

FOLDER NO.

150

RESOLUTION NO. 12

ARRANGEMENTS FOR HEARINGS DURING RECESS

RESOLVED: That hearings shall be held at Ketchikan, Juneau, Anchorage, Fairbanks, Wrangell, Petersburg, Sitka, Haines, Klawock, Nome, Unalakleet, Kodiak, Cordova, Seward, Homer, Palmer, Dillingham, Valdez and Nenana.

Hearings may be held by delegates from nereby communities at such places as Craig, Kotzebue, Naknek, Kenai, Seldovia, Douglas, Talkeetna and Skagway without expense or prior notice to the Convention.

All hearings shall be open to discussion of any matter under consideration by the Alaska Constitutional Convention.

Committees to conduct the hearings will be as follows:

Ketchikan	- Mr. Smith
Wrangell	- Mr. Nolan
Petersburg	- Mr. Lee
Sitka	- Mr. Knight
Juneau	- Mr. Armstrong, Mr. Gray, Mr. Robertson, Mr. Sundborg, Mrs. Sweeney and Mr. VanderLeest
Haines	- Mr. King and Mr. Riley
Nenana	- Mr. Coghill
Klawock	- Mr. Peratrovich
Nome	- Mrs. Hermann
Unalakleet	- Mr. Londborg
Anchorage	- Miss Awes, Mr. Buckalew, Mrs. Helen Fischer, Mr. Victor Fischer, Mr.

- Hellenthal, Mr. Marston, Mr. McCutcheon, Mr. Poulsen, Mr. V. Rivers and Mr. White.

Palmer - Mr. Hurley
Homer - Mr. Kilcher
Seward - Mr. Metcalf
Kodiak - Mr. Hinckel
Cordova - Mr. Rosswog
Dillingham - Mr. Emberg
Valdez - Mr. Egan and Mr. Harris
Fairbanks - Mr. Boswell, Mr. Collins, Mr. Cooper, Mr. Doogan, Mr. Hilscher, Mr. Johnson, Mr. Laws, Mr. McLaughlin, Mr. McNealy, Mr. McNees, Mr. Nerland, Mr. Reader, Mr. R. Rivers, Mr. Taylor, Mrs. Wien.

Committees of two or more members shall elect their own chairman and secretary and shall operate by majority vote.

The tentative dates, times and places of all committee hearings shall be announced to the Convention, if possible, not later than December 19. Each committee shall make certain that at least one of its members is present at the time specified.

No expense to the Convention shall be incurred by any committee.

A brief report, listing witnesses heard and subjects covered shall be submitted to the Convention by each committee not later than January 6.

Constitutional Convention
Convention/12
December 7, 1955

Alaska Constitutional Convention

REPORT TO CONVENTION BY COMMITTEE CHAIRMEN

PROPOSED ARRANGEMENTS FOR HEARINGS DURING RECESS

(1) Hearings of ~~not to exceed two days~~ shall be held at Ketchikan, Juneau, Anchorage, ~~and~~ Fairbanks, ~~Hearings of not to exceed one day shall be held at~~ Wrangell, Petersburg, Sitka, Haines, Klawock, Nome, ^{Unalakleet} ~~Kotzebue~~, Kodiak, Cordova, Seward, Homer, Palmer, Dillingham, Valdez and Nenana.

Hearings may be held by delegates from nereby communities at such places as Craig, ^{Kotzebue} ~~Unalakleet~~, Naknek, Kenai, Seldovia, Douglas, Talkeetna and Skagway without expense or prior notice to the Convention.

(2) All hearings shall be open to discussion of any matter under consideration by the Alaska Constitutional Convention.

