

# ALASKA CONSTITUTIONAL CONVENTION

## PART 2

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Alaska Legislative Council

Box 2199 — Juneau, Alaska

COGHILL: I might answer that, being familiar with the Calvert course, that the Territorial Department of Education, that is one of their recognized correspondence courses for the outlying areas, and if any family on a CAA remote station or someone on a remote part of the Yukon River, etc., would want to further the education of their children, write to the Commissioner of Education and they are referred to the Calvert course, and in higher institutions it would be the correspondence courses from the University of Nebraska.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Coghill be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 19 - Barr, Boswell, Coghill, Collins, Cooper, Cross, Harris, Hilscher, Hinckel, Johnson, King, Knight, Laws, McCutcheon, Metcalf, Nerland, Poulsen, Robertson, Sweeney.

Nays: 34 - Armstrong, Awes, Buckalew, Davis, Doogan, Emborg, H. Fischer, V. Fischer, Gray, Hellenthal, Hermann, Hurley, Kilcher, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Nordale, Peratrovich, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Taylor, Walsh, White, Wien, Mr. President.

Absent: 2 - Nolan, VanderLeest.)

CHIEF CLERK: 19 yeas, 34 nays, and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption.

WHITE: I have an amendment to Section 1.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. White and Mr. Fischer.

CHIEF CLERK: "Section 1, strike the last sentence."

WHITE: I move the adoption of the amendment.

V. FISCHER: I second it.

ARMSTRONG: I object. Mr. President, I feel that we will complicate our finance situation by trying to write this into a later report for clarification. I think here in one sentence you pinpoint it; you clarify it once and for all, but when you start to define this thing again in a larger amendment, you

have a hopeless task. I don't think it can be done, and I believe you want it here where they read it, they understand it and they know the precepts we are following. I think we would be wasting time to now delete this after we have had this vote of confidence for the Committee's report and then try to take it up again later. So I shall vote to kill the amendment and would ask the delegates to do likewise.

WHITE: I feel again that we are getting into a legislative matter here, and I feel that the broad policies that have been laid down in the Federal Constitution are good enough for our purposes here. Those policies that are contained in our Section 5 of our bill of rights which says, "No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof". In a section, I forget the number of it, in a finance article saying that no funds shall be spent for other than a public purpose. I think those two sections are good enough to spell out the broad outline. In addition, I feel that while I am not a lawyer that almost every argument that has been applied against the use of the word "indirect" could just as logically be applied against the use of the word "direct", and I think it will lead us into trouble.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White and Mr. Fischer be adopted"? Mr. Fischer.

V. FISCHER: I would just like to add, Mr. President, that while this Commissioner Dafoe points out education is an important field, I do not feel that when it comes to an appropriation of public funds it should receive any special, either more restrictive or more favored treatment. As Mr. White pointed out, the general stipulation is that funds be appropriated only for public purpose. Now it seems to me that the definition of public purpose must be made during every age in view of the conditions prevailing at that time. I think that has been one of the strong points of the Federal Constitution. The fact that it has left itself open to that kind of interpretation and, therefore, it seems that if we give favored treatment or discriminatory treatment to this education section, what are we going to do when it comes to health, welfare and just anything else that may come out. I think the public purpose provision should be the only guidance when it comes to appropriating public funds.

PRESIDENT EGAN: Mr. Gray.

GRAY: I would like to ask the Chairman of Style and Drafting if they would have the authority to move this section, if it directly belonged to taxation, would Style and Drafting have that authority?

PRESIDENT EGAN: Would the Rules Committee have the answer to that question?



SUNDBORG: Our rules, I believe, outline the authority of the Style and Drafting Committee and they do provide that after the various proposals have been adopted in third reading that the Style and Drafting Committee has an opportunity to arrange any material, section, subsections and I believe even sentences where it properly belongs in the constitution. It might be that Style and Drafting would have that authority, but, of course, that authority would be subject to approval here on the floor because we can't do anything in our Committee, of course, unless it is approved in a subsequent report that we make to the plenary session.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I merely wanted to point out that this problem has arisen in a good many of the States. It has arisen in connection with the education, and therefore I feel that this provision should remain in the section under education.

