, 1955, Senate Bill No. 161—An Act to Amend Chapter 21, Title 18, of the Delaware Code Relating to Agents and Brokers, by Providing for Regulations and Examinations in Licensing of Agents and Brokers: Non-Resident Brokers; Appropriation.

April 20, 1955, Senate Bill No. 93—An Act to Amend Chapter 5, Title 17 of the Delaware Code, Relating to the Penalties for Casting Glass or Injurious Obstructions on Public Highways.

Respectfully submitted,

J. CALEB BOGGS, Governor

Mr. Mayhew moved that **HB 380**—"An Act to Amend Section 3525, Title 12, Delaware Code, Relating to Testamentary Trusts by Providing That Interest on a Pecuniary Bequest in Trust Shall be Paid by the Executor Out of the Residue of the Estate," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Lawson, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Pepper, Queen, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—25.

NAYS—None.

ABSENT—Messrs. Brogan, Donovan, Hicks, Keel, Lester, Maclary, Nechay, Rowan, Shockley, Wood—10.

HB 380 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Pepper moved that **HB 320**—"An Act to Amend Chapter 29, Title 21, Delaware Code, Pertaining to the Director of Safety Responsibility," be taken up for consideration and read for the third time in order to pass the House.

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Pepper, Queen, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—26.

NAYS—None.

ABSENT — Messrs. Brogan, Donovan, Hicks, Kell, Maclary, Nechay, Rowan, Shockley, Wood—9.

HB 320 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Clark moved that **SB 207**—"An Act to Amend Chapter 28, Title 31 of the Delaware Code by Requiring the State Welfare Home to Set Aside and Maintain a Certain Area for the Purpose of Burial of Bodies from Kent County," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Pepper, Queen, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—26.

NAYS—None.

ABSENT — Messrs. Brogan, Donovan, Hicks, Kell, Maclary, Nechay, Rowan, Shockley, Wood—9.

SB 207 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Pepper moved that **HB 321**—"An Act to Appropriate Money to the State Highway Department so as to Enable It to Expand the State Police Force," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Deputy, T. S. Johnson, Lawson, Pepper, Queen, Snowden—7.

NAYS — Messrs. Layton, Lester, Livingston, Massey, Wolf, Mr. Speaker Quigley—6.

Messrs. Lester and Wolf and Mr. Speaker Quigley changed their votes from yea to nay for purpose of reconsideration.

NOT VOTING—Messrs. Garton, Macklin, Smith—3.

ABSENT — Messrs. Brogan, Donovan, Hicks, Keel, Maclary, Mattiford, Nechay, Rowan, Shockley, Wood—10.

PRESENT—Messrs. Bostick, Clark, Eskridge, Hastings, B. W. Johnson, Mayhew, (Mrs.) Tunnell, Walls, Wilkinson—9.

HB 321 not having received the constitutional majority, was lost.

On motion of Mr. Lester, **HB 321** was restored to the calendar.

Mr. Queen moved that **SB 166**—"An Act to Amend Chapter 1, Title 27 of the Delaware Code Relating to Religious Societies and Corporations," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, B. W. Johnson, T. S. Johnson, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mayhew, Pepper, Queen, Smith, Snowden, (Mrs.) Tunnell, Wilkinson, Wolf, Mr. Speaker Quigley—23.

NAYS—None.

ABSENT—Messrs. Brogan, Donovan, Hastings, Hicks, Keel, Maclary, Mattiford, Nechay, Rowan, Shockley, Walls, Wood—12.

SB 166 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Pepper moved that **SB 169**—"An Act Amending Title 20, of the Delaware Code by Providing for Compensation for Civil Defense Workers While In Training," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Pepper, **HA 1** to **SB 169** was adopted.

On motion of Mr. Mayhew to defer, the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Eskridge, Garton, Lester, Livingston, Maclary, Massey, Mattiford, Mayhew, Shockley, Wolf—13.

NAYS—Messrs. Deputy, B. W. Johnson, T. S. Johnson, Lawson, Layton, Macklin, Nechay, Pepper, Queen, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—15.

ABSENT—Messrs. Brogan, Donovan, Hastings, Hicks, Keel, Rowan, Wood—7.

Motion to defer action on **SB 169** with **HA 1** not having received the constitutional majority, was lost.