(3) Committees to conduct the hearings will be as follows:

Ketchikan	- Mr. Smith
Wrangell	- Mr. Nolan
Petersburg	- Mr. Lee
Sitka	- Mr. Knight
Juneau	- Mr. Armstrong, Mr. Gray, Mr. Robertson, Mr. Sundborg, Mrs. Sweeney and Mr. Vander- Leest
Haines	- Mr. King and Mr. Riley

As amended: Journal, December 9, 1955

Nenana - Mr. Coghill
Klawock - Mr. Feratrovich
Nome - Mrs. Hermann and Mr. Londborg
Unalakleet ~~Kotzebue~~ - *Mr. Londborg*
~~Mr. Cross~~
Anchorage - Miss Awes, Mr. Buckalew, Mrs. Helen Fischer,
Mr. Victor Fischer, Mr. Hellenthal, Mr.
Marston, Mr. McCutcheon, Mr. Poulsen, Mr.
V. Rivers, Mr. White.
Palmer - Mr. Hurley
Homer - Mr. Kilcher
Seward - Mr. Metcalf
Kodiak - Mr. Hinckel
Cordova - Mr. Rosswog
Dillingham - Mr. Emberg
Valdez - Mr. Egan and Mr. Harris
Fairbanks - ~~Mr. Barr~~, Mr. Boswell, Mr. Collins, Mr.
Cooper, Mr. Doogan, Mr. Hilscher, Mr.
Johnson, Mr. Laws, Mr. McLaughlin, Mr. Mc
Nealy, Mr. McNees, Mr. Nerland, Mr. Reader,
Mr. R. Rivers, Mr. Taylor, Mrs. Wien.

(4) Committees of two or more members shall elect their own chairman and secretary and shall operate by majority vote.

(5) The tentative dates, times and places of all committee hearings shall be announced to the Convention ^{if possible} not later than December 19. Each committee shall make certain that at least one of its members is present at the time specified.

(6) No expense to the Convention shall be incurred by any committee.

(7) A brief report, listing witnesses heard and subjects covered shall be submitted to the Convention by each committee not later than January 6.

Constitutional Convention
Convention/10/a
December 7, 1955

R E S O L U T I O N No 10

CONVENTION RECESS

Introduced by Committee on Administration

WHEREAS, the Act providing for this Constitutional Convention permits the Convention to recess for a period of not to exceed fifteen days for the purpose of holding public hearings in Alaska;

WHEREAS, all substantive committees of the Convention plan to recommend articles for inclusion in the Constitution prior to December 19;

WHEREAS, the holding of public hearings by as many delegates as practicable in communities throughout Alaska after December 19 will permit delegates to gain valuable insights into public reaction to the Committee proposals and to enable them to act more wisely on these proposals prior to their final adoption by the Convention:

THEREFORE BE IT RESOLVED:

1. That the Convention recess from December ²⁰~~19~~, 1955 to January 3, 1956, ^{both dates} inclusive, for the purpose of holding public hearings in Alaska on proposed provisions of the Constitution;
2. That hearings be held by such delegates at such times and places as the Convention shall approve;

As amended: Journal of December 8, 1955

3. That the delegates shall be entitled to reimbursement for their actual travel costs going to and returning from their ^{hearings} ~~homes for the recess and to compensation~~ *authorized by the Convention and to* and per diem for the days involved in such travel.

~~4. That the delegates who participate in public hearings scheduled by the Convention will be entitled to compensation and per diem for the actual days devoted to such hearings, if it is necessary for the delegates to travel from their homes for such periods. Hearings shall not exceed the number of days approved in advance by the Convention. If the site of the hearings is away from their homes, they shall also be entitled to reimbursement for the actual cost of travel going to the hearings and returning to their homes or to the Convention.~~

4 B. That those delegates whose normal residence is outside the Fairbanks area shall be entitled to per diem for the days of Convention recess spent in the Fairbanks area.

5 B. That the rate of ~~compensation~~ and per diem shall be ^{that} ~~those~~ established in the Convention Enabling Act.

P R O P O S E D R E S O L U T I O N
CONVENTION RECESS

WHEREAS the Act providing for this Constitutional Convention permits the Convention to recess for a period of not to exceed fifteen days for the purpose of holding public hearings in Alaska:

WHEREAS, all substantive committees of the Convention plan to recommend articles for inclusion in the Constitution prior to December 19;

WHEREAS, the holding of public hearings by as many delegates as practicable in communities throughout Alaska after December 19 will permit delegates to gain valuable insights into public reaction to the Committee proposals and to enable them to act more wisely on these proposals prior to their final adoption by the Convention;

THEREFORE BE IT RESOLVED:

1. That the Convention recess from December 19, 1955 to January 4, 1956 inclusive, for the purpose of holding public hearings in Alaska on proposed provisions of the Constitution;
2. That hearings be held by such delegates at such times and places as the Convention shall approve;
3. That the delegates shall be entitled to reimbursement for their actual travel costs going to and returning from their homes for the recess and to compensation and per diem for the days involved in such travel.
4. That the delegates who participate in public hearings scheduled by the Convention will be entitled to compensation and per diem for the actual days devoted to such hearings, which shall not exceed the number of days approved in advance by the Convention. If the site of the hearings is away from their homes, they shall also be entitled to reimbursement for the actual cost of travel going to the hearings and returning to their homes or to the Convention.

