

Four settlements were established in New Hampshire in the years 1623 - 1639. There was no central government over these towns, each one being an independent entity. Because of their frontier position, they were exposed to Indian attack. Due to the civil strife in England, the home government was able to give little attention to these struggling settlements, and they were glad to put themselves under the protection of Massachusetts in 1641. The association with Massachusetts continued until 1679.

In 1679 Charles II separated New Hampshire from Massachusetts jurisdiction and commissioned John Cutt, a wealthy inhabitant of Portsmouth (N. H.) as President. In the "Cutt commission" the King named six men as members of the President's Council, and ordered that three additional members be named by the President and Council.

In colonial times the Council were not only the Governor's sworn advisors but also the upper house of the legislature, and the highest court of appeal in the province.

"Upon all important questions the governor was expected to consult the councilors. Upon some matters he was compelled, by his instructions, to ask them for advice, and in some cases, even to receive their consent before taking action." Fry, New Hampshire as a royal province, p. 119.

The Council consisted, as a rule, of less than a dozen members. Usually appointments were made (by the King) on the governor's recommendation. It was the governor's duty to recommend such only as were "principal freeholders," leading citizens of the colony, and "well affected toward the government."

The councilors were not appointed for any definite term, but served solely during the king's pleasure. Yet many were reappointed on the accession of new governors, and some served for long periods of years.

Usually the councilors were men of wealth, ability and influence, and were highly esteemed and respected. However, through his power of recommendation of appointments, and by other means, the governor was in a position to fill the council with men upon whom he could rely to back his policies. To strengthen their hold upon the Council, some governors gave members and their friends offices of profit. "During the administrations of the last two Wentworths (1741-1775), there was a growing tendency to fill the Council with men who were related to the executive either by blood or by marriage." Fry, p. 126.

However, harmony between governor and council did not exist in all administrations. Opposition factions were sometimes able to exert enough influence in London to get councilors appointed who opposed the current governor's measures.

There was sometimes trouble in getting the attendance of enough members at council meetings for the transaction of business. One of the chief causes was the difficulty in finding suitable men who would accept the position. Councilors received nothing for their services, and must pay for their travel, and even fees connected with their appointment papers. As Theodore Atkinson said in 1761 "when he heard that John Thomlinson had gone to the trouble of having his mandamus as councilor renewed as was requisite after the death of the king, ... 'I am in doubt whether I should have done as much myself had I been with you, as I find much trouble and little profit in that office.'" Fry, p. 119, quoting Provincial Papers, vol. vi, p. 855.

In late 1775, Governor John Wentworth "and several of the Council" fled the colony, leaving no government in existence but the provincial congress.

The New Hampshire constitution of 1776 was the first framed by any of the 13 colonies. It was a brief document adopted January 5, 1776 by a congress of representatives of the towns of New Hampshire, but never submitted for popular vote. It was intended to set up only a temporary or provisional form of government.

This constitution provides that the House of Representatives shall "choose twelve persons, being reputable freeholders and inhabitants within this colony...to be a distinct and separate branch of the Legislature by the name of a Council..."

Thus the Council of the 1776 Constitution corresponded more closely to our present Senate. Under this Constitution, however, the Council and Assembly had executive as well as legislative functions, there being no provision for an executive branch.

A convention met at Concord, June 10, 1778 and framed a constitution which was submitted to the people at their town meetings in 1779, and rejected. A new convention met in 1781 and framed another constitution, which was submitted to the people at town meetings. Numerous amendments were suggested by the towns, and the convention met again, and after a considerable time was able to reconcile conflicting opinions and submit another draft to the people assembled in town meetings. This constitution was adopted and went into effect June 2, 1784. Though considerably amended in 1793, and to a lesser extent at nine constitutional conventions since that time, this is still the Constitution of New Hampshire.

The Constitution of 1784 provided for a Council of five members, elected annually by the General Court (Legislature) by a joint ballot of both houses. Two members of the Council were to be elected from the Senate and 3 from the House of Representatives, and their qualifications were to be the same as for Senators. This meant that a councilor was required to be of the Protestant religion, to own a freehold estate of the value of 200 pounds within the state, be at least 30 years old, and an inhabitant of the state for 7 years immediately preceding his election. Members of the council were "impeachable by the House, and triable by the Senate for mal-conduct."