Mr. Pepper moved that **SB 169** with **HA 1** be taken up for consideration in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Bostick, Clark, B. W. Johnson, T. S. Johnson, Macklin, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—10.

NAYS—Messrs. Deputy, Donovan, Layton, Lester, Livingston, Nechay, Pepper, Queen, Shockley, Snowden, Wolf—11.

Messrs. Pepper and Queen changed their votes from yea to nay for purpose of reconsideration.

NOT VOTING—Messrs. Eskridge, Garton, Keel, Lawson, Smith—5.

ABSENT—Messrs. Brogan, Hivks, Rowan, Wood—4.

PRESENT—Messrs. Hastings, Maclary, Massey, Mattiford, Mayhew—5.

SB 169 with HA 1 not having received the constitutional majority, was lost.

On motion of Mr. Pepper, SB 169 with HA 1 was restored to the calendar.

Mr. Bostick moved that SB 164—"An Act to Amend Chapter 119, Volume 28, Laws of Delaware Entitled "An Act Providing for the Collection of Taxes for the City of Wilmington by Increasing the Salary of the Collectors of Taxes for the City of Wilmington and Providing a Salary for the Clerks in the Office of the Said Collectors," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Brogan, Hicks, Layton, Rowan, Wood—5.

SB 164 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Mattiford moved that SB 32—"An Act to Amend Chapter 41, Title 7, of the Delaware Code, Pertaining to the Collection of Taxes Levied by Tax Ditches," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Donovan, HA 1 to SB 32 was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Brogan, Hicks, Layton, Rowan, Wood—5.

SB 32 with HA 1 having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence.

Mr. Mattiford moved that SB 33—"An Act to Amend Chapter 84, Title 9, of the Delaware Code, Pertaining to the Duty of the Receiver of Taxes and the County Treasurer to Collect School Taxes," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—31.

NAYS—None.

ABSENT—Messrs. Brogan, Hicks, Rowan, Wood—4.

SB 33 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Mattiford moved that SB 34—"An Act to Amend Chapter 21, Title 14, of the Delaware Code, Pertaining to the Assessment, Levy and Collection of School Taxes," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Donovan, HA 1 to SB 34 was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT—Messrs. Brogan, Garton, Hicks, Rowan, Wood—5.

SB 34 with HA 1 having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence.

Mr. Pepper moved that SB 35 with SA 1 and HA 1—"An Act Amending Chapter 91, Title 9, of the Delaware Code, Pertaining to the Disposition of and Accounting for Fees of County Officers," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Donovan, HA 2 to SB 35 as amended by SA 1 and HA 1, was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnel, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—29.

NAYS—None.

ABSENT — Messrs. Alexander, Brogan, Garton, Hicks, Rowan, Wood—6.

SB 35 with **SA 1** and **HA 1** and **HA 2** having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence.

Mr. Mayhew moved that **HB 324**—"An Act to Amend the Charter of the Town of Houston Chapter 240, Volume 27, Laws of Delaware, With Respect to the Election of Commissioners and Meetings Thereof," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—30.

NAYS—None.

ABSENT — Messrs. Alexander, Brogan, Hicks, Rowan, Wood—5.

HB 324 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Wolf moved that **HB 207**—"An Act to Amend An Act Entitled "An Act Changing the Uame of the 'Town of Newark' to the 'City of Newark' and Establishing a Charter Therefor" by Permitting the Assessor to Use the County Assessment List," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Clark, Deputy, Donovan, Eskridge, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Mr. Speaker Quigley—27.

NAYS—None.

ABSENT — Messrs. Alexander, Brogan, Garton, Hicks, Mattiford, Rowan, Wilkinson, Wood—8.

HB 207 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Wolk moved that **HB 206** with **HA 1**—"An Act to Amend An Act Entitled "An Act Changing the Name of the 'Town of Newark' to the 'City of Newark' and Establishing a Charter Therefor" by Changing the Provisions for Paving of Sidewalks," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Bostick, Deputy, Donovan, Eskridge, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Mr. Speaker Quigley—27.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Clark, Garton, Hicks, Mattiford, Rowan, Wood—8.

HB 206 with **HA 1** having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Layton introduced the following resolution, which upon further motion by him was adopted: **HR 73**—"Authorizing Payment of Two Invoices for the House of Representatives of the 118th General Assembly."