5. That those delegates whose normal residence is outside the Fairbanks area and who are unable to return thereto during the recess period, shall be entitled to per diem for the days of Convention recess spent in the Fairbanks area.

6. That the ~~r~~ate of compensation and per diem shall be those established in the Convention Enabling Act.

J. Gerald Williams
Attorney General

TERRITORY OF ALASKA
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December 9, 1955

Honorable William A. Egan, President
Alaska Constitutional Convention
University of Alaska
College, Alaska

Re: Interpretation of Chapter 46, SLA 1955

Dear Mr. Egan:

This is in reply to your letters of December 3 and
December 5, 1955, wherein you ask the following questions:

1. "Are the remarks made by delegates of the Alaska Constitutional Convention on the Convention floor and at public hearings of Convention Committees entitled to privileges and immunities similar to the remarks of members of the territorial legislature made on the floor of the legislature and at public hearings of legislative committees?"
2. "Assuming that the Convention adopts a program to recess for a period of fifteen (15) days for the purpose of holding public hearings in various parts of Alaska, are we correct in assuming that the period of recess does not count as a part of the seventy-five (75) days which the Convention is authorized to meet? If the following arrangements for compensation, per diem, and costs of travel during the recess period are approved by the convention, would there be, in your opinion, any legal objection thereto?
 - a. That the delegates shall be entitled to reimbursement for their actual travel costs going to and returning from their homes for the recess and to compensation and per diem for the days involved in such travel.

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b. That the delegates who participate in public hearings scheduled by the convention will be entitled to compensation and per diem for the actual days devoted to such hearings which shall not exceed the number of days approved in advance by the convention. If the site of the hearings is away from their homes, they shall also be entitled to reimbursement for the actual cost of travel going to the hearings and returning to their homes or to the convention.

c. That those delegates whose normal residence is outside the Fairbanks area and who are unable to return thereto during the recess period, shall be entitled to per diem for the days of convention recess spent in the Fairbanks area.

d. That the rate of compensation and per diem shall be those established in the convention enabling act."

Answering each question in the same order as they are set forth in your letters, you are advised as follows:

I.

Initially, it is noted that Chapter 46, Session Laws of Alaska, 1955, the Constitutional enabling act, does not extend any privilege or immunities to the delegates for any words uttered in the discharge of their official duties.^{1/} For this reason, the common law, which is applicable within the Territory, must be examined to determine if such privilege or immunity exists. Section 2-1-2 ACLA 1949 makes the common law applicable to Alaska.

^{1/} Compare Section 12 of the Organic Act for the Territory of Alaska, which states:

"That no member of the legislature shall be held to answer before any other tribunal for any words uttered in the exercise of his legislative functions.***"

Also, see Article I, Section 6 of the United States Constitution, which provides:

"***for any Speech or Debate in either House, (the Senators and Representatives) they shall not be questioned in any other Place."

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I believe it hardly subject to argument that the privilege or immunity sought is primarily to allow delegates to the Convention to speak their minds freely and exercise their respective functions in drafting a Constitution for the State of Alaska without incurring the risk of an action for the recovery of damages. This freedom from libelous or slanderous legal action will contribute greatly to freedom of expression.

The statements and communications by members of any public governing or deliberative body are divided into two main general classes namely:

- (1) Those that are absolutely privileged, and
- (2) Those that are qualifiedly or conditionally privileged.

An absolute privilege affords a complete defense to a libel or slander lawsuit and even the existence of malice will not destroy such an absolute privilege. Ryan v. Wilson, 300 N.W. 707, 712; Robinson v. Home Fire and Marine Ins. Co., 59 N.W. 2d 776.

