

## HOUSE.....No. 85.

---

---

### Commonwealth of Massachusetts.

---

HOUSE OF REPRESENTATIVES, March 4th, 1847.

The Committee on the Judiciary, to whom was referred the Order of the House of January 20th, 1847, directing them to inquire into the expediency of establishing the office of Attorney General, having given this important subject all the consideration their other duties have enabled them to apply to it, ask leave respectfully to state, for the consideration and judgment of the House,—

That the constitution provides for the appointment of an attorney general, and there has always been such an officer in this Commonwealth, until the repeal of all laws authorizing such an appointment, by the Legislature of 1843.

In the district system, established by the act of 1832, and continued in the Revised Statutes, and which is now in full force, the office of attorney general was an essential constituent.

Without such an officer, the system is manifestly defective, and the public interests are clearly, and in most important respects, without sufficient and adequate protection.

By the act of 1832, it was made the duty of the attorney general to take charge of all capital trials, and appear in all criminal and *civil* causes in the Supreme Judicial Court; and, when required by the Governor, or either branch of the Legis-

lature, to appear for the Commonwealth in any case, *civil* or *criminal*, and before any tribunal. He was to consult with and advise the district attorneys. He was to make observations and suggestions to the Legislature as to criminal jurisprudence and the *economical* administration of the criminal law. He was to take charge of all prosecutions when present. This is a very important provision in many prosecutions not capital. He was required to give his opinion to either branch of the Legislature, and to the Governor and Council, *and give his aid and advice in the arrangement and preparation of legislative documents and business.*

By the acts of 1839, the attorney general was required to advise the Treasurer, the Secretary, and Adjutant General, on any questions of law, and to file and prosecute informations for intrusions on Indian lands in certain cases.

The above were some of the duties of the attorney general, as pointed out by the laws heretofore existing on the subject.

These were duties of the highest importance to the public, and such as, in their nature, cannot be so conveniently performed by the district attorneys, if practicable at all.

In the first place, the labors of the district attorneys, in conducting the *criminal* business in their districts, are quite as much as they can conveniently perform, and they need the aid and advice of an attorney general in many important matters arising in the discharge of their duties.

The duty of advising the Executive and Legislature, and the high officers of the State, is a duty which, in its nature, cannot properly be imposed on a district attorney.

This is a duty of the highest importance to the interests of the Commonwealth, the responsibility of which must be constantly increasing from day to day, and for the performance of which there should be a competent officer provided by the Commonwealth. The want of such an officer is a great and manifest defect in the law as it now exists, in regard to the administration of the civil rights and criminal jurisprudence of the Commonwealth.

That the establishment of such an officer would be a saving of expense to the Commonwealth, is manifest from the number

of cases in which the Commonwealth have been obliged to retain counsel.

The books of the treasury, since the office was abolished, will show, it is believed, payments enough to counsel, in particular cases, to have paid a regular salary for the constant services of a competent attorney general.

As a matter of expense, therefore, it must be *doubtful* economy, at least, to retain counsel for each case upon such terms as may be required, instead of having a regular officer of the government, whose official duty shall require him to attend to whatever may affect the interests of the Commonwealth.

The great interests of the Commonwealth require that there should be a law officer, not only to superintend the administration of the criminal law, but to advise and aid the different branches of the government and the high officers of State, *and attend to the civil interests of the same.*

The *civil* interests of the Commonwealth require the services of an attorney general. The Commonwealth has important rights and interests in lands near the seashore, between high and low water mark, which are now suffering, and have suffered, great loss and injury for want of the proper care and oversight of an attorney general. There are, also, escheats to the Commonwealth, and other rights and properties, which can be taken care of only, in a proper and economical manner, by such an officer.

The foregoing are some of the duties which have heretofore been assigned by law to the attorney general:—

But there are other important duties which have not been, but which should be, assigned to such an officer: particularly in regard to *public charities*, which are becoming constantly more and more important.

There should be an attorney general with power to file informations, to prevent the misapplication or non-application of funds given to public charities.

This is a matter of great public concernment, which can be properly managed only by an attorney general, with power to apply the proper remedies in such cases.

The attorney general should, also, have power to *file infor-*

*mations* for public nuisances—a power which has not heretofore been given to that officer.

The simple statement of the fact, that there is no officer to look after the *civil* interests of the Commonwealth, shows, of itself, the defect of the existing system.

The constitutionality of more than one statute of the Commonwealth has now been under the consideration of the Supreme Court of the United States for several terms of that court. Similar cases must always be expected to arise.

How shall the interests of the Commonwealth be taken care of on such occasions?

If the citizens of Boston find it for their interest to have a competent officer to look after their *civil affairs*, at a respectable salary, it surely must be for the interest of the Commonwealth to have some one to look after the civil affairs of the same.