BE IT RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that the sum of Thirty-Five Dollars (\$35.00) is hereby appropriated to Harrington Journal, Harrington, Delaware, for supplying two (2) Roll Books, said expense being an expense connected with this session of the House.

BE IT FURTHER RESOLVED by the House of Representatives of the 118th General Assembly of the State of Delaware that the sum of Four Dollars and Seventy-Five Cents (\$4.75) is hereby appropriated to International Business Machines Corporation, 502 Delaware Avenue, Wilmington 41, Delaware, for repair service on Electric Typewriter No. 63893, said expense being an expense connected with this session of the House.

The House recessed at 3:20 P. M.

The Speaker called the House to order at 5:15 P. M.

The House adjourned at 5:30 P. M. until 10:00 A. M., Monday, April 25, 1955.

70TH LEGISLATIVE DAY

House met pursuant to adjournment at 10:00 A. M., on Monday, April 25, 1955.

Prayer by Mr. Donovan.

Members present—Messrs. Donovan, Keel, Nechay—3.

Members absent—Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

There being no quorum present, the House adjourned until 10:00 A. M., Tuesday, April 26, 1955.

71ST LEGISLATIVE DAY

House met pursuant to adjournment at 10:00 A. M., on Tuesday, April 26, 1955.

Prayer by Mr. Donovan.

Members present—Messrs. Donovan, Keel, Nechay—3.

Members absent—Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

There being no quorum present, the House adjourned until 1:00 P. M., Wednesday, April 27, 1955.

72ND LEGISLATIVE DAY

House met pursuant to adjournment at 1:30 P. M., on Wednesday, April 27, 1955.

Prayer by the Chaplain, Rev. Buckley.

Members present—Messrs. Alexander, Bostick, Brogan, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—35.

Members absent—None.

The Clerk proceeded to read the Journal of the previous Session when Mr. Macklin moved that so much be considered the reading of the Journal, and the Journal be approved. Motion prevailed.

The following communication from the Governor was delivered to the House.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT

April 27, 1955

To The House of Representatives
118th General Assembly, State of Delaware

On April 22, 1955, I received House Bill No. 56 with Senate Amendment No. 1, entitled:

AN ACT DIRECTING AND REQUIRING THE
STATE HIGHWAY DEPARTMENT TO REMOVE
A SLUICE GATE, INCLUDING ITS FOUNDATION,
IN THE CANAL AT OR NEAR SLAUGHTER
BEACH CANAL BRIDGE, EARTH OR DIRT
REMOVED TO BE USED FOR PARKING ACCOM-
MODATIONS.

I respectfully return this Bill without my approval.

In 1947 the General Assembly authorized and directed the sluice gate to be installed in the Canal at or near Slaughter Beach Canal Bridge. This installation cost the State of Delaware \$14,600.

After the installation was made, it benefited some land owners and other land owners believed that it was not of any particular benefit. As a result, the gate was removed. After the gate was removed, the situation is today and has been for some time as if this installation had not been made. Therefore, it is not necessary to expend this \$5,000.

It seems better also to leave the installation as it is because there may be some time in the future in the interest of conservation when the property owners might desire the sluice gate in operation.

It has also been pointed out to me that with minor ditching arrangements some lands could be benefited by the operation of the sluice gate while other lands could be separated from any harmful affect.

Any way one looks at this particular installation it appears that the expenditure of this money for the removal of this installation is unnecessary. Furthermore, if the installation were removed there might be some time in the future when it would be desirable to have it reinstalled. Therefore, it appears better to leave the situation as it is. Otherwise, we could conceivably get in a position of spending state money to make an installation of this nature in one legislative session and in another legislative session spend state money to remove such an installation, and in all probability another legislature may desire to spend state money to reinstall the installation. Such actions would not be in the best interests of the taxpayers of the State of Delaware.

Respectfully submitted,

J. CALEB BOGGS, Governor

The following substitute bill was introduced, given first and second readings by title only and referred to committee:

HS 1 for HB 429—"An Act to Amend Title 28, Delaware Code, by Providing for the Licensing, Regulation and Control of Dog Racing in Within New Castle County in the State of Delaware," by Brogan; to Private Corporations.