It may be generally stated that the occasion and the office afford the test as to whether an alleged slanderous or libelous statement may be absolutely privileged, conditionally privileged, or not at all privileged. Ryan v. Wilson, supra.

The doctrine of privileged communication is based upon public policy. This is especially true in cases of absolute privilege, where the interests and the necessities of society require that on certain occasions, utterances or publications of individuals, even though they are both false and maliciously made, shall protect the defamer from all liability to prosecution. Ryan v. Wilson, supra; Newell on Slander and Libel, 4th Ed., Section 349; Tanner v. Stevenson, 128 S.W. 878.

It is usually held that the public welfare alone justifies the privilege and on occasions some persons who are members of such public bodies, should be allowed to express their sentiments fully and fearlessly upon all questions and subjects. Mills v. Denny, 63 N.W. 2d 222, 48 A.L.F. 2d 933.

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This rule should be and usually is confined strictly to cases in which the public service requires complete immunity to legislatures in debate. Ryan v. Wilson, supra. Most courts as well as textbook writers agree that this privilege is and must be restricted to narrow limits. Absolute immunity, it seems, should be confined to cases where there is supervision and control by other authorities, such as courts of justice, where proceedings are under the able and controlling influence of a learned judge, who may reprimand, fine and punish as well as expunge from records statements of those who exceed proper bounds, and who may themselves be disciplined when necessary. The same is true in federal and state legislatures, and their committees, where the decorum is under the watchful eye of presiding officers and records may be stricken and the offending member punished. Mills v. Denny, supra.

The rule is quite well settled that in final analysis the question as to whether or not there is a privilege, absolute or qualified, under the circumstances or occasion involved is for the court to decide. Robinson v. Home Fire and Marine Ins. Co., supra; Ryan v. Wilson, supra; Mills v. Denny, supra.

The general rule is that that defamatory statements uttered by members of Congress or of state or territorial legislatures in the performance of their legislative function is absolutely privileged. Tenney et al. v. Brandhove, 341 U.S. 367; 3 Restatement of the Law of Torts, Sec. 590, p. 236; 40 A.L.R. 2d 941 (Anno.).

The reason for the privilege is clear. It was well summarized by James Wilson, an influential member of the Committee of Detail which was responsible for the provision in the Federal Constitution. "In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however, powerful, to whom the exercise of that liberty may occasion offense." II Works of James Wilson, (Andrews Ed 1896) 38; Tenney v. Brandhove, supra.

In the time allowed, no case was found extending such common law privileges and immunities to delegates of a Constitutional Convention. However, in analyzing the nature of such a body, it is inescapable that, at the very minimum

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it has the very basic and fundamental powers and rights within its jurisdiction as are likewise vested in the Congress of the United States and the Legislature for the Territory of Alaska.

In Goodrich v. Moore, 72 Am. Dec. 74, the Supreme Court of Minnesota declared that a constitutional convention is the "highest legislative assembly recognized in law." In Frantz v. Autry, 91 F. 193, 202, the Court held that:

"In a Territory, the source of all power is Congress. But in the formation of a Constitution and state government the power emanates from the people."

The Court further held that the delegates to the convention were the immediate representatives of the people of the "two Territories" (Territory of Oklahoma and the Indian Territory) and that the convention "was created by the direct action of the people, and in the discharge of its powers, duties and obligations it performs one of the highest and most important acts of popular sovereignty." In Sproule v. Fredericks, 11 S. 472, the Supreme Court of Mississippi, in discussing the powers of the convention said:

"It is the highest legislative body known to freemen in a representative government. It is supreme in its sphere, it wields the powers of sovereignty, specially delegated to it, for the purpose and the occasion, by the whole electoral body, for the good of the whole commonwealth."

Based on the above premise, that the delegates to the convention are serving, by any interpretation, in at least an equal or comparable capacity as members of the Congress and the legislature, I am of the opinion that remarks made by them on the convention floor and in the discharge of their duties of office at any public hearing should be afforded an absolute privilege. This conclusion is also supported by Judge Jameson, quoted by you in your letter, wherein he fully endorses granting members of a convention the same immunities and privileges allowed jurors, witnesses and legislators.

II.