The city of Boston have, for years, found such an officer a *matter of economy*, and the Committee cannot doubt it would be found a much greater saving, as a mere matter of economy, on the part of the Commonwealth. It would also restore to the administration of the criminal law the symmetry and proper action of a system as old and as venerable as the Commonwealth itself.

The Committee, therefore, report, for the consideration and judgment of the House, the Bill herewith exhibited.

JOSEPH BELL, *Chairman.*

## Commonwealth of Massachusetts.

---

In the Year One Thousand Eight Hundred and Forty-  
Seven.

---

### AN ACT

To establish the Office of Attorney General.

*BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :*

1   SECT. 1. There shall be an attorney general of  
2 this Commonwealth, to be appointed and commis-  
3 sioned by the Governor with the advice and consent  
4 of the Council, in the manner prescribed by the con-  
5 stitution, who shall have, hold, and exercise all the  
6 powers and duties by law appertaining to that office  
7 in this Commonwealth.

1   SECT. 2. The attorney general shall appear for  
2 the Commonwealth, in the Supreme Judicial Court,  
3 when held by three or more justices thereof, in all

4 prosecutions for crimes punishable with death ; and  
5 also in the trial and argument, in said court, of all  
6 causes, criminal or civil, in which the Commonwealth  
7 may be a party, or be interested.

1     SECT. 3. The attorney general shall also, when  
2 required by the Governor, or either branch of the  
3 Legislature, appear for the Commonwealth in any  
4 court or tribunal, in any other causes, criminal or  
5 civil, in which the Commonwealth may be a party,  
6 or be interested.

1     SECT. 4. The attorney general shall consult with  
2 and advise district attorneys, whenever requested by  
3 them, in all matters appertaining to the duties of  
4 their offices ; and shall prepare, from the returns of  
5 the district attorneys, and transmit to the Legisla-  
6 ture annually, as early in the month of February as  
7 is practicable, such abstracts and tabular statements  
8 as will show the nature and extent of crime in this  
9 Commonwealth, and in the several counties thereof ;  
10 the number of prosecutions, and the results thereof,  
11 and the punishments awarded, particularly discrimi-  
12 nating between those crimes which are perpetrated  
13 against the person and against the rights of property,  
14 and whether with violence or without violence ; the  
15 amount of the costs arising in such prosecutions, and  
16 whether the same are paid by the persons accused or  
17 not ; with all such other information as may present  
18 full and complete statistics of crime, and the opera-  
19 tion of criminal laws of this Commonwealth, and  
20 with such observations and statements as, in his opin-  
21 ion, the criminal jurisprudence, and the proper and

22 economical administration of the criminal law, shall  
23 warrant and require.

1   SECT. 5. The Commonwealth's attorney for the  
2 county of Suffolk, and the several district attorneys,  
3 shall make the annual returns which they are now  
4 by law required to make to the secretary of the  
5 Commonwealth, to the attorney general.

1   SECT. 6. The attorney general shall, when re-  
2 quired, attend the Legislature during their sessions,  
3 and shall give his opinion upon all questions of law,  
4 submitted to him by either branch of the Legislature,  
5 or by the governor and council; and shall give his  
6 aid and advice in the arrangement and preparation of  
7 legislative documents and business, when required by  
8 either branch of the Legislature.

1   SECT. 7. The attorney general shall, when re-  
2 quired by the treasurer and receiver general of the  
3 Commonwealth, the secretary, adjutant general and  
4 land agent, consult and advise with them, respective-  
5 ly, on any questions of law that may arise in the  
6 course of their official business.

1   SECT. 8. The attorney general shall see that all  
2 funds given and appropriated to public charities with-  
3 in this Commonwealth, are duly applied to their re-  
4 spective objects; and he is hereby authorized and  
5 required to use all lawful process to prevent the mis-  
6 application thereof, and to apply all lawful remedies  
7 to the correction of abuses and breaches of trust, in  
8 the administration of the same.

1   SECT. 9. The attorney general is hereby author-  
2 ized, whenever, in his judgment, the interests of the  
3 Commonwealth shall require it, to file informations  
4 or other proper process against all persons who in-  
5 trude, without right, on the lands, rights or property  
6 of the Commonwealth, or commit or erect nuisances  
7 thereon, and prosecute the same to final judgment.

1   SECT. 10. The attorney general shall hold his  
2 office for the term of five years from the date of his  
3 commission, unless sooner removed by the governor  
4 and council.

1   SECT. 11. The attorney general shall receive a  
2 salary of two thousand five hundred dollars a year,  
3 to be paid out of the treasury of the Commonwealth,  
4 in equal quarterly payments, in full of all services  
5 rendered by him in said office.

1   SECT. 12. All acts and parts of acts inconsistent  
2 with this act, are hereby repealed.

1   SECT. 13. This act shall take effect from and after  
2 its passage.