The Chair announced he is about to sign: **SCR 6, SCR 8, SCR 9, SB 8 with HA 1, SB 101, SB 103, SB 111 with SA 1, SB 117, SB 121, SB 145, SB 155, SB 164, SB 191, SB 192, SB 203 with SA 1, SB 272, and HB 299 with HA 1.**

The following bills were reported by the Committee on Revenue and Taxation: **HB 444**, 4 favorable, 1 on merits; **HB 450**, 4 favorable, 1 on merits; **HB 470**, 3 favorable, 2 on merits; **HB 556**, 4 on merits, 1 unfavorable; by the Committee on Public Health: **HB 385**, 3 on merits, 2 favorable; **HB 386**, favorably; **HB 387**, 3 on merits, 2 favorable; **HB 397**, 3 on merits, 2 favorable; **HB 398**, favorably; **HB 399**, 3 on merits, 2 favorable; by the Committee on Miscellaneous: **SB 276**, favorably; by the Committee on Elections: **HB 467**, favorably; **HB 468**, favorably; **HB 509**, favorably; **HB 542**, favorably; **HB 543**, 2 favorable, 2 unfavorable, 1 on merits.

The Secretary of the Senate informed the House that the Senate had passed and requested the concurrence of the House in the following: **SB 213, SB 227, SB 228, SB 229, SB 230, SB 257, SB 371, SB 405 and SB 407 with SA 1.**

The Chair presented the following Senate Bills, which were given first and second readings by title only and referred to committees as follows:

SB 84—"An Act to Provide for the Construction, Equipping, and Furnishing of Several New Buildings for Patients, a New Kitchen and Dining Room for Employees, Two Doctors' Residences and Six Employees' Apartments, and a Receiving and Warehouse Building, and for the Additional Repairing, Remodeling, and Equipping of Two Existing Buildings and the Enlarging of One Existing Building at the State Hospital at Farnhurst and Making an Appropriation Therefor," to Miscellaneous.

SB 213—"An Act to Amend Chapter 196, Volume 22, Part One, Laws of Delaware, Being An Act Establishing a Board of Public Works for the Town of Lewes and Defining Its Powers, by Granting to the Said Board the Authority to Make Certain Additions and Improvements to the Electric Light Plant and Distribution System and to the Water Pumping and Distribution Facilities, on Credit, Including the Right to Buy on Contracts of Conditional Sale, Pledging the Revenues from Those Two Utilities for the Payment of the Cost Thereof," to Municipal Corporations.

SB 227—"An Act to Amend Chapter 25, Title 9 of the Delaware Code Relating to Appropriations to the Regional Planning Commission of New Castle County," to Appropriations.

SB 228—"An Act to Amend Chapter 6, Title 9 of the Delaware Code Relating to the Time of Submission to the Levy Courts of the Recommendation of County Park and Recreation Commissions With Respect to Proposed Suburban Park Community Plans," to Municipal Corporations.

SB 229—"An Act to Amend Chapter 6, Title 9 of the Delaware Code Relating to the Preparation of Surveys, Plans, Specifications and Estimates for Suburban Park Communities," to Municipal Corporations.

SB 257—"An Act Appropriating Certain Moneys to Otto D. Zacharias, Trading as Lewis Hardware Store, in Payment of the Claim of the Said Otto D. Zacharias Against the State of Delaware for Merchandise Supplied to the State Highway Department," to Claims.

SB 277—"An Act to Amend Chapter 55, Title 29 of the Delaware Code by Increasing the Compulsory Retirement Age of Covered Employees of the State of Delaware," to Miscellaneous.

SB 405—"An Act to Amend Title 29, Delaware Code, by Adding a New Chapter Providing for Pensions for Members of the State Judiciary," to Judiciary.

SB 407 with SA 1—"An Act to Amend Title 29 of the Delaware Code by Creating the Board of Post Mortem Examiners and the Post of State Medical Examiner and Defining the Powers and Duties Thereof," to Private Corporations.

On motion of Mr. Massey, HB 329 was recommitted.

The following communications from the Governor were delivered to the House.

GOVERNOR'S MESSAGES STATE OF DELAWARE EXECUTIVE DEPARTMENT

Dover, April 25, 1955

To the Honorable
The House of Representatives of the State of Delaware
Dover, Delaware

Gentlemen:

This will advise you that on the date indicated I have approved the following legislation:

April 22, 1955, Senate Bill No. 61—An Act to Amend Chapter 61, Title 29 of the Delaware Code Relating to the "General Fund."

