

118 VOTES AND PROCEEDINGS, NOVEMBER SESSION, 1802.

On the second reading of the same, the question was put, That the further consideration thereof be postponed? Resolved in the affirmative.

The clerk of the senate delivers the following resolutions:

BY THE SENATE, JANUARY 11, 1803.

BY the constitution the legislative, executive and judicial departments, are distinctly separated, neither have a right, within the sphere of action of the other, to control or expound the limits fixed by the constitution to each, therefore any opinion the legislature may express, or any construction they may give to the constitution, in which the executive authority is implicated, cannot in any manner conclude that department, nor will it be bound to adopt the legislative construction; but as the governor and the council have both expressed a desire that the legislature should give an opinion, and as that opinion may close the misunderstanding that has taken place in the board, although we disclaim any right of concluding by our decision, still we consider it by no means improper to comply with their mutual request; therefore **RESOLVED**, That at the time of passing the resolution respecting the appointment of commissioners on the part of this state to meet such commissioner or commissioners as may be appointed on the part of the state of Pennsylvania and on the part of the Susquehanna canal company, respecting the navigation of the river Susquehanna, it was the intention of the legislature, that those appointments should be made by the governor and council in the same manner, and not otherwise, that the civil officers of government are appointed.

**AND RESOLVED**, That it is the opinion of this legislature, that the practice that has long since prevailed in the executive, of indiscriminately nominating persons for appointments by the governor, as well as by the council, or any member thereof, is the safest, and perhaps the best, construction that we can put upon the constitution, and that the person obtaining a majority of that number of the council that constitutes a quorum, is constitutionally elected.

By order,

J. B. DUCKETT, clk.

Which were read.

On the second reading of the said resolutions, the question was put, That the house assent to the preamble thereof? Resolved in the affirmative.

On progression in reading the said resolutions, the question was put, That the house assent to the first resolution? Resolved in the affirmative.

On further progression in reading the said resolutions, the question was put, That the house assent to the last resolution? The yeas and nays being required, appeared as follow:

A F F I R M A T I V E.

Messrs	Hatheson, Moore, Stansbury, Love,	Lemmon, Frazier, Miller, Alexander,	Veazey, Wood, Kemp,	Montgomery, Forwood, E. Davis,	Lytle, Orrell, Hardcastle,	Dickson, Purviance, Kershner,	Smith, Tilghman, Swearingen.	23.
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N E G A T I V E.

Messrs.	Frisby, Harwood, Hall, Blake,	Somervell, Bourne, Lloyd, Dashiell,	Cottman, Hyland, Goldsborough, Keene,	Steele, Van-Horn, Carr, Quyan,	Ridgely, Thompson, Furnell,	Wilson, T. Davis, Selby,	Veatch, Simkins, Tomlinson.	24.
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So it was determined in the negative.

The clerk of the senate delivers the following message:

BY THE SENATE, JANUARY 11, 1803.

GENTLEMEN,

WE have finished the business before us, and are ready to close the session.

By order,

J. B. DUCKETT, clk.

Which was read.

The following message being prepared, was read.

BY THE HOUSE OF DELEGATES, JANUARY 11, 1803.

GENTLEMEN OF THE SENATE,

WE have finished the business before us, and are also ready to close the session. We therefore hope the governor will be notified that his attendance is requested in the senate chamber to sign and seal the laws.

By order,

W. HARWOOD, clk.

The following message being prepared, was read, agreed to, and sent to the senate by the clerk.

BY THE HOUSE OF DELEGATES, JANUARY 11, 1803.

GENTLEMEN OF THE SENATE,

WE have dissented from your last resolution which contains an expression of your opinion on the constitutionality of the practice which has heretofore obtained relative to appointments by the executive, because we decline expressing an opinion on the construction of the constitution relative to the duties to be performed by the executive.

By order,

W. HARWOOD, clk.