The questions under Paragraph 2 of your letter are primarily a matter of statutory construction. The following

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provisions of Chapter 46, SLA 1955, are pertinent to the discussion herein:

"Section 1. *** The convention shall meet for not more than seventy-five days but may, at its discretion, recess for a period of not to exceed fifteen days for the purpose of holding public hearings in Alaska on proposed provisions of the constitution."

"Section 18. The convention shall have power to incur such expenses as may be necessary, including but not limited to expenses for employment of such clerical, technical and professional personnel as it may require, in order to exercise the powers conferred and to perform the duties imposed by this Act."

"Section 19. The delegates shall receive a per diem of twenty dollars for each day in attendance at, including time spent going to and returning from, the convention; and they shall be reimbursed for their actual travel costs incurred in attending upon their duties as delegates. In addition they shall receive for their services the sum of fifteen dollars per day as compensation for each day's attendance while the convention is in session."

The primary rule of construction is to ascertain and declare the intention of the legislature and carry such intention into effect to the fullest degree. 50 Am. Jur. 200, Statutes, Section 223. The legislative will is the all-important factor. Juneau Spruce Corporation v. International Longshoremen's and Warehousemen's Union, 12 A. 250, 83 F. Supp. 224.

All laws are to be given a sensible construction. United States v. Katz, 271 U.S. 354. Where the language of a statute leads to an absurdity or hardship presumably not intended, it may be construed by modifying its words so as to carry out the real intention. Cf. Tulman v. United States, 130 U.S. 121. Interpretational inconsistencies must be avoided and all parts of the statute must be harmonized to reach the real

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ment of the legislature. Iglehart v. Iglehart, 204 U.S.
487, 51 L. Ed. 525.

I am of the opinion that under Section 1, quoted above, the Convention is authorized to meet for a period not exceeding seventy-five days exclusive of the time allowed for a recess. As the word "meet" is used in the context of the statute, it suggests the full gathering of the delegates as a deliberating body engaged in the function of drafting a Constitution. It is the Convention that "shall meet for not more than seventy-five days"; the conducting of public hearings is not a meeting of the Convention.

(a) As I interpret Chapter 46, a recess is authorized "for the purpose of holding public hearings." However, it is readily recognized that all members will not be engaged in such a function. Therefore, several delegates may be faced with the alternative of remaining in Fairbanks or returning to their place of residence. ^{2/} Under these circumstances, and recognizing the absence of any intentional avoidance of the duties of office, I am of the opinion that the delegates are entitled to be reimbursed for the actual travel costs incurred while going to and returning from their homes during the recess together with a per diem of \$20.00 for each day involved in such travel. However, as I read the Act, they are not entitled to receive any compensation for that time spent in travel; nor may they be given any per diem while at their place of residence.

(b) If, during the recess, a delegate participates in a public hearing scheduled by the Convention, he is entitled to receive compensation and per diem for the actual days devoted to such hearings. I feel it is implied that a delegate has the right to be paid for services rendered in the furtherance of his official duties, which by statute specifically includes the holding of such public hearings. Consider Section 18.

Furthermore, I interpret Section 19 as authorizing

If a delegate remains in Fairbanks, he is entitled to receive a per diem allowance of \$20.00; however, no travel expenses are charged against the Convention's appropriation. On the other hand, if he returns to his place of residence travel expenses will be incurred, while a certain portion of the per diem otherwise allowed, will be saved.

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the reimbursement to delegates of the actual cost of travel, together with the allowance of a per diem during such times as they are going to a hearing and returning to their homes or to the Convention. However, once again, I conclude they are not permitted to be paid any compensation during such travel.

(c) As discussed in subsection (a) above, a delegate not scheduled to take part in a hearing is faced with the alternative of remaining in the Fairbanks area or returning to his place of residence. Consistent with the discussion in subsection (a), I am of the opinion that those delegates whose normal place of residence is outside the Fairbanks area are entitled to per diem for those days spent in that city.

(d) As a matter of law, the rate of compensation and per diem must be \$20.00 a day per diem and \$15.00 a day compensation. Use of the word "shall" in the Act makes this mandatory and does not permit deviations therefrom.

Very truly yours,

J. GERALD WILLIAMS
Attorney General

By: 
Henry J. Camant
Assistant Attorney General

HJC:mez