April 22, 1955, Senate Bill No. 128—An Act to Amend Chapter 3, Title 14 of the Delaware Code by Changing the Time During Which Polls are to Remain Open for Election of School Board Members in Kent, Sussex, and Part of New Castle Counties.

April 22, 1955, House Bill No. 149—An Act to Amend Subchapter III, Chapter II, Title 10, Delaware Code, Relating to the Juvenile Court of Kent and Sussex Counties.

April 22, 1955, House Bill No. 184—An Act to Amend Chapter 33, Title 19, Delaware Code, Entitled "Unemployment Compensation" to Eliminate Disqualification or Reduction by Reason of Benefits Under Social Security Act.

April 22, 1955, House Bill No. 188—An Act to Amend Chapter 33, Title 19, Delaware Code, Relating to Unemployment Compensation.

April 22, 1955, House Bill No. 198—An Act to Amend Chapter 9, Title 10, Delaware Code, in Regard to the Family Court of New Castle County, Changing the Court's Name and the Responsibility for Its Budget.

Respectfully submitted,

J. CALEB BOGGS, Governor

STATE OF DELAWARE
EXECUTIVE DEPARTMENT

Dover, April 27, 1955

To the Honorable
The House of Representatives of the State of Delaware
Dover, Delaware
Gentlemen:

This will advise you that on the date indicated I approved the following legislation:

April 26, 1955, House Bill No. 241—An Act to Amend Chapter 23, Title 11, Delaware Code, Entitled "Search and Seizure", by Eliminating the Exclusive Jurisdiction of Superior Court Judges to Order the Return or Suppression of Things Illegally Seized.

April 26, 1955, House Bill No. 248—An Act to Amend Title 10, Delaware Code, by Providing That Terms of Superior Court Shall be Fixed by Rule of Court.

Respectfully submitted,

J. CALEB BOGGS, Governor

Mr. Donovan moved that **HCR 22**—"Appropriation for Postage Stamps and Other Supplies for the 118th General Assembly."

BE IT RESOLVED by the House of Representatives, the Senate concurring therein, that the sum of Three Thousand Dollars (\$3,000.00) is appropriated out of the General Fund of the Treasury of the State of Delaware for the purchase of postage stamps and other supplies to be used for the official business of the 118th Session of the General Assembly of the State of Delaware.

Be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Resolution pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Brogan and B. W. Johnson—2.

HCR 22 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Garton moved that **HB 391**—"An Act to Amend Chapter 55, Title 29, Delaware Code, Relating to State Employees' Pensions by Permitting the Professional Employees of the Board of Education of the City of Wilmington and of the State Board of Education Who Attain the Mandatory Age of Retirement to be Reained in Active Duty Until the End of the Then Current School Year," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Brogan and Maclary—2.

HB 391 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

The entire membership of the House sponsored **HCR 23**. Under suspension of the rules:

Mr. Lester moved that **HCR 23**—"To Express the Gratitude of the Citizens of the State of Delaware to Dr. Salk for His Successful Research Combating Poliomyelitis."

WHEREAS, poliomyelitis has killed or crippled countless thousands of children and adults throughout the world and

WHEREAS, many ears of human research has finally resulted in the discovery by Dr. Jonas E. Salk of a vaccine which will largely prevent polio,

NOW, THEREFORE, BE IT RESOLVED by the General Assembly of the State of Delaware that the General Assembly speaking for the citizens of Delaware hereby expresses the congratulations and heartfelt gratitude of the citizens of

the State of Delaware to Dr. Jonas E. Salk and those associated with him for the great advance which they have made for the betterment of mankind everywhere by their successful research which has culminated in a vaccine to combat polio, and

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the Journals of the House and Senate and that a copy be mailed to Dr. Salk.

Be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Resolution pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

ABSENT—Messrs. Brogan, Hastings, Maclary—3.

HCR 23 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Pepper moved that **SB 14**—"An Act to Amend Chapters 1, 3 and 5 of Title 10 of the Delaware Code, Relating to the Supreme Court, Court of Chancery and Superior, having had its third reading, be taken up for consideration in order to pass the House.