COGHILL: Mr. White brought up the thought that the Federal Constitution was all-inclusive. However, it might be well to remember that during the years that they were writing the Federal Constitution they left all educational matters to the individual states, and the purpose of leaving these educational matters to them was because of the trouble they were having at that time between different groups and different communities and different states being quite well controlled by different churches of one sort and another, such as the Quakers in Penn State and down in Virginia and over in Rhode Island and through that area. I feel that this should stay in the article, although my amendment did not ride, I am going to vote for it because I feel at least we have a certain provision for the direct benefit of tax dollars. I might, if I may, Mr. President, read the Supreme Court's decision of 1947 of the Emerson case, and I will not read the whole section but just in one part. It says, "No tax in any amount, large or small, can be levied to support any religious activities or institution whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither state nor federal government can openly or secretly participate in the affairs of any religious organizations or groups and vice versa."

WHITE: If I may close briefly. I am not for or against bus transportation to certain institutions. I am not for or against hot lunches to certain institutions. I again think we would be much better advised to stick to the broad outlines. In partial reply to Mr. Coghill, I might mention that 100 years from now the state might wish to get involved in some sort of G.I. Bill of its own, following another war. I would not be in favor of it now, but 100 years from now I might. Why not leave ourselves open?

BARR: Point of information. I seem to remember when we first started out there was a sheet of paper on our desk to outline certain things that was mandatory to place in our constitution to conform with the Federal Constitution and with our accepted principles of American government. I will ask Mr. Armstrong, I believe, wasn't this practically the same wording in one of those paragraphs and did it not specifically mention schools? Mr. White has put in his amendment because he said the other phrasing in the Finance Committee report would take care of it. That mentioned public funds should be used for public purposes, but aren't we required to state in our constitution that public funds should not be used for private schools?

ARMSTRONG: No sir, not according to the House Enabling Act that we have used as a guide. On page 3, line 14, it just makes the general provision that for the establishment and the maintenance of a system of public schools which shall be open to all children of the state and free from sectarian control. That is the only thing, but I might add that I believe that there are 39 states that have added some type of safeguard in their constitutions directly in connection with education, and I believe every new constitution that has come out has held to some provision of this type, practically in every case they have been written in at this point, so I don't know why we should be afraid to follow that pattern. I don't think it is unusual to keep it here. I think it is healthy to keep it here, and I believe this is where it belongs.

McNEES: I call for the question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. White and Mr. Fischer be adopted by the Convention?"

JOHNSON: I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 13 - V. Fischer, Hurley, Kilcher, Laws, Lee, McCutcheon, Nolan, Poulsen, Reader, Riley, Sundborg, Walsh, White.

Nays: 41 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Johnson, King, Knight, Londborg, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nordale, Peratrovich, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sweeney, Taylor, Wien, Mr. President.



Absent: 1 - VanderLeest.)

CHIEF CLERK: 13 yeas, 41 nays and 1 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 1? Mr. Victor Rivers.

V. RIVERS: May I ask a question? I notice that the Committee has come in with the words "direct benefit". I notice that some of the other states' constitutions, including that of Hawaii, say "support or benefit". What was the intent of limiting them to the word "direct"? I would like to know a little about the intent of the Committee rather than in dealing with both "support" or "benefit".

PRESIDENT EGAN: Miss Awes.

AWES: I don't recall that the Committee considered the words "support" or "benefit". I think the purpose we wanted to achieve was brought out in the arguments on an earlier amendment and we felt these words did it, and I don't recall the words "support" or "benefit" came before the Committee.

V. RIVERS: In other words, the Committee did not consider the words "support" or "benefit"?

AWES: That is right.

PRESIDENT EGAN: That seems to be the understanding of the Chair. Mr. Armstrong.

ARMSTRONG: As I recall, Mr. President, we probably discussed the question of the support of private schools, but we did not feel it needed to be in this particular section, and I don't recall, Mr. Rivers, that we considered that as a part of the text. I certainly would agree with what Miss Awes has said, although we discussed in Committee such things as direct legislation for the building of a school or the maintenance of a private school, which would be support, but it was our understanding that that would be covered under this word "direct benefit". This would prohibit the direct appropriation for building or maintenance of private institutions.

V. RIVERS: Mr. President, I am going to make a motion. I think that the word "direct" limits the interpretation of this. I am going to make a motion that the word "direct" be stricken and insert in lieu thereof the words "support of", line 7.

BARR: I second it.

PRESIDENT EGAN: The matter is open for discussion. Mr. Rosswog.