The Council shared executive power with the chief executive of the state, then called the President of the State of New Hampshire. (Changed to Governor in 1793.) Appointments to judicial, administrative and military offices were by the President and Council. All money paid out of the state treasury must be "by warrant under the hand of the President...by and with the advice and consent of the council."

The President "with advice of Council" had power to prorogue the legislature "not exceeding 90 days" and to call it together.

The power of pardon was exercised by the President with the advice of the Council.

Three Councilors were a quorum. It was provided that "the resolutions and advice of the council shall be recorded in a register, and signed by the members present, and the record may be called for at any time, by either house of the legislature, and any member of the council may enter his opinion contrary to the resolution of the majority." In this provision can be seen a reflection of the bitter struggles between the executive and the Assembly in colonial times.

The amendments of 1792 (effective in 1793) provided for popular election of the councilors, one from each of the five counties of that time. However, the legislature was empowered... "if the public good shall hereafter require it," to divide the state into five districts, "as nearly equal as may be, governing themselves by the number of ratable polls and proportion of public taxes," each district to elect one councilor. By a law effective in 1829 the state was thus divided into councilor districts.

Added in 1793 was Art. 47 of Part 2, reading as follows: "The governor and council shall have a negative on each other, both in the nominations and appointments. Every nomination and appointment shall be signed by the governor and council, and every negative shall be also signed by the governor or council who made the same."

Abolition of the Governor's Council and substitution of the office of Lieutenant Governor was proposed by the Constitutional Convention of 1850. This proposal was not approved by the people. Abolition of the Council was discussed in most of the 8 constitutional conventions since that time, but has never again been submitted for popular vote.

Qualifications of councilors have remained the same as those for senators. The requirement that senators have a "freehold estate of the value of 200 pounds, lying within this state," was stricken out in 1852. The requirement that each senator be "of the Protestant religion" was stricken out in 1877.

Since 1877, councilors, like the Governor and members of the legislature, have been elected biennially instead of annually.

Since 1784 the constitution has provided that "The governor (President) and council shall be compensated for their services, from time to time, by such grants as the general courts shall think reasonable." (Art. 58, part 2) This contrasts sharply with the following article which provides: "Permanent and honorable salaries shall be established by law for the justices of the superior court."

This reflects again the colonial distrust of the executive as contrasted with respect for the judiciary. In colonial times it was indeed at irregular intervals that the Assembly granted money to the Governor and his Council. In those days, a man could not afford to be Governor or a councilor unless he had independent means.

In 1811 each member of the Honorable Council was voted "two dollars per day during the present session of the legislature, and two dollars and fifty cents per day when called together during the recess of the General Court." (Laws of New Hampshire, vol. 8, p.56). A few years later there was added to this annual grant a payment of 10 cents a mile for travel. However in 1834 the pay was reduced to a flat \$2.00 a day whenever they met plus the 10 cents mileage. The compensation remained at that figure until 1866, when it was raised to \$3.00 a day and 10 cents a mile. In 1905 the compensation was increased to \$8.00 a day and expenses and in 1953 to the present amount of \$20 a day and expenses.

Councilor districts have been changed from time to time, in order that they may be "as nearly equal as may be" (Constitution, Part 2, Art. 68). In 1912 the constitution was amended by substituting "population" for "ratable polls and proportion of public taxes" as the basis for division of the state into councilor districts. Another amendment adopted in that year provided for election of the governor, councilors and senators by plurality instead of majority vote.

The basic functions of the Council in the governmental structure of the state have changed but little. A majority of the councilors must still approve appointments. Public officers, outside of the state classified service, may not be removed except by the governor and council for good cause, and after a public hearing. Disbursements of funds must be approved by the governor with the advice of the council. The governor, "with the advice and consent of the council" may acquire real estate by purchase or by the exercise of the power of eminent domain, and may dispose of real estate. The governor's pardoning power is still "by and with the advice of council." The governor, with advice of council, may prorogue or adjourn the legislature and call extra sessions.

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