On motion of Mr. Pepper, **HA 1** to **SB 14** was adopted.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—29.

NAYS—Mr. Donovan—1.

NOT VOTING—Mr. Garton—1.

ABSENT—Messrs. Brogan and Hastings—2.

PRESENT—Messrs. Rowan and Smith—2.

SB 14 with **HA 1** having received the constitutional majority, passed the House and was ordered returned to the Senate for concurrence as amended.

Mr. Nechay moved that **SB 241**—"An Act to Amend Chapter 45, Title 7 of the Delaware Code Relating to the Sale of Public Lands and Products," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—27.

NAYS—Messrs. Lawson, Lester, Maclary, Snowden—4.

ABSENT—Messrs. Brogan and Donovan—2.

PRESENT—Messrs. Hicks and T. S. Johnson—2.

SB 241 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Mayhew moved that **HB 372**—"An Act to Amend Chapter 5, Title 12, Delaware Code, Establishing Rules of Distribution of Intestate Personal Estate," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Bostick, Clark, Deputy, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood Mr. Speaker Quigley—29.

NAYS—None.

ABSENT—Messrs. Alexander, Brogan, Donovan, Hicks, Lester, Wilkinson—6.

HB 372 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

On motion of Mr. Rowan, **HS 1** for **HB 228** was adopted.

Mr. Rowan moved that **HS 1** for **HB 228**—"An Act to Amend Chapter 7, Title 7, Delaware Code, Relating to Regulations and Prohibitions Concerning Game and Fish, by Prohibiting the Use or Possession of Certain Sizes of Shot at Certain Times," be taken up for consideration and read for the third time in order to pass the House.

On motion of Mr. Rowan, action was deferred.

The House recessed at 3:45 P. M.

The Speaker called the House to order at 5:00 P. M.

The following bills were reported by the Committee on Appropriations: **HB 522**, on merits; by the Committee on Revised Statutes: **HB 41**, favorably; **HB 104**, on merits; **HB 189**, on merits; **HB 438**, favorably; **HS 1** for **HB 561**, favorably.

Mr. Massey moved that **SB 19**—"An Act Proposing Certain Amendments to Article IV of the Constitution of the State of Delaware, Relating to the Judiciary," having had its third reading, be taken up for consideration in order to pass the House.

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—Mr. Donovan—1.

ABSENT—Mr. Brogan—1.

SB 19 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Massey moved that SB 189—"An Act to Amend Chapter 19, of Title 10 of the Delaware Code Relating to the Law Libraries," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. Brogan—1.

SB 189 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Massey moved that SB 190—"An Act Appropriating Funds to the Judges of the Superior Court and the Court of Chancery Residing in New Castle County for the Maintenance and Operation of the New Castle Law Library," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. Brogan—1.

SB 190 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Donovan moved that **SB 188**—"An Act Appropriating Funds to the Judges of the Superior Court Residing in Sussex County for the Maintenance and Operation of the Sussex County Law Library," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—34.

NAYS—None.

ABSENT—Mr. Brogan—1.

SB 188 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Massey moved that **SB 86**—"An Act to Amend Chapter 39, Title 12 of the Delaware Code, Relating to Records to be Kept by the Clerk of the Orphans' Court," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Macklin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—32.

NAYS—None.

ABSENT—Messrs. Brogan and Rowan—2.

PRESENT—Mr. Donovan—1.

SB 86 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. Donovan, on behalf of Mr. Quigley, moved that **HB 298**—"An Act to Reincorporate the City of New Castle and to Repeal Chapter 216 Volume 27, Laws of Delaware, as Amended, Entitled "An Act Amending, Revising and Consolidating the Charter of the City of New Castle" and Repealing Certain Other Acts Concerning the City of New Castle Inconsistent Herewith Relating to the Board of Education, Elections, City Clerk, Board of Water and Light Commissioners, Sewers and Disposal Works," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Clark, Deputy, Donovan, Eskridge, Garton, Hastings, Hicks, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Lester, Livingston, Mack-

lin, Maclary, Massey, Mattiford, Mayhew, Nechay, Pepper, Queen, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wilkinson, Wolf, Wood, Mr. Speaker Quigley—33.

NAYS—None.

ABSENT—Messrs. Brogan and Rowan—2.

HB 298 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Donovan, on behalf of the Committee on Passed Bills, reported having delivered to the Governor for his approval, the following: On March 28, 1955, **HB 352**; on April 7, 1955, **HB 78** with **HA 1**, **HB 109**, **HB 159** with **SA 1**, **HB 203**; on April 13, 1955, **HCR 16**, **HCR 17**, **HCR 19**, **HCR 20**, **HB 57**, **HB 58**, **HB 66**, **HB 71**, **HB 73**, **HB 74**, **HB 76**, **HB 86**, **HB 94**, **HB 95**, **HB 96**, **HB 126**, **HB 139**, **HB 198**, **HB 217**; on April 20, 1955, **HB 77** with **HA 1**, **HB 149**, **HB 184**, **HB 188**, **HB 257**; on April 22, 1955, **HB 56** with **SA 1**, **HB 174**, **HB 235**, **HB 241**, **HB 248**.

The following substitute bills were introduced, given first and second readings by title only and referred to committees:

HS 1 for **HB 449**—"An Act to Amend Chapter 33, Title 19, Delaware Code, Relating to Unemployment Compensation," by Shockley; to Labor.

HS 1 for **HB 507**—"An Act to Amend Chapter 37, Title 12, Delaware Code, by Empowering the Court of Chancery to Authorize Charitable Contributions Under Certain Circumstances by Trustees for Mentally Ill Persons," by Tunnell (by request); to Judiciary.

HS 1 for **HB 484**—"An Act to Amend Title 12, Delaware Code, by Adding a New Subchapter Thereto Entitled "Abandoned Property Law" Declaring Abandoned Certain Money and Personal Property Which Have Been Unclaimed for Certain Periods of Time," by Donovan; to Appropriations.

The House recessed at 5:50 P. M.

The Speaker called the House to order at 9:00 P. M.

Mr. Donovan moved that **HB 111**—"An Act Appropriating Certain Money to the State Soil Conservation Commission for the Drainage of Tax Ditches in Kent County," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS—Messrs. Alexander, Bostick, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Nechay, Pepper, Queen, Rowan, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—25.

NAYS—None.

ABSENT — Messrs. Brogan, Clark, Hicks, Lester, Maclary, Massey, Mattiford, Mayhew, Shockley, Wilkinson—10.

HB 111 having received the constitutional majority, passed the House and was ordered to the Senate for concurrence.

Mr. Donovan moved that SB 69—"An Act Appropriating Money to the State Soil Conservation Commission for the drainage of Tax Ditches in New Castle County," be taken up for consideration and read for the third time in order to pass the House.

YEAS — Messrs. Alexander, Bostick, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Nechay, Pepper, Queen, Rowan, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—25.

NAYS—None.

ABSENT — Messrs. Brogan, Clark, Hicks, Lester, Maclary, Massey, Mattiford, Mayhew, Shockley, Wilkinson—10.

SB 69 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. B. W. Johnson moved that SB 40—"An Act to Amend Title 15, Delaware Code, by Changing the Qualifications of Members of Departments of Election and the Secretaries Thereof," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, T. S. Johnson, Keel, Lawson, Layton, Livingston, Macklin, Nechay, Pepper, Queen, Rowan, Shockley, Smith, Snowden, (Mrs.) Tunnell, Walls, Wolf, Wood, Mr. Speaker Quigley—26.

NAYS—None.

ABSENT — Messrs. Brogan, Clark, Hicks, Lester, Maclary, Massey, Mattiford, Mayhew, Wilkinson—9.

SB 40 having received the constitutional majority, passed the House and was ordered returned to the Senate.

Mr. B. W. Johnson moved that SB 64—"An Act Directing the Department of Elections of New Castle County to Create a New Election District in New Castle Hundred," be taken up for consideration and read for the third time in order to pass the House.

On the question, "Shall the Bill pass the House?" the roll call revealed:

YEAS — Messrs. Alexander, Bostick, Deputy, Donovan, Eskridge, Garton, Hastings, B. W. Johnson, Keel, Layton, Livingston, Macklin, Massey, Nechay, Pepper, Queen, Rowan, Shockley, Smith, (Mrs.) Tunnell, Walls, Wilkinson, Mr. Speaker Quigley—23.